



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

JUN 23 2004

Honorable Douglas D. Christensen
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall, South, 6th Floor
P. O. Box 94987
Lincoln, Nebraska 68509-4987

Dear Commissioner Christensen:

The purpose of this letter is to respond to the Nebraska Department of Education (NDE) March 31, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed States to address five cluster areas: General Supervision, Early Childhood Transition, Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment, and Secondary Transition.

Background

In OSEP's March 18, 2004 letter regarding the NDE Improvement Plan Progress Report, OSEP informed the State that OSEP believed that NDE had implemented all of the activities in the Improvement Plan. OSEP also included that NDE "continues to monitor local districts and State-operated programs to ensure IDEA compliance." NDE collaborated with the State's Steering Committee and consulted with OSEP in the implementation of Improvement Plan activities. OSEP informed NDE that, as part of CIFMS, it expected NDE to continue to work on improvement activities and include data that indicated maintenance of compliance in these areas in the State's APR.

The State's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the

cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments are listed by cluster area.

General Supervision

The State provided data and information, on pages one through sixteen of the APR, demonstrating that NDE's policies and procedures identified compliance, ensured correction of noncompliance, and encouraged positive program performance. The State has baseline and trend data, indicators, targets, future activities, and projected timelines and resources to address each of the following topics in this cluster: (1) effective general supervision; (2) identification and remediation of systemic compliance; (3) timely dispute resolution; (4) sufficient personnel; (5) accurate and timely data collection and reporting; and (6) services for students with disabilities in adult correction facilities.

On pages one and two of the APR, NDE described the Nebraska Program Standards Review Process (the State's monitoring system) and the results of monitoring activities at the State and local levels. During the 2002-2003 school year the State conducted follow-up monitoring to ensure correction of noncompliance within one year. General and special education stakeholders began a process of revising the Program Standards Review Monitoring System to better link the special education review process to the general education school improvement process. The Improving Learning for Children with Disabilities (ILCD) process focused resources on student performance. The ILCD process requires local education agencies to correct both individual student files and systemic issues found out of compliance during the monitoring process. NDE developed materials and provided training for staff that facilitate the ILCD process.

On pages two through five of the APR, NDE described the State's efforts to identify and remediate systemic issues from all available sources, including monitoring, complaint investigations, and due process hearings. The State included information about NDE's activities to implement the NDE Improvement Plan to address the systemic issue of providing counseling services, when needed, to ensure children with disabilities are able to benefit from their educational program. The State included trend data, indicators, explanation of progress and slippage, targets, future activities, timelines and projected resources for reaching this goal.

On pages six through nine of the APR, NDE discussed the timeliness of due process hearings, mediations, and complaint investigations. For the 2003-2004 reporting period, the State had one due process hearing filed and then dismissed. For the 2003-2004 reporting period the State completed 100% of the complaint investigations within 60 days. The State reported that of twelve mediations, two resulted in partial agreement and ten resulted in full agreement. Where decisions required changes at the district level, NDE monitoring staff found 100% compliance with the decisions. The State included baseline data, indicators, explanation of progress and slippage, targets, future activities, timelines and projected resources for reaching this goal.

On pages ten through 13 of the APR, NDE discussed the status of trained personnel to meet the educational needs of all children with disabilities in the State. NDE identified the strengths and challenges of ensuring an adequate supply of special education administrators, teachers and related services personnel. The State was working collaboratively with the Nebraska Partnership for Quality Teacher Education to increase the State's capacity to provide professional development and courses leading to licensure and certification for teachers and related services personnel who work in rural and urban areas of the State. The State provided an overview of professional development activities that are underway in 2004 and those that will continue through 2005. The State included baseline data, indicators, explanation of progress and slippage, targets, future activities, timelines and projected resources for reaching this goal.

On pages 14 through 16 of the APR, the State identified its efforts to collect accurate and timely data to use in reports and decision-making. The State maintained a web-based information system for districts to use when conducting their ILCD Self-Assessments. The ILCD system was closely linked with Nebraska's web page containing information of student achievement related to school improvement and the requirements of the No Child Left Behind Act. Use of the website assisted school districts in reporting and analyzing local data and provided a mechanism to compare special education student progress with the progress of the general education students. The NDE data coordinator worked with WESTAT to ensure data reporting and collection reporting systems were accurate.

