



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dr. Lana Seivers
Commissioner of Education
Tennessee Department of Education
Sixth Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0375

OCT 25 2004

Dear Commissioner Seivers:

The purpose of this letter is to respond to Tennessee's March 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 cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

Tennessee submitted its Self-Assessment on December 21, 2001. Tennessee Department of Education (TDE) submitted its Improvement Plan (IP) to OSEP on July 1, 2002 to address areas in its Self-Assessment that needed improvement. OSEP provided an analysis, requiring some revisions, of this IP to TDE on June 18, 2003. TDE revised its IP and submitted it to OSEP on September 16, 2003.

OSEP conducted a visit to Tennessee during the week of August 18, 2003 to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA and State-wide assessment. OSEP provided the results of this visit to the State in a letter dated February 6, 2004. OSEP expressed concerns that TDE's monitoring procedures for

collecting data at the local level did not include a method for interviewing related service personnel, administrators, and parents. In addition, OSEP found that TDE was not issuing decisions on formal written complaints within 60 days (unless an extension was granted for exceptional circumstances with respect to an individual complaint) and due process hearings within 45 days of the request for a hearing, in accordance with 34 CFR §300.511. TDE was required to submit documentation in its March 2004 APR to demonstrate compliance in these areas.

TDE's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments regarding TDE's Improvement Plan, and the APR are listed by cluster area.

General Supervision

Timely Identification and Correction of Noncompliance

OSEP's February 2004 verification letter noted that TDE changed its monitoring system to include a self-assessment by local education agencies and a process for TDE to verify this information through an on-site monitoring process. OSEP provided some suggested modifications to TDE's monitoring system, including obtaining monitoring information from related service providers and evaluation of its procedures to determine if interviews with administrators and parents would further enhance TDE's ability to identify noncompliance. OSEP indicated that it expected TDE to report the progress of its revised monitoring process through the APR.

On pages three through nine of TDE's APR, TDE reported on the status of its monitoring system. TDE reported that it completed three-quarters of the self-assessment phase for the monitoring of local education agencies and reported statistics on "indicators needing improvement" through each cycle of its monitoring process. On page seven of the APR, TDE reported that for the LEAs monitored in 01-02 school year, the percentage of indicators requiring improvement was reduced to 0-5% based on implementation of the LEAs' program improvement plans. TDE must continue to report on its progress in ensuring compliance in these agencies in the next APR.

In addition, TDE reported monitoring data for the 02-03 school year identifying what appears to be noncompliance regarding evaluations and reevaluations (on page 22 of the APR), extended school year services (on page 23 of the APR), early childhood transition (on page 29 of the APR), parent involvement (on page 34 of the APR), suspension and expulsion (on page 70 of the APR), and least restrictive environment (on page 88 of the APR). However, TDE did not include data demonstrating that it ensured the correction of this apparent noncompliance. As a result, the APR indicates potential noncompliance not previously identified by OSEP in these areas. Under 20 USC 1232d(b)(3)(E), States must ensure the correction of identified deficiencies. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that the monitoring findings do not indicate noncompliance with requirements of the IDEA and its

regulations, (2) documentation that the State has ensured the correction of noncompliance that it identified, within a year of identification; or (3) a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of identified noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and provide to OSEP, a report with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

TDE also identified targets and activities regarding its monitoring process for local education agencies and correctional facilities. TDE should continue to include data and strategies that it will utilize to maintain compliance in this area in the FFY 2003 APR. TDE also should report in the FFY 2003 any modifications and changes made to the monitoring system reflected in the FFY 2002 APR.

Identification and Remediation of Systemic Issues through the Analysis of Data for all Available Sources, including Monitoring

On pages nine through 11 of the APR, TDE included three issues it identified as needing improvement through an analysis of its data. These areas included updating its interagency agreement with the Department of Corrections, improvement in the participation of children with disabilities in the general curriculum, and decreasing the “exceptions” (i.e., findings) identified through State monitoring in State agency, private schools, and State-operated programs. The State on pages ten and 11 of the APR indicated that corrective action plans had been fully implemented in districts requiring improvement concerning participation in the general curriculum and that there had been a decrease in the number of exceptions in monitored State agency programs, private schools, and State-operated programs from 2001-2002 to 2002-2003. However, the APR did not indicate that the interagency agreement with the Department of Corrections had been adopted or that the exceptions identified in State agency, private schools and State-operated programs had been corrected. Thus, the APR presents information indicating noncompliance not previously identified by OSEP regarding interagency agreements and correction of identified deficiencies.

Under 34 CFR §300.142, States must ensure that there are interagency agreements or other mechanisms between the SEA and other public agencies with responsibility for providing or paying for special education and related services to ensure that all needed services are provided. On page 11 of the APR, the State also included strategies, evidence of change, targets and timelines to ensure compliance on the interagency agreement issue within a reasonable period of time not to exceed one year from the date of this letter. OSEP accepts the State’s plan. The State must provide an interim progress report in the FFY 2003 APR, and a final progress report, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date of this letter.

