



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

Superintendent Patricia Hamamoto  
Superintendent of Education  
Hawaii Department of Education  
1390 Miller Street, #307  
Honolulu, Hawaii 96813

FEB -8 2005

Dear Superintendent Hamamoto:

The purpose of this letter is to respond to Hawaii Department of Education's (HIDOE's) April 27, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments by the State during the reporting period compared to established objectives. The APR for Part B of IDEA is designed to provide uniform reporting from States and result in high-quality information across States. OSEP is also responding to Hawaii's final Improvement Plan (IP) Progress Report submitted June 2004 addressing the noncompliance identified in OSEP's June 5, 2002 Monitoring Report.

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 the submission of Part B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

It is OSEP's expectation that, as part of its improvement planning efforts and in reporting in the APR, Hawaii will collect, analyze, and report relevant data and make data-based determinations regarding the implementation of the five clusters (as well as other areas identified by the State) to ensure compliance and improvement in program performance. OSEP's comments regarding the April 2004 APR and the June 2004 IP Progress Report are listed by cluster area.

### ***Background***

OSEP's 2002 Monitoring Report identified the following areas of noncompliance: (1) methods were not always effective in identifying noncompliance and ensuring that schools corrected identified noncompliance; (2) an adequate supply of qualified personnel was not always available to provide a free appropriate public education (FAPE) to children with disabilities; (3) schools did not always ensure that needed supports, services, accommodations and modifications were

included in the IEP, that, where appropriate, children's IEPs were accessible to their regular education teachers, and that children with disabilities have the opportunity to access, be involved in and progress in the general curriculum; (4) HIDOE did not always ensure that the participation of children with disabilities in State-wide assessment programs with appropriate accommodations and modifications, including participation in the alternate assessment; (5) schools did not always ensure that IEP teams included a statement of needed transition services in children's IEPs beginning at age 16 or younger, if appropriate; (6) schools did not always invite, to IEP meetings, other agencies that were likely to be responsible for providing or paying for needed transition services, or take steps to obtain their input if they did not attend; (7) complaints were not resolved in a timely manner; and (8) due process hearing decisions were not issued in a timely manner or enforced.

In September 2003, OSEP visited Hawaii to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA and State-wide assessment. OSEP's March 31, 2004 verification letter identified that HIDOE did not: (1) monitor charter schools for compliance with Part B requirements; (2) consistently require districts to correct noncompliance; (3) have an effective system in place to ensure that due process hearing decisions were reached and a copy of the decision mailed to each party within Federal timelines; and (4) establish performance goals and indicators in order to report on the performance of children with disabilities participating in the alternate assessment, in the same detail as it reported the results for nondisabled children. The verification letter further noted that HIDOE's use of only one performance level for all children with disabilities who took the alternate assessment was inconsistent with the requirements of 34 CFR §§300.137 and 300.139.

In OSEP's FFY 2004 grant award letter to Hawaii, the United States Department of Education imposed Special Conditions to ensure Hawaii meets the requirements at 34 CFR §§300.137 and 300.139. Under the Special Conditions, Hawaii was required to establish and submit to OSEP goals and indicators for measuring the performance of children with disabilities participating in its alternate assessment by December 1, 2004. Hawaii also is required to report publicly and to the Secretary on the participation and performance of children with disabilities on the alternate assessment by June 15, 2005. On November 8, 2004 and January 5, 2005, Hawaii submitted documentation regarding assessments. Those submissions are discussed in further detail in the section on assessments, below.

In other correspondence, OSEP further addressed issues relating to charter schools, including the inclusion of charter schools in the State's monitoring activities. OSEP directed the State to submit additional documentation related to charter schools. OSEP's analysis of the State's January 5, 2005 submission will be addressed under separate cover.<sup>1</sup>

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<sup>1</sup> It also will be important for the State to review its proposed statutory changes with regard to charter schools in light of the changes to Section 613(a)(5) made by the Individuals with Disabilities Education Improvement Act of 2004, that will take effect July 1, 2005.

