



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

OCT 27 2005

Commissioner Susan A. Gendron  
Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, Maine 04333-0023

Dear Commissioner Gendron:

The purpose of this letter is to respond to Maine's May 4, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Reports (APRs) under the Individuals with Disabilities Education Act (IDEA) Parts C and B<sup>1</sup> 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 and a subsequent compliance report submitted by the State on August 23, 2005. OSEP has set out its comments, analysis and determinations by cluster area.

### ***Background***

OSEP responded to the State's Part C and Part B FFY 2002 APRs in a single letter, dated March 4, 2005. The conclusion of that letter required the Maine Department of Education (MDOE) to provide:

#### **A. Related Issues Under Part C and Part B**

Documentation of the State's progress in ensuring the correction of the following areas of noncompliance by submitting a Progress Report, due September 4, 2005,

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<sup>1</sup> The Maine Department of Education (MDOE) is both the State educational agency (SEA) for Part B and the State's lead agency for Part C. In Maine, 16 Child Development Services (CDS) Regional Site Boards provide both Part C early intervention services to infants and toddlers aged birth to three, and preschool special education services to children aged three through five (children who are not yet five years old by October 15 of a given school year), pursuant to the State's Chapter 180 regulations. 284 School Administrative Units (SAUs) provide "school-aged" special education and related services to children aged five (children who have turned age five by October 15 of a given school year) to 20 (the school year in which the student turns 20), pursuant to the State's Chapter 101 regulations.

including evidence of change data demonstrating substantial improvement, and a Final Report, due by April 4, 2006, including data demonstrating full compliance:

1. Part B: The provision of a free appropriate public education (FAPE) to preschool-aged children with disabilities;
2. Part B: Provision of services to preschool-aged children as set forth in their individualized education program (IEP)/individualized family service plan (IFSP), notwithstanding shortages in personnel;
3. Part C: 45-day timeline for evaluation, assessment, and holding the initial IFSP meeting;
4. Part C: Provision of all the services identified in IFSPs to infants and toddlers and their families;
5. Timely correction of noncompliance under Parts B and C; and
6. Part B: Timelines for due process hearing decisions.<sup>2</sup>

In addition, OSEP's March 2005 letter required the State to submit, within 60 days of that letter, documentation related to the procedural safeguards notice for CDS. The letter further required the State to submit, on or before May 31, 2005, documentation related to the right of a party to request a due process hearing.

#### **B. Part B**

Documentation of the State's progress in ensuring the correction of the following areas of noncompliance by submitting a Progress Report, due by September 4, 2005, including evidence of change data demonstrating substantial improvement, and a Final Report, due by April 4, 2006, including data demonstrating full compliance:

1. Standard for, and timeliness of, correction of noncompliance, including longstanding noncompliance, in school-aged programs;
2. Statement of needed transition services, age 16;
3. Inviting the student and a representative of any other agency likely to be responsible for providing or paying for transition services to the IEP

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<sup>2</sup> Although the data and IDEA requirement cited here relate only to Part B, this letter addresses timeliness of complaint decisions and due process hearing decisions as a "related indicator under Part B and Part C," because MDOE uses the same entity and procedures for Part B and Part C complaints, mediation, and due process hearings. The State reported that there were no complaint, mediation, or due process requests for Part C during the FFY 2003 reporting period. In its September 1, 2005 letter to OSEP, MDOE indicated that one complaint and one mediation request had been filed.

meeting, and in case the student does not attend, ensuring that steps are taken to consider the student's preferences and interests; and

4. Transition-related content of the IEP meeting notification.

OSEP's March 2005 letter also required MDOE to submit, within 60 days from the date of that letter, a plan to ensure full compliance with the requirements at: (1) 34 CFR §300.348(a), related to agency participation in secondary transition; and (2) 34 CFR §300.347(c), related to the age of majority.

OSEP's letter further required the State to address, in its FFY 2003 APR, the following areas: (1) ensuring the provision of FAPE for children with disabilities placed by public agencies in private special purpose schools; (2) Part B data under §618 of IDEA; (3) parent involvement; and (4) preschool outcomes.

On September 2, 2005 Maine submitted a Progress Report that addressed the issues required by OSEP's March 2005 letter. OSEP responds to the Progress Report submission below.

**C. Part C**

OSEP's March 2005 letter required MDOE to submit, in its FFY 2003 APR, data demonstrating improved performance and/or compliance for the following areas: (1) natural environments monitoring data regarding compliance requirements and performance goals; and (2) improved and sustained functional abilities.

