



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

Honorable Richard P. Mills
Commissioner of Education
New York State Department of Education
11 Education Building
89 Washington Avenue
Albany, New York 11234

OCT - 5 2005

Dear Commissioner Mills:

The purpose of this letter is to respond to New York'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 and OSEP's March 24, 2004 verification letter. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's August 20, 2004 FFY 2002 APR response letter required the State to submit, in the FFY 2003 APR:

- (1) Data and analysis on its continuing efforts to ensure compliance with due process hearing timelines, consistent with 34 CFR §300.511;
- (2) Data and analysis on the extent to which it requires correction of identified noncompliance and the extent to which it ensures correction of identified noncompliance as soon as possible but no later than one year from identification;
- (3) Either data (whether collected through sampling, monitoring, Individualized Education Programs (IEP) reviews, or other methods), targets for improved performance and strategies to achieve those targets for early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities or a plan to collect data, including a detailed timeline of the activities necessary to implement that plan; and

- (4) Evidence of progress in correcting the noncompliance regarding the requirements of 34 CFR §§300.132 and 300.342(c) of IDEA, including current supporting data and analysis.

OSEP's August 2004 letter also required the State to clarify, in the FFY 2003 APR, how it ensured, as required by 34 CFR §300.146, the review, and if appropriate revision, of policies, procedures and practices relating to the development of IEPs, use of behavioral interventions and procedural safeguards in districts with identified significant discrepancies in the rates of long-term suspensions and expulsions of children with disabilities. In addition, the State was required to submit to OSEP as soon as possible, but no later than September 20, 2005, a final Progress Report, with data and analysis demonstrating compliance, regarding early childhood transition and the requirements of 34 CFR §§300.132 and 300.342(c).

OSEP's March 2004 verification letter required NYSED to submit, in the FFY 2003 APR, the State's progress in eliminating delays in Impartial Hearing Officer decisions and appointments, as well as the backlog of State-level complaint reviews. OSEP's March letter also recommended that the State analyze whether current and projected staffing levels were adequate to ensure ongoing implementation of a comprehensive general supervision oversight system.

General Supervision

Identification and timely correction of noncompliance

OSEP's August 2004 letter required NYSED to submit, in the FFY 2003 APR, data and analysis on the extent to which the State required correction of identified noncompliance and the extent to which the State ensured correction of identified noncompliance as soon as possible, but no later than one year from identification. During OSEP's November 2003 verification visit, OSEP was able to verify that NYSED utilized multiple mechanisms to address program performance and procedural compliance. However, OSEP was not able to verify whether the State's current and projected staffing levels were adequate to ensure ongoing implementation of a comprehensive general supervision oversight system.

On pages 1 through 3 of the Executive Summary/Overview for Cluster Area I: General Supervision of the FFY 2003 APR, NYSED described multiple strategies designed to support and complement each other for the purpose of assuring compliance, and for identifying and correcting noncompliance in a timely manner. The State indicated its general supervision systems relied on continuous efforts to maximize the impact of a data-driven, collaborative process based on district, private school, Boards of Cooperative Educational Services (BOCES) programs, preschool and other agency reporting on key performance indicators (KPIs) (e.g., achievement, least restrictive environment (LRE), student exiting/transition, etc.) to identify entities to be reviewed and design, and provide, needed technical assistance.

On pages 2 and 3 of Tables GS.I, II, and III of the FFY 2003 APR, the State indicated that 110 of the planned 117 on-site visits were conducted. Additional targets for this reporting period included activities such as: improving the data collection system; developing additional

review protocols; and conducting public forums to obtain feedback regarding the agency's policies and practices. On pages 3 and 4 of this section of the APR, NYSED explained that unanticipated challenges to refining the data system delayed implementation of the new system until April 2005. The State reported that its Regional Associates continued to use its existing data system to record data for focused reviews and that the State analyzed complaint issues and identified training and technical assistance needs. The State reported that new review protocols were developed for day and residential schools, State-supported schools and BOCES programs. The State also reported that in October 2004 it presented a policy strategy proposal to the Department's Board of Regents to improve the achievement of children with disabilities as well as school district compliance with special education requirements.