### *General Supervision*

#### Monitoring: Identification and Correction of Noncompliance

OSEP's 2002 Monitoring Report stated that Hawaii's methods for identifying and correcting noncompliance were not always effective. In the March 2004 verification letter, OSEP noted that HIDOE did not monitor charter schools for compliance with Part B requirements and did not require districts to correct all the identified noncompliance within a reasonable period of time not to exceed one year. Additional correspondence also addressed needed changes to State law, and additional documentation related to charter schools in Hawaii.

In the monitoring section (Part VI) of the June 2004 IP Progress Report, HIDOE provided examples of IEP focused checklist results for complexes in four of the seven districts and the corresponding corrective action plans. In one example, results using the focused checklist showed that only 69% of the IEPs included a statement in the child's present level of performance describing how the child's disability affected access to the general education curriculum. Although HIDOE submitted documentation that the complexes developed improvement strategies, it was not clear from HIDOE's submission that all Part B noncompliance was required to be corrected within a reasonable period of time not to exceed one year. For example, on pages 6-8 of the general supervision section of the APR, HIDOE reported that during the 2002-2003 school year, 91% of complexes passed the internal review. In the APR, HIDOE set a target that 100% of the complexes would pass the internal review. However, OSEP noted that HIDOE did not include targets for compliance with Part B requirements included in the focused checklist or internal reviews.

As noted above, HIDOE's January 5, 2005 submission related to charter schools, including HIDOE's monitoring of charter schools will be addressed under separate cover.

Based on the information provided in the APR and IP Progress Report, OSEP cannot determine that the State's system can identify and correct noncompliance in a timely manner. The State must provide, in the FFY 2003 APR, data and analysis such that OSEP can determine whether the State's monitoring system ensures correction of all identified noncompliance with Part B requirements within a reasonable period of time not to exceed one year.

#### Complaints

OSEP's 2002 Monitoring Report stated that HIDOE did not ensure that formal written complaints were resolved and a final decision was issued within 60 days of filing, unless there was an extension of time due to exceptional circumstances for a particular complaint. See 34 CFR §300.661. During the September 2003 verification visit, OSEP staff determined that HIDOE had corrected the previous noncompliance and was issuing written decisions within the 60-day timeline or within a proper extension of time. However, OSEP also found that HIDOE had no systemic way to ensure that State complaint decisions were being implemented.

On pages 1-3 of the complaint section (Part VII) of the June 2004 IP Progress Report and pages 9-10 of the general supervision section of the APR, HIDOE reported that from January 2001 to the

2003-2004 school year, all State complaints were resolved and a final decision issued within the 60-day timeline or within an extension of time for a particular complaint.

In addition, on page 3 of the complaint section of the June 2004 IP Progress Report and page 5 of the general supervision section of the APR, HIDOE noted that it had developed and implemented procedures for "Validating the Implementation of Agreements, Decisions and Orders" in July 2001. In the June 2004 IP Progress Report, HIDOE reported that all corrective actions required for written complaints in school year 2003-2004 had been completed. OSEP looks forward to HIDOE's FFY 2003 APR submission, regarding the State's performance in continuing to ensure compliance with the Federal requirements related to resolving State complaints.

#### Due Process Hearings

OSEP's 2002 Monitoring Report and March 2004 verification letter found that HIDOE: (1) did not consistently meet the 45-day timeline requirement, or extension of timelines, for due process hearings; (2) did not ensure that a copy of the due process hearing decision was mailed to each party; and (3) did not ensure that due process hearing decisions were implemented. See 34 CFR §§300.511 and 300.600.

On page 10 of the general supervision section of the APR, HIDOE reported that for the period between July 1, 2002 and June 30, 2003, 16 of 23 due process hearing decisions (70%) were timely issued.<sup>2</sup> On pages 1-3 of the due process hearing section of the June 2004 IP Progress Report, HIDOE reported that as of that date, all due process hearings requested from July 1, 2003 through June 25, 2004 were either resolved within Federal timelines, including proper extensions, or were still within those timelines or extensions.

