



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

Dr. Veronica C. Garcia
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, New Mexico 87501-2786

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Dear Secretary Garcia:

The purpose of this letter is to respond to the New Mexico's April 19, 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. This letter also closes out portions of New Mexico's November 2000 Improvement Plan and issues in OSEP's February 23, 2004 verification letter.

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 its January 7, 2000 Monitoring Report, OSEP identified the following areas of noncompliance: (1) placement in the least restrictive environment, including: (a) failure to ensure that removal of children with disabilities from the regular education environment occurs only when the nature and severity of the disability is such that education in the regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily (34 CFR §300.550(b)), and (b) failure to ensure that the educational placement of each child with a disability is based on his or her individualized education program (IEP) (34 CFR §300.552(a)(2)); (2) transition from Part C to Part B, including: (a) failure to ensure a smooth and effective transition for children transitioning from Part C to Part B programs; (b) failure to ensure that by the third birthday of a child, an IEP was developed and implemented; and (c) failure to ensure that local educational agencies (LEAs) participated in transition planning conferences arranged by the Lead Agency (34 CFR §300.132); (3) extended school year (ESY)

services, including: (a) failure to ensure that ESY services were available for all children who needed those services as part of a free appropriate public education (FAPE) (34 CFR §§300.300, 300.309); (b) failure to ensure that each child's IEP team determined the need for ESY services; and (c) failure to ensure that the IEP teams' decisions regarding ESY services were documented on the IEPs (34 CFR §§300.309 and 300.347(a)(3)); (4) secondary transition, statements of transition services, including: (a) failure to ensure that IEPs for each student by age 16 included a statement of needed transition services that represented a coordinated set of activities, designed within an outcome-oriented process, that promoted movement from school to post-school activities (34 CFR §§300.29 and 300.347(b)(2)); (b) failure to ensure that the statements were based on individual students' needs, taking into account each student's preferences and interests (34 CFR §300.29(a)(2)); and (c) failure to ensure that the each public agency reviewed, and if appropriate revised, the IEP at least annually, including the statement of needed transition services (34 CFR §300.343(c) and 300.347(b)); (5) secondary transition, notice of content and participation in meetings, including: (a) failure to ensure that, if a purpose of an IEP meeting was the consideration of transition services, the notice included that purpose (34 CFR §300.345(b)); (b) failure to ensure that the student was invited to any meeting where transition was a purpose of the meeting (34 CFR §300.344(b)(1)); (c) failure to ensure that, if the student did not attend the IEP meeting, the public agency took other steps to ensure that the student's interests and preferences were considered (34 CFR §300.344(b)(2)); (d) failure to ensure that representatives of any other agencies likely to be responsible for providing or paying for transition services were invited to the IEP meeting (34 CFR §300.344(b)(3)); and (e) failure to include agencies that were invited to the IEP meeting on the meeting notice (34 CFR §§300.345(b)(3)); (6) failure to ensure that noncompliance identified through its monitoring process was corrected in an effective manner (34 CFR §300.600); and (7) failure to ensure that formal written complaints were investigated and resolved within 60 days, unless extensions were granted due to exceptional circumstances with respect to an individual complaint (34 CFR §§300.660-300.662).

In response to the noncompliance, the New Mexico State Department of Education (NMSDE), now called the New Mexico Public Education Department (NMPED), submitted an Improvement Plan (IP) in November 2000. OSEP reviewed the IP and approved it on June 29, 2001. In that letter, OSEP asked NMPED to reexamine its "Indicators" and "Verification" to reflect evidence of change that evaluates the effectiveness of its improvement strategies and to submit a revised plan as a part of its December 2001 Progress Report. NMPED addressed this request in the December 2001 Progress Report. Progress Reports were also submitted in December 2002 and December 2003.

During the week of August 18, 2003 OSEP conducted a visit to New Mexico to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA, and State-wide assessment. OSEP provided NMPED with the results of this visit in a letter dated February 23, 2004.

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). This

letter responds to NMPED's Progress Reports of 2001, 2002, and 2003, NMPED's May 27, 2004 submission regarding issues in the February 2004 verification letter and the APR.

General Supervision

Monitoring: Identification and Correction of Noncompliance. In the January 2000 Monitoring Report, OSEP concluded that NMPED failed to ensure that deficiencies identified through monitoring were corrected in an effective manner (34 CFR §300.600). In its Progress Reports, NMPED reported on the development of its new focused monitoring process. During the August 2003 verification visit, OSEP reviewed NMPED's monitoring instruments, procedures and resulting reports as well as interviewing NMPED's monitoring staff. OSEP concluded in its February 2004 verification letter that it was unable to determine whether NMPED was effectively identifying and correcting all IDEA noncompliance.

