



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Kenneth James
Director of Education
Arkansas Department of Education
Four State Capitol Mall, Room 304A
Little Rock, Arkansas 72201-1071

SEP -9 2005

Dear Director James:

The purpose of this letter is to respond to Arkansas' March 31, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific databased determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's December 13, 2004 FFY 2002 APR response letter required the State to: (1) include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date of that letter regarding the resolution of complaints within required timelines (34 CFR §300.661(a)); (2) review and revise the language in the relevant parts of the disproportionality sections of the APR to be consistent with Federal law and submit the revisions in the FFY 2003 APR; and (3) submit either documentation of data related to preschool outcomes (whether collected through sampling, monitoring, individualized education program (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.

General Supervision

Identification and timely correction of noncompliance

On pages 3 through 13 in Cluster I of the FFY 2003 APR, the State included data and information regarding its standard compliance monitoring of randomly selected local education agencies (LEAs) and its Continuous Improvement and Focused Monitoring (CIFM) systems, indicating that its targets were met and all corrective action plans (CAPs) for 2003-2004 monitoring reviews were cleared by the State educational agency (SEA). The State also reported that CAPs were cleared by the State for the triennial 2003-2004 monitoring of preschool programs. OSEP appreciates the State's efforts in this area. OSEP looks forward to reviewing the State's data and information in the State Performance Plan (SPP), due December 2005, including the implementation of strategies and resulting data and analysis.

Formal written complaints

OSEP's December 2004 letter identified timely resolution of complaints as an issue of noncompliance and required the State to report on whether complaints were resolved within timelines as required by 34 CFR §300.661(a), not later than 30 days following one year from the date of that letter. On pages 3 through 16 in Cluster I and in Attachment 1 of the FFY 2003 APR, the State indicated that: (1) there were 32 complaints for the reporting period; (2) 12 complaints had findings; (3) 4 complaints had no findings; (4) 16 complaints were not investigated, withdrawn or had no jurisdiction; (5) 15 complaints with decisions were issued within 60 calendar days; and (6) one complaint was overdue prior to the implementation of a new internal tracking system, but all other complaints for the reporting period were within timelines. OSEP appreciates the work of the State in improving compliance with this requirement. The State must continue to report data and information in this area in the SPP.

Mediation

On pages 14 through 16 in Cluster I and in Attachment 1 of the FFY 2003 APR, the State indicated that there were a total of 15 mediations conducted, all of which were not related to due process hearing requests. Eight of the mediation decisions reached agreements and seven were withdrawn. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data and information in this area in the SPP.

Due process hearings and reviews

On pages 3 through 16 in Cluster I and in Attachment 1 of the FFY 2003 APR, the State indicated that: (1) 30 due process hearings were requested; (2) five due process hearings were held; and (3) all were completed within timelines extended under 34 CFR §300.511(c). OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data and information in this area in the SPP.

Personnel

On pages 17 through 23 in Cluster I of the FFY 2003 APR, the State included data and analysis regarding special education personnel that indicated: (1) 92.02 percent of special education teachers were fully certified, a decrease of 1.07 percent from the previous year's 93.09 percent; (2) 6.89 percent were not fully certified, an increase of 1.09 percent from the previous year's 5.80 percent; and (3) 1.09 percent of the positions were vacant, a decrease of 0.02 percent from the previous year's 1.11 percent. On pages 22 through 24 in Cluster I of the FFY 2003 APR, the State indicated the need to improve performance by addressing issues related to licensure and retention of special education personnel and unfilled positions. The State also included strategies to improve performance in this area. OSEP appreciates the State's efforts to improve performance in this area.

Collection and timely reporting of accurate data

On pages 24 and 25 in Cluster I of the FFY 2003 APR, the State reported that: (1) all data collected through the Arkansas Public School Computer Network (APSCN) and other sources for general supervision activities were maintained, analyzed, and if needed, corrected by the Special Education Data Manager; (2) the Special Education Data Manager was the single point of contact with LEAs and APSCN for data corrections, updates, and clarification of required special education data; (3) the SEA data administrative staff and the Special Education Data Manager developed more comprehensive protocols governing collection of data outside the APSCN network; (4) accuracy and timeliness of data collection were enhanced through training of LEA staff; and (5) the Special Education Unit (SEU) technology environment was enhanced and improved. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data and information in this area in the SPP.