In addition, on page 4 of the due process hearing section of the June 2004 IP Progress Report, and page 5 of the general supervision section of the APR, HIDOE reported it has a system in place to ensure that due process hearing decisions and settlement agreements are implemented. In the March 2004 verification letter, OSEP noted that beginning in September 2003, HIDOE planned to take action to ensure that due process hearing decisions were implemented. In the June 2004 IP Progress Report, HIDOE reported that the procedures for "Validating the Implementation of Agreements, Decisions and Orders" were revised and reissued in January 2004. HIDOE reported that the State is tracking due process hearing decisions in all cases including those where the nature of the decision includes actions that go beyond the State guidelines of 60 days for full implementation. OSEP looks forward to HIDOE's 2003 APR submission regarding the State's performance in continuing to ensure compliance with Federal timeline requirements for due process hearing decisions.

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<sup>2</sup> OSEP noted that Hawaii did not consistently establish full compliance as its projected compliance targets for meeting IDEA requirements. For example, on page 10, HIDOE established 85% and not 100% compliance as the projected target for meeting the requirement at 34 CFR §300.511 related to timely due process hearing decisions. HIDOE must ensure, in the FFY 2003 APR and beyond, that compliance targets for meeting IDEA requirements ensure full compliance or 100%.

### Adequate Supply of Qualified Personnel to Provide FAPE

OSEP's 2002 Monitoring Report noted that due to a lack of qualified personnel: (1) required reevaluations were not being completed by qualified personnel in a timely manner (34 CFR §300.532(c)(ii)); and (2) children with disabilities did not receive all the special education and related services (occupational and speech therapy) listed in their IEPs.

HIDOE reported on pages 11-16 of the APR that the State is using contract personnel who are occupational therapists, physical therapists, and speech and language pathologists to ensure that students with disabilities receive related services identified in IEPs. During the 2002 and 2003 school years data showed: (1) a 2% vacancy for special education teachers; (2) 23-35% vacancies for related services personnel; (3) 7% vacancy for behavior health personnel; and (4) no vacancies for psychological examiners and school psychologists.

HIDOE reported, in Part I (qualified personnel) of the June 2004 IP Progress Report, that the State had sufficient numbers of qualified teachers to ensure the provision of special education and related services. Data in the June 2004 IP Progress Report showed that in March and April 2004, 90% of the special education positions were filled with qualified special educators and related services providers.

On page 4 of Part II (early childhood transition) of the APR, HIDOE reported data on compliance with the State's 60-day timeline for evaluations. HIDOE reported that for 2002-2003, 87% of 14,635 evaluations were conducted within the State's timeline.

In the next APR submission, HIDOE must continue to report on compliance with requirements for reevaluations within the State's timelines and on the impact, if any, of the reported vacancies on the provision of special education and related services to eligible students with disabilities.

### Data Collection Under Section 618 of IDEA

OSEP's March 2004 verification letter reported that HIDOE's system for collecting and reporting data appeared to be a reasonable approach to ensuring the accuracy of the data that HIDOE reports to OSEP under section 618. As noted in the verification letter and reported on pages 20-21 of the general supervision section of the APR, HIDOE completed the following activities: (1) developed and implemented Hawaii's integrated special education system (ISPED); (2) adhered to the 618 specifications and definitions the State has received from OSEP; (3) implemented an online verification process for principals and superintendents; (4) informed school staff regarding trends, on a monthly basis, in data input; (5) provided monetary incentives to schools that have 100% accuracy in reporting data; and (6) incorporated system supports and checks. OSEP looks forward to reviewing data in the FFY 2003 APR regarding continued performance in this area.