In its December 2001, December 2002, and December 2003 Progress Reports NMPED reported on its development of and efforts to implement a new monitoring system. During 2000-2001, NMPED contracted with a consultant to train the NMPED staff on Focused Monitoring and to assist NMPED with the development of a Focused Monitoring System. In 2001-2002, NMPED piloted the new system with ten LEAs. In 2002-2003, NMPED conducted fifteen Focused Monitoring onsite visits. In January 2004, one additional staff member was hired to assist the LEAs with the development of improvement plans and to support the LEAs in the implementation of those plans within the designated timelines. NMPED utilized a State-wide stakeholders group in the development and refinement of its new monitoring system. Based on this information, NMPED's section of the IP related to monitoring is closed. However, as discussed later in this section, additional issues related to monitoring were identified during OSEP's verification visit.

Although NMPED's progress reports noted progressive steps in the development and implementation of its focused monitoring system, the APR included data and information that indicated continued noncompliance with the requirement to ensure that identified noncompliance is corrected within one year of identification (34 CFR §300.600). On page two of the APR, NMPED reported that of the districts monitored in 2001-2002, 31% were closed out within a year. On page four of the APR, NMPED stated that general supervision instruments and procedures identified noncompliance, but correcting identified noncompliance within one year was a more difficult challenge. On the same page, NMPED reported that procedures for the completion of the LEA improvement plans have been in place, but staff shortages have prevented the timely writing of monitoring reports.

During the verification visit, OSEP learned that NMPED relied principally on its focused monitoring system to ensure the identification and correction of noncompliance, and did not have other methods for reviewing LEA policies, procedures or practices to ensure that all LEAs complied with all IDEA requirements. Under its system, districts are identified for monitoring based primarily on performance data on certain 'key indicators' such as graduation rates and assessment results. During focused monitoring visits, comprehensive record reviews were conducted but interviews were conducted only on the topic of the focus review, unless other potential problems areas were identified through the record review process, or through other

means. If a district, through the monitoring process, was found out of compliance with one or more regulations, the district was required to develop an improvement plan to address the findings in the report. NMPED determined what evidence of change was required before an item was removed from an improvement plan. The improvement plans were monitored by NMPED until the district met the evidence of change requirement. NMPED reported that although child-specific noncompliance was corrected as soon as possible, complex systemic issues could take longer than a year to correct. NMPED reported that there were a few instances where LEAs were given extended timelines for extenuating circumstances. OSEP staff reminded NMPED that all noncompliance must be corrected within one year of identification.

Although OSEP was impressed with NMPED's focused monitoring system and its potential to improve performance and compliance in the school districts selected for review, OSEP was concerned that NMPED did not have a systemic method for identifying and correcting noncompliance in LEAs not selected for focused monitoring. Therefore, OSEP could not conclude that NMPED's systems for general supervision constituted a reasonable approach to the identification and correction of noncompliance throughout the State. In the verification letter, OSEP required that by February 23, 2005, NMPED demonstrate to OSEP that it has an effective system for ensuring the identification and correction of noncompliance for all educational programs for children with disabilities administered within the State, in a timely manner. The State submitted strategies and timelines on page six of the APR. These strategies and timelines appear to address the identification issue noted in OSEP's February 2004 verification letter. OSEP accepts these strategies and timelines as to the identification issue; however, as noted in the February 2004 verification letter, the State also must demonstrate compliance as soon as possible, but no later than one year from the date of that letter (i.e., February 23, 2005). (NMPED subsequently has received approval to submit its final response to the verification letter in its FFY 2003 APR (due March 31, 2005), given the closeness of the two submission dates.) In the next APR, NMPED must submit data documenting that it is conforming with the one year timeline for the correction of noncompliance identified through the monitoring process.

On page 4 of the APR, NMPED stated that during 2002-2003, the identification and remediation of systemic issues occurred at three junctures: preparing for focused monitoring visits, preparing for statewide quarterly meetings, and allocating discretionary funds; and on page 5 and 6 of the APR, NMPED stated its projected target of analyzing and publishing data on systemic issues on the State website and the activities that would need to occur to support the achievement of its target. OSEP looks forward to reviewing the results of implementation of these activities in the next APR.

Dispute Resolution. During the FFY 2002 reporting period, NMPED reported 35 requests for due process hearings. Seven due process hearings were held, all within the required timelines.

On page 1 and in Attachment 1 of the APR, the State acknowledged continued noncompliance with the formal written complaint timelines under 34 CFR §300.661, for the 2002 reporting period. NMPED reported that of 29 complaints investigated, seven were completed within the 60-day timeline. This noncompliance was identified in the 2000 Monitoring Report, and in OSEP's verification letter of February 2004. In its December 2001 and 2002 Progress Reports NMPED stated continuing problems in complying with the formal written complaint timelines.

