



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

Honorable Wayne G. Sanstead
State Superintendent
North Dakota Department of Public Instruction
600 E. Boulevard Ave., Dept 201
Bismarck, North Dakota 58505-0440

OCT 18 2005

Dear Superintendent Sanstead:

The purpose of this letter is to respond to North Dakota's March 30, 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 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

OSEP's September 17, 2004 FFY 2002 APR response letter required the North Dakota Department of Public Instruction (NDDPI) to submit, within 60 days of the date of that letter, data and analysis showing that it is ensuring correction of State-identified noncompliance, or a plan including strategies, proposed evidence of change, targets, and timelines to ensure correction of the noncompliance with this requirement, as soon as possible.

OSEP's September 2004 letter also required NDDPI to submit the following information in the FFY 2003 APR:

- (1) that the State had provided for a review of policies, procedures, and practices used in identification or placement of children with disabilities, if the State identified significant disproportionality based on race;
- (2) that the State examined data to determine if significant discrepancies were occurring in the rates 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; and

- (3) data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve targets for early childhood outcomes, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

General Supervision

Identification and timely correction of noncompliance

OSEP's September 2004 letter required the NDDPI to submit, within 60 days of the date of that letter, data and analysis showing that it is ensuring correction of State-identified noncompliance, or a plan including strategies, proposed evidence of change, targets, and timelines to ensure correction of the noncompliance with this requirement, as soon as possible. NDDPI submitted data and analysis, in a November 24, 2004 letter, showing that the State was ensuring correction of noncompliance identified through monitoring. In addition, NDDPI included strategies and procedures that were implemented to ensure correction of identified noncompliance in a timely matter. NDDPI also included these data and analysis in the FFY 2003 APR. OSEP appreciates NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued performance and compliance in this area in the State Performance Plan (SPP), due December 2, 2005.

Formal written complaints

On page 10 of the FFY 2003 APR, NDDPI reported that 11 formal complaints were received and all were resolved within 60 calendar days or an appropriately extended timeline. NDDPI met its target of maintaining effective processes and procedures to ensure timely resolution of complaint investigations. OSEP appreciates NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued compliance in this area in the SPP.

Mediation

On page 10 of the FFY 2003 APR, NDDPI reported one mediation request for the FFY 2003 reporting period. The mediation was not related to a hearing request and was resolved through a mediation agreement. OSEP appreciates NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued performance in this area in the SPP.

Due process hearing and reviews

On page 10 of the APR, NDDPI reported two due process hearing requests for the FFY 2003 reporting period. One due process hearing request was dismissed by the hearing officer and the other was pending as of August 31, 2004.¹ OSEP appreciates NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued compliance and performance in this area in the SPP.

¹ NDDPI indicated that its reporting period began on 9/1/03 and ended 8/31/04.

Personnel

On pages 14 and 15, NDDPI reported the following percentages of fully certified special education teachers for the most prevalent specialties: speech language pathology, 98%; specific learning disability, 94%; emotional disturbance, 95%; and mental retardation, 99%. Statewide, NDDPI reported increased numbers of special education teachers for children with disabilities, aged 6-21 and increased numbers of related services personnel for children with disabilities, aged 3-21, particularly in the most prevalent disabilities. In addition, the demand-to-supply ratio either remained constant or declined. Increased numbers of children with disabilities were accompanied by increased numbers of special education teachers/personnel. OSEP appreciates the NDDPI's efforts in this area.

Collection and timely reporting of accurate data

On page 20 of the FFY 2003 APR, NDDPI reported that it consistently complied with OSEP data submission requirements. In Fall 2004, a new web-based Online Reporting System (ORS) was implemented for all child count components. The ORS automatically populated various special education Federal reporting data fields via spreadsheet templates. NDDPI reported that ORS currently populated reports in the following required areas: personnel, exiting, child count, environment, and suspension/expulsion. A goal was for the electronic system to increase the accuracy of State and Federal reports when compared to systems used in the past. OSEP appreciates the NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Early Childhood Transition

On page 21 of the FFY 2003 APR, NDDPI reported that 95% of the three year olds who exited Part C were evaluated in order to determine Part B eligibility. On page 22, NDDPI presented data from all eight regions on the percentage of children found not eligible for preschool special education services; however, NDDPI did not report the State's overall percentage of children found eligible for preschool special education services who received services by their third birthday.

