



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

Honorable Gene Wilhoit
Commissioner of Education
Kentucky Department of Education
Capitol Plaza Tower - 500 Mero Street
Frankfort, KY 40601

JUL 20 2005

Dear Commissioner Wilhoit:

The purpose of this letter is to respond to the Kentucky Department of Education's (KDE'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

KDE submitted an Improvement Plan to OSEP on July 1, 2002 to address the following three areas of noncompliance that the State identified in its December 2001 Self-Assessment:

- Complaints were not resolved within 60 days of receipt and extensions for exceptional circumstances with respect to particular complaints were not documented, 34 CFR §300.661(a) and (b);
- Due process hearings were not completed and a hearing officer decision reached within 45 days of receipt of a request and specific extensions of time at the request of either party and granted by the hearing officer were not documented, 34 CFR §300.511(a) and (c); and

- The former monitoring system did not ensure correction of identified noncompliance and there were no data to verify that the revised monitoring system (the Kentucky Continuous Monitoring Process (KCMP))¹ ensured correction of identified problems, 34 CFR §300.600.

OSEP accepted the State's Improvement Plan (IP) in a November 6, 2003 letter requiring the State to correct the noncompliance as soon as possible, but no later than one year from the date of that letter. As required by OSEP's November 6, 2003 letter, KDE submitted Progress Reports on January 31, 2004 and June 1, 2004. OSEP will respond to the Progress Reports in this letter.

OSEP visited Kentucky on November 17-18, 2003 to verify the State's systems for general supervision, collection of data under Section 618 of IDEA and statewide assessment. OSEP issued a letter to Kentucky with the results of that visit on May 17, 2004, commenting on the previous areas of noncompliance and identifying the following additional area of noncompliance: KDE failed to ensure the participation in the Norm-Referenced Test (NRT) testing at grades three, six, and nine of those children requiring an alternate assessment in accordance with 34 CFR §300.138.

KDE submitted a response to the May 2004 verification letter on June 2, 2004 and August 6, 2004. OSEP will respond to these submissions in this letter.

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. This letter comments on the APR and KDE's January and June 2004 IP Progress Reports. OSEP's comments are listed by cluster area.

¹ The Kentucky Continuous Monitoring Process (KCMP) is one component of KDE's monitoring system, designed to drive and support improved results for children and youth with disabilities. In KCMP, local educational agencies (LEAs) conduct annual self-assessments, based on a set of six predefined indicators. Once completed, the self-assessment is scored using a rubric scoring protocol. KDE designed its rubric scoring protocol for the KCMP so that a ranking of "1" indicated little or no compliance with the indicator. A ranking of "2" indicated an attempt on the part of the district to comply, but not at a fully compliant level. A "3" indicated that the indicator was at a fully functional and operational level, i.e., in compliance. A "4" ranking indicated not only compliance, but that the district was performing at an exemplary level. OSEP's analysis of each cluster area relies on KDE's use of this scoring system in the APR to show progress or slippage on a particular issue. Another component of KDE's monitoring system is the development of Comprehensive District Improvement Plans. Comprehensive District Improvement Plans focus on district and school improvement efforts by: bringing together all stakeholders to plan for improvement; focusing planning efforts on priority needs and closing achievement gaps between subgroups of students; building upon school and district capacity for high quality planning; and making connections between the funds that flow into the district and the priority needs in schools.

General Supervision

Complaints. On page 3 of the APR, page 1 of the January and June 2004 IP Progress Reports, KDE provided updated information concerning efforts presently underway to eliminate noncompliance in the complaint process for Part B of IDEA. Page 1 of the January 2004 IP Progress Report noted that KDE added an attorney to its staff and during OSEP's verification visit, KDE provided complaint resolution data for 2001-2002 through 2003-2004. The data showed progressively increasing percentages of complaints resolved within required time lines: 41%, 55%, and 91%. KDE anticipated that the revision of the KCMP would include complaint resolution as one factor in the selection of districts for monitoring.

In explaining the progress and slippage on complaint resolution between 2001-2003 and 2002-2003, page 6 of the APR noted that the target of 100% compliance was not achieved, in large part due to health problems of the complaint investigator. Recognizing the need for the position of complaint investigator to have alternative support, a paralegal was hired to assist with the complaint investigations in Spring 2003. In addition, KDE implemented an automated system to remind staff of pending deadlines.