In its December 2003 Progress Report, NMPED reported that since September 15, 2003 it had issued all written decisions within the 60 day timeline. In the December 2002 Progress Report NMPED discussed the development of the “Facilitated IEP Project” in which licensed mediators were trained to facilitate potentially contentious IEP meetings. NMPED stated that it hoped this project would result in agreements that were reflected by well-developed IEPs and it hoped that the work of this project would result in fewer formal complaints. OSEP learned in the August 2003 verification visit, through its review of NMPED’s complaint log and interviews with staff responsible for resolving complaints, that in some instances, NMPED had failed to issue written decisions on Part B complaints within 60 calendar days of receipt of the complaint, unless the timelines were extended due to exceptional circumstances consistent with 34 CFR §300.661(a) and (b)(1). OSEP also learned that NMPED’s written decisions were comprehensive and well-researched, and included specific corrective actions. However, because NMPED failed to correct, within a year of OSEP’s approval of the State’s IP, previously-identified noncompliance related to issuing written findings of fact and conclusions for formal written complaints within 60 days of receipt of the complaint, OSEP required NMPED to submit documentation to OSEP by June 1, 2004 demonstrating that it had come into compliance with the timelines for resolving complaints. NMPED completed the activities related to the timely issuance of complaint findings of facts and conclusions in its IP and included data in its May 2004 submission demonstrating that it had complied with the timeline requirements since September 2003. Based on this information, NMPED’s section of the IP related to the 60 day timeline for complaint investigation is closed. In the next APR, the State must include current data and analysis demonstrating continued compliance with these requirements and the State must also include maintenance strategies designed to maintain compliance with this requirement.

On pages 2 and 4 of the APR, NMPED included data and information indicating an area of noncompliance not previously identified by OSEP: failure to ensure the timely implementation of complaint decisions (34 CFR §§300.600(a)(1), (b) and 300.661(b)(2)). On page 2 of the APR, NMPED reported that in 2000-2001, of the complaints where findings of noncompliance were made, 64% of the identified instances of noncompliance were corrected within one year of identification. For 2001-2002, 36% of the identified instances of noncompliance were corrected within one year of identification. NMPED submitted, as part of its FFY 2002 APR, the following strategies to address the timely correction of noncompliance identified through the complaint system: (1) an experienced manager would be hired who would assist the investigators and corrective action staff; (2) one or more contract complaint investigators will be hired if necessary; and (3) the complaint format will be reviewed for improved efficiency. OSEP accepts NMPED’s strategies, timelines, targets and proposed evidence of change. The State must demonstrate compliance with the requirement to ensure the timely implementation of complaint decisions, within a reasonable period of time not to exceed one year from the date of this letter. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following the end of the one-year timeline.

LEA Applications. OSEP learned during the verification visit, that the last time NMPED had reviewed all LEAs’ special education policies and procedures was in 1997, as a part of the local application for special education funding process; this was prior to the previous reauthorization of IDEA. OSEP required that by June 1, 2004, NMPED submit to OSEP a procedure for

reviewing and approving all LEA policies and procedures. OSEP also required that NMPED's procedures be implemented as a part of its process for approving LEA applications for FY 2004 Part B funds, and that within one year of the date of the verification letter, NMPED submit to OSEP documentation that it had completed its review of all local policies and procedures. OSEP received NMPED's submission on May 27, 2004. OSEP accepts NMPED's procedure for reviewing and approving all LEA policies and procedures and looks forward to receiving, in the next APR, documentation that it has reviewed and approved all LEA policies and procedures.

Personnel. For the FFY 2002 APR reporting period, NMPED identified 12.9% of special education teachers, 2.8% of related services providers and 1.9% of special education aides as not fully certified in their areas of service provision. These percentages have decreased since the 2000-2001 school year. On page 5 of the APR, New Mexico identified barriers to recruitment and retention of fully-certified staff and, on page 4, included proposed activities to address these barriers. NMPED included activities for ensuring sufficient numbers of professionals and paraprofessionals to meet the identified educational needs of all children with disabilities in the State. OSEP looks forward to reviewing the results of the implementation of these activities in the next APR.

Data Collection under section 618 of IDEA. In the area of collection of data under section 618 of the IDEA, OSEP learned during the verification visit that New Mexico used a unified electronic data collection system. The system contained information on regular and special education students as well as personnel data. OSEP also learned that there was a separate system for collecting data on the State-wide assessment.

On page 5 of the APR, NMPED reported that although it provided a variety of data screens and feed-back reports that help LEAs recognize data reporting errors, up until the 2002-2003 school year, NMPED had not monitored for data accuracy. During the 2002-2003 school year, NMPED developed procedures and protocols for conducting data verification visits and piloted those new procedures with three districts. These three pilot visits resulted in improvement plans being written with those three LEAs. As noted on page 5 of the APR, comments from participants in this process led NMPED to add data verification as a part of every focused monitoring visit in the 2003-2004 school year, not just those districts randomly selected for data verification. Also on page 5 of the APR, NMPED reported that it had hired a computer systems analyst to work full-time on special education data issues. NMPED included activities to continue developing and improving this process. OSEP looks forward to reviewing the results of implementation of these activities in the next APR.

