



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

JAN 18 2005

Honorable D. Kent King  
Commissioner of Education  
Missouri Department of Elementary & Secondary Education  
205 Jefferson Street, 6th Floor  
Jefferson City, Missouri 65102

Dear Commissioner King:

The purpose of this letter is to respond to Missouri's April 29, 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 made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

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

### ***Background***

In its March 20, 2003 letter responding to the State's 2002 Self-Assessment, OSEP identified two areas in which the Self-Assessment included facts that indicated noncompliance: (1) the Missouri Department of Elementary and Secondary Education (DESE) was not meeting its responsibility to monitor to ensure that eligible youth with disabilities in city and county jails received a free appropriate public education (FAPE), as required by 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3); and (2) the State did not ensure that children with disabilities participated in the alternate assessment if the Individualized Education Program (IEP) team determined that it was not appropriate for them to participate in the regular assessment, as required by 34 CFR §§300.138 and 300.347(a)(5). The State submitted its Improvement Plan (IP) on July 3, 2003, and OSEP issued a letter responding to the State's IP submission on May 27, 2004. OSEP received the State's response to OSEP's May 2004 IP letter on July 26, 2004.

In December 2003, OSEP conducted a visit to Missouri to verify the effectiveness of the State's systems for general supervision, collection and reporting of data under section 618 of the IDEA, and State-wide assessments. In its May 27, 2004 letter reporting on the results of that review, OSEP found that: (1) DESE was not ensuring the timely correction of the noncompliance it identified through its monitoring system, as required by 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600; (2) DESE had established a standard for requiring correction that was inconsistent with the requirement that the State ensure the correction of all identified noncompliance (20 U.S.C. §1232d(b)(3) and 34 CFR §300.600); (3) the State had not complied with the requirements of 34 CFR §300.139 regarding reporting on the performance of children with disabilities on the State's alternate assessment; (4) the State had not complied with the requirements of 34 CFR §§300.138 and 300.347(a)(5), to ensure that: (a) all children with disabilities participated in State-wide assessments; and (b) if the IEP team determined that a child with a disability would not participate in a particular State-wide assessment of student achievement (or part of an assessment), the child's IEP included a statement of why the assessment was not appropriate for the child and how the child would be assessed; (5) the State had not met the assessment requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5), with respect to youth with disabilities in Division of Youth Services (DYS) facilities; and (6) the State had not ensured compliance with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. OSEP directed the State to submit, within 60 days from the date of OSEP's letter, either: (1) documentation that DESE was in compliance in each of those areas; or (2) the State's plan for documenting, by 30 days following one year from the date on which OSEP accepted the plan, that DESE had corrected the noncompliance. As further explained below, the State's FFY 2004 Part B grant award included special conditions related to the State-wide assessment issues.

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). This letter responds to the State's FFY 2002 APR and its July 2004 response to OSEP's IP letter. OSEP's comments are listed by cluster area.

### ***General Supervision***

#### ***General Supervision for Youth with Disabilities in City and County Jails***

As noted above, the State's 2002 Self-Assessment included on page 19 facts that indicated noncompliance in one area in this cluster: DESE was not meeting its responsibility to monitor to ensure that eligible youth with disabilities in city and county jails received FAPE (34 CFR §300.600 and 20 U.S.C. §1232d(b)(3)). In its July 3, 2003 letter, the State informed OSEP that DESE would: (a) revise its monitoring procedures to incorporate interviews of district staff and student file reviews specific to locating and providing services to youth with disabilities held in city and county jails; (b) by the end of July 2004, complete year-one program monitoring reviews of local districts for the provision of special education and related services to eligible youth held in city and county jails; and (c) by July 2005, analyze the monitoring results to determine the level of understanding and compliance with IDEA requirements for locating and

providing services to youth with disabilities held in city and county jails. On page 2 of its May 27, 2004 response to the State's July 3, 2003 IP, OSEP informed the State that its IP submission on this issue had been accepted, and also directed DESE to submit: (1) within six months of the date of OSEP's letter, an interim Progress Report including data demonstrating that DESE was monitoring public agencies on all Part B requirements for youth with disabilities in city and county jails; and (2) within 30 days after one year from the date of that letter, a final Report that demonstrated that DESE was monitoring public agencies on, and ensuring compliance with, all Part B requirements for youth with disabilities incarcerated in city and county jails.