KDE's June 1, 2004 Progress Report on page 1 showed that for the 2003-2004 school year, 41 complaints had been filed, with nine of the 41 complaints pending as of June 1, 2004, all within the 60 day timeline. Of the 32 complaints that had been finalized in 2003-2004, 30 were within the timeline (94%). The two complaints not resolved within the timelines resulted from: (1) the submission of additional information by the parent regarding the complaint the day before the decision was due; and (2) the month and a half time period in which KDE was without a complaint investigator.

The data provided in the June 1, 2004 Progress Report demonstrated that KDE has made significant progress in correcting the noncompliance the State identified in its December 2001 Self-Assessment with the requirement in 34 CFR §300.661(a) and (b) to ensure that all complaints are resolved within 60 days after a complaint is received by the State unless an extension of time is permitted due to exceptional circumstances that exist with respect to particular complaint. (The lack of a complaint investigator is not an exceptional circumstance that exists with respect to a particular complaint, which would permit an extension of time.) In the next APR, due 60 days from the date of this letter, OSEP expects KDE to include updated data and analysis demonstrating full compliance with 34 CFR §300.661.

Due process hearings. Data reported on pages 2-3 of the January IP Progress Report and on page 6 of the APR showed that 71% of hearing decisions were reached within the required timelines in 2001-2002 and 63% in 2002-2003. On pages 2-3 of the January 2004 Progress Report, KDE reported that for the school year 2003-2004 period, four of five hearing decisions were reached within required timelines. The one hearing not resolved within required timelines exceeded the timeline by one day. The Progress Report showed four hearings pending, all still within the 45-day timeline.

In explaining the slippage in timely resolution percentages from 2001-2002 to 2002-2003, page 6 of the APR stated that KDE declined to renew the contract of one hearing officer who was perpetually late with rendering decisions. Also, KDE limited the assignments and reviewed the cases of another hearing officer. In addition, KDE noted that although none of the 2002-2003 hearing requests had been appealed to the Exceptional Children Appeals Board (ECAB), a three-person panel of hearing officers, most ECAB decisions from previous years exceeded the 30-day timeline established by Part B. KDE provided training to hearing officers/ECAB members emphasizing that the extension of timelines to specific dates may be made only upon the request of either party.

In KDE's August 2004 response to the verification letter, KDE indicated that the staff member responsible for managing the State's due process hearing system had retired and that an attorney had been hired to replace her. KDE stated that a database was being developed to track hearing timelines and that the contracts of hearing officers found delinquent with timelines would not be renewed.

KDE's June 2004 Progress Report on pages 2-3 showed 24 hearings requested, 14 decided within the timelines and four hearings pending, all within timelines. With respect to the remaining six hearings, one exceeded the timeline by one day because of delay in receipt of the hearing transcript, one hearing was dismissed as settled three days after the timeline, three hearings had orders entered for continuances, and one hearing involved the failure of the hearing officer to submit an order regarding timelines. Further, KDE reported that new contracts for hearing officers would be based, in part, on timeliness of hearing decisions.

Data provided in the June 2004 Progress Report demonstrated that KDE has made progress in correcting the noncompliance identified in its December 2001 Self-Assessment with the requirement in 34 CFR §300.511(a) and (c) to ensure that a final decision is reached in each due process hearing and a copy of the decision mailed to each of the parties not later than 45 days after the receipt of a request for a hearing, unless the hearing officer grants specific extensions of time beyond the 45-day timeline at the request of a party. However, OSEP cannot determine if the continuances were granted for a specific period of time at the request of a party. In the next APR, OSEP expects KDE to provide data and analysis demonstrating full compliance with 34 CFR §300.511, including documentation that continuances are granted by the hearing officer for a specific period of time at the request of a party.

Monitoring. Data collected during OSEP's verification visit, and information provided on pages 2-5 of the January 2004 IP Progress Report and pages 4-6 of the June 2004 IP Progress Report and the APR on page 2 showed that, in 2001, KDE implemented an entirely new monitoring system, the KCMP. Revisions to the KCMP began with the convening of a Monitoring Work Group to make recommendations that would: (1) align the KCMP document with OSEP's APR data requirements; and (2) develop systematic triggers to assist in identifying districts in need of additional interventions, such as on-site monitoring visits, technical assistance to districts, the identification of needed

professional development or the assignment of a Special Education Mentor. On page 9 of the APR, KDE reported that it had begun a process to utilize existing data, including parent calls, monitoring results, results of student performance, complaints, hearings, and mediations, in order to identify and remediate systemic issues. These changes were to be implemented during the 2004-2005 school year. It is not clear to OSEP that these revisions to the KCMP would ensure that all Part B requirements are monitored, thus presenting an issue of potential noncompliance with Part B.

