



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

FEB -8 2005

Honorable Richard Cate
Commissioner of Education
Vermont State Department of Education
120 State Street
Montpelier, Vermont 05620-2500

Dear Commissioner Cate:

The purpose of this letter is to respond to Vermont's April 1, 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

VDE submitted a Self-Assessment to OSEP for review in October 2002. OSEP responded to the Self-Assessment in a letter dated May 7, 2003 and reported that the information in the Self-Assessment raised concerns about potential noncompliance within the General Supervision cluster. OSEP was not able to determine if VDE's current monitoring procedures were effective in: (1) identifying and correcting noncompliance in all agencies, institutions, and organizations used by the State to carry out Part B; (2) correcting deficiencies identified through monitoring; and (3) enforcing any obligations imposed on those agencies under Part B. OSEP's May 2003 letter also identified several cluster areas where there was not sufficient data to make data-based performance and compliance determinations. OSEP indicated in that letter that it expected VDE, as part of its improvement planning efforts, to collect and analyze data, and make data-based determinations in those areas.

In response to OSEP's May 2003 letter, VDE reported in its July 2003 Improvement Plan (IP), that VDE would: (1) review its policies and procedures related to compliance, enforcement and correction activities to ensure clarity and adequacy of information provided to supervisory unions, and (2) analyze data resulting from the monitoring of all supervisory unions that occurred from 2000-2002 and other more current information relevant to each cluster area by August 2003. Therefore, in its March 15, 2004 letter responding to VDE's IP, OSEP indicated that VDE must include in its FFY 2002 APR, the actual data and its analysis to demonstrate whether the State's general supervision system is effective in (1) identifying and correcting noncompliance in all agencies, institutions, and organizations used by the State to carry out Part B; (2) correcting deficiencies identified through monitoring; and (3) enforcing any obligations imposed on those agencies under Part B.

In addition, OSEP's March 2004 IP letter to the State indicated that Vermont must make data-based determinations of compliance or noncompliance in the following areas:

- Students in Out-of-District Placements and Juvenile Facilities.
- Implementation of Corrective Actions from Due Process Hearings and Complaint Investigations.
- Free and Appropriate Public Education (FAPE) in the Least Restrictive Environment.
- Secondary Transition.

OSEP indicated that VDE must submit these determinations in the current APR. If VDE determined that there was noncompliance in any of these areas, VDE was directed to include with its APR improvement strategies, evidence of change, and timelines for ensuring correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approved the strategies. The March 29, 2004 cover letter to VDE's FFY 2002 APR states that the APR "addresses each concern raised by OSEP and three specific performance indicators have been developed in the areas of General Supervision, FAPE and Secondary Transition to clearly outline VDE's efforts to address and improve these areas."

OSEP visited Vermont during the week of July 26, 2004 to verify the effectiveness of the State's systems for general supervision, collection of data under Section 618 of IDEA and State-wide assessment. The results of the verification visit are summarized in a separate letter and required actions needed by VDE, as a result of the verification visit, are incorporated into this APR response.

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. OSEP's comments are listed by cluster area.

General Supervision

Identification and Correction of Noncompliance. VDE reported on page 1 of the APR that, between 2000-2002, each of Vermont's sixty supervisory unions participated in either an Act 117 monitoring visit, or an Act 117/Federal Compliance monitoring visit. During the two-year cycle, 23 supervisory unions participated in an Act 117/Federal Compliance monitoring. This process included the development of an local education agency (LEA) profile, a review of files and data related to the LEA, a review of educator licensing, a compilation of parent and educator

surveys, a site visit and a plan of corrective action, when needed. The remaining thirty-seven supervisory unions were monitored in a similar way, but with a streamlined version of the record review, staff interviews and individual school profiles. VDE maintains a six-year monitoring cycle.

During the 2002-2003 school year, VDE monitored eleven supervisory unions for compliance with the IDEA, including a review of 322 student files. VDE used the results from the 2000-2002 and 2002-2003 State monitoring activities to identify strengths and weaknesses in the special education delivery systems.