Indicator #12 in the SPP under §616 that is due December 2, 2005 requests the percent of children referred by Part C prior to age 3 who are found eligible for Part B and who have an IEP in place by their third birthdays. In preparation for the submission of the SPP, 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. The State must submit responsive baseline data regarding the percentage of children referred by Part C prior to age 3, who are found eligible for Part B and receive special education and related services by their third birthdays, in the SPP.

Parent Involvement

In the FFY 2002 APR, NDDPI projected that a statewide, web-based parent survey would be available during the FFY 2003 reporting period. On page 26 of the FFY 2003 APR, NDDPI

reported that it did not have the technical capacity to make the survey available for statewide use in a fully secure and confidential manner. Because of the lack of a comprehensive system for collecting parent involvement data, NDDPI did not report baseline/trend data, targets, and projected targets in the FFY 2003 APR, or indicate that the State considered available monitoring data relevant to parent involvement, such as: parent input in the evaluation process under 34 CFR §300.532(b); parent consent to conduct an evaluation under 34 CFR §300.505; and parent participation in IEP meetings under 34 CFR §300.501.

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. 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 developing its plans for this collection.

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

Disproportionality

OSEP's September 2004 letter required North Dakota to submit, in the FFY 2003 APR, information indicating that the State had provided for a review of policies, procedures, and practices used in the identification or placement of children with disabilities, if it identified significant disproportionality based on race. In the FFY 2003 APR, North Dakota did not identify significant disproportionality based on race. NDDPI did not report any risk ratios above 2.0 among racial/ethnic groups in any categories for both identification and settings. On page 31 of the FFY 2003 APR, the State reported that American Indian children with disabilities continue to be over-represented in resource room settings, but the number diminished since the FFY 2002 reporting period. The State reported a slight over-representation of American Indian children with disabilities identified as having a speech or language disability. Overall, the State reported improvement in most areas.

The State's performance indicator on page 31 of the FFY 2003 APR is in terms of percentage 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.

The SPP instructions establish two new indicators in this area (#9 and #10), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for these collections. OSEP looks forward to reviewing the State's plan to collect this data, in the SPP.

Graduation and drop-out rates

On page 36 of the FFY 2003 APR, NDDPI reported that 76.8% of students with disabilities exited school through graduation. This compared to 72.1% for the FFY 2002 reporting period. The percent of all students exiting through graduation was 95% during the 2003-2004 school year and 94.34% during the 2002-2003 school year. The percentage of students with disabilities who exited school through graduation was computed by dividing the number of exiters with exit reasons of “graduation with diploma” by the total number of exiters who exited through graduation, received a certificate, reached maximum age, or dropped out. The percent of graduates for all students was computed by dividing the number graduating by the number in the 12th grade at the beginning of the school year. For purposes of reporting graduates at the statewide level, and in order to be considered a graduate, the student had to meet the minimum graduation requirements of the local school district.

On page 34 of the FFY 2003 APR, North Dakota reported a 3.7% drop-out rate for students with disabilities, aged 14 to 21. This is a slight increase from the 3.6% reported for FFY 2002. North Dakota reported an increase of 637 students identified as having disabilities from the previous year. NDDPI reported that, as a percentage of special education child count, the data for this reporting period indicated the drop-out rate for students with disabilities remained nearly the same.

There are two indicators in the SPP, due December 2, 2005, related to this area (#1 and #2). OSEP looks forward to reviewing the State’s data in this area in the SPP.

Suspension and expulsion

OSEP’s September 2004 letter required North Dakota to submit information, in the FFY 2003 APR, indicating that it examined data to determine if significant discrepancies were occurring in the rates 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. Regulations at 34 CFR §300.146 require the State educational agency (SEA) to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA.