KDE's August 2004 letter provided an explanation of modifications made to the KCMP subsequent to OSEP's verification visit, including an electronic copy of KCMP documentation. Criteria had been developed for identifying districts that would receive Special Education Mentors, pursuant to Kentucky statute, as well as a selection process for conducting on-site visits. The selection criteria were provided to OSEP in KDE's June 2004 Progress Report.

OSEP staff carefully reviewed the documents submitted by KDE in order to better understand the State's current monitoring process. Based on that review, OSEP determined that there were a substantial number of Part B regulatory requirements that were not included in KDE's revised KCMP. Further data are needed that demonstrate that the revisions KDE made to the KCMP as reported to OSEP in the August 6, 2004 letter ensure that all Part B requirements are monitored and all violations of those requirements are identified and corrected in a timely manner (i.e., within one year of identification).

The information provided in the Progress Reports, verification visit, the FFY 2002 APR and the August 6, 2004 letter demonstrated that KDE has implemented many of the strategies identified in its IP and is making progress in ensuring the identification and correction of noncompliance in accordance with 34 CFR §300.600. On page 5 of the June Progress Report, KDE reported that it had committed to ten site visits to LEAs during fall 2004 to verify 2002-2003 school year KCMP data and to identify compliance issues with IDEA. Because the new KCMP is being implemented in school year 2004-2005, KDE has not submitted data and analysis demonstrating that the noncompliance the State identified in its December 2001 Self-Assessment has been corrected.

In the next APR, KDE must provide evidence that the revisions to the KCMP will ensure monitoring of all the Part B requirements and identification and correction of any identified noncompliance in a timely manner. If these data are not sufficient for OSEP to determine whether KDE has methods to ensure that all Part B requirements are monitored and if violations of those requirements are identified and corrected in a timely manner, OSEP may need to conduct a targeted on-site visit to Kentucky for the purpose of collecting additional data pertaining to KDE's monitoring process. During such a visit, OSEP would need to review documents and conduct interviews at the State and local levels. Also, it is likely we will need to interview select staff from some of Kentucky's Special Education Cooperatives. In the event that OSEP determines such a visit is necessary, we will contact KDE to arrange the details of the visit.

Personnel. The data presented on page four of the APR showed that the number of teachers in Kentucky not fully certified increased slightly over the three-year period from 2000 through 2003. In 1999, KDE reported 14% of special education teachers not fully certified, and 16% in 2003. Additional data presented on page 14 of the January 2004 Progress Report on this issue pointed out that the shortage of program teachers caused the number of waiver requests to increase from 18 in 2002-2003 to 22 for Fall 2003. In 2002-2003, the number of special education emergency teachers was 794, and 351 at the end of 2003.

The APR on page 7 and the January Progress Report on pages 14-15 articulated strategies to increase the number of certified teachers in special education. The Teacher Traineeship program provided tuition assistance for students enrolled in teacher preparation programs for preschool or special education, and administrator preparation for directors of special education. A total of 227 students participated in the program during 2002-2003, with 108 of 176 districts participating.

Future activities identified on page 10 of the APR to address KDE's personnel shortages included: (1) continue Teacher Traineeship Program; (2) expand early identification and recruitment of teachers; (3) develop and implement strategies to attract non-traditional candidates; (4) market the profession; (5) encourage recruitment of retired teachers; (6) identify and disseminate teacher retention strategies; (7) expand the number of interdisciplinary preschool teachers; (8) strengthen collaboration with Institutes of Higher Education; (9) expand on-line programs for emergency probationary teachers; and (10) increase competency standards for paraprofessionals.

OSEP appreciates KDE's efforts to address personnel shortages and looks forward to reviewing the results of implementation of KDE's strategies in the next APR.

