



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Douglas D. Christensen
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall South
P.O. Box 94987
Lincoln, Nebraska 68509-4987

AUG 31 2005

Dear Commissioner Christensen:

The purpose of this letter is to respond to Nebraska'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 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 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 June 23, 2004 FFY 2002 APR response letter required the State to revise its FFY 2002 APR to remove numerical and percentage goals based on race from all targets in the APR and submit the revised APR to OSEP within 60 days. Nebraska submitted its revised FFY 2002 APR to OSEP on August 2, 2004. OSEP responded to this submission in a letter dated March 11, 2005. The March 11, 2005 letter served as notification that OSEP accepted the Nebraska Department of Education (NDE) revised APR.

General Supervision

OSEP identified no noncompliance in this area in the FFY 2002 APR. On pages 1 through 17 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and performance in the areas of identification and timely correction of noncompliance, formal written complaints, mediation, due process hearings and reviews, and personnel. The State included no specific section for resources or specific section for timelines for personnel but grouped this information under the heading of "targets." In the section addressing collection and

timely reporting of accurate data, based on information provided by the State in the sections of the APR addressing early childhood transition and provision of a free appropriate public education (FAPE) for preschool children in the least restrictive environment (LRE), OSEP shares the State's concern about the accuracy of the State's data regarding early childhood placement in educational settings, early childhood outcomes and early childhood transition. See specific comments below in the respective sections. The State implemented a new data system during the reporting period that included a new web-based Special Education Student Information System (SEISIS). The new system included all Federal reporting requirements. OSEP looks forward to reviewing information about the accuracy of data in the State Performance Plan (SPP), due December 2, 2005, and during OSEP's verification visit to Nebraska during the week of October 17, 2005, including the implementation of improvement strategies and resulting data and analysis.¹

Early Childhood Transition

OSEP identified no noncompliance in this area in the FFY 2002 APR. On pages 18-19 of the FFY 2003 APR, the State included data and analysis related to early childhood transition from IDEA Part C programs to Part B programs. The State also raised a concern about the accuracy of the data collected regarding early childhood transition, specifically the accuracy of the data showing that the State had not determined the eligibility of 90 children for Part B services out of a total of 710 children receiving IDEA Part C services. The State included strategies (including the validation of data and analysis of the data) to improve performance in this area. The State must report in the SPP the status of the 90 children to OSEP to ensure that eligibility determinations were made within timelines required by 34 CFR §300.132(b). If eligibility was not determined within the required timelines, the State must report what actions were taken to correct this situation. As stated in the previous section of this letter, OSEP looks forward to reviewing information about the status of eligibility determination for the 90 children and accuracy of early childhood transition data reviewed during OSEP's verification visit and in the SPP, including the implementation of improvement strategies and resulting data and analysis.

Parent Involvement

OSEP identified no noncompliance in this area in the FFY 2002 APR. On pages 20-21 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. Baseline data about parent involvement were collected by sampling school districts. The State also collected data from focus groups comprised of parents and special education staff.

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.

¹ The purpose of these visits is to verify the effectiveness of the State's systems for general supervision, State-reported data collection, and statewide assessment to assess and improve State performance, and the protection of child and family rights. From the verification visit, OSEP will: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify noncompliance.

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

OSEP identified no noncompliance in this area in the FFY 2002 APR. On pages 22-68 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in the areas of disproportionality, placement of school-age children with disabilities in the least restrictive environment, graduation and drop-out rates, and suspension and expulsion. In addressing the areas of least restrictive environment (LRE) on page 24, the State reported that children with disabilities were underrepresented in some early childhood settings when compared to the national average for the settings. The State believed this discrepancy was due to data collection element codes that were not consistent with Federal codes used during the reporting period for educational placement. The State updated the data element codes for educational placement settings in May 2004 and implemented a training program to acquaint educators and data entry personnel with the data element changes during the 2004-2005 school year.