On pages 4 and 5 of this section of the FFY 2003 APR, the State's projected target included increasing the number of reviews in the State to 290 (NYC, 150 and Upstate, 140). The State indicated that this was a one-time aberration in the normal schedule of reviews due to an intensification of the efforts in the New York City regional quality assurance office to target a greater number of schools; changes in the manner the reviews are counted in the other large cities; and an increase in the number and type of monitoring activities of the regional staff.

On pages 5 and 6 of this section of the FFY 2003 APR, the State's future activities included: an increase in the allocation of discretionary funds to school districts to facilitate the review process and to implement corrective action and improvement strategies as they relate to the KPIs; focused reviews in the New York City school district; additional public meetings regarding changes in State policies and practices; training on IDEA 2004 requirements; and resolving 100% of corrective action plans resulting from quality assurance reviews within specific timelines, not to exceed 12 months.

However, NYSED did not provide data and analysis on the extent to which the State required correction of identified noncompliance and the extent to which the State ensured correction of identified noncompliance as soon as possible but no later than one year from identification, as required by OSEP's August 20, 2004 letter. (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)).

In the State Performance Plan (SPP), the State must include data and analysis demonstrating full compliance with requirements related to correction of identified noncompliance as soon as possible but not later than one year from identification. If the State is unable to demonstrate such compliance, it must include a plan, with strategies, proposed evidence of change, targets and timelines, designed to achieve compliance as soon as possible, but no later than one year after OSEP approves the plan.

Formal written complaints

OSEP's August 2004 letter required NYSED to submit, in the FFY 2003 APR, data and analysis on the extent to which the State required correction of noncompliance identified in complaint investigations and the extent to which the State ensured correction of that noncompliance as soon as possible but no later than one year from identification.

On pages 3 through 6 of Tables GS. I, II, and III of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance identified by its State complaint system. On page 5 of the APR, the State's future activities included improvements in its data collection and reporting system capacity, by 2006, to provide notification to school districts and State staff regarding due dates for corrective actions and tracking resolution of these actions.

On pages 3 and 4 of this section of the FFY 2003 APR, the State provided information indicating the implementation of standardized letters and procedures to respond to complaints and communicate with districts on the status of the corrective action plans. These activities supported the State's continued progress towards reaching its target of 100% for completing investigations within regulatory timelines. Although data and information was provided regarding the State's efforts to reach its targets and to develop future activities regarding correction of identified noncompliance, the State did not submit, in the FFY 2003 APR, data and analysis on the extent to which the State required, and the extent to which it ensured, correction of identified noncompliance as soon as possible but no later than one year from identification, as required by OSEP's August, 2004 letter.

In Section 1a of Attachment 1 of the FFY 2003 APR, NYSED provided data indicating the State received 365 formal State complaints of which 240 had findings and 56 had no findings. The State reported that 211 of the complaints had decisions issued within the required timeline and nine complaints were resolved beyond the required timeframe, with an appropriate extension. These data indicate that of the 295 complaints with decisions, only 74% were completed within timelines.¹ This demonstrates noncompliance with the required complaint resolution timelines under 34 CFR §300.661. Not later than the date for submission of the SPP, due December 2, 2005, the State must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of noncompliance as soon as possible, not to exceed one year from the date of this letter. The State must provide a final report to OSEP, including data and analysis demonstrating compliance as soon as possible, but no later than 30 days following one year from the date of this letter.

In the State Performance Plan (SPP), due December 2, 2005, the State must include data and analysis demonstrating full compliance with requirements related to correction of noncompliance identified through complaint investigations as soon as possible but not later than one year from identification. If the State is unable to demonstrate such compliance, it must include a plan, with strategies, proposed evidence of change, targets and timelines, designed to achieve compliance as soon as possible, but no later than one year after OSEP approves the plan. In addition, the State must submit a plan to resolve the noncompliance regarding meeting the complaint timelines, as noted above.

Mediation

On pages 6 through 9 of Tables GS.I, II, and III of the FFY 2003 APR, NSYED provided data and analysis regarding mediations, indicating yearly variation in the use of mediation from

¹ The data reported in section 1a of Attachment 1 do not account for all of the complaints reported received.