Collection and Timely Reporting of Accurate Data

In OSEP's May 2004 letter, OSEP found that KDE was in the process of implementing a statewide Software Technology, Inc./Special Education Tracking System (STI/SETS) for data collection. With full implementation, STI/SETS will capture the Section 618 data input at each LEA and automatically transmit the data to KDE, thereby eliminating the use of Microsoft Excel worksheets. At the time of the verification visit, the data verification consisted of a comparison made between the current and prior year data. Where there was a 20% discrepancy in the data from one year to the next, the district was contacted for an explanation of the discrepancy. Discussion with KDE staff highlighted the fact that no random audit checks were conducted at the data entry level to ensure the accuracy of the data entered into the system. Without random audit checks at the data entry level, KDE lacks the capacity for monitoring the accuracy and consistency of the data entry across the State.

Further, OSEP found that KDE did not conduct periodic training across the State for Section 618 data entry personnel. Rather, training is accomplished on an ad hoc basis depending upon the needs of staff at a particular district. KDE staff provides technical

assistance on an individual basis for personnel requiring directions for entering the data. The instructions for entering the data are found on KDE's web site.

Commissioner Wilhoit's August 2004 response to OSEP's May 2004 letter enumerated several modifications to KDE's collection of data to ensure compliance with Part B requirements. Specifically, these modification included: (1) newly-developed criteria for on-site monitoring visits and Special Education Mentor placements that would provide KDE with more specific data, including the disaggregation of district data related to students with disabilities, review of the District's Comprehensive District Improvement Plan, and Scholastic Audit/Review Reports and data; (2) development of a system to collect information among KDE's various divisions that receive and review data and audit schools/districts; and (3) in July 2004, statewide professional development was provided across the State to district staff on entering data into the STI/SETS system and train on the changes made within the system to improve the data and reports that can be collected and reported at any time during the year.

In the FFY 2003 APR, KDE must report its progress in ensuring accurate collection and timely reporting of 618 data and the results of the statewide trainings that have been provided.

Early Childhood Transition

Part B regulations require that an individualized education program (IEP) or if consistent with State policy, an individualized family service plan (IFSP) be developed and implemented for all children participating in the early intervention program under Part C of IDEA who are eligible for Part B services by their third birthdays. 34 CFR §300.132(b). KDE reported on page 14 of the APR that the monitoring data on the six indicators in this cluster area range from 2.47 to 2.97 in 2001-2002 and from 2.78 to 3.14 in 2002-2003. KDE reported that districts monitored scored 2.56 in 2001-2002 and 3.13 in 2002-2003 on the indicator measuring the percentage of children with disabilities eligible under Part B who receive appropriate special education services by their third birthdays.

On page 14 of the APR, KDE also reported that districts monitored were not in compliance with the requirement to provide timely and appropriate evaluations to children with disabilities transitioning from Part C to Part B. The scores increased from 2.67 in 2001-2002 to 2.78 in 2002-2003, but failed to achieve the 3.0 score indicative of compliance with the law.

On page 14 of the APR, KDE listed two factors that contributed to the improvement of districts in meeting the transition planning requirements: (1) the Regional Training Centers and Special Education Cooperatives had targeted early childhood transition as a priority area when working with school districts; and (2) Special Education Cooperatives assisted with the facilitation, coordination and procedural implementation of transition of children with disabilities from Part C to Part B.

On page 15 of the APR, KDE indicated that it would revise the indicators districts would use in the 2004-2005 school year when submitting the KCMP self-assessment to address the following questions:

- Are all children exiting Part C who are eligible for Part B services receiving special education and related services by their third birthdays?
- Does the district follow its child-find procedures (or existing preschool transition agreement) for children exiting Part C, including those related to timelines for referral, permission to evaluate, and placement?
- Does the District follow their child-find procedures or existing pre-school transition agreement related to: (i) referral (notification, acceptance, timelines); (ii) permission to evaluate (process, timeline); and (iii) placement (timeline)?
- Does effective transition planning occur for children exiting Part C as evidenced by LEAs attending the transition conference and providing joint training?

Based on the data provided in the APR, OSEP could not determine whether the State is meeting the requirement in 34 CFR §300.132(b). In the next APR, KDE must provide data, analysis and a determination related to the requirements of 34 CFR §300.132(b). If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, target and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Parent Involvement

KDE included data and information on pages 17-21 of the APR demonstrating improvement in the area of parent involvement as measured by the KCMP over the 2001-2002 and 2002-2003 periods. On page 19 of the APR, KDE provided several reasons for improvement in parent involvement during the 2002-2003 reporting period, including: the use of new forms of communication to increase parent participation at the annual Parent Resource Center (PRC) conference; a 34% increase in requests for PRC training; a 24% increase in PRC contacts; and an increase in materials, consultations, support and training provided parents by Kentucky Special Parent Involvement Network, Inc. (SPIN), the parent training and information project. On page 21 of the APR, KDE listed six activities for the 2003-2004 reporting period, including: (1) support for a new PRC; (2) improved training results of the PRCs; (3) improved training results of KDE's Division of Exceptional Children Services; (4) continued child-find collaboration activities; (5) continued maintenance of the parent listserv; and (6) increased parent involvement and knowledge.