VDE analyzed and included data from its 2002-2003 monitoring in the APR that specifically responded to OSEP's May 2003 Self-Assessment letter and the March 2004 IP letter: (1) VDE indicated on page 4 of the APR that it needs to include more information on students placed in independent, out-of-district, and alternative schools in the State's monitoring protocol; and (2) that it needs to ensure that children with disabilities placed in the Department of Corrections are provided a free, appropriate public education (FAPE).

VDE stated on page 4 of the APR, that during 2002-2003 it reviewed 24 files from students in 13 independent, out-of-district and alternative schools, but had not analyzed the data to determine if trends exist. VDE also stated it had not analyzed the monitoring data it collected in 2000-2001 at the Woodside Juvenile Rehabilitation Center. On page 5 of the APR, VDE indicated that it would analyze data from files of students placed in independent, out-of-district and alternative schools during the summer of 2004 and was scheduled to monitor the Community High School of Vermont during 2004-2005. During the July 2004 verification visit to Vermont, VDE informed OSEP that it does not monitor to identify and correct non-compliance at DOC facilities throughout the State. VDE has been working with DOC to clarify responsibilities related to the provision of FAPE to special education students as required at 34 CFR §300.121, with specific exceptions indicated at 34 CFR §300.122. To date, the discussions have not been finalized. VDE indicated that it was scheduled to monitor the DOC during the 2004-2005 monitoring cycle. In the next APR, VDE must submit data, along with its analysis and a determination of whether the data indicate compliance or noncompliance with the requirement in 34 CFR §300.600 to identify and correct noncompliance in independent, out-of-district and alternative schools and the DOC. If the data indicate noncompliance, VDE must submit a plan that includes strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period not to exceed one year of OSEP's acceptance of the plan.

On page 77 of the APR, VDE stated that the special education procedures of the Community High School of Vermont (CHSVT), an educational high school program operated by the Department of Corrections (DOC), were outdated and that a database is required to provide identification and tracking information for ensuring FAPE. On page 79 and 80 of the APR, many future activities to achieve projected targets/results concerning FAPE for children in DOC facilities were identified by the VDE. OSEP looks forward to reviewing the impact of these strategies in the next APR.

During the verification visit, VDE provided documentation that its monitoring reports describe the noncompliance that a supervisory union must correct, timelines for completing those corrective actions, and required documentation that must be submitted as evidence of correction of the noncompliance. On page 12 of the APR, VDE stated that the Monitoring Team developed

an Improvement Plan Log that tracked the corrective actions per school and supervisory union. However, the monitoring teams did not review this Log periodically and had inconsistent procedures to ensure that all corrective actions were completed within timelines. During the verification visit, VDE provided OSEP with the tracking log. VDE reported to OSEP during the visit that recent changes to the monitoring process resulted in a more timely corrective action system.

Data and analysis on pages 2 and 3 of the APR indicated that during 2002-2003, VDE identified noncompliance with some of the requirements of IDEA in the area of evaluations and individualized education programs (IEPs). In the FYY 2003 APR, VDE must provide data from the Improvement Plan Logs demonstrating that the noncompliance identified in the 2002-2003 monitoring cycle has been corrected, including the number of corrective actions that have been completed and the number that are overdue, and for those corrective actions that are overdue, the action VDE is taking and the current status of corrections. If the data demonstrate that there is noncompliance with the requirement to ensure correction of noncompliance within one year of identification, the State must include strategies, proposed evidence of change, targets and timelines to address the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

In addition, on page 5 of the APR, VDE stated as a target that each supervisory union would meet the 80% compliance standard for each record review checklist. While it is not inconsistent with Part B of the IDEA to include a numerical threshold to demonstrate compliance, VDE must continue to monitor to ensure that FAPE is provided to *all* children and youth in conformity with 34 CFR §§300.121 and 300.300 and not based upon a numerical goal.