In its December 8, 2004 Progress Report, DESE provided data for monitoring activities held during 2003-2004 that indicated that DESE: (a) finalized interview questions and incorporated them into the interview packets for special education administrators and superintendents; (b) piloted the questions during 32 initial on-site reviews; and (c) determined 20 of these districts to be out of compliance. DESE further stated that it would conduct follow-up reviews during 2004-2005 to document correction of the noncompliance. The State also provided additional strategies that DESE would impose for districts demonstrating continued noncompliance. OSEP appreciates the State's efforts in correcting the previously identified noncompliance with the requirement that the State monitor to ensure that eligible youth with disabilities in city and county jails receive FAPE, as required by 34 CFR §300.300. In its next APR (due March 31, 2005), the State must provide either: (1) documentation that it has ensured that the 20 districts in which it found noncompliance in 2003-2004 corrected that noncompliance within one year from identification; or (2) its plan for ensuring such correction by June 27, 2005.

#### *Timely Correction of Noncompliance*

As noted above, in its May 2004 verification letter, OSEP found that DESE: (1) was not ensuring the timely correction of noncompliance that it identified through its monitoring system, as required by 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600; and (2) had established a standard for requiring correction that was inconsistent with the requirement under 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600 that the State ensure the correction of all identified noncompliance.

As stated in the verification letter, DESE: (1) made findings of noncompliance in 87 of the 102 responsible public agencies in which it conducted on-site monitoring reviews during the 2000-2001 school year; (2) completed a follow-up review during the 2001-2002 school year of 68 of those 87 agencies, and found continuing noncompliance in 23 of them; and (3) did not yet have documentation, as of February 19, 2004, that those 23 agencies had corrected the noncompliance identified during the 2000-2001 school year. OSEP could not determine from the State's FFY 2002 APR, dated April 29, 2004, whether DESE had determined that these 23 agencies (and 19 additional agencies in which DESE found noncompliance during the 2000-2001 school year, for which DESE had not yet conducted follow-up reviews as of February 19, 2004) had corrected the noncompliance. Although, as noted above, the State reported to OSEP in a February 19, 2004 letter that 23 agencies monitored in 2000-2001 had, at the time of DESE's first-year follow-up reviews, not corrected noncompliance and required second follow-up reviews, the State reported on page 5 of the APR that only *four* agencies monitored in 2000-2001 required second follow-up reviews, and none required third or fourth follow-ups. (DESE needs to explain the inconsistency in these data in the next APR.) The State further reported on page 5 of the

APR that: (1) DESE found noncompliance in most agencies (95 percent in 2002-2003) when it conducted its initial monitoring review; and (2) 20-30 percent of agencies did not correct noncompliance within one year and required second, and in some cases, third follow-up visits. A table on page 5 of the APR showed that: (1) of the 102 agencies that DESE monitored in 2001-2002, 87 required first follow-up reviews (of which 11 had not yet been completed as of March 30, 2004), 27 required second follow-up reviews (of which 12 had not yet been completed as of March 30, 2004), and six required third follow-up reviews; and (2) of the 100 agencies that DESE monitored in 2002-2003, 95 required first follow-up reviews (of which three had been completed as of March 30, 2004). The State indicated on page 5 of the APR that all final monitoring reports would be issued by September 1, 2004.

On page 2 of its July 26, 2004 response to the May 27, 2004 IP letter, the State outlined the following plan for ensuring timely correction of noncompliance found in responsible public agencies:

1. By October 1, 2004, all districts currently in follow-up status (monitored during the 2003-2004 school year and earlier) would be notified that all areas of noncompliance identified in their most recent monitoring report must be corrected within one year of the date of the notification and that sanctions as stated in the Missouri State Plan for Part B would be invoked should noncompliance continue past that date.
2. By October 1, 2004, internal procedures would be developed to manage the review of corrective action documentation submitted by districts and track timelines to: (a) ensure that the specified documentation was submitted as required; and (b) invoke sanctions if a district failed to submit documentation as required or remained noncompliant past one year.
3. Beginning with the 2004-2005 school year, monitoring final reports would contain the required corrective action and date for submission of the corrective action to DESE (not to exceed one year from the date of the report) for each area of systemic noncompliance identified. Final monitoring reports would also stipulate that sanctions as stated in the Missouri State Plan for Part B would be invoked should noncompliance continue past that date.
4. Beginning with the 2004-2005 school year, districts monitored would be provided with an individual printout of the results of the file review for each student record reviewed, accompanied by a letter instructing the agency to submit to DESE documentation that each area of noncompliance for each student record was corrected. The letter would identify due dates for the submission of the documentation, not to exceed one year from the date of the letter. The letter would also state that if the corrective action was not received and noncompliance continued past one year, sanctions as stated in the Missouri State Plan for Part B would be invoked.

