



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

Honorable Rick Melmer
Secretary
Department of Education
700 Governors Drive
Pierre, South Dakota 57501-2291

JUL 23 2004

Dear Secretary Melmer:

The purpose of this letter is to respond to the South Dakota Department of Education (SDDOE) March 30, 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 cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

OSEP monitored South Dakota during the weeks of April 12 and May 17, 1999 for the purpose of assessing compliance in the implementation of IDEA. In the Monitoring Report, dated December 20, 1999, OSEP identified the following areas of noncompliance: (1) SDDOE did not ensure an adequate supply of qualified personnel to provide a free appropriate public education to all students with disabilities (pages 28-29); (2) SDDOE did not ensure that a free appropriate public education is made available to all children with disabilities who need extended school year services (page 29); (3) Secondary Transition plans for students with disabilities did not represent a coordinated set of activities within an outcome-oriented process that promotes movement from school to post-secondary activities (pages 32-33); and (4) other agency representatives were not consistently invited to Individualized Education Program (IEP) team meetings or involved in transition planning if they did not attend the meeting. SDDOE was required to address the identified areas of noncompliance in an Improvement Plan (IP) that was initially submitted to OSEP in June 2000 with a revised IP submitted to OSEP in November 2001. OSEP approved SDDOE's revised IP on April 4, 2002, with the requirement that

progress reports be submitted to OSEP in June 2002, December 2002, and June 2003. OSEP received all required reports.

We recognize the time and effort that went into the development of the APR and the Progress Reports and appreciate the work to describe South Dakota's performance related to serving students with disabilities under IDEA.

It was OSEP's expectation that, as part of the State's self-assessing and improvement planning efforts, the APR 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). Because it is OSEP's intent to consolidate improvement planning and performance reporting activities, OSEP is commenting on the APR and South Dakota's Progress Reports under the April 4, 2002 IP. OSEP's comments regarding the IP Progress Reports, and each cluster area within the APR are set forth below.

General Supervision

In its December 1999 Monitoring Report, OSEP identified two areas of noncompliance that are addressed in the General Supervision cluster of this APR: (1) SDDOE did not ensure an adequate supply of qualified personnel to provide a free appropriate public education to all students with disabilities (34 CFR §§300.300 and 300.381); and (2) SDDOE did not ensure that a free appropriate public education is made available to all children with disabilities who need Extended School Year (ESY) services (34 CFR §§300.8 and 300.300). SDDOE addressed these two identified areas of noncompliance in the IP.

Qualified Personnel. In the APR on pages 10, and 18-20, SDDOE reported data and analysis that demonstrated its progress in correcting this area of noncompliance. Specifically, SDDOE reported on pages 19 and 20 that 23.8 full-time equivalent (FTE) vacancies were reported by school districts at the beginning of the 2002-2003 school year, while the chart on pages 18-19 indicated that for that school year approximately 55 FTEs were reported as special education personnel not appropriately certified for their position. These numbers represent a small percentage of the more than 3000 FTEs the State identifies as involved in providing special education and related services. In the APR and Progress Reports, SDDOE stated that there were no issues raised regarding personnel in either the complaint or due process hearing systems, and on page 10 of the APR, the State notes that 97% of the districts monitored in 2002-2003 were found in compliance regarding implementation of IEPs. On page 21 of the APR the State includes strategies to improve performance in this area. SDDOE must continue to report in the next APR on its progress in ensuring full compliance with this issue.

Extended School Year (ESY) Services. On page 11 of the APR, SDDOE reported data and analysis that demonstrated its progress in correcting this area of noncompliance. The State reported that 92% of the districts monitored during the 2002-2003 school year were found compliant in the area of ESY services (page 11). In its June 30, 2003 Progress Report, the State reported that for the 2002-2003 school year there were no complaints or due process hearings

related to ESY services. SDDOE must continue to report in the next APR on its progress in ensuring full compliance with this issue.

