



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

Honorable Nancy Grasmick
State Superintendent of Schools
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201

SEP 22 2005

Dear Dr. Grasmick:

The purpose of this letter is to respond to Maryland's 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 data-based 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 July 23, 2004 FFY 2002 APR response letter required the State to submit to OSEP:

A. By September 23, 2004 -

1. Data and analysis regarding the correction of the identified noncompliance related to children with disabilities receiving special education in the least restrictive environment (LRE) and the provision of all related services.¹
2. A plan that included strategies, proposed evidence of change, targets, and timelines that ensured correction of the noncompliance identified by the State's complaint system within a reasonable period of time not to exceed one year from the date OSEP accepted the plan.²

¹ OSEP addressed MSDE's inability to verify the correction of noncompliance specially related to children with disabilities receiving special education in the LRE with appropriate supports and services and receiving all necessary services to benefit from special education in Special Conditions on MSDE's FFY 2005 grant award. The State is required to submit quarterly reports on November 15, 2005, February 15, 2006 and May 15, 2006 addressing these areas of noncompliance.

² OSEP's January 19, 2005 response to MSDE's September 2004 letter informed the State that the plan appeared to be reasonably calculated to ensure correction of the noncompliance within a reasonable period of time not to exceed January 19, 2006.

B. By August 23, 2005 -

- a. Provide a final progress report with data and analysis demonstrating compliance related to impartial due process hearings timelines.
- b. Provide a final progress report with data and analysis demonstrating compliance related to early childhood transition.

On September 20, 2004, MSDE submitted a plan to OSEP with strategies, evidence of change, targets and timelines to ensure correction of noncompliance identified by its State complaint system. In that letter, MSDE provided documentation related to corrective action plans that the local educational agencies (LEAs) developed to correct the noncompliance with the LRE requirements and subsequent follow-up activities. MSDE also included documentation related to personnel data for school years (SYs) 2002-2003 and 2003-2004. OSEP responded to this submission in a letter dated January 19, 2005. Further comment on this submission will be included in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance.

OSEP's July 2004 response letter required MSDE to provide data addressing whether the State was effectively identifying noncompliance and ensuring correction of noncompliance identified through monitoring, and using monitoring information to identify systemic issues needing correction in the FFY 2003 APR. During OSEP's March 2005 verification visit, OSEP was able to verify that MSDE had multiple methods for identifying noncompliance. However, OSEP was unable to verify that MSDE consistently corrected noncompliance identified through the State's self-assessment, comprehensive, focused, or enhanced monitoring activities, within one year of identification.

On page 5 of the FFY 2003 APR, the State described how it used statewide data on the status of the State's special education priorities³ linking the use of funds to the identified priorities to determine what agencies to monitor. On page 6, the State reported that, during this reporting period, four local school systems and two public agencies were monitored through the Monitoring for Continuous Improvement and Results (MCIR) system. On page 8, MSDE reported that OSEP remarked during the March 2005 verification visit that the State's monitoring process currently lacked sufficient structure and documentation to enable the State to identify and correct noncompliance within local school systems and public agencies in a timely manner. The State acknowledged the monitoring process did not encompass a formally structured, coordinated, systemic, and comprehensive approach necessary to ensure compliance and results. As noted on page 8 of the APR, MSDE included a strategy to focus on developing a comprehensive system of monitoring local school systems and public agencies for compliance, and documenting correction of noncompliance.

³ MSDE's special education priorities included: LRE, suspension and expulsion rates; adequate staff to ensure the provision of services as specified in each child's individualized education program (IEP); over-identification of African American children as children with disabilities; and exit data, including graduation and drop-out rates.

On pages 8 through 11 of the FFY 2003 APR, the State reported future activities to achieve projected targets. MSDE reported that, effective March 21, 2005, the State established the Quality Assurance and Monitoring Office (QAM) that would be responsible for coordinating required activities under general supervision, through the MCIR process. Other future activities to achieve projected targets and results included: (1) piloting the use of a tool to track the correction of noncompliance identified through monitoring and using it to report on the next APR; (2) initiating a system of comprehensive monitoring through the development of a self-assessment instrument; (3) implementing the current MCIR process and providing written documentation of activities and actions, confirming visits to include the purpose of the visits, team members, and setting clear expectations and required next steps for local school systems; (4) developing a statewide profile of information for each public agency based on state data; (5) integrating all available data and information; and (6) finalizing the MCIR Part B Manual.