### ***Early Childhood Transition***

OSEP's 2002 Monitoring Report identified no noncompliance in the area of early childhood transition; however, the 2002 Monitoring Report noted this as an area for improvement. The APR reported that 327 of 703 students received services by their third birthday, but that the data that was

available and reported was not reliable because the State could not accurately determine the number of those students who were transitioning from Part C to Part B. HIDOE reported that family transition surveys were distributed to parents of children ages three through five who were enrolled in one of HIDOE's districts. Of the 1,100 surveys distributed, 245 (22%) parents provided responses. Although these responses were used to assist HIDOE in identifying strengths and barriers in the transition of children with disabilities into Hawaii's preschool special education programs, the APR identified no strengths or barriers. Results of the 245 completed surveys showed: (1) 70% (172) of the parents had a child who was enrolled in an early intervention program; and (2) 90% (154) of the 172 parents participated in a transition conference prior to the referral to HIDOE.

In the FFY 2003 APR, Hawaii must include data and analysis, along with a determination of compliance or noncompliance with the requirements of 34 CFR §300.132(b). If the data demonstrates noncompliance, the State must include a plan with strategies, benchmarks, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State must include a plan in the FFY 2003 APR that describes how the State will collect data to enable it to determine compliance or noncompliance.

#### ***Parent Involvement***

OSEP's 2002 Monitoring Report identified no noncompliance in the area of parent involvement. On pages 1-4 of the parent involvement section of the APR, HIDOE reported that the State established baseline/trend data to measure the effectiveness of the State's ability to ensure that the provision of FAPE to children with disabilities would be facilitated through parent involvement. Results of monitoring visits conducted by HIDOE and of parent satisfaction surveys conducted by districts demonstrated that: (1) 90% of the 1,900 plus files reviewed during the 2002-2003 school year showed that parents of children with disabilities participated in IEP meetings; and (2) parents were satisfied with their child's general and special education program.

According to the APR, HIDOE developed a uniform parent satisfaction survey during the 2003-2004 school year. All parents of children with disabilities will be given the opportunity to respond to the survey during the 2004-2005 school year. OSEP looks forward to reviewing data in the FFY 2003 APR regarding the results of the survey.

#### ***Free Appropriate Public Education in the Least Restrictive Environment***

OSEP's 2002 Monitoring Report identified noncompliance with the requirement, at 34 CFR §300.347(a)(3), that a statement of needed supports, services, and modifications be included in the IEP. Parts II (accommodations/modifications section) and III (involvement in the general curriculum section) of the June 2004 IP Progress Report stated that HIDOE used a focused checklist as a monitoring review tool to document compliance with the IEP requirements in IDEA. As part of the State's monitoring activities, HIDOE's monitoring team reviewed two IEPs for every special education teacher during the 2003-2004 school year. The file reviews and monitoring results showed that: (1) 95% of IEPs reviewed identified the amount of special education services

needed; (2) 94% identified the amount of related services needed; and (3) 90% identified accommodations, modifications, and needed supplementary aids and supports.

Based on OSEP's review of the information provided in the Progress Report, HIDEOE has made significant progress toward ensuring full compliance with the requirements at 34 CFR §300.347(a)(3). In the FFY 2003 APR, consistent with the requirements in the monitoring section above, HIDEOE must report on the correction of the noncompliance with 34 CFR §300.347(a)(3), that it has previously identified in this area.

### Disproportionality

On page 7 of the APR, HIDEOE reported that "data on students receiving special education and related services across ethnicities and by disability category from 2001-2003 show a fairly proportionate distribution of race-ethnic groups when compared to the general student enrollment." The State indicated that due to the small population in some of the categories, over- or under-representation can be affected by one student. However, no specific numbers were included for any of the subgroups. HIDEOE concluded that the "most variance" was seen in the black student and white student data categories, but did not specify whether this was with regard to identification or placement, or identify the specific data or criteria that it was utilizing.

Part B of the IDEA, at 34 CFR §300.755, requires that States collect and examine data to determine if significant disproportionality based on race is occurring in the State with respect to the identification of students as students with disabilities or the placement into particular educational settings of such students. If the State determines that significant disproportionality based on race with respect to the identification or placement of children with disabilities is occurring, the State must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification and placement processes to ensure that they comply with Part B requirements. OSEP's APR instructions included one possible method of determining significant disproportionality.