Ensuring Timely Correction of Noncompliance Identified through Monitoring. States participating in the Part B program have provided assurances that they will adopt and use proper methods of administering the program, including monitoring and the correction of deficiencies that are identified through monitoring. 20 U.S.C. 1232d(b)(3). On pages 7 through 12 of the APR SDDOE presents data on the results of its monitoring, in terms of numbers and percentages of districts monitored found out of compliance with various requirements under Part B, but provides no information on the extent to which it is ensuring correction of noncompliance identified through monitoring. Nor did the State include in the APR strategies, evidence of change, targets, and timelines to ensure correction of noncompliance identified through monitoring. (However, the State does indicate, on page 6 of the APR that it had yet to gather data on the progress reports on findings from the 2002-2003 monitoring cycle and discuss, on page 13 of the APR, the training and technical assistance efforts it is using to address issues that the State considers to show systemic noncompliance.) Therefore, the State must, within 60 days of the date of this letter, either submit data and analysis showing that it is ensuring correction of noncompliance identified through monitoring or a plan containing strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. If the State cannot show current compliance, it also must provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR and, in addition, provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline. The State also reported on its timely resolution of complaints, mediations and due process hearings on page 5 of the APR and on collecting and reporting on accurate and timely data on pages 21 - 23. OSEP appreciates the work of the State in ensuring compliance with these requirements.

Early Childhood Transition

There were no areas of noncompliance identified in OSEP's December 1999 Monitoring Report relating to Part B Early Childhood Transition. However, the State included data and information in the APR that indicated an area of noncompliance not previously identified by OSEP.

Specifically, SDDOE stated that there exist institutional barriers that result in a small percentage of children who are not evaluated for Part B services so that, if determined eligible, an IEP can be developed and implemented by a child's third birthday (§300.132(b)).

APR data showed an increase in the percentage of children for whom Part B eligibility determinations were made, upon exiting the Part C program. The State's 2002-2003 data show 96.5% of the three year olds who exited Part C were evaluated in order to determine Part B eligibility; 78% were found eligible for preschool special education services and 18.5% did not qualify for special education services. Three and five-tenths percent (3.5%) of the three year olds exiting Part C were not evaluated for Part B eligibility. SDDOE attributed this to parents not wanting referrals made for preschool, or possible institutional barriers to conducting evaluations in a timely matter. SDDOE stated that sometimes parents defer the eligibility determination until the start of the school year, especially if the child's birthday falls during the summer months. To the extent that failure to evaluate prior to the child's third birthday is a function of institutional barriers at the district level, noncompliance exists with the requirements of §300.132(b).

To address this issue, SDDOE indicated in the APR that it would undertake the following activities: (1) pilot an expansion of the Part B monitoring to include specific on-site activity for all schools monitored to compare the Part C exit data with the early childhood IEP beginning dates, with the expectation that any child who exits Part C will have an IEP completed and will begin receiving services by the child's third birthday; (2) pilot participation by Part C staff on four on-site monitoring visits to districts to verify Part C exit data and determine school district compliance regarding transition for Part C to Part B by the child's third birthday; (3) when issues are identified with regard to specific school districts, corrective action would be addressed in Improvement Plans to correct the problem in those districts; and (4) Part B monitoring visits would include Part C exit data and compare this with the beginning date of IEPs and the children's third birthday by 2004-2005.

SDDOE's projected targets are: (1) 100% of children eligible for Part B receive services on their third birthday, regardless of whether the child's birthday occurs at times when school is not in session (e.g., summer break); (2) local educational agency personnel participate in transition planning conferences 100% of the time; and (3) 100% of transition planning meetings occur 90 days or more prior to the child's third birthday.

OSEP accepts SDDOE's plan. The State must continue to report in the next APR on its progress in ensuring full compliance with this requirement.

Parent Involvement

OSEP's December 1999 Monitoring Report indicated no areas of noncompliance in the area of Parent Involvement. However, the State included data and information in the APR that indicated an area of noncompliance not previously identified by OSEP. Baseline data for the State's 2002-2003 Continuous Improvement Monitoring Process (CIMP), reported on pages 26-27 of the APR, indicated that: in six of 38 schools/agencies parents were not asked to provide input into the evaluation process, as required by §300.532(b); and in 10 of 38 districts/agencies, parental consent to conduct an evaluation was not obtained, as required by §300.505. SDDOE's monitoring data reflects that districts are not consistently documenting the process used to obtain input from parents when planning evaluation. Many districts report that they contact the parent, but often fail to document their input.