Complaints, Mediation and Due Process: VDE provided data from the last three school years that indicated an overall decrease in the number of administrative complaints and mediation requests filed and an increase in the number of due process hearings filed. On page 15 of the APR, data indicated that in FY 03, 45.5% of all complaints were addressed within the timeline requirements at 34 CFR §300.661. During the verification visit, OSEP reviewed the special education complaint log maintained by the Office of the General Counsel for the period January 2003 to June 2004. Of the 35 complaints filed between January 2003 to June 2004, 20 were completed within the 60-day timeline and in 15 cases, the timelines were extended. In all but two cases where extensions had been granted, OSEP could not determine from the case file or VDE's log whether the extension was granted due to exceptional circumstances that existed with regard to the particular complaint, as required by 34 CFR §300.661(b)(1). VDE indicated that for the most part, extensions were necessary due to the failure of LEAs and parents to provide information in a timely manner and the inability of VDE staff to keep pace with the high volume of complaints received. The failure of the complainant or school district to provide timely information, and insufficient numbers of staff to investigate the volume of complaints do not constitute circumstances that would justify extensions to complaint timelines as required by 34 CFR §300.661(b)(1).

Based on the data and information included on page 15 of the APR and provided during the verification visit, VDE is not complying with the requirement in 34 CFR §§300.661(a) and (b)(1) to ensure that written complaint decisions are issued within 60 days unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint. The State identified some activities on page 21 of the APR to address this area of noncompliance. However, the State did not include in the APR strategies, proposed evidence of change, targets

and timelines designed to ensure correction of the noncompliance within a reasonable period not to exceed one year from the date of OSEP’s acceptance of the proposed strategies. Therefore, in the next APR, the State must submit a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period not to exceed one year from the date OSEP accepts the plan.

OSEP also finds that VDE may not be in compliance with the requirement at 34 CFR §§300.511(a) and (c) to ensure that, not later than 45 days after the receipt of a request for a hearing, a final decision is made and a copy of the decision is mailed to each of the parties, unless an extension is granted at the request of a party. On page 16 of the APR, VDE reported that in FY 03, 0 hearing decisions were made after the 45-day timeline. However, during the verification visit, OSEP reviewed the special education hearing log that VDE’s Office of the General Counsel maintained for the period of January 2003 to July 2004. OSEP learned, through its review of VDE’s due process hearing log and interview with the staff responsible for tracking hearing timelines, that most cases (48 of 65) did not go to hearing because settlements were reached by the parties and the cases were subsequently dismissed by the hearing officer. OSEP noted that the reasons for dismissals were not documented on the tracking logs it reviewed. VDE acknowledged that in order to improve its oversight of the due process system the due process log should be revised to include, where appropriate, reasons for the dismissal of the case. In further review of the due process hearing logs provided by VDE, OSEP discovered that 33 of 48 hearing decisions dismissed extended beyond the 45-day timeline for a final decision to be reached, without documentation of the reasons for the extensions. Seven additional hearings marked “pending” also exceeded the required 45-day timeline. In all 4 cases where a hearing officer did reach a final decision, the 45-day timeline was extended. Below is a summary of the hearing logs reviewed by OSEP:

VDE Hearing Decision Log – January 2003 through July 2004	
Total	65
Dismissed – total	48
• Within 45 days	15
• Beyond 45 days	33
Pending – total	10
• Within 45 days	3
• Beyond 45 days	7
Hearing Decisions – total	4
• Within 45 days	0
• Beyond 45 days	4
3 additional hearings	
• Waived	1 (beyond 45 day time line)
• Hearing Order denied	1 (within 45 day time line)
• Hearing Officer granted motion	1 (beyond 45 day time line)

OSEP could not determine if VDE is complying with the requirement in 34 CFR §§300.511(a) and (c) to ensure that a final decision is reached within 45 days after the receipt of a request for a hearing or within a specific extension of time granted by the hearing officer at the request of a party. In the next APR, VDE must submit data, along with its analysis and a determination of

whether the data indicate compliance or noncompliance with 34 CFR §§300.511(a) and (c). If the data indicate noncompliance, the State must also submit a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period not to exceed one year from the date of OSEP accepts the plan.