OSEP accepts the above plan for ensuring the timely correction of noncompliance identified through the State's monitoring system, as required by 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600. The State must submit a Progress Report as part of its next APR (due March 31, 2005), and, within 30 days following one year from the date of this letter, a final Report documenting that it corrected the noncompliance.

### *Timely Due Process Hearing Decisions*

The State's APR showed that, in most instances, DESE was meeting the timeline requirements in 34 CFR §300.511. In all but one of the 36 cases in which a due process hearing decision was rendered between July 1, 2000 and November 30, 2003, the hearing officers either: (1) issued the decision within 45 days from the date on which DESE received the hearing request, or (2) extended the timeline for the decision at the request of a party for a specific period of time, and issued the decision within the extended timeline. DESE informed OSEP that although it previously had problems with meeting hearing timelines, it has taken specific measures to correct that problem. DESE: (1) required hearing officers to include in each hearing decision, documentation of any extensions, the party who requested the extension(s), and the new extended timeline; (2) revised the contract with hearing officers to require compliance with timeline requirements; and (3) fined the chair of the hearing panel in the one case in which the panel did not comply with the timeline requirements. In the next APR, DESE must continue to report on its progress in ensuring full compliance in this area.

### *Timely Complaint Decisions*

DESE is required to issue its written decision on each Part B complaint within 60 calendar days from its receipt of the complaint, unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint (34 CFR §300.661(a) and (b)(1)). Data on page 13 of the APR indicated that DESE: (1) in 2001-2002, issued decisions for 113 complaints, six of which were beyond the 60-day timeline; and (2) in 2002-2003, issued decisions for 150 complaints, three of which were beyond the 60-day timeline. These data show that while the State was not issuing decisions on all Part B complaints within the timeline required by 34 CFR §300.661(a) and (b)(1), its performance in this area had improved from 2001-2003. In the next APR, due March 31, 2005, DESE must continue to report on its progress in ensuring full compliance with these requirements.

Data on page 13 of the APR showed that many districts did not complete corrective actions from complaint decisions within the 45-day timeline required by DESE. Those data showed that, for 2002-2003, the districts exceeded the 45-day timeline for 24 complaints (with no DESE extension), and the district exceeded an extended timeline for an additional three complaints. These 27 complaints represented 25 percent of the complaints requiring corrective action in 2002-2003. OSEP could not determine, from the APR, the number of complaints where noncompliance was not corrected within one year from identification. In its next APR, due March 31, 2005, the State must: (1) indicate the extent to which it is meeting its responsibility to ensure that noncompliance is corrected either within the time period established by DESE, or as soon as possible, but no later than one year from identification; and (2) establish a target for

correction of identified noncompliance consistent with DESE's responsibility to ensure that all noncompliance that it identifies is corrected within one-year from identification.

### ***A Sufficient Supply of Personnel***

In its March 2003 letter to the State, OSEP indicated that it could not determine from the Self-Assessment the extent to which there were shortages of qualified personnel to provide special education and related services, and, if there were, the impact of such shortages on the provision of timely and appropriate special education and related services. The State included general steps in its revised IP to address this indicator, but did not provide any conclusions regarding the existence of personnel shortages, their impact on the provision of FAPE, or any data or information that would enable OSEP to make such a determination. In its July 3, 2003 IP submission, the State indicated that it would: (1) conduct a State-wide study regarding current duties, amounts of instructional time, and caseloads for special education personnel; (2) revise its core data reporting to determine whether changes were needed for special education certification standards/requirements consistent with NCLB; and (3) analyze recommendations for expansions of instructional time for special education personnel. OSEP accepts these strategies. However, on page 16 of the APR, the State included data regarding numbers of personnel and student/teacher ratios. The State concluded that, "Data show that numbers of special education personnel are generally increasing and that student/teacher ratios are reasonable." The State added that "this is a statewide analysis" and "there are likely regional shortages." In the next APR, due March 31, 2005, DESE must provide OSEP with further data and analysis regarding such regional shortages, and their impact on the provision of FAPE to eligible children with disabilities.

### ***Collection of Data Under Section 618 of IDEA***

On page 24 of the APR, the State reported data compiled for State and district profiles which suggest that reporting accuracy has improved over the past few years. During the verification visit, DESE informed OSEP that the State did not review data accuracy as part of its on-site monitoring of agencies. DESE further explained that—having provided the data manual, training, guidance, data profiles, and the edit checks embedded in the reporting software—DESE relied on each agency to ensure the accuracy of its data. DESE further explained that each responsible public agency entered aggregated data into the data system, rather than individual data, with a unique identifier, for each student; therefore, it was not possible to monitor the accuracy of data by comparing reported data with a sample of student files. While the State set targets and activities to continue working with districts to improve the accuracy of the data collected and reported, OSEP suggested during its verification visit that DESE carefully evaluate the effectiveness of its procedures for ensuring data accuracy to determine whether additional or revised procedures are necessary. In the next APR, due March 31, 2005, DESE must provide further analysis of the effectiveness of DESE's data collection procedures.