On page 38 of the FFY 2003 APR, North Dakota reported that statewide, 13 children with disabilities were suspended or expelled during the 2003-2004 school year, compared with 20 nondisabled students. Of the 13 students, six were removed to an alternative education setting by school personnel, two were removed by a hearing officer and six were removed for other reasons, for more than ten days. NDDPI reported that, overall, the number of suspensions and expulsions had been steadily declining. NDDPI included strategies to improve performance in this area, including the expansion of the Positive Behavioral Supports (PBS) model to a larger

cohort of districts. NDDPI however, did not include the analysis demonstrating compliance with 34 CFR §300.146 as directed by the FFY 2003 APR directions.

Not later than 60 days from the date of this letter, the State must provide either:

- (A) data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that NDDPI examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, NDDPI must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or
- (B) a plan, 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

Attachment 3 of the FFY 2003 APR continued to show consistency between the number of children with IEPs and the number participating in statewide assessments. NDDPI reported performance results for grades 4, 8, and 12. On page 41, for 2003-2004, NDDPI reported that 39.7% of children with disabilities achieved a level of proficient or advanced on the State Reading Assessment, an increase of nearly 15% from FFY 2002. NDDPI reported that 21.6% of children with disabilities achieved a level of proficient or advanced on the State Math Assessment, an increase of nearly 10% from FFY 2002. On page 43, NDDPI identified a number of activities to further ensure continuous improvement in the performance of children with disabilities on statewide assessments, including Title I and Special Education Institutes. OSEP appreciates NDDPI's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in the SPP.

Least restrictive environment

On page 46 of the FFY 2003 APR, NDDPI reported 77.6% of children with disabilities, aged 6-21, were outside the regular class less than 21% of the day. This represented a slight decrease from the 78.3% reported for FFY 2002. NDDPI stated that the slight drop in placements outside the regular classroom less than 21% of the day could be accounted for by related increases in the percentage of children who were placed in separate school facilities, residential facilities, or who are homebound or in hospital care. North Dakota continues to rank high in the area of general education placement for services and educational supports for children with disabilities. OSEP

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

Preschool performance outcomes

OSEP's September 24 letter required North Dakota to submit, in the FFY 2003 APR, data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve targets for early childhood outcomes, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

On page 47 of the FFY 2003 APR, NDDPI reported that the State did not initiate data collection in this area; however, plans were being developed, and implemented in beginning stages. On page 48, NDDPI submitted its plan showing timelines and activities for the completion of the North Dakota Early Childhood Guideline that would provide indicators on which to base the collection of data in the areas required by this performance indicator.

The SPP instructions establish a new indicator in this area (#7), 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 developing its plans for this collection. OSEP looks forward to reviewing the State's plan to collect this data, in the SPP.

Secondary Transition

NDDPI reported data from the North Dakota Transition Follow-Up Project on post-school outcomes for students with disabilities that allowed the State to gather exit data from students with disabilities, as well as follow-up data from these students and/or families through telephone interviews. On pages 50-56 of the FFY 2003 APR, NDDPI reported: (1) 58.5% of the students attended school after high school; (2) 69% were employed; (3) 57.7% of the unemployed students were looking for a job; (4) there was an average wage of \$7.89 per hour while working an average of 28.24 hours per week; (5) referrals to adult service agencies for post-school services were 58.1% for Vocational Rehabilitation, 7.1 % for Developmental Disabilities, and 16.7% for Job Services; and (6) 77.4% were satisfied with high school. NDDPI planned to continue the Follow-up Project by expanding the cohort in spring of 2005 to include students without disabilities.

The SPP instructions establish two new indicators in this area (#13 and #14), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007 (#13) and February 1, 2008 (#14). The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan to collect this data, in the SPP.

Conclusion

As noted above, not later than 60 days from the date of this letter, the State must provide either:

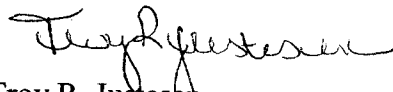
- (A) data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that NDDPI examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, NDDPI must review and, if appropriate, revise (or requires the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or
- (B) a plan, 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.

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

OSEP recognizes that the APR and its related activities represent only a portion NDDPI's work. We look forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Tony G. Williams at (202) 245-7477.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Bob Rutten