Early Childhood Transition

In the January 2000 Monitoring Report, OSEP concluded that NMPED failed to ensure: (1) a smooth and effective transition for children transitioning from Part C to Part B programs; (2) that by the third birthday of a child, an IEP was developed and implemented; and (c) that local educational agencies (LEAs) participated in transition planning conferences arranged by the Lead Agency (34 CFR §300.132). In its Progress Reports, NMPED reported the following activities: (1) the development of a transition agreement between NMPED and the New Mexico Department of Health (DOH) to support timely transitions; (2) the development of a "best

practice document” related to transition from Part C to Part B, that was jointly developed, produced and distributed by DOH and NMPED; (3) the provision of regional transition training to Part C and Part B providers, staff from Head Start, community early child care and educational programs, LEA special education directors, parents, and advocates; and (4) facilitation of the development memoranda of understanding (MOUs) between LEAs and local Part C providers by NMPED and DOH.

In December 2001, NMPED reported the following activities: (1) the development of a State Transition Agreement between NMPED and the Department of Health (DOH); (2) the collaborative development and distribution, between NMPED and DOH, of a technical assistance document on early childhood transition that was disseminated to LEAs, early intervention agencies, parent organizations and other interested community organizations and members; and (3) training at quarterly meetings for special education directors and representatives of various parent advocacy organizations. In December 2002, NMPED reported the following activities: (1) NMPED and DOH collaboratively conducted a series of regional trainings for 47 community-based transition teams, with the purpose being to ensure an effective and seamless transition process; (2) representatives from the 47 transition teams were engaged in a facilitated process to develop regional memoranda of understanding that would outline each agency’s respective responsibilities and commitments, and arranged for transition coaches to provide follow-up support to ensure that the negotiated commitments were implemented; and (3) NMPED continued to provide transition training at its quarterly meetings. In the December 2003 Progress Report, NMPED reported the following activities: (1) NMPED staff and DOH consultants provided training to new special education directors in September of 2003 and to new school staff and early intervention providers in October of 2003, and NMPED provided training to Parents Reaching Out staff, parents, preschool teachers, and childcare agencies in December of 2003; (2) In August of 2003, DOH facilitated the collection of the names of children transitioning to Part B and provided this information to NMPED. NMPED sent the names to each school district and requested that IEP information be provided, documenting the transition of each child. The issues that emerged during this process included communication problems between Part C and Part B programs, and delayed evaluations by LEAs, as well as other problems associated with the transition process. Guidance was planned to address these issues. DOH and NMPED planned visits to the eight communities with the most serious issues; (3) Plans were developed to share the above information and to monitor the process on a quarterly basis; and (4) In January of 2003, satisfaction surveys were mailed to 1,674 families of children who transitioned from Part C to Part B during 2002. Approximately 23% of the families responded to the surveys and 84% of the respondents agreed that they were satisfied or very satisfied with the transition experience. NMPED reported that they also received recommendations for improving the transition process. NMPED completed all of the activities in its IP related to Early Childhood Transition, therefore that section of its IP is closed.

On page nine of the APR, NMPED reported that in 2003, NMPED and DOH monitored the effectiveness of the MOUs and the transition process. Of 722 children exiting Part C who qualified for Part B services: (1) 16% of children with disabilities received services on the first day of school (using the start date for all children); (2) 44 % received services on the first day of the preschool program (typically 2-3 weeks later); (3) 19 % received services 2 to 43 days later than the first day of school or the first day of preschool; (4) 16 % were not receiving services,

were not located, their parents chose not to enroll them, or they did not qualify (OSEP does not understand this last phrase because NMPED described the group of 722 children as children who qualified for Part B services); and (5) for 5 % no data were available. NMPED acknowledged that the monitoring process resulted in the identification of additional barriers to the transition process: (1) ineffective mechanisms for sharing information between DOH and NMPED; (2) LEAs not always aware of the children who were transitioning, indicating that transition planning meetings were not always held in a timely manner; (3) MOUs not fully operational; (4) shared data not always accurate regarding the names and birthdates of children; (5) lack of sufficient training and technical assistance to LEAs and early intervention providers; and (6) insufficient staffing in LEAs. NMPED submitted strategies, proposed evidence of change, targets, and timelines in its FFY 2002 APR. OSEP accepts the strategies, proposed evidence of change, targets, and timelines. The State must demonstrate compliance with the requirement to ensure a smooth and effective transition from Part C to Part B, including development and implementation of an IEP (or IFSP) by the third birthday of each eligible child with a disability, within a reasonable period of time, not to exceed one year from the date of this letter. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following the end of the one-year timeline.