MSDE's plans to revise its monitoring system to support the State's efforts to identify and correct noncompliance seem calculated to lead to compliance. This issue is the subject of Special Conditions on MSDE's FFY 2005 Grant Award that requires the State to submit reports regarding the impact of its monitoring unit on correcting the noncompliance related to the LRE and provision of related services requirements identified in OSEP's 2001 Monitoring Report. OSEP will review the information included in the Special Conditions Progress Reports and determine what further action, if any, is required.

Formal written complaints

The conclusion of OSEP's July 2004 FFY 2002 APR response letter required the State to submit a plan within 60 days of the July 2004 letter, including strategies, proposed evidence of change, targets, and timelines that would ensure correction of the noncompliance identified by the State's complaint system within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan as required under 34 CFR §300.661(b). MSDE's September 2004 submission included a plan with strategies, proposed evidence of change, targets and timelines to ensure correction of noncompliance identified by its State complaint system. OSEP's January 2005 response to this submission informed MSDE that the plan appeared to be reasonably calculated to ensure correction of the noncompliance within a reasonable period of time not to exceed January 19, 2006. The State was required to report in the FFY 2003 APR on its progress in ensuring full compliance with the requirements related to timely handling of complaints as required under 34 CFR §300.661(a).

On page 4 and Attachment 1 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance related to resolving all complaints within 60 calendar days unless the timeline is extended because exceptional circumstances exist with respect to a particular complaint (See 34 CFR §300.661(a)). MSDE indicated the State received 175 formal State complaints. Of the 152 complaints that resulted in decisions, 125 decisions issued within 60 days and 16 complaints were resolved within a documented extended timeline. Eleven decisions were completed after timelines and/or extensions expired. MSDE further reported that 20 complaint requests were withdrawn, one was held in abeyance because the same issue was being addressed in a due process hearing, and three remained open. MSDE reported that further validation activities are needed to ensure the systemic concern was corrected. In the

State Performance Plan (SPP), due December 2, 2005, the State must include data and analysis demonstrating compliance with this requirement.

On page 4 of the FFY 2003 APR, the State included additional data and analysis demonstrating progress in correcting noncompliance identified by its State complaint system (See 34 CFR §300.661(b)). On page 6 of the FFY 2003 APR, MSDE reported that it had hired a dispute resolution data specialist in April 2004 and designed a database to facilitate tracking data related to IDEA dispute resolution methods (to include written complaints). MSDE reported that the FFY 2004 data will serve as baseline data for future reports for timely completion of corrective actions required as a result of complaint investigations. MSDE further reported that it increased the ability to track these activities, generate detailed reports for use by local public agencies and MSDE, and ensure that required corrective actions were completed in a timely manner. Additionally, MSDE reported that the dispute resolution data specialist was responsible for conducting follow-up activities to ensure that corrective actions were completed within required timelines. This individual conducted on-site visits with public agencies, provided technical assistance to public agency staff and complainants regarding implementation of corrective actions, and monitored implementation of public agency-developed corrective action plans. OSEP verified this information during the March 2005 verification visit.

The State must include data and analysis demonstrating full compliance with this requirement in a final report due January 19, 2006. MSDE may choose to submit this information as part of the SPP, due December 2, 2005. If MSDE chooses to submit the final report by January 19, 2006, the SPP must include data and information demonstrating compliance with this requirement.

Mediation

On pages 7, 8 and 24 of the FFY 2003 APR, the State included data and information regarding IDEA dispute resolution methods, including mediation, as required under 34 CFR §300.506.

On page 7 of the FFY 2003 APR, the State explained that the use of mediation to resolve IDEA disputes was promoted by disseminating information through correspondence, reminders to stakeholders during telephone conversations with parents and advocates, and presentations. On page 8, MSDE's future activities included collecting and analyzing data regarding issues that were subject to mediation requests and any mediation agreement to serve as a data source for consideration in its monitoring system to identify and correct noncompliance. These activities also included collection and review of public agency policies and procedures to ensure they are consistent with Federal and State requirements related to mediation.