OSEP's March 2005 letter further required the State to address Part C data accuracy in its next IDEA §618 data submission.

In addition, OSEP's March 2005 letter stated, "to the extent that the State can demonstrate correction, or progress towards correction, of any of the areas of noncompliance as part of its FFY 2003 APR, OSEP would be glad to review such documentation."

**I. Related Indicators Under Parts C and B:**

***Provision of Services Under IDEA: Free Appropriate Public Education in the Least Restrictive Environment (FAPE in the LRE) and Early Intervention Services in the Natural Environment (EIS in the NE)***

For the following four areas of noncompliance, OSEP's March 2005 letter required MDOE to submit: (1) an interim Progress Report, due September 4, 2005, that included evidence of change data demonstrating substantial improvement; and (2) a Final Report, due April 4, 2006, that included data demonstrating full compliance. OSEP's letter specified the required content for each of those reports.

## **Evaluation timelines**

### Part C: Evaluation and identification of needs: timeline for evaluation, assessment, and holding the initial IFSP meeting

Part C requires, at 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a), that within 45 days after initial referral, the public agency must complete an initial evaluation and assessment of the child and convene an initial IFSP meeting. Although the data on page 9 of the FFY 2003 Part C APR, regarding the 45-day timeline, were unclear, the State submitted data in its September 2005 Progress Report indicating that, as of June 2005, the agency convened the initial IFSP meeting beyond the 45-day timeline for 199 of 1804 children, of which 31 were due to family circumstances (or a 9.3 percent noncompliance rate for the State). Five of 16 providers accounted for virtually all of these 199. Those data demonstrate significant improvement in correcting this area of noncompliance. OSEP looks forward to reviewing updated data to address noncompliance in this area in the SPP. OSEP will determine, based upon those data, whether the State will need to continue reporting on this issue in the Final Report, due by April 4, 2006.

### Preschool: Delay in the provision of FAPE to preschool-aged children with disabilities

MDOE was not effective in ensuring the completion of initial evaluations for preschool-aged children with disabilities, consistent with State timelines, as required by 34 CFR §§300.600(a)(2)(ii) and 300.121(c). Maine's Chapter 180, Section VI.3.D, requires that public agencies complete an initial evaluation and hold an initial IEP/IFSP meeting within 60 days after referral for initial evaluation of preschool-aged children with disabilities. On page 28 of the FFY 2003 Part B APR, the State included data indicating continued noncompliance in meeting the State's 60-day timeline. Specifically, the data indicated that 44 evaluations exceeded the 60-day timeline in 2004, and 122 in 2005. The data did not include the total number of evaluations; therefore, OSEP was unable to determine the percentages out of compliance and/or whether these data indicated progress or slippage. However, the State submitted data in its September 2005 Progress Report indicating that, as of June 2005, 145 of 4863 were over the State's 60-day timeline for completing preschool evaluations, of which 24 were due to family circumstances (a statewide noncompliance level of 2.5%). One provider/LEA accounted for most of this noncompliance. Those data demonstrate significant improvement in correcting this area of noncompliance. OSEP appreciates the State's efforts and looks forward to reviewing updated data demonstrating compliance in the Final Report, due by April 4, 2006.

## **Delay in initiation of service**

### Infants and toddlers and their families receive all the services identified in their IFSPs

Part C requires, at 34 CFR §§303.340(c) and 303.342(e), that infants and toddlers receive all the early intervention services on their IFSPs. OSEP was unable to determine whether

the data on page 14 of the FFY 2003 Part C APR indicated progress or slippage. In its September 2005 Progress Report, the State submitted data for June 2005 that demonstrated progress in correcting this area of noncompliance (see Table 1). In the SPP, the State must include data and analysis to address Part C indicator number 1 (the percent of infants and toddlers with IFSPs who receive the early intervention services on their IFSPs in a timely manner). OSEP looks forward to reviewing updated data in the SPP. OSEP will determine, based upon those data, whether the State will need to continue reporting on this issue in the Final Report, due by April 4, 2006.

Table 1 INFANTS/TODDLERS NOT RECEIVING ALL SERVICES SPECIFIED ON IFSPS AS OF JUNE 2005 (number and percentage)							
Speech		Occupational Therapy		Physical Therapy		Developmental Therapy	
63	5.31%	36	5.73%	13	2.13%	14	2.28%

Services to preschool-aged children as set forth in the IEP/IFSP

MDOE was not effective in ensuring that services to preschool-aged children with disabilities were not delayed or interrupted, as required by 34 CFR §§300.300(a) and 300.350(a)(1). The State submitted data for June 2005 in its September 2005 Progress Report that demonstrated progress in correcting this area of noncompliance (see Table 2). OSEP looks forward to reviewing updated data demonstrating compliance in this area in the Final Report, due by April 4, 2006.

