



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

Honorable Terry Bergeson
Superintendent of Public Instruction
Washington State Office of Public Instruction
Old Capitol Building
P.O. Box 47200
Olympia, Washington 98504-7200

FEB 28 2005

Dear Superintendent Bergeson:

The purpose of this letter is to respond to Washington's April 1, 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

The December 1999 OSEP Monitoring Report and the December 2001 OSEP Improvement Plan Progress Report letter identified nine areas of noncompliance, including: (1) children with disabilities in need of psychological counseling services to benefit from special education were not always provided these services through the Individualized Education Program (IEP) process at no cost to the parents under the direction and supervision of the public agency; (2) shortages of qualified staff in occupational therapy, physical therapy and teachers of children with behavior disorders, resulted in failure to provide services appropriate to the unique needs of a child and delays in the provision of required services; (3) parents were not always included as participants in evaluations; (4) parents were not included in the multidisciplinary team that made placement decisions; (5) students with disabilities were not always invited to IEP meetings when the purpose was the consideration of needed transition services; (6) public agencies did not routinely invite to IEP meetings representatives of other agencies that were likely to be responsible for

providing or paying for needed transition services; (7) the Office of the Superintendent of Public Instruction (OSPI) did not ensure that youth with disabilities in adult correctional facilities were provided a free appropriate public education (FAPE); (8) the OSPI monitoring system did not ensure consistent implementation of Part B requirements; and (9) OSPI's monitoring system did not incorporate the changes necessary to evaluate compliance with the IDEA Amendments of 1997.

In response to the noncompliance, Washington submitted an Improvement Plan in March 2002 and an updated Improvement Plan in March 2004, along with its FFY 2002 APR. This letter will respond to any outstanding issues that have been identified in Washington's Improvement Plan as well as the contents of Washington's FFY 2002 APR. Washington also submitted a report in June 2004 detailing the results of its first complete monitoring cycle. This report included monitoring data from 289 districts and 4,400 individual student files covering years 2000-2001 through 2002-2003.

OSEP conducted a visit to Washington during the week of September 20, 2004 to verify the effectiveness of the State's systems for general supervision, State-wide assessment, and data collection under section 618 of IDEA. The results of this visit have been provided to the State in a separate letter issued today, and where appropriate, results of the verification visit are referenced in this letter.

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

Timely Identification and Correction of Noncompliance. Under 34 CFR §300.600(a)(2)(ii) and 20 U.S.C. §1232d, States are required to have monitoring procedures that identify areas of noncompliance and ensure timely correction of deficiencies identified through monitoring. Washington reported on page 2 of Cluster I of the APR on its implementation of strategies and activities to correct the finding that the State's monitoring system was ineffective in addressing actual practices, evaluating compliance with the IDEA Amendments of 1997, and correcting identified deficiencies. On pages 1 through 9 of Cluster I of the APR, the State included data and analysis that demonstrated correction of this noncompliance. Information on page 2 of Cluster I of the APR concerned the State review and analysis of 289 of the 296 districts and 4,400 individual student files for the 2000-2003 school years. On page 2 of Cluster I of the APR, OSPI explained that the Consolidated Program Review (CPR) process for special education adopted by OSPI during the 2000-2001 school year facilitates the identification and correction of noncompliance, using 18 core areas with corresponding indicators of compliance. The 18 core areas include: (1) policies; (2) procedures; (3) Section 504; (4) community involvement; (5) procedural safeguards; (6) private schools; (7) Family Education Rights and Privacy Act; (8) child find; (9) staff development; (10) complaints and due process; (11) special education State and Federal funds; (12) Medicaid funds; (13) continuum of educational placements; (14) IEP implementation; (15) free appropriate public education; (16) related

services; (17) parent participation; and (18) transition. The State explained on page 2 of Cluster I of the APR that core areas 1 through 12 focus on the district's administrative policy and procedures in the implementation of special education and related services. Core areas 13 through 18 focus on the implementation of individual student programs and on-site observations and interviews with staff necessary to verify the information found in the files.

The State undertook the strategies and activities it identified to address this area of noncompliance, and OSEP appreciates the work of the State in this regard. Although the information provided by the State indicates that the State's monitoring system complies with Part B insofar as OSPI has implemented a system for identifying deficiencies with applicable Part B requirements, OSEP has determined, based on the verification visit, that OSPI fails to ensure timely correction of identified noncompliance affecting specific students, as addressed more fully in the verification letter. As indicated on page 2 of Cluster I of the APR, OSPI indicated that upon receipt of the final report, the district may challenge the findings. However, once the challenged findings are reconciled, the district is required to develop and implement an agreed upon corrective action plan, as necessary.

As OSEP found during the verification visit, and as described in the verification letter, OSPI does not have procedures for ensuring correction of identified noncompliance affecting specific students within a reasonable period of time, not to exceed one year of identification. OSEP expects Washington to develop a procedure to ensure timely correction of deficiencies identified through monitoring that affect specific students. In the next APR, due April 29, 2005, in accordance with the measures set out in the verification letter, Washington must submit a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of identified noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepts the plan. In the next APR, due April 29, 2005, OSPI must submit data and analysis demonstrating progress toward compliance, including copies of monitoring procedures demonstrating timely correction of noncompliance involving specific students, and provide a report to OSEP with documentation of compliance as soon as possible, but no later than 30 days following the one-year timeline.