In Attachment 1 of the FFY 2003 APR, MSDE provided data for the reporting period indicating 208 mediations were conducted that were not related to hearing requests and 150 that were related to hearing requests. The State reported that there were 172 mediation agreements not related to hearing requests and 118 agreements that were related to hearing requests. On page 24, MSDE reported that the State improved its ability to track and collect data requested for the APR process. Having improved its data collection system, MSDE determined the information that was reported in the FFY 2002 APR was not reliable. The State indicated the intent to use the information reported in the FFY 2003 APR as baseline data for future reporting. OSEP

appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Due process hearings and reviews

The conclusion of OSEP's July 2004 FFY 2002 letter required the State to provide evidence of correction of the noncompliance related to impartial due process hearings, including supporting data and analysis of hearing requests by issue or locality in the FFY 2003 APR and, in addition, a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than August 23, 2005. 34 CFR §300.511 requires that a final decision in a due process hearing be issued within 45 days of receipt of the request for the hearing, unless the hearing officer at the request of a party extends the timeline.

On page 4 and Attachment 1 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance as required under 34 CFR §300.511(a), (c)-(d). In GS.III.1c, MSDE reported fully adjudicating 75 of the 447 hearing requests received. Of the 75 adjudicated hearings, 58 of the decisions were issued within required timelines or within an extended timeline. Seventeen due process hearing decisions were issued beyond required timelines. On page 4 of the FFY APR, MSDE listed strategies to ensure the correction of noncompliance identified by impartial due process hearings, including: (1) hearing decisions would contain a statement directing the public agencies to inform MSDE when corrective actions required by the decision were completed; and (2) the public agency was required to provide documentation that hearing decisions were implemented as required.

On page 6 of the FFY 2003 APR, MSDE reported that the dispute resolution data specialist was charged with tracking data related to IDEA dispute resolution methods specific to due process hearings. MSDE reported that the State increased its ability to track these activities, generate detailed reports, and ensure that required corrective actions were completed in a timely manner. On pages 22 and 23 MSDE reported on the efforts it had taken to improve timeliness of due process decisions, including training of ALJs and improved management controls.

On pages 21 and 22 of the FFY 2003 APR, MSDE responded to OSEP's July 2004 letter requiring the State to address whether there were particular issues or localities involved in due process hearing requests and to identify appropriate strategies to address the results of that analysis. MSDE reported that the data revealed that 86% (385/447) of all hearings requested between July 1, 2003 and June 30, 2004 were generated by the five largest school systems in the State. The State reported that these school systems were a party to 78% (70/90) of the hearings that were fully adjudicated and that of the 90 disputes that went to hearing, a majority of those (58%) involved a parent's request for nonpublic placement. MSDE indicated its intent to continue to refine the analysis of the dispute resolution data to better explain and understand potential areas of concern.

On August 31, 2005, MSDE forwarded information in response to OSEP's July 2004 FFY 2002 letter requiring the State to submit, no later than August 23, 2005, a final progress report to OSEP, with data and analysis demonstrating compliance related to timely due process decisions. The information included data and analysis provided by MSDE on Attachment 1 of the FFY

2003 APR indicated that for FFY 2003 77% of the fully adjudicated hearings met the timeline in 34 CFR §300.511. Additional data provided in MSDE's August 31, 2005 report indicated that 89% of the fully adjudicated due process hearings the period from July 1, 2004 through June 30, 2005 met the timeline. While the data show improvement, MSDE still has not demonstrated compliance with this requirement. If the State is unable to demonstrate compliance in the SPP, OSEP will consider continued designation of the State as a high-risk grantee.

Personnel

MSDE's September 2004 submission provided documentation related to personnel data for SYs 2002-2003 and 2003-2004. OSEP's January 2005 response required the State to provide updates regarding the outcome of its focused monitoring activities on the provision of related services in the FFY 2003 APR. Additionally, OSEP required the State to provide monitoring data for targeted school districts visited by OSEP during the 1999 monitoring visit to indicate that districts monitored have appropriate staffing plans and that children with disabilities were receiving the appropriate related services.

On pages 26 through 29 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance related to comprehensive system of personnel development (CSPD). On page 26, MSDE provided data indicating variable trends of reductions and increases in school system personnel vacancy data over time with reductions in vacancies in speech pathologists and paraprofessionals during this reporting period and continued vacancies for occupational and physical therapists. On pages 27-29, the State described the strategies used to address compliance with the provisions related to establishing and maintaining a comprehensive system of personnel development, including: staffing plan reviews to gauge LEA staffing and technical assistance needs; on-site monitoring activities; verification of data reports; establishing contracted arrangements and partnership agreements with institutions of higher education (IHE); and requiring corrective action plans. On page 27, MSDE indicated that the analysis of available data and documents provided evidence of continued progress toward addressing retention and recruitment needs for both teachers and related services providers in targeted areas of shortages.