### ***Other Areas: Interagency Agreements***

As noted in OSEP's March 20, 2003 letter, the Self-Assessment raised potential noncompliance regarding the appropriate and timely evaluation of, and provision of services to, children with

disabilities covered under four interagency agreements, and indicated that those agreements may not be fully consistent with Part B requirements. Although the State included general steps in its July 3, 2003 IP to address this indicator, the IP did not specifically address this issue or include information or data that would enable OSEP to make a determination of whether the agreements in question were consistent with Part B requirements and whether the provision of FAPE to eligible children with disabilities was impacted by any alleged inconsistencies. (The State had only submitted its regulations, not the agreements themselves.) In its May 27, 2004 letter responding to the State's IP submission, OSEP also requested that the State submit, within 60 days of the date of that letter, copies of the four interagency agreements referenced in the Self-Assessment and the State's analysis of the extent to which they were consistent with Part B requirements.

In its July 26, 2004 letter, the State submitted copies of the four agreements, stated that it had analyzed the agreement with the Division of Medical Services, and maintained that the agreement did not violate any Part B requirements and that the provision of FAPE to children with disabilities had not been impacted by any elements of this agreement. Regarding the other three agreements (Autism, Head Start, and Vocational Rehabilitation), DESE indicated that these agreements did not meet the criteria for Interagency Agreements under Part B and had been identified incorrectly as Interagency Agreements. DESE stated on page 1 of the letter that "these are merely cooperative agreements or memorandums of understanding, and do not involve obligations of non-educational agencies for IDEA requirements." OSEP accepts DESE's explanation of the nature of these agreements and grants DESE's request that the three identified agreements be removed from all future IP submissions.

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

The instructions to this cluster ask States to determine whether each child transitioning from the Part C program to the Part B program has an IEP or an Individualized Family Services Plan (IFSP) in effect by the child's third birthday (34 CFR §300.132(b)). On page 26 of the APR, DESE indicated that data showed that Part C referrals to Part B have been increasing over the past four years with 80 percent of referrals from the 2002-2003 school year consistently found eligible, but that more analysis and data collection was needed. The State included monitoring data on page 27 of the APR, showing that DESE found noncompliance with the requirement that an IEP or an IFSP be in effect by the child's third birthday in: (1) 23.8 percent (15) of the 63 agencies that DESE monitored during the 2001-2002 school year; and (2) 14.6 percent (6) of the 41 agencies that DESE monitored during the 2002-2003 school year. The State did not include data demonstrating that it was effective in ensuring that the agencies corrected this noncompliance. On page 27 of the APR, DESE described changes in its data system that would "make it difficult to not hold transition meetings for children nearing their third birthday, as well as making it more apparent to monitoring staff if the meetings are not held." The new Part C software will include reports/notifications of impending deadlines, including timelines for transition meetings. Page 27 of the APR stated that the software would also require service coordinators to take certain actions including appropriate transition activities. The State did not include projected targets for this APR period, timelines, or proposed evidence of change to ensure that public agencies correct this noncompliance within a reasonable period of time, not to exceed one year from identification of the noncompliance (i.e., that an IEP or IFSP is in effect for each eligible child with a disability transitioning from Part C to Part B by the child's third

birthday). In its next APR (due March 31, 2005), the State must provide either: (1) documentation that DESE has ensured that agencies corrected all of the noncompliance, described above, with the requirements of 34 CFR §§300.132(b); or (2) its plan for ensuring such correction. The plan must provide for submitting to OSEP a Progress Report by June 30, 2005, and a final Report (within 30 days after the one-year timeline noted above) showing correction of the noncompliance.

