



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

Honorable Shirley J. Neeley
Chief Commissioner
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

SEP - 1 2005

Dear Commissioner Neeley:

The purpose of this letter is to respond to Texas' 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) designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's December 13, 2004 FFY 2002 APR response letter required the State to submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines that would ensure correction of the remaining noncompliance by the FFY 2003 APR in the following areas: (1) individualized education programs (IEPs) for children with disabilities identify the amount and frequency of services (34 CFR §§300.347(a)(3) and (6)); and (2) services, including psychological services, are provided to youth with disabilities educated at Texas Youth Commission (TYC) facilities (34 CFR §§300.2(b), 300.347(a)(3), and 300.300(a)(3)(i)).

Additionally, OSEP required the State to: (1) continue to report on its progress in ensuring compliance with timelines for formal written complaints; (2) include an analysis of compliance with 34 CFR §§300.347(a)(5) and 300.138 regarding participation of children with disabilities in statewide assessments; (3) include information on the results of its review of policies, procedures, and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race or ethnicity; (4) include information indicating that it examined all data for all local

educational agencies (LEAs) to determine whether significant discrepancies exist 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 children without disabilities within the agencies and, if it identifies significant discrepancies, the results of its review and, if appropriate, revision (or of the affected State agency's or LEA's review and revision) of policies, procedures, and practices consistent with 34 CFR §300.146; (5) include either documentation of data (whether collected through sampling, monitoring, IEP review, or other methods), targets for improved performance and strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan; and (6) report on the results of the monitoring findings related to post-secondary transition services and the status of the correction of any identified noncompliance.

Also, the conclusion of OSEP's FFY 2002 APR response letter to the State required it to report on targets, activities, and timelines for the following areas: (1) identification and remediation of systemic issues identified through the coordinated data system; (2) adequate supply of personnel to meet identified needs of all children with disabilities in the State; (3) State procedures and practices for ensuring collection and reporting of accurate and timely data; and (4) placement in the least restrictive environment (LRE).

General Supervision

Identification and timely correction of noncompliance

OSEP's December 2004 letter required the State to report on targets, activities, and timelines related to the identification and remediation of systemic issues identified through the coordinated data system. On pages 6 through 8 of the FFY 2003 APR, the State included information regarding the implementation of a process of identification and remediation of systemic issues from information and data collected from all State supervision functions (20 U.S.C. 1232d(b)(3)). The State included targets with activities, timelines, and potential results to develop a technology project that: (1) centralized and coordinated disparate data sources concerning due process hearings, mediations, complaints, and performance-based monitoring activities; (2) integrated and analyzed data to establish LEA profiles; (3) would have the capacity to determine and analyze data-driven trends at LEA, regional, and State levels; and (4) interacts with LEA databases to track intervention activities, monitor progress, and maintain continuous improvement plans. The State reported that although this plan would take some time to implement, the initiation of the dispute resolution and communications management system in the Fall of 2005 would allow the State to make immediate and actionable findings based on data from complaints, mediations, due process hearings, and monitoring.

On pages 1 through 5 of the FFY 2003 APR, the State included information regarding the monitoring system describing the stages of interventions and LEA status in the special education monitoring review process. The State indicated that: (1) 179 LEAs were monitored; (2) 788 improvement goals were identified; (3) 188 noncompliance issues were

identified; and (4) 32 LEAs had noncompliance issues. The State also reported the status of its monitoring as of December 31, 2004, indicating that: (1) 141 LEAs completed continuous improvement plans (CIPs); (2) two LEAs were in a pending status due to the resubmission of CIPs; (3) four LEAs were pending a Texas Education Agency (TEA) on-site visit; and (4) it completed noncompliance follow-up verification for 32 LEAs in April through May 2005. OSEP appreciates the work of the State in this area and looks forward to reviewing the State's data and analysis in this area in the State Performance Plan (SPP), due December 2, 2005.

Formal written complaints

OSEP's December 2004 letter required the State to continue to report on its progress in ensuring compliance with complaint timelines as required by 34 CFR §300.661(a). On page 9 of the FFY 2003 APR, the State indicated that: (1) of the 219 complaints submitted, 64 complaints had findings, 75 had no findings, 68 were not investigated because of withdrawal or no jurisdiction, and 12 were pending as of June 30, 2004; (2) of the 68 complaints reported above in the category of "not investigated because of withdrawal or no jurisdiction were resolved by other means," 25 were resolved at the local level, 14 were withdrawn, 17 were in abeyance, and 12 were mediated; (3) 11 complaints were resolved beyond the 60 calendar days with documented extensions; and (4) 128 complaints were completed within 60 calendar days. Therefore, the number of complaints investigated by the State with and without findings totaled 139 and, as noted above, 139 were completed within required timelines. OSEP appreciates the work of the State in ensuring compliance with these requirements and looks forward to reviewing the State's data and analysis in this area in the SPP.