1997 to the FFY 2003 reporting period. In Section 1b of Attachment 1 of the FFY 2003 APR, the State reported that it did not have information on the number of mediations related to hearing requests and that it began to collect this data in 2004, resulting in the State's designation of all mediations for this reporting period as not related to hearing requests. On pages 8 and 9 of Tables GS.I, II, and III of the FFY 2003 APR, the State indicated that it planned to conduct outreach to promote mediation and training for mediators based on IDEA 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding the percent of mediations that result in a mediation agreement, in the SPP.

Due process hearings and reviews

OSEP's August 2004 letter required the State to submit data and analysis on its continuing efforts to ensure compliance with due process hearing timelines. In addition, OSEP encouraged the State to examine whether there were certain districts with concentrations of requests or if there were certain issues for which hearings were most frequently requested. OSEP's March 2004 verification letter required NYSED to submit, in the FFY 2003 APR, its progress on eliminating delays in Impartial Hearing Officer (IHO) decisions and appointments, as well as the backlog of State-level reviews.

On pages 7 through 9 of Tables GS.I, II, and III of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting noncompliance with requirements under 34 CFR §300.511. On pages 7 and 8, NYSED's strategies to reach its target, for this reporting period, of 100% of impartial hearing requests and second tier appeal decisions of the Office of State Review rendered within regulatory timelines, as well as timely appointments and hearing decisions of IHOs, included: improved local-level data entry regarding hearing officer appointments, timeliness of conducting the hearing and issuance of decisions; increased training for impartial hearing officers regarding the use of data systems; and increased monitoring of timelines and resolution of cases through the use of that system.

In Section 1c of Attachment 1 of the FFY 2003 APR, NYSED reported that it fully adjudicated 1,172 of the 4,699 hearing requests received in the July 1, 2003 through June 30, 2004 period. Of the 1,172 adjudicated cases, 1,159 decisions were issued within timelines or within an appropriately extended timeline. Thirteen due process hearing decisions were issued beyond required timelines. In Appendices 18.4 and 18.5, the State provided data and analysis indicating the number of requests for impartial hearings by school districts and the distribution of types of issues for decided impartial hearing cases for those school districts. In Appendix 18.6, the State provided data demonstrating continued timely issuance of second-tier appeal decisions and elimination of any backlog.

On pages 8 and 9 of Tables GS I, II, and II of the FFY 2003 APR, the State's future activities to reach its projected target of 100% of impartial hearing decisions rendered within regulatory timelines included: increasing training for IHOs; linking databases between Upstate and NYC impartial hearing systems; and providing professional development opportunities for IEP chairpersons regarding procedural safeguards.

OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating full compliance with the requirement that hearing decisions are issued within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party in the SPP.

Personnel

On pages 2 through 6 of Table GS.IV of the FFY 2003 APR, the State provided data and information indicating continued significant shortages in, and concern for retention of, special education teachers and providers, primarily in NYC, and strategies to address those shortages. On page 2, the State indicated that the shortage of teachers and providers was less pronounced in other areas of the State. The State reported growing concern for staff shortages within its preschool special education programs. In Appendices 3.1 - 3.8 of the APR, the State provided data and information related to the continued collaboration between the State and the NYC Department of Education to address special education personnel shortages.

On pages 3 through 5 of this section of the FFY 2003 APR, the State described the strategies to address personnel shortages to include but not be limited to: development of outreach activities (to include provider-specific international recruitment) used by recruitment teams; increased use of institutions of higher education to support grant initiatives to address recruitment, capacity building, and retention needs; and changes in certification policy to avoid delays in the availability without compromising personnel qualifications. On pages 5 and 6, the State's future activities to address teacher and provider shortages included making needed adjustments of those strategies, as well as ongoing monitoring. OSEP appreciates the State's efforts demonstrating continued improvement in this area.

On pages 11 through 14 of Tables GS.I, II, and III of the FFY 2003 APR, the State also reported on its efforts through the Special Education Transition and Resource Centers to improve student outcomes and support effective transition to post-school activities. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 2 through 6 of Table GS.V of the FFY 2003 APR, the State provided data and analysis indicating continued collection and reporting of data consistent with the requirements under §618 of the IDEA. The State indicated the ongoing use of the data to define the KPIs that are used to measure progress toward achieving the State's goals for children with disabilities. Improvements in the State's data collection system resulted in web-based data submissions throughout the State, except statewide assessment data that was collected electronically by the State's general education system. The State reports that these improvements provided the State with the capacity to increase the number of edit checks to ensure valid and reliable data. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding the collection and timely reporting of data, in the SPP.