The IDEA requirements regarding CSPD and personnel standards were removed from IDEA 2004 and replaced by statutory provisions related to State's establishment and maintenance of personnel qualifications for special education teachers that align Part B with the highly qualified teacher provisions in section 1119(a)(2) of the Elementary and Secondary Education Act, and that also address personnel qualifications for related services providers and paraprofessionals (effective July 1, 2005, see 20 U.S.C. 1412(a)(14)). However, MSDE must fulfill its obligation to ensure that all needed related services are provided as a part of FAPE. This issue is the subject of Special Conditions on MSDE's FFY 2005 Grant Award. OSEP will review the information included in the Special Conditions Progress Reports and determine what further action, if any, is required.

Collection and timely reporting of accurate data

On pages 36 through 40 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and performance in this area. On pages 36 and 37 of the APR, MSDE described State and local procedures and practices to ensure collecting and timely reporting of accurate data. MSDE reported that data collection methods improved and resulted in the State's ability to produce error-free, disaggregated data on children with disabilities. MSDE included information indicating the availability of technical assistance to LEAs, when needed to ensure accurate and timely submission of required data. On pages 38 and 39, MSDE provided information related to future activities to achieve projected targets, specifically, the development of a web-based data reporting system. MSDE reported the future changes in the data collection systems would conform to IDEA 2004. OSEP looks forward to reviewing the State's data in this area in the SPP.

Early Childhood Transition

OSEP's July 2004 letter required the State to provide evidence of progress in correcting noncompliance related to early childhood transition at 34 CFR §300.132(a)-(b), including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final Progress Report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than August 23, 2005.

On pages 43 through 49 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting early childhood transition. On pages 43 and 44, MSDE included the changes made to its policies and procedures requiring a child's transition meeting to occur no earlier than six months or later than 90 days prior to the child's third birthday. MSDE indicated that entries regarding timelines in the new Part C data system would serve as baseline data.

In EC.1 Table 1 of the FFY 2003 APR, MSDE provided data reflecting the percentage of IEP meetings held within timelines and, if not within timelines, when there was a family-related reason or late referral (i.e., parent requested that the meeting be postponed, parent declined to consider eligibility for Part B, or child was referred less than 90 days before the third birthday). The data included periods before and after the policies and procedures were revised in March 2004. The preliminary data under the revised policies indicated only slight improvement. On page 45, the State's explanation for the slight improvement in the data was due to data entry delays in the Part C data system. The State reported reissuing instructions and increasing technical assistance to targeted programs. On page 47, the State's future activities included focused monitoring to ensure that practices support compliance with the early childhood transition requirements. The State reported plans to launch a web-based tutorial to support the "Early Childhood Transition" module that also included evidence-based strategies to support the needs of three-year old children with disabilities in community-based settings.

On August 31, 2005, MSDE forwarded information in response to the OSEP's July 2004 APR letter requiring the State to submit a final Progress Report to OSEP, with data and analysis demonstrating compliance related to ensuring that an IEP be in effect by the third birthday of a

child transitioning from Part C to Part B services. 34 CFR §§300.121(c) and 300.132(a) and (b). The document included data reported to OSEP in the FFY 2004 APR as well as strategies that have been implemented since the OSEP March 2005 verification visit. In the report, MSDE described that it had completed review of all local policies regarding the Part C to Part B transition, provided on-site technical assistance in several districts, and revised its monitoring system to address these requirements. It also provided evidence of LEA self-assessment activities that addressed these requirements. The State indicated that it would have data available on the number of children transitioning from Part C to Part B whose IEPs were in effect by their third birthdays after the October 2005 data collection.

This is an indicator in the State Performance Plan (SPP) under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements.

Parent Involvement

On pages 51 through 59 of the FFY 2003 APR, the State included data and information regarding parent involvement for pre-school and school-aged program partnerships, and support services and coordination for families in the 24 LEAs and two State-operated programs. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the State Performance Plan (SPP).

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. 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.

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

Disproportionality

On pages 62 through 69 of the FFY 2003 APR, the State included data and information regarding disproportionality. OSEP's July 2004 letter required MSDE to revise the targets and goals concerning disproportionality. On page 62 of the FFY 2003 APR, the State changed its goal to: all students with disabilities, ages 3-21 years of age, will receive a FAPE individually designed to result in improved achievement based upon access to the general curriculum in the LRE. OSEP accepts MSDE's revised goal. However, Target 1.1 still is a target for the number of children with disabilities of certain racial or ethnic backgrounds who would be identified as eligible for services under Part B. The proposed use of numerical goals based upon race raises serious concerns under federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the

numerical goal is based upon comparable numbers in the general population, raises the same legal concerns.