OSEP was unable to determine from HIDEOE's submission, what criteria the State used and whether the State determined the existence of significant disproportionality when it identified "most variance." In addition, because neither the criteria nor the actual numbers of students in each subgroup were reported, OSEP was unable to evaluate HIDEOE's conclusions. On page 7 of the FAPE section of the APR, HIDEOE established projected targets that were focused on decreasing the amount of disproportionality in eligibility determinations and placement into educational settings based upon specific race criteria. OSEP has major concerns with the State's proposed use of race-based goals and is directing HIDEOE to revise these targets, consistent with the requirements of 34 CFR §300.755.

In addressing possible evidence of disproportionate representation in identification and placement of students with disabilities, it would be appropriate for the State to look at policies, procedures and practices in the evaluation, identification and placement processes to determine if they are educationally appropriate, consistent with the requirements of Part B, and race-neutral. Such an examination would generally include a review of policies, procedures and practices with regard to the availability and use of pre-referral intervention services; the selection and use of evaluation

instruments and materials; the selection and use of evaluation criteria; the reasons for referral for special education evaluations; the criteria for placements; the availability of needed supports, services, and modifications in the general education settings; and the opportunities to access, be involved in and progress in the general curriculum. Such reviews would generally look at State policies, procedures and practices from both an educational and legal perspective to ensure that any proposed revisions are educationally appropriate and legally consistent with Part B and other civil rights laws.

In the next APR, HIDOE must report on the criteria it is utilizing to determine significant disproportionality, including the relevant data, and revise its targets to address the reviews and, if appropriate, revisions of policies, procedures and practices as required under 34 CFR §300.755.

### Graduation and Drop-out Rates

On pages 8-10 of the FAPE section of the APR, HIDOE provided information and data the State used to compare the graduation and drop-out rates of children with disabilities to children without disabilities. During the 2002-2003 school year, HIDOE reported that 98.5% of children with disabilities and 95.9% of children without disabilities completed high school. Of the 98.5% of children with disabilities, 79.3% earned a diploma and 19.2% received a certificate of completion. HIDOE reported that a factor contributing to the high graduation rate is that there is no "high stakes" competency exit exam required to earn a regular diploma. The State identified strategies and activities to maintain or increase the percentage of children with disabilities graduating with a diploma.

Information and data regarding drop-out rates in middle/intermediate and high schools showed that approximately 2.2% of children with disabilities dropped out of school during the 2002-2003 school year compared to 3.3% of children without disabilities. In the APR, HIDOE proposed to develop a more efficient process for collecting/reporting graduation and drop-out data for middle and high schools. OSEP looks forward to the FFY 2003 APR submission regarding the implementation of strategies and any resulting changes.

### Suspension and Expulsion Rates

HIDOE's method of reporting suspension data indicated the percent change in suspensions from 2001-2002 to 2002-2003 but not the actual rates of suspensions (i.e., the numbers of suspension divided by the enrollment number). On page 11 of the FAPE section of the APR, Hawaii compared the number of long-term suspensions of children with disabilities compared to the number for nondisabled children. OSEP was unable to determine whether the reported data also included expulsions of students.

Based upon the enrollment figures on page 4 of the FAPE section, HIDOE reported the total nondisabled enrollment for 2001-2002 as 162,033; and for 2002-2003 as 161,606.<sup>3</sup> The enrollment of students with disabilities for 2001-2002 was reported as 21,596, and as 21,192 for 2002-2003.

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<sup>3</sup> This was calculated by subtracting the number of students with disabilities from the total enrollment number for all students.



Based upon these numbers, OSEP calculated the 2001-2002 rates of suspensions for more than ten days as .18% for nondisabled students and .39% for students with disabilities, or more than twice the rate. The 2002-2003 rates were .2% for nondisabled and .5% for students with disabilities, again, more than twice the rate. Such calculations of rates in conjunction with an appropriate statistical criterion for determining whether a significant discrepancy exists would be an appropriate way to meet the requirements of 34 CFR §300.146.<sup>4</sup> In addition, if the data indicate that a significant discrepancy exists, the State must review and, if appropriate, revise its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that the policies, procedures and practices comply with the IDEA.