Early Childhood Transition

OSEP's August 2004 letter required the State to submit, in the FFY 2003 APR, evidence of progress in correcting the noncompliance regarding early childhood transition including current supporting data and analysis. In addition, the State was required to submit to OSEP, as soon as possible, but no later than September 20, 2005, a final Progress Report, with data and analysis demonstrating compliance, regarding early childhood transition.

On pages 2 through 6 of Table ECT.1 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting the noncompliance regarding early childhood transition. On pages 2 through 4, the State provided an explanation of progress including: policy revisions; implementation of a memorandum of agreement with the Department of Health; development of joint transition guidance documents between the two agencies and technical assistance to the field; efforts to increase the number of approved preschool programs; improved data systems to ensure the availability of services and the elimination of waiting lists; and increased monitoring activities and follow-up to ensure corrective action plans are implemented within required timelines.

On September 20, 2005, OSEP staff contacted the State regarding data and analysis demonstrating compliance, regarding early childhood transition and the requirements of 34 CFR §§300.132 and 300.342(c). OSEP was informed that, while the data and analysis demonstrate ongoing progress, the State is not in full compliance with the early childhood transition requirements.

In the SPP, due December 2, 2005, the State must provide updated data and information demonstrating compliance with the requirement regarding children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays. 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 and may affect the State's next grant award.

Parent Involvement

On pages 2 through 5 of the Executive Summary/Overview on Parental Involvement and on pages 2 through 9 of Table PI.I of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. Strategies to promote improved school-parent relationships and parent involvement included an increase in: information dissemination to parents and families; involvement of parents in the monitoring process; and parent involvement in capacity building and professional development opportunities. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding the percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities, in the SPP.

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

Disproportionality

On pages 2 through 8 of Table FAPE.1 of the FFY 2003 APR, the State included data and information regarding disproportionality. (The issue of disproportionality is also addressed on pages 14 through 17 of Table GS. I, II and III.) In Attachment 2, the State provided the results of the analysis of risk ratios for all children with disabilities, aged 6-21 for school year (SY) 2002-2003, specifically: American Indian/Alaska Native children were 1.31 times more likely to be identified as children with disabilities; Black children 1.23 times more likely; and Hispanic children 1.09 times more likely. Risk ratios for children with disabilities by disability categories indicated that Black children were more likely to be identified with mental retardation and emotional disturbance; American Indian/Alaska Native children were more likely to be identified with specific learning disabilities and autism; Hispanic children were more likely to be identified with speech or language impairments; and White students were more likely to be identified with other health impairments. Risk ratios for educational environment categories indicated that Black children were more likely to be placed outside the regular class greater than 60% of the school day as well as in combined separate facilities.

In Appendix 17.4 of the FFY 2003 APR, the State identified the nature and extent of disproportionality in school districts based on SY 2002-2003 data, specifically: 225 school districts were identified as having disproportion in the identification of children as children with disabilities; 153 school districts in the identification of children with disabilities by particular disabilities; 129 school districts in the placement of school-aged children with disabilities in particular settings; and 15 school districts in the placement of preschool students in separate settings.

On pages 3 through 5 of this section of the FFY 2003 APR, the State listed strategies it used to address disproportionality in local school districts to increase the State's capacity to correct procedural noncompliance and improve performance: enhanced methodology for data analysis; information dissemination; focused monitoring activities; action plans to address teacher shortages; and technical assistance, including professional development and comprehensive services to designated districts through the State Improvement Grant. On page 3 of the APR, the State indicated that enhancements were made to its methodology for identifying school districts whose data indicate disproportionality based on students' race/ethnicity, identification of children as children with disabilities, disability category, and placement in particular settings.

Notifications to school districts demonstrating problems involving disproportionality were issued based on verified data from SY 2002-2003. The notifications were authorized under Chapter 405 of the Laws of 1999 that includes provisions for addressing and improving results in each of the problem areas covered by the provision. These provisions included technical assistance by the State and, if appropriate, required the identified school district to develop corrective action plans. Districts are required to use the review process to address systemic problems associated with Chapter 405, which included disproportionality. The process required districts to analyze data; engage in root cause discussions; develop long-term

and annual goals; develop strategies based on data analysis and root cause discussions; implement Comprehensive System of Personnel Development (CSPD) plans; and describe how progress would be monitored and evaluated throughout the year. A scoring rubric was developed and used to guide districts in developing the CSPD plan and assessing the success of goals and objectives in addressing the Chapter 405 problem areas.