OSEP looks forward to reviewing the results of activities identified in the FFY 2002 APR to increase parent involvement in the FFY 2003 APR.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality. KDE's APR reported disproportionality among racial/ethnic groups beyond the relative difference (>0.20 or $<- 0.20$) in several categories for both identification and settings. For example, KDE reported in Attachment 2 of the APR, an overrepresentation of African-American children with disabilities in mild mental disability (MMD), developmental delay (DD), and emotional-behavioral disability (EBD), with EBD being the most over-identified category. With respect to disproportionality in various educational settings, the Attachment 2 data showed consistent overrepresentation of African-American children with disabilities in more restrictive settings; i.e., removed from the general education setting more than 21% of the school day.

KDE reported on page 27 of the APR that the majority of Kentucky's African-American population resided in seven school districts, and pilot projects were established in these districts to address disproportionality. Phase One of the project was completed. Phase Two established Area Gap Coordinators to address identification issues in the seven districts. Professional development was provided on differentiated instruction, cultural competency, educational equity, and multicultural education to help identify differences in learning and to reduce the number of inappropriate referrals in the categories of MMD, DD, and EBD. Beginning with the 2004-2005 school year, the KCMP would collect district-specific data on disproportionality. Two outcomes of the data collection effort would be to allow districts to address the issue in the Comprehensive District Improvement Plan and to allow KDE to identify specific technical assistance needs.

On page 29 of the APR, KDE stated its projected target to be a decrease in the rate of disproportionality to coincide with data from the general population across all categories. Use of numerical or percentage goals based upon race as a means of addressing disproportionality, however, raises serious concerns under Federal civil rights laws and the United States Constitution and would not be an appropriate way to address any potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals based on race, even where the numerical goal is based upon comparable numbers in the general population, raises some legal concerns. In addressing evidence of disproportionate representation, it would be appropriate for KDE to look at policies, procedures, and practices in the evaluation, identification and placement process to determine if they are educationally appropriate, consistent with the requirements of Part B, and race-neutral. Such an examination would generally include a review of policies, procedures and practices at both the State and local level, with regard to the availability and use of pre-referral intervention services; the selection and use of evaluation instruments and materials; the selection and use of evaluation criteria; the reasons for referral for special education evaluations; the continuum of placement options, the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. Such reviews would generally examine policies, procedures, and practices from both an

educational and legal perspective to ensure that any proposed revisions are educationally appropriate and legally consistent with Part B and other civil rights laws.

Part B requires at 34 CFR §300.755(b) that “in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with [§300.755(a)], the State...must provide for the review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act”. The instructions to the APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices.

In the FFY 2003 APR, KDE must include its plan to review policies, procedures and practices and its plan to revise any policies, procedures and practices identified as not educationally appropriate or legally consistent with Part B and other civil rights laws.

Graduation and Drop-out Rates

On page 23 of the APR, KDE provided a chart with the numbers and percentages of students with disabilities by race/ethnicity who graduate with a diploma or certificate for 1999 through 2003. The data demonstrated an increase in the number of children with disabilities who graduated with a diploma.

On page 26 of the APR, KDE included a target to increase the number of high school graduates who immediately pursue post-secondary education, and on page 29, a target to increase the number of children with disabilities who graduate compared to children without disabilities. On page 31, KDE indicated that it would continue the strategies listed on page 27 to which it attributed the increasing numbers of children with disabilities who graduated with a diploma.

On page 24 of the APR, KDE included the numbers and percentages of children with disabilities by race ethnicity who dropped out from 1999 through 2003. The trend data indicated a decrease in the number of children dropping out, and on pages 26 and 29, KDE included targets to continue to decrease the percentage of children with disabilities dropping out of school overall and in all subcategories, and to decrease the number of children with disabilities dropping out as compared to their same-age nondisabled peers. On page 31 of the APR, KDE indicated that it would continue to implement the strategies listed on pages 27 and 28 to which it attributes the decrease in the number of children with disabilities who drop out of school.