OSEP assumes that any Part C to Part B tracking system that Missouri develops will not involve the disclosure of personally identifiable information from student education records or, if it will, that it is consistent with the IDEA and the Family Educational Rights and Privacy Act (FERPA). OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Mary Elder, which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

### ***Parent Involvement***

On page 29 of the APR, the State established a goal of facilitating the provision of special education and related services to children with disabilities through parent involvement in special education services for the 2002-2003 reporting period. In the Improvement Planning phase, Missouri revised the goal to state that active parent involvement in their child's education is promoted in assisting to improve student achievement. Extensive data on monitoring findings regarding parent involvement were found on pages 33 through 36 of the APR. Those data, which were obtained through selected parent survey questions for 2002-2003, showed that: (1) 82.7 percent of agencies monitored in 2002-2003 (81 of 98) were not in compliance with the requirement to afford parents the opportunity to provide information that would be used in the evaluation and eligibility determination (34 CFR §§300.533-300.535), and none of these agencies had corrected the noncompliance when DESE conducted the first follow-up; and (2) 62.8 percent of agencies monitored in 2002-2003 (59 of 94) were out of compliance with the requirement to ensure that parents, and children with disabilities if appropriate, were involved in the evaluation and eligibility determination (34 CFR §§300.533(a)(1) and 300.534(a)(1)). In its next APR, due March 31, 2005, the State must provide either: (1) documentation that DESE has ensured that agencies corrected all of the noncompliance, described above, with the requirements of 34 CFR §§300.533-300.535; or (2) its plan for ensuring such correction. The plan must provide for submitting to OSEP a Progress Report by June 30, 2005, and a final Report (within 30 days of the one-year timeline noted above) showing correction of the noncompliance.

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

#### ***Reporting on State and District-wide Assessments***

As noted above, OSEP's May 27, 2004 verification letter informed the State that: (1) it had not complied with the requirements to make available, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, information on the performance of students with disabilities on the State's alternate assessment (34 CFR §300.139(a)); (2) it had not ensured that: (a) all children with disabilities participated in State-wide assessments; and (b) if the IEP team determined that a child with a disability would



not participate in a particular State-wide assessment of student achievement (or part of an assessment), the child's IEP included a statement of why the assessment was not appropriate for the child and how the child would be assessed (34 CFR §§300.138 and 300.347(a)(5)); (3) it had not ensured that youth with disabilities in the DYS facilities were included in general State and district-wide assessments (34 CFR §§300.138, 300.139, and 300.347(a)(5)); and (4) it had not ensured that children with disabilities were included in district-wide assessments (34 CFR §§300.138, 300.139, and 300.347(a)(5)). OSEP directed the State to submit, within 60 days from the date of OSEP's May 27, 2004 verification letter, either: (a) documentation that DESE corrected each area of noncompliance; or (b) the State's plan for documenting, not later than 30 days following one year from the date on which OSEP accepts the plan, that DESE had corrected the noncompliance. The State's FFY 2004 Part B grant award included special conditions requiring the State to comply with the directions in the verification letter.

On page 2 of its July 26, 2004 letter, which contained DESE's Plan for Compliance, DESE indicated that State-level assessment results for children with disabilities participating in the Missouri Assessment Program-Alternate (MAP-A) for State Fiscal Year 2002 and 2003 were posted on its website, and that it posted district-level results for the MAP-A as part of the State-required district report cards for those districts that had more than thirty children with disabilities in the grade being assessed, as required by 34 CFR §300.139. The State further informed OSEP that DYS participated in the spring 2004 administration of the MAP and MAP-A, as required by 34 CFR §§300.138, and 300.347(a)(5). OSEP has verified that the State-level assessment results have been posted on the DESE website as indicated above and are consistent with the requirements of 34 CFR §300.139. On pages 1 and 2 of its July 26, 2004 response to OSEP, the State outlined the following plan regarding State-wide and district-wide Assessment requirements:

1. In the spring of 2004, the Assessment Section of DESE's Division of School Improvement released, through the State Office of Administration, a Request for Proposals for the development of alternate assessments in communication arts and mathematics in grades 3-8, communication arts in grade 11, and mathematics in grade 10. DESE expected the contract to be awarded in August 2004. These assessments would be based on the Show-Me Standards and the grade-level expectations.
2. DESE would pilot the alternate assessments outlined in #1 above and they would be ready for initial administration in spring 2006. Alternates would be scored in the summer of 2006 and district-and State-level results would be reported on the new Alternate Assessments in August 2006.
3. New "grade span" assessments for science would be developed and administered in grades 5, 8, and 11 for the first time in spring 2008. The alternate assessments for science would be developed at the same time as the State developed the new grade span assessments.
4. For the past three years (State Fiscal Years 2003, 2004, and 2005), the Missouri legislature did not appropriate funding for State-wide administration of the MAP science and MAP social studies assessments. Districts were no longer required to

administer these MAP assessments, but may administer the assessments at district expense. DESE did not, therefore, regard science and social studies as State-wide assessments. These assessments meet the criteria for a district-wide assessment and DESE will be monitoring for the administration of the "non-funded" MAP assessments to all students in those districts that voluntarily administer the assessment as described below.