On pages 62 through 65 of the FFY 2003 APR, MSDE provided baseline data generated by risk ratio analysis, index calculations, State trend analysis, and District level analysis for all disability and environmental setting categories for children with disabilities aged 3-21 years of age. The State's highest risk ratio and highest index calculations based on 2003-2004 Child Count Data indicated Black children were more likely than other children to be classified with mental retardation, emotional disturbance and developmental delay as well as being placed in a separate class setting, or in an early childhood special education setting. Hispanic, Asian, Native American students, aged 6-21 did not experience dramatic over or under representation at the State level.

On pages 65 through 67, MSDE indicated that 18 LEAs had disproportionate data in one or more categories. When comparing data across districts, the State identified varied changes among the districts as some reduced disproportionate representation in one category while slightly increasing in several others.

On pages 67 and 68, MSDE reported the use of an Instructional Consultation Model as a proactive pre-referral process that emphasized teacher/staff collaboration in developing and expanding teaching strategies to reduce unnecessary referrals of children to special education. The State also reported the use of competitive grants, technical assistance and focused monitoring to support districts in addressing the reduction and elimination of over-representation of minority children identified as children with disabilities. On pages 68 and 69, MSDE listed future activities to address disproportionality to include a more detailed analysis as well as refining the processes and procedures for data collection and analysis during the SY 2004-2005. However, the State did not provide the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race neutral, for those districts with data that illustrate significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings. Therefore, OSEP concludes that the State is not complying with the requirements of 34 CFR §300.755.

With the SPP, due December 2, 2005, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including 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 the end of the one year timeline.

Graduation and drop-out rates

On pages 69 through 71 of the FFY 2003 APR, the State included data and information regarding graduation and drop-out rates. On page 69, MSDE indicated the performance standard of graduation for all children, including children with disabilities, was 90% for Adequate Yearly

Progress (AYP). In BF.II Table 1, MSDE reported the percent of high school graduates comparing children with disabilities to their nondisabled peers for SY 2004, 77.67% of children with disabilities graduated compared to 84.88% of the children without disabilities; SY 2003, 78.35% compared to 85.20%; and SY 2002, 80.71% compared to 84.08%.

In BF.II, Table 2, MSDE reported the drop-out rates for students with disabilities for grades 9-12 compared to their nondisabled peers: for the SY 2004, 4.12% of children with disabilities dropped out compared to 3.82% of the regular education children without disabilities; SY 2003, 4.11% compared to 3.32%; and SY 2002, 3.71% compared to 3.68%. On page 70 of the APR, MSDE indicated that the graduation rates were comparable to that of nondisabled students and that the drop-out rates were high. The State reported it would use targeted activities to meet the needs of each LEA. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Suspension and expulsion

On pages 72 through 75 of the FFY 2003 APR, the State included data and information regarding suspension and expulsion. MSDE included data indicating the number of school districts that had significant discrepancies in extended and multiple suspensions greater than ten days. On page 72, MSDE indicated the baseline was established during the SY 2000-2001 with four local school systems identified as having significant discrepancies in suspensions greater than ten days; nine school districts were identified as having significant discrepancies in suspensions greater than ten days. In SY 2003-2004, six local school systems were identified with discrepancies in multiple suspensions summing to greater than ten days. On page 74, MSDE's future activities included increased support and staff training, implementation of positive behavior interventions and supports, and auditing and focused monitoring activities for targeted school districts. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Statewide and districtwide assessment

On pages 75 through 85 of the FFY 2003 APR, the State included data and information regarding statewide and districtwide assessment. The State provided baseline data and related information specific to performance and participation of children with disabilities in the State's new accountability system. In Attachment 3 of the APR, the State provided data indicating its efforts to continue to exceed the state's participation goal of 95%. On page 80, MSDE attributed the increase in participation of children in the State's alternate assessment to increased understanding of the regulatory requirements for participation of children with significant cognitive disabilities in statewide accountability systems by nonpublic and public schools as well as enhanced monitoring, auditing and data collection practices. The State reported its commitment to work with leadership in the LEAs to ensure that children with disabilities have access to a rigorous curriculum that addresses the content standards and raises expectations for the performance of children with disabilities among general and special educators at the State, local, and school levels.