The instructions to the APR require States to provide data on whether high school graduation rates, and drop-out rates for students with disabilities, are comparable to graduation rates and drop-out rates for nondisabled children. No data were provided regarding the number or percentage of nondisabled students who graduate or drop out. On page 31 of the APR, KDE reported that it will be collecting data needed to determine

whether high school graduation rates for children with disabilities are comparable to graduation rates for nondisabled children and whether the number of students with disabilities dropping out of school are comparable to their same-age nondisabled peers from districts as part of the KCMP. OSEP looks forward to reviewing this data, and KDE's analysis of the data in the next APR.

Least Restrictive Environment (LRE).

On page 20 of the January Progress Report, KDE provided LRE data on the percentage of all children with disabilities placed in general education 80% or more, 40%-80% and less than 40%. On page 28 of the APR, KDE indicated that in school year 2002-2003 "over 56% of children with special needs in the Commonwealth spend over 80% of their day in a general classroom. This is higher than the national average." KDE's projected target (page 29) was to "maintain current level of inclusion of children with disabilities...." No information or data were provided in the APR regarding children in other placements. On page 33 of the APR, KDE indicated it would maintain its activities listed on page 28. The only identifiable strategy on page 28 regarding LRE is the continued implementation of the "inclusion model." No information or strategies were provided regarding children who may not be involved with part of the "inclusion model."

In the FFY 2003 APR, OSEP looks forward to reviewing data on the percentage of all children with disabilities, including children with disabilities enrolled in preschool programs, placed in general education 40%-80% and less than 40%, not just data on those who spend more than 80% of their day in general classrooms.

Statewide Assessment. In its January 2004 IP Progress Report (page 13) and in the APR (page 25 and Attachment 3), KDE reported data from the Kentucky Core Content Test (KCCT) over a three-year period (2001 through 2003) that showed progress in closing the achievement gap between children with and without disabilities, with the most significant advances occurring at the fourth-grade level. In the fourth grade, the proficient level for children with disabilities in reading increased 11% between 2001 and 2003, from 32% to 43%, compared with an increase from 62% to 65% for nondisabled children. Further, on page 14 of the January 2004 IP Progress Report, KDE reported that the data collected around the percentage of children with disabilities who demonstrated progress in the general curriculum increased on the KCMP scoring from 2.46 in 2000 to 2.62 in 2001.

On page 28 of the APR, KDE explained that the gap reduction was due in part to the use of the Universal Design for Learning (UDL). The UDL was a new paradigm for teaching, learning, and assessment, drawing on new brain research and new media technology to respond to individual learning differences. Further, Kentucky's requirement of 100% participation in the statewide assessment process was having a positive effect on scores of children with disabilities. In addition, the high percentage of participation of children with disabilities in the general curriculum may have been a factor in the increased performance of children with disabilities.

KDE requires the submission of portfolio alternate assessments three times: in the fourth, eighth, and 12th grades. The subtest scores (math, reading, etc.) for the portfolio alternate assessment are entered into schools' accountability scores for the various subjects covered by the KCCT for the grade span in that school. For example, the fourth grade portfolio alternate assessment scores for reading, science, and writing are entered into the school accountability scores for the fourth grade and the fifth grade math, social studies, arts and humanities and practical living/vocational studies scores. The same method was used for the eighth-grade portfolio (seventh and eighth grade scores constitute the eighth-grade portfolio) and the 12th-grade portfolio (10th, 11th and 12th-grade scores constitute the 12th-grade portfolio).

OSEP learned during its verification visit that KDE administered a statewide Norm Reference Test (NRT) in grades three, six, and nine, but had no alternate assessment for the NRT administered in those grades. This issue was also raised in the September 23, 2004 Part B grant award and will be addressed in the 2005 Part B grant award.

Preschool Outcomes.

On pages of 27-29 and 33 of the APR, KDE noted that it did not currently collect data on the early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education and related services and indicated that it would begin to collect baseline data through the KCMP during the 2004-2005 school year.

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 next APR, KDE must provide OSEP with information regarding the status of its data collection efforts, including a detailed timeline of the activities necessary to complete the collection of baseline data and analyze the results. OSEP looks forward to reviewing this information in the next APR.