Personnel: On page 22 of the APR, VDE reported that communities all over Vermont were experiencing a shortage of educators and “many schools have public school personnel without the proper special education credentials working as special educators in their schools.” From FFY 2001 through FFY 2003, the number of reported special education teacher vacancies more than doubled from 20.6% to 43.8%. Page 23 of the APR indicated that from FFY 2001 to FFY 2003, the total number of special education personnel reported as employed, but not fully certified, more than doubled from 78.9 positions to 169.8 positions. The State attributed this finding to the number of special education teachers reported on waivers increasing more than 150%, or 76 positions. The State identified significant increases in the number of administrators and speech pathologists on waivers.

In direct response to the personnel shortages, VDE developed partnerships with higher education that have been supported by both the State Improvement Grant (SIG) sponsored by OSEP and Act 117 legislation. VDE and Vermont State Colleges have collaborated to sponsor reduced tuition, mentoring and other incentives for personnel on waiver status. As of November 2003, 45 newly-certified special educators have graduated from these programs. VDE proposes to open new sites across the State to increase access to the programs. Related service personnel are also actively recruited and supported with similar incentives, including the implementation of a speech pathology assistance program and the provision of training to fully certified speech pathologists to supervise the assistant in the field. The APR indicated that both the State’s SIG and the Comprehensive System of Personnel Development (CSPD) have strongly focused on personnel training needs, recruitment and retention for the rural areas of the State.

OSEP finds that VDE identified several personnel needs and developed strategies to address those needs. OSEP looks forward to reviewing the impact of VDE’s strategies in this area in the FFY 2003 APR.

618 Data Collection: The APR stated on page 29 that VDE maintains a State-wide student database with unique student identifiers. The system collects all data related to the December 1 child count requirements. Data collections are implemented and verified by Vermont’s Student Support and Data Management Teams. The APR indicated, on page 29, that “the collection of suspension and expulsion data in Vermont has presented many challenges resulting in data that is regarded as inaccurate and unreliable.” In addition, on page 30 of the APR, the State indicated “on key indicators such as graduation, dropout and discipline, Vermont has been unable to draw meaningful conclusions on the outcomes for students with disabilities compared to those students without disabilities.” The APR provided several strategies that the State intended to implement to improve data collection, including collaboration with Vermont’s Information Technology and Data Management Team to enhance current data collection systems. In the FFY 2003 APR, OSEP looks forward to reviewing the State’s progress in implementing strategies to improve data collection.

Early Childhood Transition: Part B of IDEA requires children participating in the early intervention program under Part C of IDEA, who will participate in the preschool program under

Part B have an IEP [or individualized family service plan (IFSP) if consistent with State policy] developed and implemented by the child's third birthday (34 CFR §300.132(b)). Although the FFY 2002 APR provided data on the number of preschool children entering the Part B system, it does not provide data that enables OSEP to determine compliance with the requirement in 34 CFR §300.132(b).

The APR on page 37 stated that Vermont has historically used a prevalence rate of 5% of births as the target number for children, ages 3-5, served in Part B. Vermont served over 5% of 3-5 year old children based on the December 2000 and 2001 child count. OSEP acknowledges the State's use of prevalence rates to help the State predict the number of children that are likely to need special education services. While it is not inconsistent with IDEA to include a numerical goal to determine the percentages of children with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all children are made in conformity with the requirements of Part B of IDEA (at 34 CFR §§300.531 through 300.535) and not based upon a numerical goal, and that all children with disabilities are identified, located, and evaluated.

In addition, on page 38 of the FY 2002 APR, VDE stated that, due to insufficient data and analysis, it needs improvement in ensuring that all children eligible for Part B special education are receiving services by their third birthday. To address this concern, VDE identified several strategies, including revising its monitoring and data collection system by including elements that would determine if children have an IEP by their third birthday. In the next APR, VDE must provide data, analysis, and a determination of compliance with the requirement in 34 CFR §300.132(b). If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period not to exceed one year from the date of OSEP accepts the plan.