In the FFY 2003 APR, HIDOE must revise its analysis to determine whether there is a significant discrepancy in the rates of long-term suspension and expulsion of students with disabilities compared to students without disabilities and report on the required reviews of and, if appropriate, revisions to, policies, procedures and practices consistent with 34 CFR §300.146.

#### Participation and Performance of Children with Disabilities on State- and District-wide Assessments

OSEP's 2002 Monitoring Report identified the following noncompliance in the area of participation and performance of children with disabilities on State-wide assessments: (1) schools did not always ensure that children with disabilities were included in State-wide assessment programs with appropriate accommodations and modifications (34 CFR §300.138); and (2) the State did not ensure that children with disabilities participated in State-wide alternate assessments by July 1, 2000 (34 CFR §300.138(b)).

In the March 2004 verification letter, OSEP concluded that HIDOE was not meeting the requirements of 34 CFR §§300.137 and 300.139, to establish performance indicators and report on the performance of children with disabilities on the alternate assessment, with the same frequency and detail as it reports on the performance of children without disabilities. That is, while HIDOE reported performance on the regular assessment using four indicators or proficiency levels, it only used one level, "well below proficiency" to report on the performance of all students with disabilities who participated in the alternate assessment. Based upon this, OSEP attached Special Conditions to Hawaii's FFY 2004 Part B grant award requiring that the State revise and submit goals and indicators for measuring and reporting on the performance of children with disabilities participating in the alternate assessment, and that the State report publicly on such performance.

In the April 2004 APR submission and the June 2004 IP Progress Report, the State reported on the participation rates of students with disabilities, indicating high percentages of participation. In the spring of 2002, 0.5% of 95% of children with disabilities who participated in the State-wide

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<sup>4</sup> It appears that HIDOE chose to use the criteria of a 3.3 ratio of students with disabilities to students without disabilities to determine significant discrepancy in its review of school-based suspension data. This analysis does not meet the requirements of 34 CFR §300.146. That is, because HIDOE is a unified system without local educational agencies, the State must determine the existence of a significant discrepancy in the rates of long-term suspension and expulsion of children with disabilities compared to the rates for nondisabled students.

assessment program took the alternate assessment. In the spring of 2003, 0.4% of 92% of children with disabilities who participated in the State-wide assessment program took the alternate assessment. Part IV (State-wide assessment) of the June 2004 IP Progress Report and pages 14-15 of the APR reported data and information regarding Hawaii's 2002 and 2003 State-wide assessment results. With regard to performance, the State indicated that, although children with disabilities performed "far below" children without disabilities, assessment results showed a decrease in the percentage of children with disabilities who performed in the "far below proficiency" performance level and an increase in the percentage of children with disabilities in "approaching proficiency" and "proficient" performance levels.

On November 8, 2004 and January 5, 2005, HIDOE submitted revised proposed reporting indicators, along with a proposed "Implementation Plan For Enhancing the Hawaii Alternate Assessment." Based upon this submission, it appears that HIDOE intends to report publicly on the performance of children with disabilities participating in the alternate assessment using the same four performance levels that it uses for the regular assessment, while it implements its plan to revise the alternate assessment.<sup>5</sup> OSEP looks forward to HIDOE's submission of the performance reports under the Special Conditions, due June 15, 2005.

The State also included strategies and activities in its APR submission to address the gap between the achievement of children with and children without disabilities and areas of noncompliance regarding the alternate assessment. OSEP looks forward to reviewing data in the FFY 2003 APR regarding continued performance in this area.

#### Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent Appropriate

OSEP's 2002 Monitoring Report identified the following noncompliance related to access to and progress in, the general curriculum: (1) needed supports, services, and modifications were not always included in the IEP (34 CFR §300.347(a)(3)); (2) IEPs were not consistently accessible to the regular education teachers, where appropriate, to ensure they were aware of their responsibilities related to implementing their students' IEPs (34 CFR §300.342(b)); and (3) children with disabilities did not consistently have the opportunity to access, be involved in and progress in the general curriculum (34 CFR §300.347(a)(2)). The first finding is addressed in the FAPE section, above.