Early Childhood Transition

On page 17 of the APR, NDE described efforts to ensure children eligible for Part B services would receive special education and related services by their third birthday or when they transition from Part C. As of December 2002, data from the Special Education Student Information System (SEGIS) showed that an analysis of the data collection regarding transition from Part C to part B is incomplete. NDE's performance indicator for this cluster was to change the SEGIS to enable the State to provide complete and accurate data in the future. Future activities included a review of SEGIS by the NDE data team and by WESTAT. In the State's next APR, OSEP requests that NDE report (1) the State's progress to ensure transition from Part C to Part B meets IDEA requirements; (2) the State's progress in determining eligibility of all children exiting Part C by the child's third birthday; and (3) each district's progress in participating in transition planning conferences arranged by NDE under section 637(a)(8) of the Act (at 34 CFR §§300.121(c) and 300.132 (b) and (c)).

Parent Involvement

On pages 18 through 25 of the APR, NDE discussed its progress in reaching its goal that the provision of a free appropriate public education is facilitated by parent involvement. The State had two performance indicators for reporting its progress on this goal. The indicators addressed establishing baseline data to determine the level of parent participation in program improvement activities and to determine the level of parent involvement in the special education process, focusing on identification and the determination of appropriate services. NDE reported that four school districts conducted

parent satisfaction surveys following the multidisciplinary team and Individualized Education Program (IEP) processes. The Parent Training and Information Center of Nebraska also gathered performance data during the reporting period. NDE reviewed and analyzed the data regarding implementation of State Rule 51 and parental rights under IDEA. NDE identified baseline data (including the need to have additional baseline data), targets, an explanation for slippage or progress, future activities; and projected targets, resources and timelines for each of the indicators.

Free Appropriate Public in the Least Restrictive Environment

On pages 26 through 65 of the APR, NDE provided information to answer the question, *“Do all children with disabilities receive a free and appropriate public education in the least restrictive environment that promotes a high quality education and prepares them for employment and independent living?”* The State provided an overview of its efforts to examine State-wide assessment, graduation rates, dropout rates, incidents of expulsion and suspension, racial and ethnic disproportionality in enrollment and young children’s early development skills.

The State presented baseline and trend data for racial and ethnic disproportionality in enrollment data, educational environment, and assignment to disability category, including data in Attachment 2 of the APR. Targets in the State’s APR for this cluster identified numerical and percentage goals, based upon race, as a means of addressing disproportionality. Use of numerical or percentage goals based upon race raises serious concerns under federal civil rights laws and the United States Constitution and would not be an appropriate way to address any potential compliance problems that significant disproportionality may indicate. NDE must revise this section of the APR to eliminate the use of numerical or percentage goals based upon race and submit the revised section of the APR to OSEP within 60 days. In addressing evidence of disproportionate representation, it would be appropriate for the State to look at policies, procedures and practices in the evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. Such an examination would generally include a review of policies, procedures and practices at both the State and local levels, with regard to 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. Such reviews would generally examine policies, procedures and practices to determine if they are educationally appropriate and legally consistent with Part B and other civil rights laws.

For example, a State could look at whether recommendations for pre-referral services and for referrals for special education are made consistent with Part B and in a race neutral manner, that is, both the criteria and practices are nondiscriminatory. The State could address these issues in a variety of ways including: (1) ensuring the standardization of its policies and procedures for pre-referral interventions and for referrals for special education evaluations consistent with Part B and other civil rights laws; (2) providing in-service training on any revisions to the policies and procedures and on teacher expectations and effective education for a diverse student population; and (3) conducting follow-up

monitoring and review to ensure that any practices that were either discriminatory or inconsistent with Part B have changed.

On pages 37 and 38 of the APR, NDE presented information about the graduation and dropout rates for youth with disabilities, including the formula for calculating the rates. The State had goals to increase the graduation rate and decrease the dropout rate. A Task Force on Dropouts convened in 2004 to analyze data and make recommendations to increase the percentage of school completers. The State planned to include results of the Task Force's work in the State's next APR. Baseline data, targets, explanation of progress and slippage, projected targets, and future activities are included in the APR.