Early Childhood Transition

On pages 2 and 3 in Cluster II of the FFY 2003 APR, the State reported that: (1) the Arkansas Department of Education (ADE) and the Lead Agency for Part C, the Arkansas Department of Human Services Developmental Disabilities Services (DDS), jointly aligned the Program Effectiveness Evaluation Profile (PEEP) data collection system and the transition data elements regarding children transitioning from Part C to Part B; (2) 97.3 percent of Part C children eligible for Part B services entered programs at age three; and (3) the analysis of eligible children who did not enter the program indicated that this was primarily due to parents moving out of State, and parents' decisions not to enter the eligible children into the program. On page 4 in Cluster II of the FFY 2003 APR, the State included information demonstrating continued performance that included: (1) all eligible children transitioning from Part C would enter Part B with no gap in services with the support of a seamless web-based data collection and tracking system; (2) intensive training in methodologies for conducting successful Part C to Part B transition conferences would be provided for Part C staff and Part B IEP teams; and (3) data requirements in the APSCN for students transitioning from Part C services to Part B 619 programs would be revised. OSEP looks forward to reviewing the State's data and information in this area in the SPP.

Parent Involvement

On pages 2 through 6 in Cluster III of the FFY 2003 APR, the State reported: (1) the parent survey results regarding participation in IEP meetings, satisfaction with their child's special education program, and satisfaction with their child's progress; (2) parent participation in activities related to behavior and literacy in the Arkansas State Improvement Grant (SIG); (3) activities related to parent training and outreach through the Arkansas Area Services Consultants and the Parent Training and Information Center (PTI); (4) parent stakeholder activities in the General Supervision Enhancement Grant (GSEG); and (5) an analysis of the PEEP data indicated that 79.28 percent of parents with school age children and 96.63 percent of parents with children in early childhood programs participated in the development of their children's IEPs. OSEP looks forward to reviewing the State's data and information in this area in the SPP.

Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

Disproportionality

OSEP's December 2004 letter required the State to review and revise the language in the relevant parts of the disproportionality sections of the APR to be consistent with Federal law and submit the revisions in the FFY 2003 APR. Under 34 CFR §300.755 the State must review policies, procedures, and practices in the referral, evaluation, identification, and placement processes to determine if they are educationally appropriate, consistent with the requirements of Part B, and race-neutral. On pages 3 through 6 in Cluster IV of the FFY 2003 APR, the State indicated that: (1) it developed a three-year benchmark for overrepresentation based on LEA's demographics and population distribution by race/ethnicity in 2002-2003 that resulted in a 45 percent decline in the number of LEAs identified for possible disproportionality when compared to 2001-2002; (2) it changed to a single-year data analysis that resulted in 55 LEAs identified with possible disproportionality in 2003-2004; and (3) while the overall projected target for this probe was to have proportionate representation, the goal for 2003-2004 was to reexamine Arkansas' policies, procedures, and practices to determine if any may lead to disproportionate racial/ethnic representation, including disproportionality by race/ethnicity within a disability category and in an educational setting.

On pages 7 through 10 in Cluster IV and Attachment 2 of the FFY 2003 APR, the State indicated that: (1) for 2003-2004 focused monitoring, the three-year benchmark for overrepresentation was 6.12 percent with a standard deviation of 7.25 resulting in a trigger value of 13.37; (2) any district that reported 13.37 percent more Black children in special education than in general education was identified with possible disproportionality; (3) in 2003-2004 Black children were twice as likely to be identified as having mental retardation as any other ethnic group in the State; (4) the educational environment risk ratios revealed that in 2003-2004, Black children were four times more likely to be placed outside the regular classroom more than 21 percent of the instructional day than any other racial/ethnic

group; and (5) Black children were also slightly over identified in the disability category of specific learning disability, with a risk ratio of 1.07.

In addressing significant disproportionality related to identification, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. Such an examination generally would include a review of 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. In addressing significant disproportionality related to placement, under 34 CFR §300.755, it is appropriate to look at policies, procedures, and practices related to placement in the least restrictive environment consistent with the requirements at 34 CFR §§300.501 and 300.550-300.556 in order to determine if they are educationally appropriate, consistent with the requirements of Part B, and race-neutral.

On page 11 in Cluster IV of the FFY 2003 APR, the State reported strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's December 2004 letter. Strategies included: (1) continued review of policies and procedures to determine if any might lead to disproportionate racial/ethnic representation in disability category or educational setting; (2) internal analysis of whether school choice and location of residential treatment facilities affect LEA disproportionality; and (3) incorporating a risk ratio analysis into the monitoring data for disability category, educational placement, graduation, dropout, and suspension/expulsion. OSEP appreciates the work of the State in ensuring compliance with this requirement and looks forward to reviewing the State's data and information in this area in the SPP.