Included in SDDOE's projected targets are: (1) required parent consent to conduct an evaluation will be obtained, 100% of the time; and (2) parents of students with disabilities will be asked to provide input into the evaluation planning process, 100% of the time. SDDOE's projected timeline for meeting these targets is the next reporting period (July 1, 2003 through June 30, 2004). Among future activities to achieve projected targets/results, SDDOE included holding monthly teleconference calls with South Dakota Parent Connection to develop and implement strategies to impact parental involvement, and the development of a method to collect data on the reported level of satisfaction with parent involvement. SDDOE also stated that this area has been emphasized to the monitoring teams to ensure they focus on this requirement. OSEP accepts SDDOE's plan, with the caveat that, as discussed in the General Supervision section above, the State also must demonstrate that it ensures correction of noncompliance identified in monitored LEAs. SDDOE must provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR and provide a report to OSEP,

with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the date of this letter.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality. In the APR, SDDOE reported disproportionality among racial/ethnic groups beyond the relative difference (>0.20 or $<- 0.20$) in several categories for both identification and settings. SDDOE attributes any disproportionality issues to the ethnic composition of the State, which is significantly less diverse than the national composition. After Caucasian, American Indian is the next largest ethnic group at 8.3 percent. Asian, Hispanic, and Black range from 0.01 percent to 1.04 percent. The State reported that in a sparsely populated State without much diversity, the addition or reduction of only a few students of a racial/ethnic group can significantly impact the relative difference. For instance, the relative difference for Blacks in the mental retardation category was 0.66 although only 32 students were identified in this category. The relative difference for Asian students in the emotional disturbance category was -0.64 . However, Asians represented less than 1% of the State's population. The State noted that of any of the race/ethnicity categories, the American Indian group provided a more statistically reliable set of results. Generally, there is an overall trend of over-identifying American Indian students while Asian students appear to be the most consistently under-identified group.

On page 31 of the APR, SDDOE presented a target of reducing the identification of American Indian students to a rate comparable to their percentage of the total school enrollment. In addressing evidence of disproportionate representation, it would be appropriate for the State to look at policies, procedures and practices in the evaluation and identification process 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 at both the State and local level, 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, and the reasons for referral for special education evaluations. Such reviews would generally examine 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. Use of numerical or percentage goals based upon race as a means of addressing disproportionality, however, would raise serious concerns under federal civil rights laws and the United States Constitution and would not be an appropriate way to address any potential compliance problems that significant disproportionality may indicate. In the FY 2003 APR, the State must revise its target consistent with these principles.

Part B requires, at 34 CFR §300.755(b), that "In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with [§300.755(a)], the State . . . shall provide for review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with Part B of the act." The State reports on page 32 of the APR that it will be reviewing LEAs with significant disproportionality during the next reporting period. The State's

FFY 2003 APR must include the results of the State's review of LEA policies, procedures and practices.

State-wide Assessments. Participation data showed that SDDOE has achieved the identified performance target in the 1999-2001 Biennial Performance Report of 95% participation or higher on State-wide assessments. SDDOE reported that students with disabilities participated in the State-wide assessments at a higher level than their nondisabled peers. The State also identified a target of reducing the number of students scoring in the basic and below basic achievement levels and discussed its plans to develop and implement extended content standards for the State's alternate assessment. OSEP looks forward to reviewing the State's progress on these plans in the next APR.

Least Restrictive Environment

On pages 40 and 41 of the APR, SDDOE reports monitoring data that reflects that it is identifying some compliance issues regarding LRE in districts that it monitors, but no information about correction of those identified deficiencies. As noted above in the General Supervision section, the State must demonstrate that it ensures correction of noncompliance identified in monitored LEAs. The State must continue to report in the next APR on its progress in ensuring full compliance with the least restrictive environment requirements.

The State also identified opportunities for improvement of the rate at which preschool aged children with disabilities are placed in inclusive settings, and proposed strategies to achieve improvement. OSEP looks forward to reviewing the implementation of these strategies and their impact on preschool-aged children with disabilities as a part of the next APR.

Early Language/Communication, Pre-reading, and Social-Emotional Skills.

On pages 43 and 44 of the APR, the State reported that it did not currently have standards related to this issue and indicated that it would convene a workgroup to plan for appropriate data collection to support analysis of the early language/communication, pre-reading and social-emotional skills of preschool aged children with disabilities. 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 socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, OSEP expects States to include either 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.

The State also included data about its drop-out and graduation rates and suspension and expulsion rates for children with disabilities compared to children without disabilities, and strategies for improvement in these areas. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities in the next APR.