As noted previously, HIDOE used a focused checklist as a monitoring review tool to document compliance with the IEP requirements in IDEA. As part of the State's monitoring activities, HIDOE's monitoring team reviewed two IEPs for every special education teacher during the 2003-2004 school year. The file reviews and monitoring results showed that: (1) 95% of IEPs stated the impact of the disability upon participation with nondisabled peers in the regular classroom; (2) 83% of IEP meetings included general education teachers; and (3) 82% of IEPs identified goals and objectives that were aligned with the general education curriculum.

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<sup>5</sup> Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with and without disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. This letter does not, and should not be interpreted to, address Hawaii's compliance with requirements of Title I.

The Progress Report documented the State's efforts in ensuring that training was provided to school staff to address the findings in the 2002 Monitoring Report related to the IEP and progress in the general curriculum. HIDOE's June 2004 memorandum to principals, regular and special education teachers and student services coordinators documented the State's effort to ensure that copies of IEPs were provided to regular education teachers, where appropriate. While it appears that HIDOE is making progress in this area, based on OSEP's review of the information provided in the APR and IP Progress Report, it was not clear that HIDOE had identified and ensured correction of noncompliance with 34 CFR §§300.342(b) and 300.347(a)(2). For example, although the State reported a high percentage of regular education teachers present at IEP meetings (83%), it was not clear whether the remaining 17% constituted noncompliance or whether it was not appropriate for a regular education teacher to attend those IEP meetings. If the former (i.e., 17% noncompliance), then the State must also report on correction of such noncompliance. Likewise, while the State reported that 82% of IEPs reviewed were aligned with the general curriculum, the State did not indicate whether the remaining 18% constituted noncompliance and, if so, the extent to which this was corrected.

In the FFY 2003 APR, Hawaii must provide data and analysis demonstrating that the State is identifying and ensuring the correction of noncompliance with 34 CFR §§300.342(b) and 300.347(a)(2). For example, to the extent that the percentages noted above represent noncompliance with these requirements, HIDOE should identify it as such and report on its correction. If it does not constitute noncompliance, HIDOE should provide its analysis to support this conclusion.

On pages 16-19 of the FAPE section of the APR, HIDOE reported that from 2000-2003: (1) there was an increase (from 4.95% to 13.02%) in the number of children with disabilities who were placed in a regular early childhood setting; (2) the percentage of children with disabilities outside the regular class for less than 21% of the day decreased as the grade/age levels increased; and (3) the percentage of children with disabilities outside the regular class for more than 60% of the day increased as the grade/age level increased. On page 19 of the FAPE section of the APR, HIDOE established targets, strategies, activities and timelines. OSEP looks forward to reviewing data in the FFY 2003 APR regarding the implementation of strategies and any changes resulting from implementation.

#### Skills of Preschool Children with Disabilities

On page 20 of the FAPE section, the APR noted that Hawaii did not collect data on this issue; however, the State established targets, activities, strategies and timelines for the FFY 2003 APR. Under 20 U.S.C. 1418(a)(2) States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by or for the Secretary. Under the Government Performance and Results Act of 1993 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. OSEP accepts the State's plan for collecting the data and looks forward to Hawaii's submission for the FFY 2003 APR.

### *Secondary Transition*

OSEP's 2002 Monitoring Report identified the following noncompliance in the area of secondary transition: (1) schools did not always ensure that IEPs included a statement of needed transition services beginning at age 16 (or younger, if appropriate) (34 CFR §300.347(b)(2)); and (2) schools did not always invite, to IEP meetings, other agencies that were likely to be responsible for providing or paying for needed transition services, or take steps to obtain their input if they did not attend (34 CFR §300.344(b)).