5. The MAP-A for spring 2005 would require districts to submit portfolios that include both mathematics and communication arts goals. In those districts that voluntarily administer MAP science and/or MAP social studies, the MAP-A would also require a goal for the required subject area.
6. DESE's Division of Special Education (DSE) requested that the Missouri School Improvement Program (MSIP) modify the MSIP Standards and Indicators manual used for district accreditation, requiring local school districts to include, as part of their written assessment plan, a list of all district-wide tests used in the district, the grade level at which the test is administered, and the purpose of the assessment. DSE also requested that the plan specify the use of accommodations and modifications as necessary and directed IEP teams to determine how children with disabilities would be assessed if they could not participate in district-wide assessments. DESE expected the rule to be adopted by the fall of 2004.
7. DESE would notify all districts in September of 2004 of the State's noncompliance with Part B requirements related to district-wide assessments, and would require those districts that would be monitored during the 2004-2005 school year to submit a list of district-wide assessments, including the grade level and purpose for the assessment.
8. DESE's Special Education Monitoring Self-Assessment would be modified to include the district-wide assessment information in the Self-Assessment. This modification would occur prior to the training for districts monitored during the 2005-2006 school year.
9. Beginning in 2004-2005, DESE's on-site monitoring of districts would include a review of IEP data, as well as a review of test results and accommodations provided to ensure that all children with disabilities were participating in State- and district-wide assessments with appropriate accommodations. This review would include State-wide and district-wide assessments and the alternate assessments for both, matched to IEP data to ensure appropriate participation in all assessments.
10. Due to the historic low numbers of children participating in the State's alternate assessment, DESE would include interview questions regarding an expected one percent participation rate during the special education monitoring of districts beginning with the 2004-2005 school year.

OSEP accepts the State's plan for correcting the noncompliance related to State-wide and district-wide assessments. Within 30 days following one year from the date of this letter, DESE must provide OSEP with data and analysis documenting that it corrected the noncompliance. The State must provide a Progress Report as part of its next APR, due March 31, 2005.

### *Disproportionality*

Data in Attachment 2 of the APR showed disproportionality in racial/ethnic categories that represent less than three percent of Missouri's student population or in low-incidence disability or placement categories. The most significant areas of disproportionality were over-representation of Black children in the disability categories of mental retardation, emotional disturbance and specific learning disabilities, and in self-contained placements (outside the regular classroom greater than 60 percent of the time). On page 47 of the APR, DESE indicated that its monitoring process did not look at data on eligibility by racial/ethnic groups, and that the data suggested that additional work was needed to facilitate improvement in eligibility determinations, including considerations relative to disproportionality.

In the State's explanation of progress or slippage on page 46 of the APR, it indicated that 29 districts had over-representation of Black children in special education, in the disability categories of mental retardation, emotional disturbance, specific learning disabilities and in self-contained placements, and that DESE sent these districts data analysis and survey packets designed to assist them in self-evaluation regarding identification and/or placement of children in various race/ethnic groups. Each superintendent received a Data Analysis Sheet containing the district's December 1, 2001 child count information, disaggregated by race/ethnicity, indicating disability categories and placements with possible over- and/or under-representation. Each district also received a Data Analysis Sheet to explain how the data analysis was conducted. The survey questions were intended to prompt districts to evaluate actions and processes related to general education interventions, special education referrals and evaluation. Of those 29 districts, 14 reduced their disproportionality by the December 1, 2002 child count. The State did not indicate what happened with the remaining 15 districts; consequently, OSEP could not determine whether the State met its responsibility under 34 CFR §300.755 with respect to the identification of children with disabilities or placement in particular educational settings. The State did indicate on page 48 of the APR that it would provide technical assistance to districts in analyzing data and, if needed, in changing district's policies, procedures and practices.

The Part B regulation at 34 CFR §300.755 requires States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability), or in placements into particular settings, to provide for the review and, if appropriate, revision of the policies, procedures, and practices used in identification or placement to ensure that they comply with Part B. Missouri's FFY 2003 APR must include the results of the State's review of the policies, procedures, and practices used in the State in the identification and placement of children with disabilities to ensure that they are consistent with the Part B requirements at 34 CFR §300.755. If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures, and practices used in identification or placement of

children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation.