Mediation

On page 10 of the FFY 2003 APR, the State indicated that: (1) of the 221 mediation requests, 120 were related to hearing requests and 101 were not related to hearing requests; (2) of the 159 mediation agreements, 78 were related to hearing requests and 81 were not related to hearing requests; and (3) mediation agreements were reached in an average of 22 days. OSEP appreciates the efforts of the State in this area and looks forward to reviewing the data and analysis in this area in the SPP.

Due process hearings and reviews

On pages 11 and 12 of the FFY 2003 APR, the State indicated that: (1) there were 387 due process hearing (DPH) requests; and (2) of the 73 DPH requests fully adjudicated, 71 of the decisions were issued within the timeline under 34 CFR §300.511(a) and two of the decisions were issued within timelines extended under 34 CFR §300.511, and 46 of the rulings were in favor of the LEAs and 27 of the rulings were in favor of the parents. The State also reported that it tracks the timeliness and implementation of the decisions adverse to LEAs. OSEP appreciates the efforts of the State in this area and looks forward to reviewing the State's data and analysis in this area in the SPP.

Personnel

OSEP's December 2004 letter required the State to report on targets, activities, and timelines related to the adequate supply of personnel to meet identified needs of all children with disabilities in the State as required by 34 CFR §300.136. On pages 13 through 16 of the FFY 2003 APR, the State indicated that: (1) of the 925.78 full-time equivalency (FTE) teaching positions designated as providing services to children with disabilities aged 3 through 5, 89.9 percent were fully certified and 10.1 percent were not fully certified; (2) of the 29,110.44 full-time equivalency (FTE) teachers designated as providing services to children with disabilities aged 6 through 21, 86 percent were fully certified and 14 percent were not fully certified; (3) it continued a variety of efforts in retaining and recruiting special education personnel; and (4) the Region IV Education Service Center (ESC) and the Texas Center for Educational Research would conduct a survey, in Spring, 2005, to assess the current status, the gaps, and critical issues regarding special education personnel needs in Texas. OSEP appreciates the State's efforts in ensuring compliance in this area.

Collection and timely reporting of accurate data

OSEP's December 2004 letter required the State to report on targets, activities, and timelines related to procedures and practices for ensuring the collection and timely reporting of accurate and timely data as required by §618 of IDEA. On pages 17 and 18 of the FFY 2003 APR, the State indicated that: (1) the Person Identification Database (PID) system, that included records for students and teachers, was used by TEA to manage and store identification information reported to TEA through the Public Education Information Management System (PEIMS); (2) the purpose of the PID system was to ensure that each time data are collected for the same individual, certain pieces of basic identifying information match; (3) the PID system allowed linking of data across data collections with greater confidence levels and ensured confidentiality of personally identifiable data; (4) LEAs received diagnostic reports of PID errors with each PEIMS data submission; (5) the State reduced the percentage of PID errors by 47 percent in 2003-2004 from 2002-2003; (6) the State met its 2003-2004 goal of a less than three percent PID error rate on student records; (7) the projected State PID target error rate for 2004-2005 was two percent or less; (8) continued guidance and training was provided to the staff at educational service centers (ESCs) and LEAs; and (9) targets and activities with timelines related to the PEIMS and PID systems were set for 2004-2005. OSEP appreciates the State's efforts in ensuring performance and compliance in this area and looks forward to reviewing the State's data and analysis in this area in the SPP.

Early Childhood Transition

On pages 19 through 21 of the FFY 2003 APR, the State indicated that: (1) of the 179 LEAs monitored, there were no instances of noncompliance identified nor were there desired results/goals submitted in the LEA CIPs in this area; (2) 19 of 20 Educational Service Centers (ESCs) reported training activities involving the Early Childhood Intervention Division of the Department of Assistive and Rehabilitative Services (ECI),

LEAs, and family community programs; (3) 18 of 20 ESCs distributed the ECI-TEA Early Childhood Memorandum of Understanding (MOU); (4) 14 of 20 ESCs developed local written agreements concerning early childhood transition between ECI programs and LEAs; (5) TEA and ECI were integrating the databases with the assistance of the National Early Childhood Technical Assistance Center (NECTAC) to efficiently track data in this area; (6) additional products and resources were being developed; and (7) additional data requirements would be added to the Program Effectiveness Review in this area. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and analysis in this area in the SPP.