In Part V (secondary transition) of the June 2004 IP Progress Report, HIDOE reported that it used the focused checklist in conjunction with the internal monitoring process, and the transition report from ISPED to monitor compliance at 34 CFR §§300.347(b)(2) and 300.344(b). HIDOE submitted a chart with data from focused checklist results for the 2002-2003 school year. The submission indicated that 24 of 34 high schools reported data to HIDOE regarding compliance in these two areas. Although the levels of compliance were not summarized by the State, OSEP reviewed and summarized the data and determined the levels of compliance with these two requirements based upon the data that the State reported as reliable.<sup>6</sup>

Based upon the HIDOE's data for the 2002-2003 school year, OSEP concluded that 75% of the sample IEPs reviewed where transition services statements were required, included them; and that in 77% of IEP meetings covering transition services, the agency likely to be providing or paying for transition services was notified and invited to send a representative. OSEP was unable to determine from the reported data, what steps, if any, the State takes to obtain agency input where a representative of an agency likely to be responsible for providing or paying for needed transition services does not attend such IEP meetings.<sup>7</sup> In addition, the State did not include, in the June 2004 IP Progress Report or the APR, any indication that the identified noncompliance noted above, was corrected.

In the FFY 2003 APR, the State must provide data and analysis showing that the previously-identified noncompliance with the requirement at 34 CFR §300.347(b)(2) has been fully corrected, and demonstrating compliance with the requirement at 34 CFR §300.344(b), that the public agency takes other steps to obtain agency input where a representative of an agency likely to be responsible for providing or paying for needed transition services does not attend an IEP meeting.

On pages 2-5 of the secondary transition section of the APR, HIDOE reported that the State did not gather data on post-school outcomes of children with disabilities. HIDOE included strategies and activities to collect such data. OSEP looks forward to the State's implementation and reporting of data in this area.

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<sup>6</sup> In its review and summary, OSEP excluded data that the State flagged as not accurate or discrepant.

<sup>7</sup> Although the State reported that in 46% of cases where the agency does not provide the agreed upon services, the State reconvenes the IEP meeting, it was not clear how such agreement of services was reached or whether the education agency provided or paid for such services pending resolution of any interagency dispute. See 34 CFR §300.142.

**Conclusion**

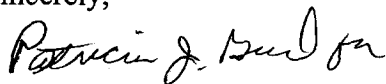
OSEP is extending the due date for the FFY 2003 APR from March 31, 2005 to April 30, 2005. In the FFY 2003 APR HIDEOE must include:

1. data and analysis such that OSEP can determine whether the State's monitoring system ensures correction of all identified noncompliance with Part B requirements within a reasonable period of time not to exceed one year;
2. a report on compliance with requirements for reevaluations within the State's timelines and on the impact, if any, of the reported vacancies on the provision of special education and related services to eligible students with disabilities;
3. early childhood transition data and analysis, along with a determination of compliance or noncompliance with the requirements of 34 CFR §300.132(b);
4. a report on the correction of the noncompliance with 34 CFR §300.347(a)(3), that it has previously identified;
5. the criteria it is utilizing to determine significant disproportionality, including the relevant data, and revised targets to address the reviews and, if appropriate, revisions of policies, procedures and practices as required under 34 CFR §300.755;
6. a revised analysis to determine whether there is a significant discrepancy in the rates of long-term suspension and expulsion of students with disabilities compared to students without disabilities and report on the required reviews of and, if appropriate, revisions to, policies, procedures and practices consistent with 34 CFR §300.146;
7. data and analysis demonstrating that the State is identifying and ensuring the correction of noncompliance with 34 CFR §§300.342(b) and 300.347(a)(2);
8. data and analysis regarding skills of preschool children with disabilities; and
9. data and analysis showing that the previously-identified noncompliance with the requirement at 34 CFR §300.347(b)(2) has been fully corrected, and demonstrating compliance with the requirement at 34 CFR §300.344(b).

In addition, to comply with the special conditions as set forth in the FFY 2004 grant award letter, by no later than June 15, 2005, Hawaii must report publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments.

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 children and youth with disabilities and their families. If you have questions, please contact Debra Jennings at (202) 245-7389.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Dr. Paul Ban