### ***Graduation and Drop-out Rates***

Data on page 49 of the APR indicated that graduation rates for students with disabilities from 2000 to 2003 were increasing, and that the gap between graduation rates of students with disabilities and nondisabled students was narrowing. Nevertheless, the State indicated that its monitoring data showed that many districts were not meeting the performance standards for increasing the percentage of students who graduate with a regular diploma and decreasing the percentage of students who drop out. Data on page 53 of the APR showed that the highest percentage of dropouts were students with specific learning disability (61 percent), and that the emotional disturbance (ED) percentage of drop-outs was more than twice the ED percentage of child count.<sup>1</sup> Missouri attributed its progress to a combination of activities such as training and technical assistance to districts, use of exit data for monitoring and more accurate reporting of data. While specific targets were not set for 2003-04, the State did indicate that targets were established in conjunction with the improvement plan submitted in July 2003 and that progress would be measured against targets set for the FFY 2004 APR. OSEP accepts these strategies and looks forward to receiving an update on the implementation of these strategies in the next APR, due March 31, 2005.

### ***Suspensions and Expulsions***

Data on page 56 of the APR showed that children with disabilities made up 30 percent of overall disciplinary incidents. The data further showed that the highest numbers of incidents resulting in disciplinary action involved children with emotional disturbance and children with specific learning disabilities. The State indicated on page 58 that its monitoring data were relatively consistent with the discipline incident data findings. Its data suggested that the percentage of districts that, at initial review, did not meet the indicator that expulsion and suspension rates for children with disabilities be no higher than children without disabilities, increased by 31.2 percent. Other data suggested an increase of 20.6 percent in noncompliance for children with disabilities receiving FAPE during suspensions of 11 days or more, etc. The State indicated that, "given the variability in its data collection, it is difficult to determine or explain progress and/or slippage." The only activity the State included in the APR was that Special Education Consultants would provide assistance to districts as needed.

34 CFR §300.146 requires that the State examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among local education agencies (LEAs) in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to 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 Part B. The instructions to the

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<sup>1</sup> The State explained that the data did not include children served by Missouri Department of Corrections, DYS, and State-Operated Programs.

FFY 2002 APR directed States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constituted a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies were occurring, a description of those discrepancies and how the State planned to address them. The State's FFY 2002 APR did not include any information indicating that the State examined data from the LEAs when it assembled the State-level data to determine whether significant discrepancies were occurring in the LEAs based on either one of the comparisons described above. In the next APR, due March 31, 2005, the State must include the information required by the instructions. If the FFY 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of the comparisons described above, and that when it identifies significant discrepancies, it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

### *Least Restrictive Environment and Preschool Outcomes*

The State's analysis of its placement data, on page 97 of the APR, showed that placement in early childhood settings decreased, indicating some slippage occurred with respect to educating children ages three through five in this more inclusive setting.

Under the Government Performance and Results Act of 1993, 31 U.S.C. §1116, the effectiveness of the IDEA §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. On pages 97-99 of the APR, the State provided preschool outcomes data based on the School Entry Profile. The School Entry Profile is an assessment instrument used to rate the school readiness of children from a ten percent random sample of Missouri public elementary districts and schools. All kindergarten teachers in sample schools were trained to rate all the children in their classrooms including children with disabilities. The School Entry Profile consisted of 65 rating items that reflected entry-level skills, knowledge, behavior, and dispositions in seven areas of development (symbolic development, communication, mathematical/physical knowledge, working with others, learning to learn, physical development and conventional knowledge). On page 99 of the APR, the State reported that limited data made it difficult to draw conclusions. The State set targets to continue ongoing discussion about valid and reliable assessment methodology to measure the performance level of preschool children, and to continue to increase the performance level of children who receive special education and related services. OSEP looks forward to the State's report in the next APR on the impact of its work to improve preschool outcomes for children with disabilities and performance measurement in this area. In the next APR, the State also must include documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

### ***Secondary Transition***

The instructions to this cluster ask States whether the percentage of youth with disabilities participating in post-school activities (e.g., employment, education, etc) is comparable to that of nondisabled youth. On page 108 of the APR, the State indicated that issues surrounding transition and post-secondary outcomes were not the same in all parts of the State, and that data and analysis were needed at the district level to determine the root causes of poor or limited post-secondary outcomes. The State further stated that post-vocational-program follow-up showed similar trends as the post-graduation data. Data on page 102 of the APR indicated that the majority of students with disabilities who graduated were employed or continuing their education six months after graduation. The State's monitoring data showed variability in the percentage of districts not in compliance with transition requirements at initial review.