Parent Involvement

On page 11 of the APR, NMPED reported that it was not collecting data in this cluster area, but that its target was to participate in the National Center for Special Education Accountability Monitoring's (NCSEAM) development of a parent survey that could be used to collect the data. NMPED reported the ways it had involved parents in the special education process at the State and local levels, and on the joint efforts to increase the involvement of parents, in cooperation with the New Mexico Parent Information and Training Center and with the State's universities. On page 12 of the APR, NMPED reported other planned activities. From data and information provided by the State in the APR, OSEP could not determine performance or compliance in this cluster. OSEP has not previously identified noncompliance within this cluster. In the next APR, NMPED must include data and its analysis, along with a determination of performance and compliance in this cluster. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State must include a plan that describes how the State will collect data to enable it to determine performance and compliance by the FFY 2004 APR.

Free Appropriate Public Education in the Least Restrictive Environment

In the January 2000 Monitoring Report, OSEP identified the following areas of noncompliance: (1) placement in the least restrictive environment, including failure to ensure that: (a) removal of children with disabilities from the regular education environment occurs only when the nature and severity of the disability is such that education in the regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily (34 CFR §300.550(b)); and (b) the educational placement of each child with a disability is based on his or her IEP (34 CFR

§300.552(a)(2)); and (2) extended school year (ESY) services, including failure to ensure that: (a) ESY services were available for all children who needed those services as part of FAPE) (34 CFR §§300.300, 300.309); (b) each child's IEP team determined the need for ESY services; and (c) IEP teams' decisions regarding ESY services were documented on IEPs (34 CFR §§300.309 and 300.347(a)(3)).

Least Restrictive Environment (LRE). As noted above, in the January 2000 Monitoring Report, OSEP identified the noncompliance related to placement of children with disabilities in the LRE. In its December 2001, 2002 and 2003 Progress Reports, NMPED reported on activities conducted to ensure that children with disabilities received services in the LRE: (1) LRE was (and is) one of the key performance indicators for NMPED's Focused Monitoring System; (2) NMPED contracted with a national inclusion expert to systemically change the State's practices in LRE and formed an LRE design team, composed of a group of interdisciplinary stakeholders, to assist in this process; (3) NMPED used State Improvement Grant (SIG) funds to hire an LRE coordinator to provide technical assistance to LEAs and trained 50 professionals as coaches in this process; (4) NMPED supported one professor and three additional doctoral students at the University of New Mexico to provide additional professional development to the districts in the Middle Rio Grande corridor and to the Albuquerque School District; (5) NMPED used capacity-building grants to fund pilot inclusion projects in LEAs and to support LEAs in sending interdisciplinary school teams to an annual, week-long Summer Institute on LRE; (6) NMPED, in collaboration with the Curriculum, Instruction and Learning Technologies Office (CLT) and the New Mexico Special Education Office, awarded approximately \$2.4 million to LEAs to support increased access for children with disabilities to the general education curriculum through the use of technology; and (7) NMPED developed and distributed technical assistance training tools, such as an LRE assessment and planning tool for school districts, a training toolbox consisting of videos, activities and materials, and a technical assistance manual on *Developing Quality IEPs*. NMPED also reported that it participated with the University of New Mexico in three additional LRE initiatives, including: Leadership Academies to train and support administrators in better meeting the needs of a diverse student population, a Dual Licensure Program to license teachers in both elementary and special education, and the development and publishing of an LRE best practices document. Based on this information, NMPED has completed all of the activities related to LRE in its IP; therefore that section of its IP is closed.

The percentage of children with disabilities in regular classroom placements has steadily increased since 2000. On page 16 and in Attachment 5, NMPED reported placement data for the years 2000-2001, 2001-2002, and 2002-2003, showing an increase in regular class placements and a decrease in segregated placements. NMPED reported that the LEAs that received a focused monitoring visit exhibited even greater improvements than those reflected in State-wide placement rates. NMPED reported that progress in the area of placement in the LRE could be attributed to a variety of activities aimed at improving New Mexico's poor national ranking on placement in the LRE.

However, data on pages two and three of the APR indicated that in eight of the 155 districts monitored in 2002-2003 the State identified systemic noncompliance regarding LRE and placement. NMPED submitted strategies, proposed evidence of change, targets, and timelines as

part of its FFY 2002 APR. OSEP accepts the strategies, proposed evidence of change, targets, and timelines. The State must demonstrate compliance with the requirement to ensure that, to the maximum extent appropriate, children with disabilities (including preschool children), including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following the end of the one-year timeline.

Extended School Year (ESY) Services. As indicated in OSEP's January 2000 Monitoring Report, New Mexico had failed to ensure that: (a) ESY services were available for all children who needed those services as part of FAPE (34 CFR §§300.300, 300.309); (b) each child's IEP team determined the need for ESY services; and (c) the IEP teams' decisions regarding ESY services were documented on the IEPs (34 CFR §§300.309 and 300.347(a)(3)). NMPED's December 2001, December 2002, and December 2003 Progress Reports identified the activities it had undertaken to correct this issue. The State provided technical assistance and training, and published a guidance document (last revised in 2003) on ESY services. In addition, NMPED revised its IEP form in 2001 to require the consideration of ESY services for all children who might need those services as part of FAPE. NMPED also included the consideration and provision of ESY services as part of its student record review form, which was used in all of its onsite monitoring. The State in the 2003 report indicated that, after conducting records reviews, it found no evidence that ESY continued to be a problem. NMPED completed all of the activities related to ESY in its IP; therefore that section of NMPED's IP is now closed. OSEP looks forward to reviewing the results of the implementation of these activities in the next APR.