On page 5 of this section of the FFY 2003 APR, the State indicated the impact teacher shortages had upon issues related to the over-identification of students with disabilities and the disproportionate identification of students of a particular race/ethnicity. The State indicated that Joint Action Plans are developed between the State education agency (SEA) and the local school district. The State reported that many of the activities and strategies of the Joint Action Plan have policy and program implications on a statewide basis, including legislative proposals to address teacher shortages. The State also indicated that procedures were revised and were disseminated along with policy memoranda to school district, personnel, parent and training networks. On page 6, NYSED provided information regarding continued use of these strategies, to include Special Education Space Plans requirements, to support the projected targets for the next reporting period. 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.

Regulations at 34 CFR §300.755(b) require that in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the State shall provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of Part B of IDEA. The information provided in NYSED's FFY 2003 APR did not demonstrate compliance with this regulation.

Not later than the submission of the SPP, due December 2, 2005, the State must either provide documentation demonstrating that it is meeting the requirements of 34 CFR §300.755, or 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 no later than 30 days following the end of the year timeline. 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. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Graduation and drop-out rates

On pages 2 through 5 of Table FAPE.II of the FFY 2003 APR, the State included data and information regarding graduation and drop-out rates. On page 3 of Table FAPE.II, the State indicated that computations for high school graduation rates for all students, including students with disabilities, were based on the percentage of each cohort of students that met all graduation requirements within four years of entry into the cohort year (9th grade). On page 3 of Appendix 12.1, NYSED provided data indicating continued gradual increases in the number of students with disabilities earning a Regents diploma. During SY 2003-2004, 65.9% of the students with disabilities earned Regents or local high school diplomas, an increase of less than one percent from the previous reporting period. On page 2 of Appendix 12.2, the State provided the percentages of students with disabilities earning high school diplomas for NYC, the four biggest cities in the State, and by need/resource capacity of school districts. In 2003-2004, a greater percentage of students with disabilities in almost every need/resource capacity category of school districts earned high school diplomas compared to the previous year. NYC graduation rates for students with disabilities, during SY 2003-2004, increased by 3.6% over the previous SY.

On page 4 of the FFY 2003 APR, the State provided an explanation for progress and slippage in statewide drop-out rates for students with disabilities. In Appendix 13.1, the State provided trend data indicating improvements in drop-out rates for almost all need/resource categories of school districts, NYC, and the four largest cities in the State during SYs 2000-2004. In high need/resource districts the drop-out rates were 6.2% compared to average or low need/resource districts rates of 3.5%. The drop-out rates for NYC were 6.5% during SY 2003-2004, compared to 9.6% during SY 2002-2003. The four largest cities reported improvements, 5.1% during SY 2003-2004, compared with 6.5% during SY 2002-2003.

On page 5 of the FFY 2003 APR, the State listed future activities to address its projected targets for the next reporting period, including: urban initiatives to focus on improving attendance and instructional leadership, and developing strategies relating to human resource management; and focused reviews related to exiting and transition. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding graduation and drop-out rates, in the SPP.

Suspension and expulsion

OSEP's August 2004 letter required the State to ensure the review, and if appropriate revision, of policies, procedures and practices relating to the development of IEPs, use of behavioral interventions and procedural safeguards in districts with identified significant discrepancies in the rates of suspensions and expulsions of children with disabilities. On pages 2 through 7 of Table FAPE.III of Cluster Area IV of the FFY 2003 APR, the State included data and analysis indicating baseline and trend data on out-of-school suspensions of children with disabilities, by number of days, by selected disability, data on analysis of long-term suspension rates in school districts, and strategies to address the data.