Parent Involvement

On pages 22 through 26 of the FFY 2003 APR, the State included data and information indicating that: (1) it changed parent involvement criteria in the Performance Based Monitoring System by increasing the requirements for the percentage of parent participation at public meetings, added surrogate parent criteria, and retained the criteria related to effective parent communication and parent participation in the IEP process; (2) the State Parent Training Committee would continue to expand the electronic family friendly resource guide; (3) it would establish partnerships with the ESC Parent Network and parent training entities; and (4) it would continue to collaborate with parent organizations to ensure parent participation in State and LEA public meetings. 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.

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

Disproportionality

OSEP's December 2004 letter required the State to include information on the results of its review of policies, procedures, and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race/ethnicity as required by 34 CFR §300.755. On pages 27 through 47 of the FFY 2003 APR, the State included data and information indicating that African-American children were overrepresented in: (1) the disability categories of mental retardation, emotional disturbance, and specific learning disabilities; and (2) educational settings outside the regular class between 21 percent and 60 percent, outside the regular class more than 60 percent of the time, public separate school facilities, private school separate facilities, and public residential facilities.

- Based on the State's race/ethnicity PEIMS data submitted annually by LEAs, disaggregated by eligibility category and settings, the State indicated on page 47 of the APR that: (1) it identified LEAs with overrepresentation and underrepresentation by disability category and placement; (2) it projected targets based on the Special Education Performance-Based Monitoring indicators; (3) its Access to the General Curriculum Improvement Planning Committee would review the issue of overidentification as it relates

to populations within special education; (4) the Committee recommended that overidentification would be addressed as an issue prior to referral to special education; (5) it would review current guidance regarding pre-referral issues as they relate to placement in special education; and (6) it would work with the 20 ESCs in regard to addressing these issues in their training and technical assistance activities. However, the State did not provide the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race neutral, for those districts with data that illustrate significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings. Therefore, we conclude that the State is not complying with the requirements of 34 CFR §300.755.

Page 47 of the APR contains targets for the 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 percentage targets 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 percentage goals/targets based upon race, even where the percentage goal or target is based upon comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification, under 34 CFR §300.755, 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 race neutral. Such an examination generally would include a review of the availability and use of pre-referral intervention services, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluations. In addressing significant disproportionality related to placement, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices related to placement in the least restrictive environment consistent with the requirements at 34 CFR §§300.501 and 300.550 - 300.556 in order to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. This would generally include a review of policies, procedures, and practices related to: the continuum of placement options; the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. The State must ensure that the SPP is consistent with this guidance.

Within 60 days of the date of this letter, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Graduation and drop-out rates

On pages 48 through 50 of the FFY 2003 APR, the State indicated that: (1) the graduation rate for children with disabilities increased six percent since 2001, surpassing the four percent increase for students without disabilities; and (2) the drop-out rate for children with disabilities decreased 32 percent, surpassing the 27 percent rate for children without disabilities. The State also reported that progress in graduation rates and drop-out rates may be attributed to: (1) the implementation of the Personal Graduation Plan requirement in State law requiring a school principal to designate a guidance counselor, teacher, or other appropriate individual to develop and implement a personal graduation plan for each student in junior high, middle school, or high school who does not perform satisfactorily on an assessment instrument; or who is not likely to receive a high school diploma before the fifth school year following the student's enrollment in grade 9 (as determined by the LEA); (2) the requirement that each LEA must provide accelerated instruction to a student enrolled in the LEA who has taken the secondary exit-level assessment instrument and not performed satisfactorily on each section or who is at risk of dropping out of school; (3) the efforts of the statewide Transition Network (see Secondary Transition cluster for activities related to improving the transition process); and (4) the renewed emphasis on reductions of PID data errors and increased data integrity in the PEIMS data system, critical to the longitudinal child tracking. OSEP appreciates the efforts of the State in this area and looks forward to reviewing data and analysis in this area in the SPP.