Parent Involvement: In the FY 2002 APR on page 41, VDE stated that parents participated in the State and local self-assessment process and were members of the Vermont Steering Committee and State Advisory Panel. Vermont utilized parents as an integral part of its overall monitoring process. On page 9 of the APR, VDE reported that during school year (SY) 2001-2002, 4845 surveys were mailed with a 27.7% return rate, and in SY 2002-2003, 1900 surveys were mailed with a 26.4% return rate. VDE had difficulty analyzing the results of the surveys and decided to develop a database to compile the data. VDE was able to sort the data based on the supervisory union where the family resided and added the information to the overall analysis of monitoring results for that supervisory union. VDE worked closely with the Vermont Parent Information Center and provided stipends to parents for their ongoing participation in the State's overall improvement activities.

On page 44 of the APR, VDE reported that it developed a family-friendly parental rights form and a booklet regarding transition from EEE to kindergarten and conducted training. VDE demonstrated that the State worked with parent groups to support data collection activities and the development of overall improvement strategies for eligible children. Vermont indicated that, as part of its improvement strategies relevant to this cluster, it would continue to examine and improve its survey process. OSEP will review the data submitted by the State, and its analysis, in the FFY 2003 APR.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality: On pages 49 and 50 of the APR, the general student population in Vermont was predominately white: the percentage of white students ranged from 95.8% to 97.5% of the total school population over the last decade. The ethnic groups of African-American, American Indian, Asian Pacific and Hispanic represent a total of 4.16% of the school population or 4,170 of Vermont's 99,978 students for school year (SY) 2002-2003. The APR further documented that, when Vermont's child count was disaggregated by race/ethnicity within primary disability, the small numbers in the categories trigger what appeared to be significant disproportionality using the "20% rule." However, when categories comprised of at least five students are considered, the under-representation observed in race/ethnicity categories Asian/Pacific Islander and Hispanic occurs in the primary disability categories of Specific Learning Disabilities, Mental Retardation, Emotional Disturbance, Speech Language Impairment and Other Health Impaired. Under the race/ethnicity category for "black," there was not evidence of disproportionality using the "20% rule." VDE reported that, based on the December 1, 2002 child count, there were 148 (1.19%) African-American students, 89 (.72%) American Indian students, 79 (.64%) Asian Pacific students and 54 (.43%) Hispanic students. When looking at educational placements, students reported as "black" are over represented in the category of "Private Separate Day School."

Although Vermont's data on disproportionality appeared skewed by the homogeneity of the student population, Vermont indicated that the State would continue to examine the policies and procedures related to the identification and educational placement of students with disabilities to ensure consistency and neutrality across all districts. The strategies included by the State constitute a reasonable approach to maintain and improve performance in this area.

Graduation and Dropout: The instructions to the APR require the State to provide data on whether high school graduation rates, and dropout rates, for children with disabilities, are comparable to graduation rates and dropout rates for non-disabled children. On page 54 of the APR, Vermont reported that the graduation rate was improving for children with disabilities as evidenced by increasing graduation rates over time (65% in SY 2002-2003, up from 56% in SY 2000-2001). Gains in graduation rates for children with emotional disabilities and specific learning disabilities were largely driving the overall increased graduation rate, according to the APR. Vermont's graduation rate for all children rose to 93% in SY 2003, up from 90% in the prior years. Vermont provided the formula used by the State to calculate graduation rates for both students with and without disabilities.

The APR on page 56 reported that the dropout rate for children with disabilities dropped from 40% in FFY 2001 to 30% in FFY 2002. VDE reported that it implemented comprehensive strategies to ensure that it continues to reduce the dropout rate for all children. The APR indicated that the State implemented comprehensive reforms to support the transition of all students into the workplace through the collaborative efforts of VDE and other key agencies.