On pages 39 through 40 of the APR, NDE discussed the State's efforts to reduce school expulsions and suspensions. Suspension and expulsion rates compared between students with disabilities and their nondisabled peers were not reported because the data were not collected for students without disabilities. Thus, only the rates for students with disabilities were included in the APR. The State's goal was to have suspension and expulsion rates comparable among local educational agencies within the State. NDE reported that Nebraska met the performance target to maintain a suspension/expulsion rate of less than 5%. The APR contained performance indicators, baseline data, trend date, targets, explanation of slippage or progress, projected targets, future activities, projected timelines and resources for addressing this topic.

On pages 42 through 54 of the APR, NDE included the State's goal to increase the participation and performance of students with disabilities in the State's assessment of State and local standards, as measured by the Nebraska School-based Teacher-led Assessment and Reporting System (STARS). Each district also reported the results of student performance on a locally-developed, criterion-referenced assessment under STARS. Data for students with disabilities were collected by the State on this assessment and the content-appropriate alternate assessment. The APR identified baseline data, an explanation of progress and slippage, projected targets, and future activities, timelines and resources.

On pages 55 through 60 of the APR, NDE reported data related to providing a free appropriate public education in the least restrictive environment. The APR contained indicators, targets, an explanation for progress or slippage, projected targets, future activities, timelines and resources. NDE must revise the targets and projected targets and remove the use of numerical or percentage goals and submit the revised section of the APR to OSEP within 60 days.

On pages 61 and 62 of the APR, NDE reported that the State had not established baseline data to determine the early language/communication, pre-reading, and social-emotional skills, of preschool children with disabilities receiving special education and related services. NDE indicated that projected targets, future activities, and projected timelines and resources for this indicator would be included in the State's next APR. Resources for this endeavor also included technical assistance from the National Early Childhood Technical Assistance Center, the Early Childhood Outcomes Center, and the Nebraska Early Learning Guidelines Management Team.

NDE also indicated that the State planned to work with OSEP to better understand the data elements relating to skill development of preschool children with disabilities, attend OSEP

data management meetings, and explore data collection options for preschoolers by establishing a stakeholder committee. On page 61 of this section, the APR noted that Nebraska did not currently collect data on this issue and indicated that it would develop a plan to collect the data. Under 20 U.S.C. 1418(a)(2) States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by or for the Secretary. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, Nebraska must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

On pages 63 and 64 of the APR, NDE reported an additional performance indicator for better serving Part B eligible students with disabilities in juvenile and adult correctional facilities. The APR contained indicators, targets, an explanation for progress or slippage, projected targets, future activities, timelines and resources. The State reported that the Nebraska Ad Hoc Corrections Committee considered issues surrounding the delivery of services to students in correctional facilities and proposed State Rule 18 for interim-program schools serving youth with disabilities, including county detention homes, institutions, and Juvenile Emergency Shelters.

On pages 66 through 68 of the APR, the State discussed the goal of improving post-school outcomes such as participation in postsecondary education opportunities and post-school employment for youth with disabilities. NDE identified a goal that the percentage of youth with disabilities participating in post-school activities will be comparable to that of nondisabled youth. The State gathered post-school follow-up data to compare the post-school activities undertaken by students with disabilities and students without disabilities. NDE also used post-school outcomes as a component of the State's on-site monitoring process. During the State's on-site monitoring activities for the reporting period, the State found all districts monitored were in full compliance with procedures related to transition planning. The State had baseline and trend data, targets, an explanation for slippage and progress, projected targets, future activities, timelines, and projected resources to address this goal.

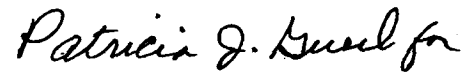
Conclusion

Nebraska provided the necessary data and information to document NDE's ability to ensure compliance and gather performance outcome data. As noted in previous sections of this letter, NDE must revise the State's APR to remove numerical and percentage goals based on race from all targets in the APR and submit the revised APR to OSEP in 60 days.

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

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Gary Sherman