Suspension and expulsion

OSEP's December 2004 letter required the State to examine all data for all LEAs to determine whether significant discrepancies existed 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 children without disabilities within the agencies and, if it identifies significant discrepancies, the results of its review and, if appropriate, revision (or of the affected State agency's or LEA's review and revision) of policies, procedures, and practices as required by 34 CFR §300.146.

On pages 51 and 52 of the FFY 2003 APR, the State reported that it conducted a statewide discrepancy analysis on the rates of suspensions greater than ten days or expulsions, comparing children with and without disabilities with single suspensions of greater than ten days or expulsions, and indicated that: (1) in 162 school districts (13.08 percent), children with disabilities had higher rates of single suspensions greater than ten days or expulsions; (2) in 218 school districts (17.59 percent), children with disabilities had lower rates of single suspensions greater than ten days or expulsions; and (3) in 859 school districts (69.33 percent) there was no significant discrepancy. For the number of multiple suspensions of greater than ten days, or expulsions: (1) in 252 school districts (20.34 percent), children with disabilities had higher rates of multiple suspensions for greater than 10 days, or expulsions; (2) in 119 school districts (9.60 percent), children with disabilities had lower rates of multiple suspensions/expulsions; and (3) in 868 school districts (70.06 percent), there was no significant discrepancy. For the unduplicated count for children with and without disabilities with single and multiple suspensions greater than ten days or

expulsions: (1) in 305 school districts (24.62 percent), children with disabilities had higher rates of multiple suspensions or expulsions; (2) in 199 school districts (16.06 percent), children with disabilities had lower rates of multiple suspensions/expulsions; and (3) in 735 school districts (59.32 percent), there was no significant discrepancy.

On pages 53 and 54 of the FFY 2003 APR the State indicated that: (1) the Texas Behavior Support Initiative (TBSI) initial training was conducted statewide addressing legislative issues, positive behavior support (PBS) during 2003-2004, school wide and classroom specific interventions, time out management, severe behavior management, and action planning techniques; (2) the TBSI capacity building training, implementation support and data collection techniques were being conducted during 2004-2005; (3) the TBSI web site would provide statewide network support and statewide database management; and (4) a TEA/ESC/higher education collaborative series would offer online courses for parents and educators. The State also included targets and activities with timelines related to the oversight of suspension and expulsion.

The December 2004 letter indicated that if the FFY 2003 APR did not include information on the results of the State's review of policies, procedures and practices in affected LEAs, OSEP would conclude that the State was not complying with 34 CFR §300.146. However there is no evidence in the FFY 2003 APR that the State conducted a review of policies, procedures, and practices in the LEAs demonstrating significant discrepancies in rates of suspension and expulsion. 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 children without disabilities within the agencies. Where the State determines that significant discrepancies are occurring, it 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 the policies, procedures, and practices comply with Part B. Therefore, OSEP concludes that the State is not complying with 34 CFR §300.146. Within 60 days of the date of this letter, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Statewide and districtwide assessment

OSEP's December 2004 letter required the State to include an analysis of compliance pertaining to the participation of children with disabilities in statewide assessments as required by 34 CFR §§300.347(a)(5) and 300.138. The TEA web page addresses the participation of students in the statewide assessment process. The State reported that children with disabilities in Texas participated in the Texas Assessment of Knowledge and

Skills (TAKS); or the State-Developed Alternative Assessment (SDAA). Children with disabilities could be exempted from any part of the above assessments, or a part of the assessment, but must participate in the assessment using the locally determined alternate assessment (LDAA). If the child was exempted from the assessment (TAKS, or the SDAA) or any part of the assessment, the district must document that the child met the performance criteria established in the IEP for the LDAA. The State indicated that the U. S. Department of Education (Department), under the No Child Left Behind Act of 2001 (NCLB)¹ approved the State's plans to count as participants students with disabilities who took the TAKS, SDAA or LDAA for purposes of 2004 AYP computations.

On pages 55 through 76 and Attachment 3 of the FFY 2003 APR, the State indicated that: (1) 98 percent of children with IEPs were assessed in both reading and math with TAKS, SDAA (either at grade level, or off grade level) or LDAA; (2) two percent were not assessed in both reading and math; (3) 33.1 percent were assessed in the TAKS math; (4) 64.9 percent were in SDAA or LDAA math; (5) 29.5 percent were assessed in TAKS reading; and (6) 68.5 percent were assessed in SDAA or LDAA reading.