In Appendix 9.1 of the FFY 2003 APR, the State provided statewide data indicating increasing percentages of children with disabilities receiving out-of-school suspensions for more than 10 days during SY 2003-2004. Of the 35,248 children with disabilities receiving out-of-school suspensions during this period, 11.9% of the suspensions were for more than 10 days (a two percent increase above the previous SY). In Appendix 9.2, the State provided statewide data regarding out-of-school suspensions of children with disabilities by type of disability indicating a greater percentage (25.3%) of children with emotional disturbance who received out-of-school suspensions when compared to their percentage (10.4%) in the enrollment of children with disabilities, as of December 1, 2003. In Appendix 9.3, the State reported increases in long-term suspension rates with 42 school districts above three percent and 10 school districts with rates above five percent.

On page 2 of the FFY 2003 APR, NYSED included targets to address suspension and expulsion rates. On pages 3 through 5, the State listed strategies used to address the slippage in this area, including: the SY 2002-2003 establishment of the Positive Behavioral Interventions and Supports (PBIS) Center, a data-driven, research-based, approach to preventing and responding to classroom and school discipline problems by creating systems change; statewide implementation of PBIS using a team approach to expand capacity for statewide intervention; School Support Projects to identify successful strategies for integrating mental health services from multiple systems into school buildings, provide student and family support in an environment that fostered the system of care approach, provide quality mental health services, and to evaluate the efforts of the project; Coordinated Children's Service Initiative, a cross systems process for serving children with complex emotional and behavioral needs; and the use of grants. On page 5, the State indicated that for the SY 2004-2005, if it identifies significant discrepancies, it would require LEAs to review, and if appropriate, revise policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure compliance with the IDEA. While the State identified a number of strategies that it used to improve discipline, it did not provide evidence of the review, and if appropriate revision of policies, procedures and practices as required by 34 CFR §300.146, as directed by the APR instructions.

Regulations at 34 CFR §300.146 require the 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 local educational agencies (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 requires the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education programs (IEPs), the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA.

With the SPP, due December 2, 2005, the State must submit either: (1) evidence demonstrating that it is meeting the requirements of §300.146, as described above; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible but not later than one year from the date

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 2-9 of Table FAPE.IV of the FFY 2003 APR, the State included data and information regarding its efforts to ensure compliance and improve performance in this area. In Appendix 10.1 of the FFY 2003 APR, the State provided data indicating 95.3% of children with disabilities enrolled in school during SY 2003-2004 participated in grade 4 English Language Arts (ELA) assessments²; 95.2% for grade 4 mathematics assessments; 94.0% for grade 8 ELA assessments; and 92.2% for grade 8 mathematics assessments. Scores for children with disabilities were not reported when the child was absent or when the child's scores were invalid. On pages 4 through 9, the State provided data analysis of State assessment results and strategies to close the gap in performance of children with disabilities including: technical assistance networks, supported by focused reviews; professional development; and reading and math initiatives. On pages 8 and 9, the State provided information indicating its intent to continue these strategies to achieve its projected targets for the next reporting period. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding the participation and performance of children with disabilities in statewide and districtwide assessments, in the SPP.

Least restrictive environment (LRE)

On pages 2 through 10 of Table FAPE.V of the FFY 2003 APR, NYSED included data and analysis regarding its efforts to ensure compliance and improved performance in this area. In Appendix 4.1, the State provided data indicating steady increases, since 1995-1996, in the percentages of preschool children with disabilities who received services in integrated settings. During SY 2003-2004, a greater percentage (60%) of preschool children with disabilities received services in integrated settings compared to the national average (53.3%). In Appendix 8.1, the State provided data indicating the percentage of school-aged children with disabilities provided special education services in general education programs 80% or more of the school day increased from 42.89% in SY 1996-1997 to 53.4% in SY 2003-2004. The national average for SY 2003-2004 was 49.9%. However, the percentages of children with disabilities provided special education services in general education programs less than 40% of the school day and in separate settings exceeded the national average by more than three percentage points. In Appendix 8.2, the State provided data indicating a decrease in the number of school districts with high rates of placing children with disabilities in separate educational settings. During SY 1998-1999, 47 school districts reported 15% or more children with disabilities received special education services in separate settings, compared to 15 school districts during SY 2003-2004.

² State assessments includes the New York State Alternate Assessment, New York State English as a Second Language Achievement Test, Locally Selected Assessments and General Assessments.