Table 2 CHILDREN 3-5 NOT RECEIVING ALL SERVICES SPECIFIED ON IEPS/IFSPS AS OF JUNE 2005 (number and percentage)							
Speech		Occupational Therapy		Physical Therapy		Developmental Therapy	
144	4.63%	56	3.21%	34	5.67%	45	2.68%

*General Supervision*

Identification and timely correction of noncompliance

Regarding the State’s longstanding failure to correct noncompliance under Parts C and B (as required by 34 CFR §§300.600 and 303.501(b)(4)), OSEP’s March 2005 letter required MDOE to submit: (1) an interim Progress Report, due by September 4, 2005, that included evidence of change data demonstrating substantial improvement; and (2) a Final Report, due by April 4, 2006, that included data demonstrating full compliance. The required content of those reports was detailed in the March 2005 letter.

On pages 4 through 7 of the FFY 2003 Part C APR, and pages 17 and 18 of the FFY 2003 Part B APR, the State included data and information indicating that, by September 2005, MDOE would have conducted an on-site monitoring visit to each of the CDS sites, and that those on-site visits would focus on file reviews, interviews, assurances, and data verification. The September 2005 Progress Report indicated that Maine conducted on-site reviews for all 16 CDS sites. The data collected by the State demonstrated progress in

addressing correction of noncompliance identified by the State through monitoring. In the SPP, the State must include data and analysis to address identification and timely correction of noncompliance as soon as possible but in no case later than one year from identification.

#### Formal written complaints

Regulations at 34 CFR §300.661(a) require that, within 60 days after a complaint is filed, the State educational agency (SEA) must: (1) carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaints; (3) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B; and (4) issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion and the reasons for the SEA's final decision. Data and information describing compliance with these requirements may include: (1) the number of complaints filed during the reporting period; (2) timelines within which written decisions were issued for each complaint; and (3) an explanation for any timelines exceeding 60 calendar days after the date the complaint was filed. In its September 2005 Progress Report, Maine asked that OSEP clarify whether the 60-day timeline was for the date on which the State issued its decision, or the date on which the parties received the State's decision. As noted above, the State must issue its decision within 60 days.

In attachment 1 of the FFY 2003 Part B APR, the State included data indicating that eight of the 27 complaints that MDOE received between January 1, 2004 and December 31, 2004 exceeded the 60-day timeline and no extension was granted. In its September 2005 Progress Report, the State provided updated information for the period of January 1, 2005 through August 22, 2005 that indicated that six of the seven complaint decisions were received within appropriate timelines and the seventh was received by the LEA on the 61<sup>st</sup> day. (We note again that the timeline runs from the date the complaint is filed until the date the decision is issued, not the date the decision is received.)

#### Mediation

In attachment 1 of the FFY 2003 Part B APR, the State included data regarding mediation indicating that, from January 1, 2004 through December 31, 2004, there were 20 mediations related to due process hearing requests and 20 mediations not related to due process hearing requests. OSEP looks forward to reviewing data and information in the SPP related to the percent of mediations resulting in mediation agreements, as required by indicator number 19.

#### Due process hearings and reviews

The Part B regulations at 34 CFR §300.511(a) and (c) require that a public agency ensure that a final decision is reached in the hearing and a copy of the decision is mailed to each

of the parties within 45 days of the receipt of a request for a hearing. A hearing officer may grant specific extensions of time beyond 45 days at the request of either party. In its September 2005 Progress Report, Maine asked that OSEP clarify whether the 45-day timeline was for the date on which the State mailed its decision, or the date on which the parties received the State’s decision. As noted above, the State must mail its decision within 45 days.

Regarding the timeliness of due process hearing decisions, OSEP’s March 2005 letter required MDOE to submit: (1) an interim Progress Report, due by September 4, 2005, that included evidence of change data demonstrating substantial improvement; and (2) a Final Report, due by April 4, 2006, that included data demonstrating full compliance. The required content of those reports was detailed in the March 2005 letter. In Attachment 1 of the FFY 2003 Part B APR and the September 2005 Progress Report, the State provided data showing progress from prior years in timeliness of due process hearing decisions for 2004 and 2005 (see Table 3, below). In the SPP, the State must include data and analysis to address due process hearings and reviews. In the Final Report, the State must demonstrate full compliance with the timeliness of due process hearing decisions.