On page 25, the State reported no data for the July 1, 2003 through June 30, 2004 reporting period in the area of preschool performance outcomes. The State worked closely with the OSEP funded Early Childhood Outcomes Center since October 2003 and planned to continue developing an early childhood outcomes measurement system for young children with disabilities. The SPP instructions establish a new indicator in the area of preschool outcomes, 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 this collection.

On page 33, the State reported that graduation and drop-out rates improved during this reporting period. On page 36, the State reported that suspension and expulsion rates were an average of .015% for children with disabilities. The State did not collect suspension and expulsion data for children without disabilities; however, the State compared suspension/expulsion data across districts using a factor of 5% as the point beyond which a concern would be raised. During the 2003-2004 school year, ten of the State's 665 school districts reported suspending or expelling more than 5% of their students with disabilities. All ten districts had a small student population. Eight districts had less than 126 students and the remaining two districts had less than 722 students with disabilities. The State also utilized trend data from 2001 through 2004 to determine whether or not the State had significant discrepancy in the suspension and expulsion rates of students with disabilities when comparing school districts to each other. The State concluded that trend data showed no significant discrepancy in the suspension and expulsion of students with disabilities and planned to provide personnel development training to further ensure local and State data entry personnel and special education personnel gathered suspension and expulsion data consistently among all school districts. During OSEP's verification visit, it will discuss with the State what strategies or activities are in place to address the behaviors of children with disabilities in districts that exceed the 5% trigger.

On pages 38-59, the State reported data about the State's activities designed to increase the participation and performance of children with disabilities on statewide and districtwide

assessments. Attachment 3 of the APR included data about the participation of children with disabilities on statewide assessments. OSEP is concerned that the data are inaccurate or incomplete because the State reported that more children participated on the regular and alternate math assessments than the total number of children who had IEPs and reported some of the State's data in terms of percentages of children rather than in the actual number of children (pages 42-45). The State also reported assessment results for 2002-2003 rather than for the 2003-2004 reporting period. The participation and performance of children with disabilities on statewide and districtwide assessments is an indicator in the 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. The State must submit data about the participation and the performance of children with disabilities in the SPP. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

OSEP looks forward to reviewing information about the accuracy of early childhood educational placement data and early childhood outcomes in the SPP, including the implementation of improvement strategies and resulting data and analysis. OSEP also looks forward to reviewing the State's data in all areas of FAPE in the SPP and reviewing the State's further analysis of information related to student participation and performance on Statewide and districtwide assessments during the verification visit.

Secondary Transition

On pages 69-70 of the FFY 2003 APR, the State included data and analysis previously reported as baseline data in the FFY 2002 APR, as the State did not conduct a Student/Parent Follow-up Study in 2003. The source of the 2002 data was a study conducted annually between 1994 and 2002 and was limited to following each annual cohort for one year. The State reported that NDE special populations staff initiated planning in 2004 to develop and implement a comprehensive plan to collect multi-year post-school follow-up data on youth who have exited high school. The SPP instructions establish a new indicator for post-school outcomes in the SPP, 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 this collection.

Conclusion

The State did not include complete data to determine Part B eligibility for 90 children who exited the Part C program. In the State's Performance Plan, due December 2, 2005, NDE must submit to OSEP the status of each of the 90 children to ensure that eligibility determination was made within required timelines. If eligibility was not determined within required timelines, the State must report what actions have been taken to correct this situation.

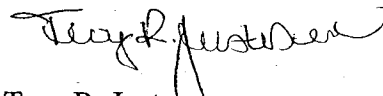
As noted earlier in this letter, OSEP will conduct a verification visit to the State during the week of October 17, 2005. During the visit OSEP will review data regarding: (a) children exiting Part

C have an IEP in place by the child's third birthday; (b) preschool children with disabilities are placed in the LRE; (c) the progress of preschool children in achieving identified outcomes; (d) participation and performance of children with disabilities on statewide and districtwide assessments; and (e) strategies and activities to address the behavior of children with disabilities in districts where suspension/expulsion rates exceed the State target.

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

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Marie Mayor at (202) 245-7433.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Gary Sherman