On pages 3 through 9 of the FFY 2003, APR, the State provided data and information to explain the progress and slippage related to the State's targets for this reporting period. The strategies used to achieve the targets included: revisions of the strategic plan to focus resources on the essential activities to promote the State's goals; changes to career and technical education (CTE) programs to allow increases in the percentage of children with disabilities participation in CTE programs with their nondisabled peers, given revisions in the State's graduation requirements; analysis and use of data from the Preschool Special Education Quality Indicator Study; data collection; interagency partnerships, the reading and math initiatives; enhanced monitoring; professional development, technical assistance; and the State Improvement Grant. On pages 10 and 12 of the APR, the State provided information indicating the continued use of these strategies to achieve its projected targets for the next reporting period. On pages 9 through 11 of Tables GS. I, II, and III, of the FFY 2003 APR, the State also addressed its efforts to decrease the percentage of children with disabilities educated in separate settings using the Special Education Space Requirements Plan. OSEP looks forward to reviewing updated information in the SPP, including the implementation of strategies to improve performance and resulting data and analysis.

Preschool performance outcomes

OSEP's August 20, 2004 FFY 2002 APR response letter required NYSED to submit in the FFY 2003 APR either data (whether collected through sampling, monitoring, IEP review, or other methods), targets for improved performance and strategies to achieve those targets for early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities or a plan to collect data, including a detailed timeline of the activities necessary to implement that plan. On pages 2 through 4 of Table FAPE.VI of the FFY 2003 APR, the State included data and analysis indicating the progress in achieving performance outcomes for preschool children with disabilities. The State also included strategies to meet the projected targets for the next reporting period. 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. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Secondary Transition

On pages 1 and 2 of the Executive Summary/Overview and pages 1 through 23 of Table ST.1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. On pages 1 through 3, the State provided its specific goals and the transition specific key performance indicators related to those goals. On pages 3 through 13, the State provided baseline data and analysis regarding preparation and transition planning for children with disabilities to post-school activities. On pages 13-20, the State included targets and strategies to support those targets including: policy development; capacity building and information dissemination, and family support services. The State also provided information related to the challenges it faced meeting the targets, including increasing demands for technical assistance and support statewide due to the aging educational workforce and retirements of school staff; the State's continuing fiscal crisis; appropriate planning for students who did not qualify for alternate assessments but who

experienced difficulty in completing coursework and passing exams necessary to obtain a Regents diploma; and post-school outcomes gaps between students without disabilities and students identified with specific disabilities (e.g., emotional disturbance and mental retardation). On pages 20 through 23 of the APR, the State continued to use these strategies to achieve its projected targets for the next reporting period.

The SPP establishes two new indicators in this area, for which States must submit baseline data in the FFY 2005 APR, due February 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.

Conclusion

As noted above, not later than December 2, 2005, NYSED must:

1. Demonstrate compliance with the early childhood transition requirements under 34 CFR §§300.132 and 300.342(c);
2. Either provide documentation demonstrating that it is meeting the requirements of 34 CFR §300.755, or 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; and
3. Submit either: (1) evidence demonstrating that it is meeting the requirements of §300.146; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible but not later than one year from the date OSEP accepts the plan.

If the State submits plans under 2 or 3 above, 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 related to these areas, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the year timeline.

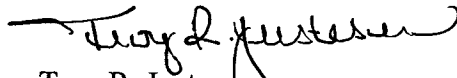
In the SPP, due December 2, 2005, New York must submit to OSEP:

1. Data and analysis on the extent to which the State required correction of identified noncompliance through the State's monitoring and complaint systems and the extent to which the State ensured correction of identified noncompliance, as soon as possible but no later than one year from identification. If the State is unable to demonstrate such compliance, it must include a plan, with strategies, proposed evidence of change, targets and timelines, designed to achieve compliance as soon as possible, but no later than one year after OSEP approves the plan; and
2. Data demonstrating full compliance with the requirements of 34 CFR §300.661. If the State is unable to demonstrate such compliance, it must include a plan, with strategies, proposed evidence of change, targets and timelines, designed to achieve compliance as soon as possible, but no later than one year after OSEP approves the plan.

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 Michael F. Slade at (202) 245-7527.

Sincerely,

A handwritten signature in cursive script, appearing to read "Troy R. Justesen".

Troy R. Justesen
Acting Director

Office of Special Education Programs

cc: Rebecca Cort