2002	2003	2004	2005 (through 8/22/05)
14/16 (12% compliance)	5/5 (0% compliance)	3/12 (75% compliance)	2/8 (75% compliance)

Ensuring the right of a party to request an impartial due process hearing regardless of whether the issue was addressed through a complaint

OSEP’s March 2005 letter stated that, on or before May 31, 2005, MDOE was to submit documentation related to the right of a party to request a due process hearing regardless of whether the issue was addressed through a complaint. This was a condition of Maine’s FFY 2004 Parts C and B Grant Awards and remains a condition on Maine’s FFY 2005 Parts C and B Grant Awards. On October 12, 2005, the State submitted documentation that it had made the necessary changes in its statute, and the statute went into effect in September 2005.

Content of procedural safeguards notice for CDS

OSEP’s March 2005 letter stated, “As part of its application for FFY 2005 funds under Part C and Part B, Maine will need to provide written assurances that the State has procedural safeguards with respect to programs under Part C, as required by 20 U.S.C. 1439, and Part B, as required by 20 U.S.C. 1412(a)(6). In order to make those assurances, the State will need to ensure that, among other procedural safeguards requirements, it is meeting the requirements of Part C and Part B related to the provision of procedural safeguards notice.” MDOE provided these assurances in the State’s Parts B and C applications for FFY 2005 grant funds, both submitted to OSEP on May 2, 2005.

### ***Early Childhood Transition***

On pages 36 and 37 of the FFY 2003 ***Part B*** APR, the State responded to the question: “are all children eligible for Part B services receiving special education and related services by their third birthday,” by stating that 90 percent of the children served by Part C continued to be eligible under Part B and that the remainder (ten percent) of the children exited Part C. OSEP appreciates the State’s efforts in this area and looks forward to reviewing data and information in the SPP regarding early childhood transition.

On page 43 of the FFY 2003 ***Part C*** APR, State included data and information regarding children transitioning from Part C to Part B indicating that 89.1 percent of children transitioning out of Part C were found eligible for services under Part B in 2004. On page 43, the State included a target for 2004-2005 stating that all children turning three would have a transition planning conference at least 90 days prior to the third birthday and this would be evaluated through monitoring. OSEP looks forward to reviewing the State’s updated data in response to indicator number 8 in the SPP.

## **II. Additional Indicators that Pertain to Part C Only:**

### ***General Supervision***

#### Collection and timely reporting of accurate data

As documented in OSEP’s February 2004 verification letter, MDOE reported that: (1) it was not fully confident in the accuracy of its Part C settings and exit data; (2) the error rate in the settings data could be as high as 20 percent; and (3) MDOE was concerned that the accuracy of the exit data was affected by the fact that many service coordinators did not understand that children are “exiting” Part C, when they reach age three (thus aging out of Part C eligibility) and continue to receive services from CDS under §619. OSEP’s verification letter required MDOE to submit, within 60 days from the date of the letter, its plan for ensuring that the Part C settings and exiting data provided as part of the next required submission of IDEA §618 data were accurate. MDOE submitted this plan in its FFY 2002 APR. In its March 2005 response to the State’s FFY 2002 Part C APR, OSEP accepted the strategies and timelines that the State proposed in its FFY 2002 Part C APR to ensure such accuracy, and required the State to include, in its next Part C report under §618, confirmation that MDOE implemented the revised data collection procedures to ensure accurate data submissions under §618, and ensure that the §618 data report contained accurate settings and exit data.

On pages 21 through 24 of the FFY 2003 Part C APR, the State included data and information regarding reporting of accurate and timely data for infants and toddlers with disabilities, indicating that full data verification would be completed by September 1, 2005 at all 16 CDS sites. OSEP appreciates the State’s efforts and looks forward to reviewing in the State’s SPP its response to the collection and timely reporting of accurate data.



### ***Comprehensive Public Awareness and Child Find System***

OSEP's March 2005 letter stated, "OSEP appreciates the work of the State in ensuring compliance with this requirement [family access to culturally relevant materials] and requests that MDOE provide in the FFY 2003 APR updated information on the availability of alternative language, Part C materials, particularly the prior written notice documents required to be submitted to OSEP." On page 30 of the FFY 2003 APR, the State included information indicating that foreign language materials, including prior written notice, were provided to all 16 CDS sites. OSEP appreciates the State's efforts in this area.