Under 20 USC 1232d(b)(3)(E), States must ensure the correction of identified deficiencies. The State did not include strategies, evidence of change, targets and timelines to address the

correction of identified deficiencies in State agency, private school and State-operated programs. Therefore, within 60 days of the date of this letter, the State must submit a plan, including strategies, proposed evidence of change, targets and timelines that will ensure the correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. One element of that plan must be documentation of correction of noncompliance identified through monitoring and subsequent State follow-up activities demonstrating that correction occurred.

Dispute Resolution System Ensures that Complaint Investigations, Mediations, and Due Process Hearings and Reviews are completed in a Timely Manner

OSEP's February 2004 verification letter stated that TDE was not in compliance with 34 CFR §300.661 because Part B complaints were not being resolved within the 60-day timeline. OSEP noted that TDE made changes in its procedures and had established a system to track complaints. On page 12 of the APR, TDE reported that 40% of all complaints with findings during FY 2002-2003 exceeded the 60-day timeline (or timelines set by exceptional circumstances). However, TDE was able document improvement during this period, noting an 80% decrease in the number of complaints exceeding the 60-day timeline during the first seven months of 2003. TDE provided improvement strategies, proposed evidence of change, targets and timelines to address this noncompliance in its September 16, 2003 IP and on page 14 of the APR. Tennessee must provide to OSEP, data and analysis demonstrating compliance with this requirement within 30 days after February 6, 2005, one year from the date Tennessee was informed of noncompliance through OSEP's verification letter.

OSEP's February 2004 verification letter found that TDE was not in compliance with 34 CFR §300.511 because due process hearing requests were not being resolved within the 45-day timeline. On page 12 of the APR, TDE reported that all but one of 64 due process hearings were completed within the 45-day timeline (or a proper extension granted) for FY 2002-2003. TDE provided improvement strategies, proposed evidence of change, targets and timelines to address noncompliance in its September 16, 2003 IP and on pages 14 through 16 of the APR. The State must continue to report on its progress in ensuring compliance with due process hearing timelines in its next APR submission.

A Sufficient Supply of Personnel Available to Meet the Needs of All Children with Disabilities

On pages 17 through 20 of the APR, TDE reported on the numbers and trends for personnel serving students with disabilities in Tennessee. TDE reported an increasing need for more special education personnel, although progress was documented in increasing the supply of trained personnel and a reduction in the number of teachers with waivers. OSEP looks forward to reviewing in the FFY 2003 APR information that includes both the implementation of the strategies it included in the FFY 2002 APR and the resulting data demonstrating improvement.

Collection and Reporting of Accurate and Timely Data

On pages 20 through 21 of the APR, TDE noted that it received a General Supervision Enhancement Grant (GSEG) to update its database and collect data that was not included in its student-level, web-based system. OSEP looks forward to reviewing in the next APR information that includes both the implementation of the strategies it included in this APR and the resulting data demonstrating improvement in its collection of accurate and timely data.

Other Issues

On pages 22 through 23 of the APR, TDE addressed the issue of determining the needs of children with disabilities through appropriate evaluations consistent with the requirements of 34 CFR §§300.532-300.534, and on pages 23 through 24, TDE addressed the availability of Extended School Year (ESY) services across all categories and severities of disability, consistent with the requirements of 34 CFR §300.309. TDE included strategies, activities and resources designed to ensure compliance. The State must continue to report on its progress in achieving compliance in the next APR. In addition, the State must address the monitoring data as indicated on pages two and three of this letter.

On pages 25 through 27 of the APR, TDE addressed influence of the funding formula on the placement of students with disabilities. TDE presented data, an analysis, an explanation of progress or slippage, activities, and timelines and resources for this issue. OSEP looks forward to reviewing the impact of TDE's strategies and activities in the next APR.

Early Childhood Transition

The data presented on pages seven and 10 of TDE's September 2003 IP indicated 345 of 2,595 children exiting the Part C program who were potentially eligible for the Part B program during FY 2000-2001 did not have their Part B eligibility determined by age three. On pages 28 through 33 of the APR, TDE reported that Part C monitoring showed 80% of transition conferences included a local education agency (LEA) representative. These data indicate noncompliance with 34 CFR §300.132 which requires an IEP to be developed and implemented for children with disabilities by their third birthday who have been in the Part C program and require Part B services, and that an LEA representative participate in transition planning meetings arranged by the Part C agency.