Disproportionality. NMPED submitted Attachment 2 of the APR using data for 2000, 2001, and 2002. The extent of disproportionality, based on a plus or minus .20 percent within each category, for both the numbers of children identified within categories of disability, and the placement patterns of identified children with disabilities, showed a decrease from FFY 2000 to FFY 2001, but an increase from FFY 2001 to FFY 2002. On page 17 of the APR, NMPED stated that addressing the over-identification of African Americans as students with disabilities was its highest priority. On page 19 of the APR, NMPED reported a goal for the number of children with disabilities for all racial or ethnic backgrounds who would be identified as eligible for services under Part B and a numeric goal for the placement patterns for children with disabilities from various racial or ethnic backgrounds. The proposed use of numerical goals based upon race raises serious concerns under Federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns. 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. NMPED must submit revised language, consistent with Federal law, in the next APR.

34 CFR §300.755 requires that States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or in placements into particular settings must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement to ensure that they comply with Part B. The instructions to the 2002 APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. While identifying significant disproportionality, the State's 2002 APR did not include any information indicating that it had provided for a review of policies, procedures or practices used in identification or placement of children with disabilities. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation.

Graduation and Drop-out Rates. On page 14 of the APR, NMPED reported that high school graduation rates, disaggregated for special education students, were only available beginning in 2002-2003 (82.0% for all students and 82.22% for students with disabilities) and that although graduation data for students with disabilities could be calculated based on exiting reports, the method of data collection was not parallel for nondisabled students. NMPED also reported that with both groups, the graduation rate was the quotient of all students who received a diploma and the number of students in grade 12. NMPED added that there were different paths to a diploma available to students with disabilities, while students without disabilities had only one path. NMPED reported on the percentage of special education students who graduated through the different pathways.

NMPED further broke down these percentages by racial/ethnic group and disability groups. On page 14 of the APR, NMPED reported that drop-out rates, disaggregated for special education students, were only available for 2002-2003, and added that although drop-out data for students with disabilities could be calculated based on exiting reports, the method of data collection was not the same for nondisabled students. NMPED reported that the drop-out rate was calculated as the quotient of students in grades nine through twelve who dropped out in a given year and the

membership in those same grades for that same year. 2002-2003 drop-out rate for all students was 5.6% and for students with disabilities the rate was 3.6%. On page 18 of the APR, NMPED stated that goals for graduation and drop-out rates were met. On pages 19 and 20 of the APR, NMPED included strategies and benchmarks designed to maintain/improve performance. OSEP looks forward to reviewing data and analysis from the implementation of these strategies in the next APR.

Suspension and Expulsion. On page 15 of the APR, NMPED reported that although suspension/expulsion data collection on a student-by-student basis was piloted in 2001-2002, not all LEAs participated. At the end of 2002-2003, all LEAs reported these data. The suspension/expulsion rate for all students was 1.4%, and 2.3% for students with disabilities. NMPED offered no explanation for the difference in the rates, but reported that it provided technical assistance to LEAs struggling to understand exactly what discipline events were and were not to be counted. In addition, it reported that it provided immediate feedback to LEAs on the discipline data following the end-of-the-year electronic data submissions. On pages 19 and 20 of the APR, NMPED included strategies and targets designed to improve performance.

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 nondisabled children 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. The instructions to the 2002 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. However, the State's 2002 APR did not include any information indicating that the State had examined LEA data, used to compile the State aggregate, to determine whether significant discrepancies were occurring in the LEAs based on either one of comparisons described above. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of the comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

State-wide Assessment. On page 15 and in Attachments 3 and 4 of the APR, NMPED reported performance results for children with disabilities in the State-wide assessment system. NMPED did not allow: (1) out-of-level testing; (2) parents to petition for test exemptions; or (3) exemptions from State testing. New Mexico's State-wide testing was norm-referenced but the State intended to switch to criterion-referenced testing. The 40th percentile was identified to be the minimum standard for all children. NMPED reported some invalid scores at all tested grade

levels for reading and math, and reported that it was unable to discriminate among various possible causes that resulted in the scores being invalid for small subsets of children.