On pages 26 and 28 of the FFY 2003 APR, the State included data and information indicating that Maine provided Part C services to three percent of the State's birth-to-three population in 2004-2005, and one percent of infants and toddlers in the State under the age of one in 2004. OSEP appreciates the State's efforts in this area.

### ***Family Centered Services***

On page 32 and in Appendix 6 of the FFY 2003 APR, the State included data and information regarding parents and families indicating satisfaction as measured through its parent survey. OSEP appreciates the State's efforts in this area and looks forward to reviewing in the SPP the State's plan to collect and report family outcome data by February 2007.

### ***Early Intervention Services (EIS) in Natural Environments (NE)***

#### Service coordination

On page 35 of the FFY 2003 APR, the State included data and information indicating that 100 percent of infants and toddlers have service coordinators assigned at the time of referral. OSEP appreciates the State's efforts to ensure compliance in this area.

#### Natural environments

OSEP's March 2005 letter requested the State to provide updated monitoring data on both Part C's natural environments compliance requirements and the State's natural environment performance goals to ensure that services for all of its infants and toddlers with disabilities are provided to the maximum extent appropriate to the needs of the child in natural environments or are provided under IFSPs that contain an appropriate child-based justification for a setting that is not the natural environment (e.g., the child's outcomes cannot be met by providing services in a natural environment).

On page 38 and in Appendix 7 of the FFY 2003 APR, the State addressed the accuracy of its Part C settings data. The State did not include any monitoring data related to compliance with Part C's requirements for settings and natural environments. In Appendix 7, the State indicated, "a sample of children who are reported to be served in the natural

environment; 46.9 percent an early childhood setting (ie: child care, family day care) [and] 15.17 percent served in their home for a total of 62.07 percent being served in the natural environment. More study is needed to determine the discussions that lead teams to make decisions of where to serve children age birth to three.” With the SPP, the State must include its natural environments targets and also provide monitoring or other data as to the number of children who received early intervention services primarily in environments other than the home or programs for typically developing children, and whether these children had appropriate justifications on their IFSPs.

#### Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional and adaptive developmental areas. The Part C FFY 2001, 2002 and 2003 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). On pages 40 and 41 of the FFY 2003 APR, the State provided a plan to collect data and information in this area that included using Maine’s General Supervision Enhancement Grant (GSEG) to continue exploring child outcome measures. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP’s annual determination on the status of the State’s performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in submitting its plans for this collection with the SPP.

### **III. Additional Indicators that Pertain to Part B Only:**

#### *General Supervision*

##### Identification and timely correction of noncompliance

*Ensuring FAPE for children with disabilities placed by public agencies in private special purpose schools.* OSEP’s March 2005 letter stated, “In its FFY 2003 APR, to the extent that the State and/or public agencies are placing children with disabilities, including preschool-aged children with disabilities, into private special purpose schools, the State must identify and report on the measures that it is taking to ensure that the requirements of 34 CFR §300.401 are met. This would include clarification on whether the State and public agencies are utilizing contracts or other methods to ensure the availability of FAPE. Also, to the extent that the preschool students with disabilities are being placed into special purpose private schools through contractual arrangements in order to provide a free appropriate public education, the State must also report on how it is meeting the requirements of 34 CFR §300.402(a) for these students.”

**School-aged.** On pages 4 through 9 of the FFY 2003 APR, the State included data and information regarding school-aged children placed by public agencies in private special purpose schools. These data and information, specifically on page 7, did not include clarification on whether the State and public agencies are utilizing contracts or other methods to ensure the availability of FAPE, as requested in the March 2005 letter.

**Preschool.** On page 12 of the APR, the State included data and information regarding preschool-aged children placed by public agencies in private special purpose schools indicating that “the larger” special purpose programs, that serve children ages 3 through 20, were monitored by MDOE’s school-aged monitoring staff and that the smaller programs were not monitored by the CDS staff. It is unclear to OSEP whether or not all programs that are responsible for the implementation of Part B are being monitored. Further, MDOE did not include clarification on whether the State and public agencies are utilizing contracts or other methods to ensure the availability of FAPE, as requested in the March 2005 letter.

With the SPP, the State must provide clear information regarding the State’s effectiveness in identification and correction of noncompliance for preschool and school-aged children placed by public agencies in private special purpose schools.