Pages 28 through 33 of the APR also indicated that TDE's monitoring found that 56% of LEAs during the 2001-2002 school year and 21% of LEAs during the 2002-2003 school year "required improvement" in this area. TDE acknowledged that, although there was a need for better data, there was also a need to ensure that children with disabilities were receiving special education and related services by their third birthday. On pages 30 through 33 of the APR, TDE included strategies, activities and resources designed to ensure compliance. OSEP accepts these strategies, with the addition noted on pages two and three of this letter. In the FFY 2003 APR, TDE must include data and analysis demonstrating progress toward compliance, and a report to

OSEP demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter. In addition, the State must address the monitoring data as indicated on pages two and three of this letter.

Parent Involvement

On pages 34 through 37 of the APR, TDE reported data and accomplishments regarding parental involvement in special education services. TDE reported that 21% of LEAs monitored during the 2001-2002 school year and 35% of LEAs monitored during the 2002-2003 school year required improvement in this area. TDE stated there was an increase in the reporting requirements for parental involvement by LEAs in the State-required End of the Year Report. TDE concluded that there was a lack of progress in this area and presented strategies, activities, timelines and resources to increase parent involvement. The steps that the State must take in this area are noted on pages two and three of this letter.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality

On pages 43 through 62 of the APR, TDE reported its data for disproportionality for children with disabilities receiving special education across three school years (2000-2001, 2001-2002, and 2002-2003). In addition, TDE reported that 43 LEAs in 2001-2002 and 34 LEAs in 2002-2003 were monitored for disproportionality. Although TDE reported areas of disproportionality for Hispanic, American Indian, and Asian students, TDE noted that these results are probably not significant because of the relatively small numbers of children in these ethnic groups in Tennessee. On page 47 and 55 of the APR, TDE's analysis of the data indicated that Black/African-American children were overrepresented in the mental retardation category and in placements in more restrictive settings, such as more than 60% outside the regular classroom. TDE presented targets, strategies, resources, and timelines to further improve its data collection and technical assistance in this area. 34 CFR §300.755 requires that 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 must 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. The instructions to the 2002 APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. The State's 2002 APR, however, while identifying significant disproportionality, did not include any information indicating that the State had provided for a review of policies, procedures or practices used in identification or placement of children with disabilities. In the next APR, the State must include the information required by the instructions. 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 or 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 Dropout

On pages 62 through 66 of the APR, TDE reported data and analysis for high school graduation and drop-out rates for students with disabilities as compared with nondisabled students. The data indicated that the percentage of students with and without disabilities exiting with a regular diploma over the three year period from school year 2000-2001 to school year 2002-2003 increased by 4.3%, while the percentage of students in special education exiting with a regular diploma increased 1.4%. TDE reported that 34.4% of students with disabilities graduated with a regular diploma, while 78.1% of all students graduated with regular diploma during school year 2002-2003. Through its monitoring of LEAs, TDE reported that 63% of LEAs in the 2001-2002 school year and 50% of LEAs in the 2002-2003 school year required improvement in this area. TDE notes there has been an increase of 6% in the graduation rate for students with disabilities from 2001-2002 to 2002-2003 school years in LEAs that were targeted from improvement through TDE's monitoring system. TDE reported that Tennessee's drop-out rate for students with disabilities improved from 24.48% in the 1999-2000 school year to 17.38% during the 2002-2003 school year. TDE presented data demonstrating that the rate of improvement for districts monitored and required to submit improvement plans by the State showed a higher percentage of improvement than the State average. OSEP looks forward to reviewing in the next APR data resulting from implementation of those strategies as the State works to improve its performance in this area.

Suspension and Expulsion

On pages 67 through 69 of the APR, TDE reported extensively on its suspension and expulsion data for children with and without disabilities, including data by ethnicity and disability category. TDE concluded on page 70, that the "suspension of disabled students show a pattern of being lower each year because Tennessee's LEAs have made a concerted effort to find other means of serving students instead of out of school suspension." TDE also noted on page 70 of the APR that its monitoring of LEAs regarding suspension and expulsion showed that 28% of LEAs during the 2001-2002 school year and 12% of LEAs during the 2002-2003 school year required improvement. The steps the State must take to address the monitoring data presented in this section are set forth on pages two and three of this letter.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among 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 individualized education programs (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 2002 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with

significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. TDE indicated on page 71 of the APR that it would evaluate the effectiveness of behavioral intervention plans and functional behavioral assessments and target districts highest rates for technical assistance during the next reporting period. In the next APR, the State must include the information required by the instructions. If the 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 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.

The State also indicated on page 71 that it would implement strategies to assess the effectiveness of behavioral intervention plans developed from appropriately conducted functional behavioral interventions and analyze data on reasons for office referrals. OSEP looks forward to reviewing data and information about these activities in the next APR.