Regarding performance on statewide assessments, on pages 55 through 76 and Attachment 3 of the FFY 2003 APR, the State indicated that: (1) the baseline total for math and reading assessments for children with disabilities did not include the SDAA baseline level score data; (2) based on the calculations without including the baseline SDAA scored assessments, 72 percent of children with disabilities achieved passing level scores on the math assessments scored, including the TAKS, SDAA, and LDAA, and 79 percent received a passing level score on the reading assessments scored, including the TAKS, SDAA and LDAA; (3) 59 percent of the children with disabilities assessed in math with TAKS achieved passing level scores; (4) 68 percent of the children with disabilities assessed in reading with TAKS achieved passing level scores; (5) the statewide performance goals were set at 84 percent for all children achieving passing scores on TAKS math, 83 percent for all children achieving passing scores on the TAKS reading; and 76 percent for all children achieving passing scores on all tests taken; and (6) the data demonstrate that children with disabilities were not meeting the goals for all children passing the TAKS reading and math assessments. OSEP appreciates the work of the State and looks forward to reviewing data and analysis in this area in the SPP.

Least restrictive environment (LRE)

OSEP's December 2004 letter required the State to provide information targets, activities, and timelines regarding educating children, including preschool children with disabilities, in the LRE as required by 34 CFR §§300.550 – 300.556. On pages 77 through 86 of the FFY 2003 APR, the State indicated that: (1) the preschool LRE initiative increased the number of preschool children with disabilities served in the least restrictive setting, increased the continuum of placement options, provided technical assistance in assessing district programs, and expanded partnerships with other providers; and (2) placement data for preschool children with disabilities showed 53 percent of itinerant services (including speech or language) were provided outside the home in educational or clinical settings, 25

¹ Submitted as Attachment 4 to the Texas APR in an email to OSEP on June 30, 2005.

percent of preschool children with disabilities were placed in early childhood special education settings, and 16 percent were placed in part-time early childhood/part-time early childhood special education settings. Additionally, the State included comparative data for the placement of children with disabilities aged 6 through 21 that indicated: (1) 52.8 percent were outside the regular classroom less than 21 percent of the time; (2) 32.6 percent were outside the regular classroom at least 21 percent of the time, but no more than 60 percent of the day; (3) 13.1 percent were outside the regular classroom more than 60 percent of the time; (4) 0.6 percent were in public or private separate facilities; (5) 0.1 percent were in public or private residential facilities; and (6) 0.8 percent were in homebound/hospital settings.

On page 84 of the FFY 2003 APR, the State indicated that it would conduct a statewide "Access to General Curriculum" initiative that would yield the following results for students with disabilities: (1) increased access to the general education curriculum and TEKS-based instruction that results in improved statewide assessment achievement and increased numbers of school-aged children with disabilities served in less restrictive instructional settings; and (2) expansion of placement options that includes increased partnerships with other service providers resulting in preschool-aged children with disabilities served in less restrictive settings.

On page 85 of the FFY 2003 APR, the State indicated that: (1) a focused compliance review would include child find procedures; (2) the LRE placement chart for three- and four-year-olds would be developed and refined; and (3) a Program Effectiveness Review would include a review of LEA data to determine if children with disabilities were assured special education and related services in the LRE. OSEP appreciates the work of the State in this area and looks forward to reviewing data and analysis in this area in the SPP.

Other: Frequency and amount of IEP services

OSEP's December 2004 letter required the State to submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines indicating that IEPs for children with disabilities identify the amount and frequency of services as required by 34 CFR §§300.347(a)(3) and (6). On page 85 of the 2003 FFY APR, the State indicated that in 2004-2005, it would include the following indicators for LEAs in its special education monitoring review: (1) children with disabilities receive required special education and related services as indicated in the IEP; and (2) children with disabilities have access to a commensurate school day, comparable services, facilities, and environments, including but not limited to, educational materials and resources, instruction in fine arts and physical education, and the opportunity to participate in extracurricular activities. The State also indicated that the monitoring process would require: (1) analyses of the data regarding frequency and duration of services in IEPs and compare that to the actual delivery of the services provided to children with disabilities; and (2) determination and implementation of corrective actions for noncompliance. OSEP reviewed and accepts this plan. The State must include data and analysis documenting progress toward compliance with the SPP and provide a Final Report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

Other: Provision of psychological services at the Texas Youth Commission

OSEP's December 2004 letter required the State to submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines, for the provision of psychological counseling services, as required by 34 CFR §§300.2(b), 300.347(a)(3), and 300.300(a)(3)(i), for children with disabilities at the Texas Youth Commission (TYC). On page 87 of the 2003 FFY APR, the State reported that during the 2004-2005 monitoring year, all TYC facilities would submit data to TEA regarding patterns of service for related services. The State must submit a plan that includes strategies, proposed evidence of change, targets, and timelines designed to ensure the provision of psychological services in the TYC facilities within 60 days from the date of this letter, and provide a Final Report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date that OSEP approves the plan.