*Standard for, and timeliness of, correction of noncompliance, including longstanding noncompliance, in school-aged programs.* OSEP’s March 2005 letter stated, “The State must submit a Progress Report, [due September 4, 2005,] and a Final Report, [due April 4, 2006,] that includes a description of revisions to State policies, procedures and practices, including a description of the State’s revised monitoring and verification activities and an analysis of its effectiveness in ensuring the timely correction of previously-identified noncompliance, including noncompliance that represented less than ten percent of the files reviewed.” On pages 4 through 11 of the FFY 2003 APR, the State described revisions to State policies, procedures and practices regarding timely correction of previously-identified noncompliance, including noncompliance that represented less than ten percent of the files reviewed, that the State began using in the 2004-2005 school year. The September 2005 Progress Report included further explanation regarding the correction of noncompliance in school-aged programs which stated that, through the State’s new focused monitoring, local education agencies (LEAs) now have only one year to reach 100 percent compliance with monitoring findings. OSEP looks forward to reviewing updated data to address noncompliance in this area in the SPP. OSEP will determine, based upon those data, whether the State will need to continue reporting on this issue in the Final Report, due by April 4, 2006.

#### Personnel

On pages 25 and 26 of the FFY 2003 APR, the State included data and information regarding personnel for children with disabilities ages 5 through 20<sup>3</sup>, indicating an increase

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<sup>3</sup> On pages 27 through 31 the State included data and information regarding personnel for preschool-aged children. This is addressed in the “Related Indicators Under Parts C and B” section of this letter.

in the percentage of certified special education teachers, from 84.6 percent in 2002-2003 to 90.4 percent in 2003-2004. OSEP appreciates the State's efforts in this area.

#### Collection and timely reporting of accurate data

OSEP's March 2005 letter stated, "MDOE must fully address this probe in the FFY 2003 APR." On pages 32 through 34 of the FFY 2003 Part B APR, the State included information regarding the reporting of accurate and timely data for children with disabilities ages 5 through 20, indicating that the new Maine Education Data Management System (MEDMS) performed verification of data accuracy on an ongoing basis. The State did not include data and analysis as to the extent to which the Part B data that it reports for children five and older under §618 are timely and accurate. On pages 32 through 34 of the FFY 2003 Part B APR, the State included data and information regarding reporting of accurate and timely data for preschool-aged children with disabilities, indicating that full data verification would be completed by September 1, 2005 at all 16 CDS sites. The State must include data and analysis (including targets, strategies, explanation of progress or slippage, proposed evidence of change and timelines) with the SPP to address collection and timely reporting of accurate data for preschool and school age.

#### ***Parent Involvement***

OSEP's March 2005 letter stated, "In its FFY 2003 APR, MDOE must continue to report its progress in this area." In its FFY 2002 APR, MDOE included a graph, indicating between two and nine percent noncompliance with requirements related to parent involvement. The graph on page 39 of the FFY 2003 APR is the identical graph submitted in the FFY 2002 APR submission. The State must include updated data and analysis in the SPP to address parent involvement.

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

##### Disproportionality

On pages 42 and 43 and in Attachment 2 of the FFY 2003 APR, the State included data and information regarding disproportionality, but did not include a determination as to whether there was significant disproportionality.

On page 43 of the FFY 2003 APR, MDOE stated its target as follows: "the percentage of children with disabilities receiving special education by race/ethnicity in the general population and their educational environments and disability categories are comparable with national data." 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.

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 are race-neutral. Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant disproportionality, whether statewide or by district; (2) a description of the procedures for conducting a review of policies, procedures and practices; (3) a description of the decision-making process for determining whether existing policies, procedures and practices contributed to, or were the cause of, the identified disproportionality; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the disproportionality; (5) a description of other steps taken if it is determined that policies, procedures or practices did not cause, or contribute to, the identified disproportionality to identify the causes; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing disproportionality.

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. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for these collections.

#### Graduation and drop-out rates

On pages 44 and 45 of the FFY 2003 APR, the State included data and information regarding graduation and drop-out rates. The data indicated that the drop-out rate for children with disabilities (according to the "new special education calculation") was just below 16 percent (for 2003 and 2004) as compared with just below four percent (2003) for children without disabilities (there were no 2003-2004 drop-out rate data for children without disabilities). The graduation rate data indicated that the graduation rate for children with disabilities was 75.6 percent (2002-2003) and 74.6 percent (2003-2004) as compared with 90 percent (2002-2003) for children without disabilities (there were no 2003-2004 graduation rate data for children without disabilities). The information included on the bottom of page 44 appears to be the explanation of progress or slippage, and states that, for children with disabilities, the graduation rate was increasing and the drop-out rate was decreasing.

#### Suspension and expulsion

On pages 46 and 47 of the FFY 2003 APR, MDOE provided data and information regarding suspensions and expulsions of children with disabilities.