On page 55 and 56 of the APR, VDE stated, "the graduation rates and dropout rates for students with disabilities are calculated from child count data and cannot be disaggregated from Vermont's overall graduation and dropout rates. The data collection differences make a true comparison of graduation and dropout rates between students with and without disabilities unavailable at this time." However, on page 59 of the APR, VDE reported that in accordance with the requirements of No Child Left Behind, Vermont will be able to make a direct

comparison of rates of graduation and dropout between students with and without disabilities in 2005. If VDE cannot submit this data in the next APR, VDE must provide a plan that includes strategies, proposed evidence of change, targets and timelines in the FFY 2003 APR to describe how the State intends to resolve the data collection differences to make a true comparison of graduation rates between students with and without disabilities.

Suspension and Expulsion: The APR on page 61 indicated that, for FY 2003, Vermont's State-wide suspension and expulsion data collection for students with disabilities was revised and consolidated into the data collection under the Safe and Healthy Schools grant and resulted in the first reliable set of data. On page 62 of the APR, the State indicated that an examination of the rates of suspension and expulsion revealed an extremely low incidence involving students with disabilities. For the last decade, the State emphasized and committed resources to help schools maintain low levels of suspension and expulsion for all students.

On page 62 of the APR, the State indicated "there were no indicators to demonstrate that the rates of suspension/expulsion for students with disabilities were out of line either across supervisory unions or as compared to students without disabilities." 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 of 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 of the 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 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. In the next APR, the State must include the information required by these 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 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.

State-Wide Assessment: Vermont's 2002 grant award under Part B of IDEA was issued with a Special Condition requiring the State to report publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments by May 2003. The State submitted the information in June 2003 and satisfied the requirements of the Special Condition. The New Standards Reference Examinations (NSRE) in mathematics and English/language arts (ELA) in Grades 4, 8 and 10 and the Vermont Developmental Reading Assessment (VT-DRA) at Grade 2 comprise the basis for State-wide accountability. For students who cannot participate in regular assessments even with accommodations, three alternate assessment options are available to meet their specific needs.

The APR indicated on page 64 that "the State is currently unable to address whether performance results for children with disabilities on large-scale assessments improve at a rate that decreases

any gap between children with disabilities and their non-disabled peers because cohorts of students are not annually tested with equated instruments and separate cohorts do not provide information to determine rates of gain in performance. Rates of growth cannot be determined without annual measures of growth.” Vermont will begin testing of grades 3 through 8 in the fall of 2005 using assessments that can track student performance over time. This, according to page 67 of the APR, will provide baseline data to address whether the performance results for students with disabilities on large-scale assessments improve at a rate that decreases any gap between students with disabilities and students without disabilities. OSEP looks forward to reviewing this information as part of the FFY 2003 APR.

VDE provided the actual data and its analysis from grade 8 in 2001 to grade 10 in 2003 for all test subsets that allowed the State to draw initial inferences.

Language Arts

- (1) On the 2001-2003 New Standards Reference Exam (NSRE)-Reading, both students with disabilities and regular education students show decreasing numbers achieving at or above standard as they progress to high school; the achievement gap between the groups widens as the student grows older.
- (2) Assessment results for the Developmental Reading Assessment (DRA) given in grade 2 indicated that of those students achieving the standard or better, an upward trend is only observed with regular education students.
- (3) Three of the language arts subtests of the NSRE show an increased performance at standard or above between grade 8 and 10 for students with and without disabilities who were tested in 2001 and again in 2003. Although students with disabilities made gains in several areas, regular students made larger gains.

Mathematics

- (1) On the 2001-2003 NSRE Math Concepts subset, 25%-36% of students with disabilities nearly achieved the standard and 44%-61% of those students performed at the “little evidence or below standard” level. By grade 8, it appears that most of those students nearly meeting standard in grade 4 slipped into the lowest achievement level by grade 8, with 77%-85% below standard. This trend continues in grade 10 where about 90% of students with disabilities perform at the lowest achievement level, “ little evidence or below standard.”
- (2) Students with disabilities evidenced a decrease in numbers achieving standard or above, while regular students increased their achievement at that level.