Graduation and drop-out rates

On pages 12 and 13 in Cluster IV of the FFY 2003 APR, the State indicated that for children with disabilities, the graduation rates increased from 62.5 percent in 2002 to 90.7 percent in 2004, while the twelfth grade general education graduation rates increased from 92.7 percent in 2002 to 93.7 percent in 2004. The improvement was due to: (1) the technical assistance provided by secondary transition specialists to LEAs in methodologies for retaining children with disabilities in school through student-driven transition planning techniques; (2) increased accuracy of the data because of improved collection and review methodologies; and (3) in 2004, the State began using the same method for calculating the graduation rate for children with disabilities as for children without disabilities by using the twelfth grade enrollment based on four year completion, rather than using the 17-21 age group on which to base graduation rate for children with disabilities.¹ OSEP

¹ The September 1, 2005 email correspondence from Marcia Harding indicated that the standards for graduation from an accredited Arkansas public high school have not changed substantially other than an increase in the number of required credits for receipt of a graduation diploma from high school. The State grants a Smart Core diploma to students meeting regular State requirements for graduation, and a Common Core diploma to students meeting alternate requirements. Both diploma options are available to children with and without disabilities.

appreciates the work of the State in this area and looks forward to reviewing the State's data and information in this area in the SPP.

On pages 12 through 16 in Cluster IV of the FFY 2003 APR, the State indicated that: (1) in 2004, the State legislature passed a drop-out formula to ensure that students moving between LEAs would not be inadvertently counted in the drop-out category; (2) LEAs with significant drop-out rate differences between children with and without disabilities are identified using the APSCN; (3) drop-out rates triggered 14 LEAs for possible monitoring during 2005, compared to 20 in 2003; (4) children with disabilities dropping out of school in 2004 declined eight percent; (5) from 2001 to 2004, the drop-out rate for children with disabilities declined from 3.37 percent to 2.68 percent while the rate for children without disabilities declined from 6.23 percent to 1.56 percent; and (6) the process for reporting comparable drop-out rates would be refined since the current database for reporting children without disabilities was based on grades 9 through 12 and for children with disabilities, on ages 14 through 21. OSEP appreciates the work of the State in this area and looks forward to reviewing the State's data and information in this area in the SPP.

Suspension and expulsion

On pages 17 through 20 in Cluster IV of the FFY 2003 APR, the State indicated that: (1) the suspension/expulsion rate is higher for children with disabilities than for children without disabilities; (2) in 2004, the suspension/expulsion gap was reduced to 0.05 percentage points, representing a 95 percent reduction in the number of suspensions and expulsions for children with disabilities since 2001; (3) 22 districts were identified as having a disproportionate number of suspensions and expulsions for children with disabilities as compared to children without disabilities; (4) these districts were required to submit compliance action plans; and (5) improvement was attributed to the school-based mental health prevention program and the school-based positive behavior supports program² implemented through the State Improvement Grant (SIG). OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data and information in the SPP.

Statewide and districtwide assessments

On pages 22 through 33 in Cluster IV and Attachment 3 of the FFY 2003 APR, the State indicated that: (1) there was a major refinement in the database that increased the accuracy of reporting assessment participation and results in 2004; (2) the average rate for children with disabilities participating in regular statewide assessments, with or without accommodations, in grades 4, 6, 8, and 11 was 90 percent in 2004; and (3) the participation

² Please note that the regulations under the No Child Left Behind Act (NCLBA) provide, at 34 CFR §200.20(c), that, in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its students with disabilities in the grades tested participate in the statewide assessments under 34 CFR §200.2.

rate for children without disabilities was 94 percent for 2004. The State indicated that (1) participation rates in the alternate assessment increased at all grade levels in 2004 when compared to the rates in 2003; (2) participation rates in alternate assessments increased from 6.6 percent in 2003 to 8.4 percent in 2004 in fourth grade, from 5.4 percent to 6.2 percent in the sixth grade, from 4.5 percent to 5.6 percent in the eighth grade and from 6.3 percent to 7.1 percent in the eleventh grade; and (3) increased numbers of children with disabilities participated in the statewide alternate assessments in grades 4, 6, 8, and 11 in 2004 compared to 2003 because there was an increase in the number of children with disabilities participating in the statewide assessment system.

On pages 22 through 33 in Cluster IV of the FFY 2003 APR, the State indicated that: (1) children with disabilities were making progress toward proficiency on large-scale assessments; (2) the percentages at the basic level on the literacy assessment approached equality in all grades for children with and without disabilities, with the gap widening at the below basic and proficient levels; (3) the gains in the basic level on the math assessments at each grade assessed were not as great as the gains in literacy; (4) the rates in the 2004 regular math assessment for children with disabilities were highest in the below basic level of performance and ranged from 60 percent in the fourth grade to 86 percent in the sixth grade; (5) the rates in the 2004 regular reading assessment for children with disabilities were highest in the below basic and basic levels of performance ranging from 53 percent in the fourth grade to 75 percent in the sixth grade at the below basic level, and from 31 percent in the eighth grade to 22 percent in the sixth grade at the basic level; and (6) the performance of children with disabilities on the alternate assessment increased 17 percent in achieving "Independence" (the highest performance level) across four categories from 2001 to 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data and information in the SPP.