The State included data and information regarding **expulsion** rates indicating that 0.1 percent of children with disabilities were expelled as compared with 0.16 percent for children without disabilities. The State included data and information regarding **suspension** rates, indicating that suspensions for children with disabilities (0.11 for less than ten days and 0.16 percent for more than ten days) were higher than the rate for

children without disabilities (0.07 for less than ten days and 0.09 percent for more than ten days). In addition, the data indicated that children with disabilities (0.37 percent) were placed in alternative education settings at over twice the rate of children without disabilities (0.16 percent). MDOE's target was that these suspension rates for children with disabilities remain stable rather than move closer to the rates of their nondisabled peers.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. If the State identifies significant discrepancies, the SEA must review, and if appropriate, 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 these policies, procedures and practices comply with the IDEA. The instructions to the 2003 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. The State's FFY 2003 APR, did not, however, include any information indicating that the State examined data from the LEAs that it used in assembling the State-level data to determine whether significant discrepancies were occurring in the LEAs based on either one of the comparisons described above, as required by the FFY 2003 APR instructions. Therefore, OSEP concludes that the State is not complying with 34 CFR §300.146. Not later than 60 days from the date of this letter, the State must either (a) demonstrate that it is meeting the requirements of 34 CFR §300.146 or (b) 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.

#### Statewide and districtwide assessment

On pages 48 and 49, 53 through 56 and in Attachment 3 of the FFY 2003 APR, the State included data and information regarding the participation and performance of children with disabilities on the regular and alternate assessments indicating a 98.8 percent **participation** rate for children with disabilities as compared to 99.5 percent for children without disabilities. Further, regarding **performance** of children with disabilities on the statewide assessment, the State indicated that while the performance of children with disabilities was far below that of their nondisabled peers, the gap was slowly closing. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in the SPP.

Least restrictive environment (LRE)

On pages 50 through 52 of the FFY 2003 APR, the State included data and information regarding LRE for children aged 6-20 indicating that 54 percent of children with disabilities were outside the regular classroom for less than 21 percent of the day, and that 31 percent of children with disabilities were outside the regular classroom between 21 and 60 percent of the day. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding placements for children with disabilities, including preschool children with disabilities, in the SPP.

On pages 51 and 52 of the FFY 2003 APR, the State included data and information regarding LRE for children aged 3-5 indicating that 52.8 percent of the preschoolers with disabilities were receiving services in the regular classroom. While OSEP appreciates the State's efforts in this area, the target on page 51 stated that the percentage of children aged 3-5 served in regular education settings would continue to be higher than the comparable national statistic. While it is not inconsistent with Part B of the IDEA to include a numerical goal to increase or decrease the percentage of children with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all children are made in conformity with the requirements of Part B of IDEA (at 34 CFR §§300.550-300.556) and not based upon a numerical goal.

Preschool performance outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA §619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. OSEP's March 2005 letter stated, "In the FFY 2003 APR, MDOE must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data ..., including a detailed timeline of the activities necessary to implement that plan." On page 52 of the FFY 2003 APR, the State provided a plan to collect data and information in this area that included using Maine's General Supervision Enhancement Grant (GSEG) to continue exploring child outcome measures. MDOE did not include projected targets for this indicator. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under §616(d) of the IDEA. The State should carefully review the instructions to the SPP in submitting its plans for this collection in the SPP.

*Secondary Transition*

OSEP's March 2005 letter set out specific reporting requirements for the first three secondary transition requirements (listed in this paragraph below) that are areas of noncompliance that were longstanding and systemic in nature. To document the State's

progress in ensuring the correction of these areas of noncompliance, OSEP's March 2005 letter required MDOE to submit a Progress Report, due by September 4, 2005, that included evidence of change data demonstrating substantial improvement, and a Final Report, due by April 4, 2006, that included data demonstrating full compliance. On pages 62 through 67 of the FFY 2003 APR, the State provided data from which OSEP could not determine whether the State corrected, or even decreased, the noncompliance in the following three areas: (1) statement of needed transition services beginning no later than age 16; (2) inviting the student and a representative of another agency, likely to be responsible for providing or paying for transition services, to the IEP meeting; and (3) transition-related content of IEP meeting notification. While MDOE stated in its targets that it would be in compliance by 2005-2006, there were no strategies, proposed evidence of change or timelines to ensure that compliance can be achieved by that date. In its September 2005 Progress Report, MDOE reported data by regulatory citation that indicated continued noncompliance in all seven areas. MDOE explained, however, that the noncompliance was found in only 2 of the 46 districts monitored in 2004-2005. The other 44 districts were in 100 percent compliance in all seven areas and the State concluded that there was not a systemic problem. Further, MDOE is requiring that the noncompliance, in those two districts, be corrected within one year from identification. OSEP looks forward to reviewing updated data demonstrating compliance in these areas in the Final Report, due by April 4, 2006.