In Attachment 3 and on page 15 of the APR, NMPED reported participation and performance data in reading and math for school years 2000-2001, 2001-2002, 2002-2003. The participation rate for children with disabilities exceeded the rate for children without disabilities for the last two years. In 2000-2001, 67.3% of children without disabilities were reading at or above the 40th percentile, and 25.2% of children with disabilities were reading at the same level, a gap of 42.1%. In the same year, 64.3% of children without disabilities were performing at or above the 40th percentile in math, and 22.9% of children with disabilities were performing at the same level, a gap of 41.4%. In 2001-2002, 66.6% of children without disabilities were reading at the 40th percentile or above, and 22.5% of children with disabilities were reading at the same level, a gap of 44.1%. Also in the same year, 62.1% of children without disabilities were performing at the 40th percentile or above in math, and 19.0% of children with disabilities were performing at the same level, a gap of 43.1%. In 2002-2003, 66.5% of children without disabilities were reading at or above the 40th percentile, and 22.7% of children with disabilities were reading at the same level, a gap of 43.8%. In the same year, 63.1% of children without disabilities were performing at or above the 40th percentile in the area of math, and 19.5% of children with disabilities were performing at the same level, a gap of 43.6%.

On page 4 of Attachment 3 in the APR, NMPED reported the performance of students with disabilities taking the alternate assessment for math in 2002-2003. 371 students performed at the beginning level, 347 students performed at the nearing-proficiency level, 327 students performed at the proficient level and 101 students performed at the advanced level. On page 8 of Attachment 3 in the APR, NMPED reported on the performance of students with disabilities taking the alternate assessment for reading in 2002-2003. 138 students performed at the beginning level, 229 students performed at the nearing-proficiency level, 470 students performed at the proficient level, and 316 students performed at the advanced level. In Attachment 4 of the APR, for the years 2000-2001, 2001-2002, and 2002-2003, NMPED reported by LEA on poverty and minority percentiles as well as test performance data for the areas of reading, math, language, social studies and science. On page 18 of the APR, NMPED reported problems obtaining valid test data but stated that it was aware of the large gap between children with and without disabilities. On page 20 of the APR, NMPED included strategies and benchmarks designed to improve performance. OSEP looks forward to reviewing the data and analysis from the implementation of these strategies in the next APR.

Preschool Skills. On pages 17 of this section, NMPED stated that it had been unaware of probe BF.VI (Are the early language/communication, pre-reading, and social-emotional skills, of preschool children with disabilities receiving special education and related services, improving?), and therefore did not establish a target or collect data. On page 19, as a projected target, NMPED stated it would participate on an interagency team that would develop standards for all four-year-olds. OSEP does not consider this to be a target but rather, an activity. On page 21, NMPED reported that staff from its program under section 619 of IDEA, along with Even Start Early Literacy consultants, would meet weekly with representatives from other programs and interested stakeholders to identify program standards, develop learning outcomes and appropriate assessments, and determine State-wide capacity for inclusive early learning systems. NMPED

also reported that it, along with the Department of Health, and the Office of Child Development-Children Youth and Families Department, would jointly fund personnel and task forces to carry out these activities, with specified work being due October 1, 2004. Although the activities reported by NMPED might be movement in the direction of collecting data on preschool outcomes, it is not a plan to collect data. 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, New Mexico 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 a plan to collect the data for the FFY 2004 APR.

Secondary Transition

In the January 2000 Monitoring Report, OSEP identified the following areas of noncompliance in secondary transition. NMPED failed to ensure that: (1) IEPs for each student by age 16 included a statement of needed transition services that represented a coordinated set of activities, designed within an outcome-oriented process, that promoted movement from school to post-school activities (34 CFR §§300.29 and 300.347(b)(2)); (2) the statements were based on individual students' needs, taking into account each student's preferences and interests (34 CFR §300.29(a)(2)); (3) each public agency reviewed, and if appropriate revised, the IEP at least annually, including the statement of needed transition services (34 CFR §300.343(c) and 300.347(b)); (4) if a purpose of an IEP meeting was the consideration of transition services, the IEP meeting notice included that purpose (34 CFR §300.345(b)); (5) the student was invited to any meeting where transition was a purpose of the meeting (34 CFR §300.344(b)(1)); (6) if the student did not attend the IEP meeting, the public agency took other steps to ensure that the student's interests and preferences were considered (34 CFR §300.344(b)(2)); (7) representatives of any other agencies likely to be responsible for providing or paying for transition services were invited to the IEP meeting (34 CFR §300.344(b)(3)); and (8) agencies invited to the IEP meeting were included on the meeting notice (34 CFR §§300.345(b)(3)).