Secondary Transition

OSEP's December 1999 Monitoring Report indicated two areas of noncompliance in this cluster: (1) secondary transition plans for students with disabilities did not represent a coordinated set of activities within an outcome-oriented process that promotes movement from school to post-secondary activities (34 CFR §300.29(a)(1)); and (2) other agency representatives were not consistently invited to Individualized Education Program (IEP) team meetings or involved in transition planning if they did not attend the meeting (34 CFR §300.344(b)(3)). SDDOE addressed these issues of noncompliance in the IP, and reported on transition services in the APR and in Progress Reports.

SDDOE monitoring data indicated that noncompliance in secondary transition remains with regard to 34 CFR §300.29(a)(1). In the APR at pages 45 and 46, SDDOE reported that 67% of the district/agencies monitored for transition planning as an outcome-oriented process, were in noncompliance. SDDOE did not report State monitoring data on whether other agency representatives were consistently invited to Individualized Education Program (IEP) team meetings or involved in transition planning if they did not attend the meeting.

The State also reported that the percentage of schools not meeting the transition services requirements that SDDOE monitored increased for the past three years (2000-2003). SDDOE attributed the increase to a more thorough monitoring of the transition portion of IEPs. However, neither the APR nor the IP progress reports indicated that the State was ensuring correction of noncompliance identified in monitored LEAs. The APR indicated there were no hearings or complaints in the last three years related to transition services (2000-2003). The State reported projected targets including a decrease in the number of schools not meeting secondary transition requirements and the identification of a process to compare post-school outcomes for students with disabilities to those for nondisabled students. On page 48 of the APR, SDDOE reported future activities to include: (1) continued support of the Transition Services Liaison Project; (2) continued use of the summer institute program "Transition in Action;" and (3) the development of a State-wide survey to assess the post-school outcomes of students with disabilities.

The State's problems regarding meeting the transition services requirements mentioned above are quite long-standing, and the APR and IP progress reports do not indicate that progress toward compliance is being made. The State must submit to OSEP within 60 days its analysis as to the root cause of the noncompliance as well as its analysis of its existing strategies and whether they have been effective (i.e., do they need to be refined or targeted) and what additional actions or strategies may assist the State in reaching full compliance in this area as soon as possible. If the State determines additional strategies are needed or that existing strategies must be modified, it must also submit within 60 days its proposed strategies, evidence of change data and timelines to ensure compliance as soon as possible. Further, as noted in the General Supervision section of this letter, the State must, within 60 days of the date of this letter, either submit data and analysis showing that it is ensuring correction of noncompliance identified through monitoring or a plan containing strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

The State also reported on the results of a brief survey of students with disabilities after secondary school and its plans to develop a statewide survey to assess outcomes for students with disabilities after they leave secondary school. OSEP looks forward to hearing about the progress of these plans in the next APR.

Conclusion

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

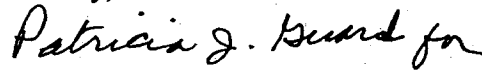
- (1) either submit data and analysis showing that it is ensuring correction of noncompliance identified through monitoring or a plan containing strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan; and
- (2) its analysis as to the root cause of the noncompliance relating to secondary transition requirements as well as its analysis of its existing strategies and whether they have been effective (i.e., do they need to be refined or targeted) and what additional actions or strategies may assist the State in reaching full compliance in this area as soon as possible. If the State determines additional strategies are needed or that existing strategies must be modified, it must also submit within 60 days its proposed strategies, evidence of change data and timelines to ensure compliance as soon as possible.

In addition, as noted above, SDDOE must provide evidence of progress in correcting the noncompliance regarding 34 CFR §§300.532(b) and 300.505, including current supporting data and its analysis, in the FFY 2003 APR and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the date of this letter.

As further noted above, SDDOE must also include in its FFY 2003 APR the results of the State's review of the policies, procedures and practices used by LEAs in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B when the State identifies significant disproportionality on the basis of race in the identification or placement of children with disabilities. SDDOE must also continue to report in the FFY 2003 APR on its progress in ensuring full compliance with the qualified personnel, extended school year, and early childhood transition requirements mentioned above, and include either 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.

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 Tony G. Williams at (202) 245-7577.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Michelle Powers
Director
Special Education Programs