Further, OSEP's March 2005 letter stated that for the two secondary transition areas with newly identified noncompliance (listed in this paragraph below), the State must, within 60 days of that letter, submit a plan to correct the noncompliance. On pages 62 through 68 of the FFY 2003 APR, the State provided data from which OSEP could not determine whether the State has corrected, or even decreased, the noncompliance in the following two areas: (1) agency responsibilities (34 CFR §300.348(a)); and (2) age of majority (34 CFR §300.347(c)). MDOE included targets indicating it would be in compliance by 2005-2006, but not a plan to correct this noncompliance, as required in OSEP's March 2005 letter. Not later than 60 days from the date of this letter, MDOE must submit a plan with strategies, proposed evidence of change and timelines, to ensure correction of both areas of noncompliance, as soon as possible but no later than one year from the date on which OSEP accepts the plan.

### ***Conclusion***

#### **A. Parts C and B**

Regarding each of the following areas, the State must submit updated data to address noncompliance in the SPP, and OSEP will determine, based upon those data, whether the State will need to submit a Final Report, due by April 4, 2006, that includes data demonstrating full compliance:

1. Infants and toddlers and their families receive all the services identified in their IFSPs;



2. Provision of services to preschool-aged children as set forth in IEP/IFSP due to shortages in personnel; and
3. Timeline for evaluation, assessment, and holding initial IFSP meeting.

The State must also report updated data in the SPP and in a Final Report due April 4, 2006, demonstrating compliance regarding the timeliness of due process hearing decisions.

The State must submit a Final Report, by April 4, 2006, demonstrating correction of the identified noncompliance relating to ensuring the completion of initial evaluations for preschool-aged children with disabilities, consistent with State timelines.

### **B. Part B**

With the SPP, due December 2, 2005, Maine must submit to OSEP: 1) clear information regarding the State's effectiveness in identification and correction of noncompliance for preschool and school-aged children placed by public agencies in private special purpose schools; and 2) data and analysis (including targets, strategies, explanation of progress or slippage, proposed evidence of change and timelines) with the SPP to address collection and timely reporting of accurate data for preschool and school age.

OSEP will determine, based upon SPP data, whether the State will need to submit a Final Report, due by April 4, 2006, that includes data demonstrating full compliance regarding the State's standard for, and timeliness of correction of noncompliance in school-aged programs.

Not later than 60 days from the date of this letter, the State must either: (1) demonstrate that it is meeting the requirements of 34 CFR §300.146; or (2) submit a plan including strategies, proposed evidence of change, targets and timelines designed to ensure the correction of the noncompliance regarding 34 CFR §300.146 (determination of significant discrepancies in long-term suspensions and/or expulsions - State-level and LEA data), 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.

The State must submit a Final Report, due April 4, 2006, demonstrating compliance with requirements regarding:

1. A statement of needed transition services, age 16 (34 CFR §300.347(b)(2));
2. Inviting the student and a representative of another agency, likely to be responsible for providing or paying for transition services, to the IEP meeting (34 CFR §300.344(b)(1) and (b)(3)); and

3. Transition-related content of IEP meeting notification (34 CFR §300.345(b)(3)).

Not later than 60 days from the date of this letter, MDOE must submit a plan with strategies, proposed evidence of change, targets, and timelines for the following two requirements of secondary transition, as identified by the State: (1) agency responsibilities (34 CFR §300.348(a)); and (2) age of majority (34 CFR §300.347(c)).

OSEP looks forward to reviewing data and information in the SPP related to the percent of mediations resulting in mediation agreements, as required by indicator number 19.

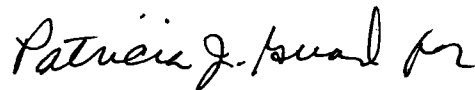
**C. Part C**

With the SPP, the State must include its natural environments targets and also provide monitoring or other data as to the number of children who received early intervention services primarily in environments other than the home or programs for typically developing children, whether these children had in appropriate justifications on their IFSPs

IDEA 2004, §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, the same as 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 infants, toddlers, children and youth with disabilities and their families. If you have questions, please contact Samara Goodman at (202) 245-7356.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: David Noble Stockford  
Laurie Bertulli  
JoAnne C. Holmes