Although VDE did provide some information on assessment, the directions to Attachment 3 of the APR state: “Include students who took out-of-level tests and students whose changes to the assessment invalidated their score. These students are to be counted in the lowest achievement column. States that can provide documentation of the linking or equating evidence for the levels of their tests may report out-of-level tests on all achievement levels. This linking or equating

evidence must be provided.” VDE did not report scores from out-of-level testing in the lowest achievement category and did not provide linking or equating evidence. In the FFY 2003 APR, VDE must ensure that students who take out-of-level tests are reported according to the directions for Attachment 3 of the APR.

During the verification visit to Vermont, State documentation indicates that only students in public schools and students placed in approved independent schools at public expense are included in the State-wide assessments. VDE informed OSEP that in most cases, youth with disabilities placed in juvenile correctional facilities are not included in State-wide assessments. VDE explained that challenges include the transience of the students within the juvenile correctional system and other legal issues taking precedence over assessment in the juvenile correctional setting.

Because VDE cannot ensure that youth with disabilities being served in juvenile correctional facilities participate in the State-wide accountability system and that their performance is reported, it does not fully comply with the requirements of 34 CFR §§300.138-139. In the FFY 2003 APR, VDE must submit a plan to OSEP that includes strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance with the Part B assessment requirements at 34 CFR §§ 300.138-139, specifically with regard to youth with disabilities being served in juvenile correctional facilities, within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

Least Restrictive Environment: On page 71 of the APR, VDE stated that Vermont’s data on children with disabilities being served along the continuum show some promise and raise questions about residential placements. While Vermont ranks #1 in the nation in terms of educating students ages 6 through 21 with disabilities within the regular education classroom at least 80% of the day, Vermont also ranks #1 in residential placements for students with specific learning disabilities. For preschool children, Vermont is well ahead of the national average in serving children in early education settings with nondisabled peers. However, Vermont also stated for children with disabilities ages 3 to 5, slightly more than half are served in early childhood settings. Vermont stated that it would examine methods to decrease the number of students with specific learning disabilities in residential settings to ensure a continuum of services for all children and increase the percentage of preschool children in early childhood settings.

On page 71, VDE reported that it does not currently collect data on participation in non-academic and extracurricular activities and would develop a plan to collect such data by September 2004. OSEP looks forward to reviewing this data and the impact of VDE’s strategies on its performance in this cluster area in the FFY 2003 APR.

Preschool

Vermont assesses all children entering kindergarten to measure their readiness for school. The APR on page 74 stated that in SY 2002-2003, approximately 84% of all Vermont public school kindergarten children were assessed. Of these children, 8.2% were reported to be receiving special education services. The results are not disaggregated for children with disabilities. VDE’s future activities include exploring methods that can report specifically on children with disabilities. During the SY 2004-2005 school year, VDE intends to develop pilots for an assessment instrument that would allow the State to disaggregate the data.

On page 74 of this section, the APR noted that Vermont did not currently collect data on whether the early language/communication, pre-reading, and social emotional skills of preschool children with disabilities are improving. Under 20 U.S.C. 1418(a)(2), States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by the Secretary. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, Vermont 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

Vermont identified this cluster as an area of noncompliance in the State's October 2002 Self-Assessment. OSEP directed the State to clarify the basis for the State's self-identification of noncompliance related to the requirements of 34 CFR §300.347. In the State's July 2003 submission of the Improvement Plan, VDE indicated that it would analyze data regarding Secondary Transition. In the State's cover letter attached to the current APR submission, the State reported that due to a lack of data, the State did not have the necessary information to make data-based decisions regarding secondary transition and identified this cluster as an area of noncompliance. On page 85 of the APR, VDE reported that while some progress has been made with respect to implementing the transition requirements of IDEA, many areas are in need of improvement and several are out of compliance. The State provided several strategies to improve the data collection needed in this cluster; however, the State did not provide benchmarks, proposed evidence of change, targets or timelines that will ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when it identified the noncompliance.

The APR indicated that, at this time, no data are available to reflect community employment outcomes for students with disabilities who have exited the public education system. VDE provided several strategies to enable the State to begin to gather this data. OSEP will review the data submitted by the State, and its analysis relevant to the participation of children with disabilities in post-school activities, in the FFY 2003 APR.