Preschool performance outcomes

OSEP's December 2004 letter required the State to report on 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 receiving special education and related services, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan as required under the Government Performance and Results Act of 1993, 31 U.S.C. 1116. On page 87 of the FFY 2003 APR, the State indicated that it was 'exploring the possibility of developing a system' to track a cohort of children receiving special education services beginning at age three, to determine outcomes that include but are not limited to placement, advancement in the elementary system, change in disability category, level of services, and dismissal from special education services. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. 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.

Secondary Transition

On pages 88 through 93 of the FFY 2003 APR, the State included data and information regarding post-school outcomes: (1) in the areas of employment, enrollment in higher education, additional training/coursework in the last year of high school, current living situation, and recreation/leisure time activities; (2) targets for survey response expectations in the 2004-2005 survey data; (3) components of the State's effectiveness study; and (4) baseline data, projected targets, and timelines for the statewide secondary transition network and transition component of the visual impairment decentralized functions. 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.

OSEP's December 2004 letter required the State to report on the results of the correction of noncompliance related to secondary transition services as required by 34 CFR §§300.347(b)(1) and 300.29, and that if an agency invited to send a representative to a meeting did not do so, the public agency took other steps to obtain the participation of the other agency in the planning of any transition services as required by 34 CFR §300.344(b)(3). On pages 94 through 99 of the FFY 2003 APR, the State indicated that: (1) the 2003-2004 special education monitoring system required all identified districts to gather data and public perceptions regarding secondary transition services at the LEA level; (2) the State public meeting profile added requirements to address all stages of intervention, to obtain feedback data regarding the goal of education to prepare students to live productive, independent adult lives and how the LEA was ensuring that students with disabilities were prepared to live as productive adults after leaving school; (3) if areas of noncompliance with this topic were identified during the analysis of public meeting input or during focused data analysis, the LEAs were required to provide corrective action plans as part of the CIPs submitted to TEA; and (4) the data results of the compliance review indicated that 98 percent of the districts met the requirements of 34 CFR §§300.347(b)(1), 300.29, and 300.344(b)(3) with corrective actions completed within timelines for the two percent that did not meet the requirements. OSEP appreciates the work of the State in ensuring compliance with these requirements.

However, on pages 96 and 97 of the APR the State reported targets for a State study that included targets related to compliance elements that are less than 100 percent. Note that 100 percent correction of noncompliance within one year of identification is required.

Conclusion

As noted above, within 60 days from the date of this letter, the State must submit: (1) a plan to address identified significant disproportionality in identification and placement, including review, and if appropriate, revision of policies, procedures and practices, 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 (2) a plan to address discrepancies in the rate of long-term suspensions and expulsions of children with disabilities, 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. Also, no later than six months from the date of his letter the State must submit a Progress Report including data and analysis demonstrating progress toward compliance for each area indicated above, and provide a Final Report to OSEP, as soon as possible, but not later than 30 days following the end of the one year timeline.

Additionally, as noted above, within 60 days from the date of this letter, the State must submit a plan regarding strategies, proposed evidence of change, targets, and timelines, for the provision of psychological counseling services, as required by at 34 CFR §§300.551(b)(2) and 300.300 for children with disabilities at TYC and provide a Final Report to OSEP, including data and analysis demonstrating compliance, as soon as

possible and not later than 30 days following one year from the date that OSEP approves the plan.

With the SPP, the State must include data and analysis documenting progress toward compliance and provide a Final Report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter regarding IEPs for children with disabilities that identify the amount and frequency of services as required by 34 CFR §§300.347(a)(3) and (6).

In addition, the State must work to ensure that it will have baseline data regarding early childhood outcomes for the APR due February 1, 2007.

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 Hugh Reid at (202) 245-7491.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Eugene Lenz
Kathy Clayton