On page 81 of the APR, MSDE attributed the progress in the numbers of proficient children after the first two years of performance data to the statewide focus on reading at the early grades, the Federal Reading First Initiative, and system level professional development in support of Maryland's efforts to implement a precise and detailed presentation of the State content standards, including assessment limits that align with the Maryland State Assessment. Overall rates of growth for children with disabilities averaged 3.9% in mathematics in AYP-counted grades 3, 5, 8 and 10 and 6.65% in reading in the same grades. Comparable average growth for children without disabilities was 6.65% in mathematics and 5.85% in reading. Most local curricula have been aligned with the statewide standards in reading and more work is being done on alignment in the area of local mathematics curricula. On page 82, the State's explanations for improvement of performance scores on the State's alternate assessment were enhanced knowledge of the State's reading and mathematics content standards, supports provided to individual test examiners, availability of substitutes and the use of portfolios, and increased professional development opportunities.

On pages 82 and 83, MSDE provided information regarding future activities to achieve projected targets, including: continued technical support; data analysis to determine what worked and did not work; support dissemination and use of promising practices; and continued development of the State's website. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Least restrictive environment (LRE)

The conclusion of OSEP's July 2004 letter required the State to submit, within 60 days of that letter, data and analysis to support the conclusion that the identified noncompliance related to the LRE requirements was corrected. To satisfy this requirement, MSDE was required to provide documentation of the LEA corrective action plans developed to correct the noncompliance and subsequent follow-up activities with documentation demonstrating that correction occurred. MSDE's September 2004 submission provided documentation related to corrective action plans and subsequent follow-up activities. OSEP's January 2005 response informed MSDE that, while the data presented by the State showed some improvement, MSDE did not provide documentation demonstrating that the State monitored school districts to ensure the necessary supports and aids are provided to students in the general education classroom based on the child's unique needs. This issue is the subject of Special Conditions on MSDE's FFY 2005 Grant Award. OSEP will review the information included in the Special Conditions Progress Reports and determine what further action, if any, is required.

On pages 85 through 87 and BF.V Table 1 of the FFY 2003 APR, the State included data and information regarding the provision of a FAPE in the LRE. On page 85, MSDE provided baseline data demonstrating no improvement for children aged 3-5, served in more restrictive environments. The percentage of children with disabilities aged 6-21, served in the LRE, continued on an upward trend; however, the State did not demonstrate that the noncompliance identified in the 2001 OSEP Monitoring Report regarding LRE was corrected.

Preschool performance outcomes

On page 88 through 91 of the FFY 2003 APR, the State included data and information showing continued improvement in the early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. 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.

Secondary Transition

On pages 100 through 105 of the FFY 2003 APR, the State included data and information regarding the percentage of youth with disabilities participating in post-school activities (e.g., employment, education, etc.) comparable to that of nondisabled youth. On pages 101 and 103 of the APR, MSDE provided baseline data and the State's analysis of the survey data generated by the High School Graduate Follow-up Study. The State's attributes the positive trend in the increase in the number of young adults participating in meaningful post-school activities to awarding LEAs Transition Grants, student participation in secondary vocational/technical education programs, training opportunities for Transition Coordinators, and increased interagency-sponsored activities. The State provided future activities to promote increased numbers of young adults with disabilities who participate in meaningful post-school activities. The SPP instructions establish two new indicators in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. 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 these indicators in the SPP packet. The State must make a determination whether data collected related to this area will be responsive to those requirements.

Conclusion

As noted above, the State must submit data and analysis demonstrating full compliance with the requirement to ensure correction of the noncompliance identified by the State's complaint system in a final report due January 19, 2006. MSDE may choose to submit this information as part of the SPP, due December 2, 2005. If MSDE chooses to submit the final report by January 19, 2006, the SPP must include data and information demonstrating progress toward compliance with this requirement.

With the SPP, due December 2, 2005, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure that when it identifies significant disproportionality it provides for the review, and if appropriate revision, of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race neutral, consistent with §300.755, as soon as possible and not more than one year after OSEP accepts the

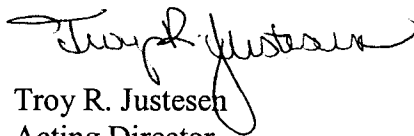
plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

In the State's Performance Plan, due December 2, 2005, Maryland must submit to OSEP, data and analysis demonstrating compliance with the requirements related to timely due process decisions and early childhood transition.

IDEA 2004, section 616, requires each State to submit a 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.

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 with disabilities and their families. If you have questions, please contact Michael Slade at (202) 245-7527.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Carol Ann Baglin