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

On pages 72 through 86 of the APR, TDE reported the performance and participation of students with disabilities on Tennessee's State-wide Assessments. TDE presented trend data, as well as predicted performance in the various testing areas. TDE concluded that the performance of students with disabilities on its State-wide Assessments increased at a higher rate than projected. TDE presented targets, strategies, resources, and timelines to further improve student performance. In addition, pages 90 through 109 of the APR provided targets for increasing the number of special education students assessed with appropriate accommodations and indicated that the State would provide technical assistance on decision-making and usage of accommodations, and the appropriate usage of the alternate assessment. OSEP looks forward to reviewing the results of TDE's strategies and activities in the next APR.

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

On pages 87 through 89 of the APR, TDE reported data on the educational environment in which children with disabilities were educated and data on their access to the general curriculum. Based on a comparison of placement data from other States, TDE concluded that its data appeared to demonstrate that many children with disabilities, who were "being served in Separate Public School, Separate Private School, Public Residential, and Private Residential settings, [are] being served in the Outside the Regular Education Setting 21-60% in Tennessee." TDE presented trend data for children with disabilities, aged three through five, demonstrating that they were served in less restrictive settings from 1999 to 2002. TDE reported that it found 14% of LEAs during the 2001-2002 school year and 15% of LEAs during the 2002-2003 school year required improvement in the access of children with disabilities to the general curriculum. The

steps the State must take to address the monitoring data presented in this section are set forth on pages two and three of this letter. In addition, TDE collected data from LEA Comprehensive Plans (applications) that demonstrated an increasing trend in system-wide inclusion of children with disabilities. TDE presented targets, strategies, resources, and timelines to further improve student performance and technical assistance in this area. OSEP looks forward to reviewing the results of TDE's strategies and activities in the next APR.

Early Language/Communication, Pre-Reading, and Social-Emotional Skills of Preschool Children with Disabilities

On pages 89 through 90 of the APR, TDE reported that it did not have any system available to collect data in this area. TDE indicated on page 90 that it would "review data options by June 2004 and develop preliminary plans for collection of the data." 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. In the FFY 2003 APR, Tennessee must either submit 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

On pages 113 through 115 of the APR, TDE reported the progress of its State goal for all high school students, including those with disabilities, "to achieve world class standards and leave school prepared for post-secondary education, work, and citizenship." TDE indicated that 51% of LEAs monitored during the 2001-2002 school year and 50% of LEAs monitored during the 2002-2003 school year required improvement in the participation of disabled students in post school activities compared to nondisabled students. TDE concluded that school systems in Tennessee require further development and expansion of secondary transition efforts before "significant outcome effects will be recognizable." TDE also acknowledged that exiting and outcome data was minimal and TDE reported on the activities that were initiated around secondary transition and reported monitoring data from LEAs. The State included strategies and targets designed to improve performance in this area. OSEP looks forward to reviewing the results of TDE's strategies and activities in the next APR.

Conclusions

Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that TDE's monitoring findings regarding evaluations and reevaluations, extended school year services, early childhood transition, parent involvement, suspension and expulsion, and least restrictive environment do not indicate noncompliance with requirements of

the IDEA and its regulations, (2) documentation that the State has ensured the correction of noncompliance that it identified regarding the above issues, within a year of identification; or (3) a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of identified noncompliance of the above issues within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and provide to OSEP, a report with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

By February 6, 2005, Tennessee must provide to OSEP, data and analysis demonstrating compliance consistent with 34 CFR §300.661 regarding the resolution of Part B complaints within 60-days, unless an appropriate extension is permitted. Tennessee must provide to OSEP, data and analysis demonstrating compliance with this requirement within 30 days after February 6, 2005, one year from the date Tennessee was informed of noncompliance through OSEP's verification letter.

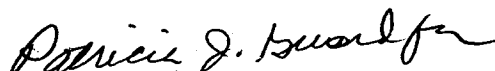
In the FFY 2003 APR, TDE must:

1. provide an interim progress report in the FFY 2003 APR regarding the adaptation of the interagency agreement with the Department of Corrections and the exceptions identified in State agency, private schools and State-operated programs have been corrected. A final report, with data and analysis demonstrating compliance, must be submitted to OSEP, as soon as possible, but not later than 30 days following one year from the date of this letter;
2. provide an interim progress report in the FFY 2003 APR regarding compliance with 34 CFR §300.132 (an IEP is developed and implemented for children with disabilities who require Part B services by their third birthday and an LEA representative participates in transition planning meetings). A final report, with data and analysis demonstrating compliance, must be submitted to OSEP, as soon as possible, but not later than 30 days following one year from the date of this letter;
3. include the information indicating that TDE, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review is done;
4. include the information required that TDE has examined all data for all LEAs to determine whether significant discrepancies in the rate of long-term suspension or expulsion are occurring in the LEAs, 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; and
5. submit 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 skills of preschool children with disabilities, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan, for demonstrating that early language/ communication,

pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving.

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 Dr. Ken Kienas at (202) 245-7621.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie D. Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Mr. Joseph Fisher