Suspension and Expulsion. In both the January IP Progress Report (page 16) and the APR (page 24), KDE provided suspension data on children with disabilities that were lower than the national average. Based on suspensions greater than 10 days in a school year, KDE reported 0.65% for 1999-2000, 0.09% for 2000-2001, and 0.45% for 2001-2002. The percentages nationally for the 2000-2001 and 2001-2002 periods were respectively 0.39% and 1.18%. On page 16 of the January 2004 IP Progress Report KDE reported that, utilizing the KCMP self-assessment, districts' suspension and expulsion rates for children with disabilities were no higher than those for children without disabilities.

On page 24 of the APR, KDE reported that no disaggregated expulsion data exists; however, Kentucky's overall rates for expulsion of all students is very low, according to data from the Kentucky Center for School Safety.

On page 28 of the APR, KDE attributed the decrease in suspensions/expulsions from the 2000-2001 to the 2001-2002 period, in part, to school programs that addressed services to children with emotional/behavioral concerns or with an emotional/behavioral disability, such as the Instructional Discipline Project, funded and developed under KDE's State Improvement Grant, that served 91 elementary, middle and high schools.

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.

On pages 32-33 of the APR, KDE reported that, it would collect quantifiable data from districts as part of the revised KCMP to determine if suspension and expulsion rates for children with disabilities are comparable to suspension and expulsion rates for nondisabled children. On page 33 of the APR, KDE also reported that it was continuing to refine its special education data collection system (SETS) within the MAX data system and that SETS when fully operational would allow KDE to compare suspension expulsion information on students in general education programs to students with disabilities

In the next APR, KDE must include the information required by the instructions. If the 2003 APR does not include information indicating that KDE 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, OSEP will conclude that KDE is not complying with the regulation.

OSEP looks forward to reviewing data collected through the revised KCMP and STI/SETS in the next APR.

Secondary Transition

The instructions to this cluster ask States to address whether the percentage of youth with disabilities participating in post-school activities, such as employment and education, is comparable to that of nondisabled youth. KDE did not provide this data. On page 35 of the APR, KDE reported that the Commonwealth Accountability Testing System (CATS) would include a measure of transition success for all students. On page 37 of the APR, KDE reported that beginning in 2004-2005, it would collect data on post-school outcomes of students with and without disabilities.

On page 38 of the APR, KDE specified activities to increase KDE's performance on secondary transition for the next reporting period, including: (1) post-school data collection and analysis; (2) compliance with secondary transition requirements through monitoring activities using the KCMP protocol relating to secondary transition; (3) program improvement activities; (4) interagency coordination; and (5) job coach supports for students with significant disabilities.

OSEP looks forward to reviewing data on post-school outcomes and the results of the implementation of KDE's strategies regarding secondary transition in the next APR.

In the FFY 2003 APR, due 60 days from the date of this letter, KDE must include:

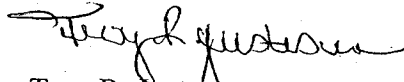
1. Data and analysis demonstrating full compliance with 34 CFR §300.661 regarding timely resolution of complaints and 34 CFR §300.511 regarding timely issuance of due process decisions, including documentation that continuances are granted by the hearing officer for a specific period of time at the request of a party;
2. Evidence that the revisions to the KCMP will ensure monitoring of all the Part B requirements and identification and correction of any identified noncompliance in a timely manner as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b);
3. Data, analysis and a determination of whether the State is meeting the requirement in 34 CFR §300.132(b) that an IEP, or if consistent with State policy, an IFSP, be developed and implemented for all children participating in the early intervention program under Part C of IDEA who are eligible for Part B services by their third birthdays. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.
4. Information indicating that the State, when it identifies significant disproportionality, conducts a review of its policies, procedures and practices used in the identification and placement of children with disabilities, and revises any policies, procedures and practices identified as not educationally appropriate or

legally consistent with Part B and other civil rights laws to ensure they comply with the requirements of Part B of IDEA;

5. Information regarding the status of efforts to collect skills data on preschool children with disabilities receiving special education and related services, including a detailed timeline of the activities necessary to complete the collection of baseline data and analyze the results; and
6. Information indicating that KDE has examined all data on the rate of long-term suspensions and expulsions of children with disabilities for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either the comparison among LEAs in the State or to the rates of non-disabled 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.

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 Mr. Hugh Reid at (202) 245-7491.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special
Education Programs

cc: Dr. Johnnie Grissom