Least restrictive environment (LRE)

On pages 33 through 44 in Cluster IV of the FFY 2003 APR, the State indicated that: (1) the percentage of children with disabilities spending less than 21 percent of the time outside the regular education classroom increased from 39.2 percent of the total in 2003 to 41.2 percent in 2004; (2) the percentage of children with disabilities spending 21 percent to 60 percent of the time outside the regular education classroom, decreased from 45 percent of the total in 2003 to 43.4 percent in 2004; (3) the percentage of children with disabilities spending greater than 60 percent of the time outside the regular education classroom decreased from 13.3 percent of the total in 2003 to 12.8 percent in 2004; and (5) the State's CIFM system will continue to target LEAs reporting placement patterns of children with disabilities in more restrictive settings for the purposes of developing strategies that address placement decisions in the context of school improvement, reviewing provider qualifications, and analyzing curriculum standards for all children. On page 34 in Cluster IV, the State indicated that "The target established for 2003-2004 for school age least restrictive settings was to bring the proportion receiving special education less than 21 percent of the time outside the regular classroom closer to the national average [50 percent].... this target was not achieved. Although statewide percentages improved more

dramatically than at any time over the previous six years, the national percentage improved at a faster rate.”

The State also reported that the rates for early childhood educational settings trends for preschool children with disabilities indicated: (1) a decrease in the percentage placed in full-time special education settings, from 10.7 percent in 1999 to 6.2 percent in 2004; (2) an increase in the percentages placed in special education part-time special settings, from 33.6 percent in 1999 to 39.5 percent in 2004; (3) a decrease in percentages placed in early childhood settings, from 24.1 percent in 1999 to 19.3 percent in 2004; and (4) an increase in percentages placed in other settings, from 30.1 percent in 1999 to 34.4 percent in 2004. OSEP appreciates the State’s efforts in this area and looks forward to reviewing the State’s data and information in the SPP.

Preschool performance outcomes

OSEP’s December 2004 letter required the State to submit either documentation of data related to preschool outcomes (whether collected through sampling, monitoring, individualized education program (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 as required under the Government Performance and Results Act of 1993, 31 U.S.C. 1116. On pages 42 through 44 of the FFY 2003 APR, the State indicated that: (1) the PEEP system was modified to collect preschool performance outcomes; (2) prior to 2003-2004, Arkansas did not have a collection procedure for this information; (3) 74 percent of the State’s early childhood programs completed the PEEP data requirements for the 2003-2004 reporting period; and (4) the State received a GSEG that included objectives to develop a preschool performance outcomes system including IEP web-based data collection, child outcome measures, and professional development for providers. For FFY 2003, PEEP data for preschool performance outcomes indicated that: (1) less than 61 percent of the children improved on their language communication objectives; (2) fewer than 55 percent of the children improved on their pre-reading/cognition objectives; and (3) 69 percent of the children improved on their social/emotional objectives. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APR, along with OSEP’s responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements. OSEP looks forward to reviewing the data and information in the State’s SPP.

Secondary Transition

On pages 1 through 7 in Cluster V of the FFY 2003 APR, the State indicated that: (1) the SEA continued to monitor the status of all CAPs related to IEP transition compliance and the types and numbers of all deficiencies noted during the LEA’s previous monitoring cycle; (2) the web-based PEEP system for 2003-2004 indicated that 98.03 percent of IEPs requiring transition plans included such plans; and (3) when the outside agency failed to

attend an IEP conference, 90 percent of LEAs participating in the Transition Outcomes Project were able to document that other steps to obtain agency participation were taken; (4) it reviewed and closed all CAPs related to the identification of noncompliance; (5) it developed evidence-based transition practices to improve post-school outcomes with school and student competency indicators; and (6) it completed a memorandum of understanding with the Arkansas Department of Higher Education to examine longitudinal data related to the outcomes of students with disabilities attending college. The State must make a determination whether plans currently in place to collect data related to post-school outcomes will be responsive to those requirements.

In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether data collected related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

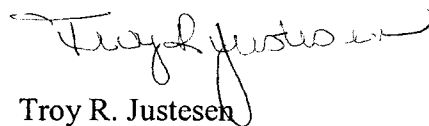
Conclusion

As noted above, the State must continue to report on its progress in ensuring compliance with the requirement in 34 CFR §300.661(a) to resolve State complaints within 60 calendar days in the SPP.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks 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 Hugh Reid at (202) 245-7491.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Marcia Harding