On page 87 of the APR, VDE indicated that the monitoring team will review its procedures for collecting and analyzing data regarding secondary transition. In the FFY 2003 APR, VDE must submit a plan to OSEP that includes strategies, proposed evidence of change, targets, and timelines that will ensure compliance with the Part B secondary transition requirements at 34 CFR §§ 300.344(b), 300.345(b) and 300.347(b), including the collection of data to make evidenced-based compliance determinations, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. (Changes made to the IDEA by the IDEA Amendments of 2004 that take effect on July 1, 2005 will eliminate the requirement to include a statement of transition services needs for students by the age of 14. (See 34 CFR §§300.347(b)(1), 300.344(b)(1)(i) and 300.345(b)(2).) Therefore, although the State must continue to comply with this requirement through July 1, 2005, VDE will not need to submit strategies that relate to this requirement.

Conclusion

OSEP is extending the FFY 2003 APR due date to April 30, 2005. In it VDE must include:

- (1) Data, along with its analysis and a determination of whether the data indicate compliance or noncompliance with the requirement in 34 CFR §300.600 to identify and correct noncompliance in independent, out-of-district and alternative schools and the DOC. If the data indicate noncompliance, VDE must submit a plan that includes strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period not to exceed one year of OSEP's acceptance of the plan.
- (2) Data from the Improvement Plan Logs demonstrating that the noncompliance identified in 2002-2003 monitoring cycle has been corrected, including the number of corrective actions that have been completed and the number that are overdue, and for those corrective actions that are overdue, the action VDE is taking and the current status of corrections. If the data demonstrate that there is noncompliance with the requirement to ensure correction of noncompliance within one year of identification, the State must include strategies, proposed evidence of change, targets and timelines to address the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.
- (3) A plan that includes the 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 regarding the requirements in 34 CFR §§300.661(a) and (b)(1) to ensure that written complaint decisions are issued within 60 days unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint.
- (4) Data, along with its analysis and a determination of whether the data indicate compliance or noncompliance with 34 CFR §§300.511(a) and (c) to ensure that, not later than 45 days after the receipt of a request for a hearing, a final decision is made and a copy of the decision is mailed to each of the parties, unless an extension is granted at the request of a party. If the data indicate noncompliance, the State must also submit a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period not to exceed one year from the date OSEP accepts the plan.
- (5) Data, analysis, and a determination of compliance with the requirement in 34 CFR 300.132(b) to ensure that children participating in the early intervention program under Part C of IDEA, who will participate in the preschool program under Part B have an IEP [or individualized family service plan (IFSP) if consistent with State policy] developed and implemented by the child's third birthday. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period not to exceed one year from the date of OSEP accepts the plan.
- (6) A plan (unless VDE can provide the actual data) that includes strategies, proposed evidence of change, targets and timelines to describe how the State intends to resolve the data collection differences to make a true comparison of graduation rates between students with and without disabilities.
- (7) Information indicating that the State has examined all data for all LEAs to determine whether 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 of nondisabled children within the agencies, 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.

- (8) Provide baseline data (as indicated on page 67 of the APR) and analysis of the data to address whether the performance results for students with disabilities on large-scale assessments improve at a rate that decreases any gap between students with disabilities and students without disabilities.
- (9) Data that students who take out-of-level tests are reported according to the directions for Attachment 3 of the APR.
- (10) A plan to OSEP that includes strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance with the Part B assessment requirements at 34 CFR §§ 300.138-139, specifically with regard to youth with disabilities being served in juvenile correctional facilities, within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.
- (11) Either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets on whether the early language/communication, pre-reading, and social emotional skills of preschool children with disabilities are improving, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.
- (12) A plan that includes strategies, proposed evidence of change, targets, and timelines that will ensure compliance with the Part B secondary transition requirements at 34 CFR §§ 300.344(b), 300.345(b) and 300.347(b), including the collection of data to make evidenced-based compliance determinations, within a reasonable period of time, not to exceed one year from the date OSEP accepts the 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 Paul Steenen at (202) 245-7397.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Karin Edwards