In its December 2001, 2002, and 2003 Progress Reports, NMPED reported on the activities that had been conducted to improve secondary transition including: (1) development of a State IEP form and a guidance manual that addressed the transition requirements; (2) development of a "transition cadre," a group of experts to oversee transition planning at the local level and identify the transition needs in the State that were addressed by the annual Summer Transition Institute; (3) development of a State-wide Transition Coordinating Council (STCC), an interagency, interdisciplinary group that advised NMPED and other State agencies, policy makers and others on the transition needs; (4) contracting with the University of New Mexico to conduct a survey of recent graduates to determine their post-secondary status and the transition planning activities that did and did not occur during high school; (5) establishment of the Transition Outcomes Project, training teams to review IEP files to assess the quality and the implementation of transition planning requirements, and to assist school personnel in making changes in district practice that local teams had identified as critical; (6) offering capacity-building grants to LEAs to improve transition outcomes; (7) revision of the technical assistance manual *Pathways to the*

Diploma: Graduation Options for Students with Disabilities; (8) establishment of partnerships between the New Mexico Transition Initiative and the Kansas University Transition Coalition, and the University of Northern Colorado Project TRAC (Transition Cadre members participated in transition-standards-based online web courses through both projects); (9) collaboration among STCC members and staff from NMPED, the New Mexico Children and Youth and Families Division, and the New Mexico Corrections Department to improve transition of incarcerated youth to the public schools as well as to post-school outcomes; and (10) training opportunities for parents, students and professionals. NMPED has completed all of the transition activities in its IP; therefore that section of its IP is closed.

On page 22 of the APR, NMPED reported that the most current data available relating to post-secondary outcomes was vocational training information collected in 2000-2001 under the Carl Perkins Vocational Education Act. Data gathered on four points related to vocational training for students with and without disabilities showed that the percentile difference between the two groups ranged from .12 % to 2.7 %, with students without disabilities having higher percentile rates for vocational academic attainment, vocational skill attainment and vocational completers, and students without disabilities having higher percentile rates for nontraditional enrollment and nontraditional completion. NMPED also reported on the result of random follow-up interviews with youth with disabilities after graduation to determine the percent positively engaged (positively engaged included: employment, military service, post-secondary training, and raising a family). The percent positively engaged in 1990 was 70%; 1994-1997, 69.2%; and 2002, 84.3%.¹ On page 22 of the APR, NMPED reported on data collected in ten districts on self-determination activities for students with disabilities (ages 14 and older). On page 25 of the APR, NMPED reported that, in 2001-2002, 35 LEAS were trained to facilitate student self-determination activities, and that in 2002-2003, 24 additional LEAs were trained. NMPED included strategies for improving secondary transition. OSEP looks forward to reviewing the results of the implementation of these activities in the next APR

Conclusion

In accordance with OSEP's February 2004 verification letter, NMPED was required to provide documentation, including monitoring data, of correction of two areas of noncompliance to OSEP by February 23, 2005. The submission date was subsequently changed, at the request of NMPED, to March 31, 2005, as part of the next APR. These issues are included in the list below.

In the next APR, NMPED must:

1. Submit data documenting that it is conforming with the one-year timeline for the correction of noncompliance identified through the monitoring process (General Supervision cluster).

¹ Sample size varied among the groups, with the 1994-1997 group about a fourth the size of the other two groups.

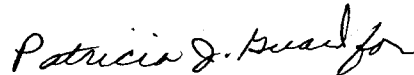
2. Provide data and analysis demonstrating continued compliance with timelines for resolving formal written complaints (General Supervision cluster) and submit maintenance strategies designed to maintain compliance with this requirement.
3. Demonstrate compliance with the requirement to ensure the timely implementation of complaint decisions, within a reasonable period of time, not to exceed one year from the date of this letter. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following the end of the one-year timeline (General Supervision cluster).
4. Submit data documenting that the State has reviewed and approved all LEA policies and procedures (General Supervision cluster).
5. Demonstrate compliance with the requirement to ensure a smooth and effective transition from Part C to Part B, including development and implementation of an IEP (or IFSP) by the third birthday for each eligible child with a disability, within a reasonable period of time, not to exceed one year from the date of this letter, in accordance with the Improvement Plan submitted with the FFY 2002 APR. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following the end of the one-year timeline (Early Childhood Transition cluster).
6. Submit data and its analysis, along with a determination of performance and compliance with the requirements of the Parent Involvement cluster. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State must include a plan that describes how the State will collect data to enable it to determine performance and compliance by the FFY 2004 APR (Parent Involvement cluster).
7. Provide data and analysis demonstrating continued compliance with placement in the LRE including: (1) that the removal of child with disabilities from the regular education environment occurred only when the nature and severity of the disability was such that education in the regular classes, with the use of supplementary aids and services, could not be achieved satisfactorily; and (2) that the educational placement of each child with a disability was based on his or her IEP (FAPE in the LRE cluster). The State must also submit maintenance strategies designed to maintain compliance with these requirements (FAPE in the LRE cluster).
8. Include the information required by the instructions related to significant disproportionality. If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review

of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation (FAPE in the LRE cluster).

9. Include the information required by the instructions related to suspension and expulsion. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above (see page 12 of this letter), and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation (FAPE in the LRE cluster).
10. 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 the area of preschool outcomes, or a plan to collect the data for the FFY 2004 APR (FAPE in the LRE cluster).

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Ms. Linda Whitsett at (202) 245-7573.

Sincerely,



Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Mr. Steve Oldroyd