In its July 3, 2003 IP submission, the State identified Secondary Transition as one of its priority areas. The Steering Committee worked through a root cause analysis and identified strategies and activities that would improve post-secondary outcomes for students with disabilities. The State was in the improvement-planning phase of the Continuous Improvement Monitoring Process during the 2002-2003 school year, and no targets had been set for the 2002-2003 school year. In the APR, the State reported that it implemented the identified strategies and activities during the 2003-2004 school year. OSEP looks forward to reviewing the results of these strategies and activities in the next APR.

### ***Conclusion***

OSEP's May 27, 2004 response to the State's IP directed DESE to submit: (1) within six months of the date of that OSEP letter, an interim Progress Report including data demonstrating that DESE is monitoring public agencies on all Part B requirements for youth with disabilities in city and county jails; and (2) within 30 days after one year from the date of that letter, a final report demonstrating that DESE is monitoring public agencies on, and ensuring compliance with, all Part B requirements for youth with disabilities incarcerated in city and county jails. OSEP received the interim Progress Report on December 8, 2004, and has addressed the content of that Report in the General Supervision section of this letter. The State must report on its progress on this issue in its next APR (due March 31, 2005). The State's final report on this issue is due June 27, 2005.

As noted above, DESE must include, in its next APR, data and analysis demonstrating progress toward compliance, and must submit to OSEP a final report, within 30 days following one year from the date of this letter, with data and analysis demonstrating compliance for each of the following areas:

1. Information demonstrating that DESE has a proper method of correcting noncompliance in a timely manner, as required by 34 CFR §300.600 and 20 U. S. C. §1232d(b)(3). The State must submit a Progress Report as part of its next APR, and within 30 days following one year from the date of this letter, a final report documenting that it corrected the noncompliance.

2. With respect to State and district-wide assessments, the requirements that: (a) the State make available, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, information on the performance of children with disabilities on State-wide assessments (34 CFR §300.139(a)); (b) the State ensure that all children with disabilities participate in State-wide assessments, and if the IEP team determines that a child with a disability will not participate in a particular State-wide assessment of student achievement (or part of an assessment), the child's IEP include a statement of why the assessment is not appropriate for the child and how the child will be assessed (34 CFR §§300.138 and 300.347(a)(5)); (c) the State ensure that youth with disabilities in DYS facilities are included in general State and district-wide assessments (34 CFR §§300.138, 300.139, and 300.347(a)(5)); and (d) the State ensure that children with disabilities are included in district-wide assessments (34 CFR §§300.138, 300.139, and 300.347(a)(5)).

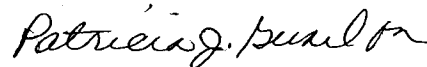
In the next APR, the State must also:

1. For each of the following areas, submit to OSEP either documentation that DESE has ensured that public agencies have corrected all of the noncompliance that DESE identified, or the State's plan for ensuring, within one year from the date on which OSEP accepts the plan, that public agencies correct the noncompliance: (a) ensuring that each child found eligible for Part B services has an IEP or IFSP in effect by the child's third birthday (34 CFR §300.132(b)); (b) affording parents the opportunity to provide information that would be used in the evaluation (34 CFR §§300.533-300.535); and (c) ensuring that parents, and children with disabilities when appropriate, are involved in the evaluation and eligibility determination (34 CFR §§300.533(a)(1) and 300.534(a)(1)). The plan must provide for submitting to OSEP a Progress Report by June 30, 2005, and a final report (within 30 days after the one-year timeline noted above) showing correction of the noncompliance.
2. Regarding the enforcement of corrective actions contained in complaint decisions: (a) indicate the extent to which DESE is meeting its responsibility to ensure that noncompliance is corrected either within the time period established by DESE, or as soon as possible, but no later than one year from identification; and (b) establish a target for correction of identified noncompliance consistent with DESE's responsibility to ensure that all noncompliance that it identifies is corrected within one year from identification.
3. As directed on page 6 of this letter, further data and analysis regarding regional shortages in special education personnel, and the impact of such shortages on the provision of FAPE to eligible children with disabilities.
4. As discussed on page 6 of this letter, further analysis of the effectiveness of DESE's data collection procedures

5. Submit data and analysis to OSEP, along with a determination of compliance or noncompliance with the requirements of 34 CFR §300.755, with respect to the identification of children with disabilities or placement in particular educational settings. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.
6. Include data and analysis (as required by the APR instructions) regarding suspension and expulsion rates for children with disabilities, as compared to nondisabled children or across LEAs in the State.
7. With respect to preschool outcomes, provide documentation of data, targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Angela McCaskill at (202) 245-7435.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

Enclosure

cc: Melodie Friedebach