Services for Youth with Disabilities in Adult Correctional Facilities. OSEP's response to Washington's March 2002 Improvement Plan requested that the State include, in its revised Improvement Plan, information regarding the State's compliance with 34 CFR §300.311. Page 9 of the March 2004 Improvement Plan included the State's report that Washington services for youth with disabilities incarcerated in adult correctional facilities were, with certain exceptions, consistent with 34 CFR §300.311 and with: (1) the Revised Code of Washington (RCW) 28A 193; (2) the Washington State Supreme Court decision in *Tunstall v. Bergeson*, 5 P.3d 691 (W.A. 2000) cert. Denied, 121 S. Ct. 1356 (2001); and (3) the assignment of responsibilities for Part B to the Department of Corrections for youth with disabilities aged 18 through 21 and convicted as adults and incarcerated in adult prisons, consistent with Governor Lock's directive of March 9, 2001. Also on page 9 of the Improvement Plan, the State reported that Washington's revised monitoring process includes on-site verification of whether services are being provided to youth with disabilities in the adult correctional facilities that serve eligible students. The State completed the strategies it identified in its Improvement Plan of March 2004. OSEP appreciates the work of the State in ensuring that youth with disabilities in adult correctional facilities

receive the special education and related services for which they are eligible under Federal and State law.

Dispute Resolution System Ensures that Complaint Investigations and Due Process Hearings Are Completed in a Timely Manner. In the FFY 2002 APR, data and information indicated the following areas of noncompliance not previously identified by OSEP: State complaint procedures did not ensure that a written decision was issued within 60 days from the date of receipt of the complaint, unless the timeline was extended due to exceptional circumstances with respect to a particular complaint (34 CFR §300.661(a)(4) and (b)). Data on page 15 of Attachment 1 of the APR identified that 73 complaints were filed during the FFY 2002 APR reporting period. Approximately 22 percent (16) of the complaints filed were not completed within 60 days from the date of receipt of the complaint, and there was no evidence that the timeline was extended due to exceptional circumstances with respect to a particular complaint. In addition, States must ensure that a final due process hearing decision is reached, and a copy mailed to each of the parties, within 45 days from the date of receipt of the hearing request, unless the hearing officer grants a specific extension of this timeline at the request of either party (34 CFR §300.511). Data on page 16 of Attachment 1 of the APR identified 162 request for hearings, of which 32 were fully adjudicated, and 7 had decisions issued after applicable timelines, including after any extensions that had been granted. Approximately 21 percent of the cases fully adjudicated had decisions issued after timelines and extensions expired. On page 14 of Cluster I of the APR, the State reported the following strategies regarding these issues: (a) alignment of the due process and complaint databases to track extension requests; (b) building prompts into the due process and complaint databases to ensure awareness of deadlines; and (c) involving staff from Special Education Operations, OSPI Legal Services and the Administrative Law Judges to revise the current due process and hearing systems and implement changes. The State submitted an Improvement Plan as part of its FFY 2002 APR. OSEP accepts these strategies, and expects the State to demonstrate full compliance in this area not later than one year from the date of this letter. In the FFY 2003 APR, due April 29, 2005, the State must include data and analysis demonstrating progress toward compliance and submit a report to OSEP with documentation of compliance as soon as possible, but not later than 30 days following the end of the one-year timeline.

A Sufficient Supply of Personnel Available to Meet the Needs of All Children with Disabilities. The 1999 OSEP Monitoring Report identified noncompliance related to 34 CFR §§300.300 and 300.380(a)(2), which require each State to develop and implement a comprehensive system of personnel development designed to ensure an adequate supply of qualified special education and related services personnel. The 1999 OSEP Monitoring Report found that personnel shortages in all of the districts monitored were negatively affecting the ability of districts to provide FAPE to children with disabilities, particularly children in need of physical and occupational therapy services, and children with severe behavior disorders. On pages 17 and 18 of Cluster I of the APR, the State included data indicating an increase in fully certified staff in every personnel category and provided several strategies tied to the goals of the State Improvement Grant (SIG) during the 2002–2003 reporting period. These strategies included: (1) incentives to encourage study in special education; (2) implementation and impact of research-based instructional models; (3) alternate paths to certification; (4) school district and university partnerships; (5)

training institutes; (6) an in-service clearinghouse; and (7) the development of a mentoring module.

Although OSPI provided data that showed an increase in personnel, OSEP could not determine whether the noncompliance identified in OSEP's 1999 Monitoring Report has been corrected. OSEP received additional data in OSPI's June 2004 Consolidated Program Review letter. On page five of Attachment 2 of the letter, the State reported that during the 2000-2003 monitoring cycle, 4,400 special education student files were reviewed. Of these files, 1,491 had evaluations that recommended IEP goals and specially designed instruction for behavior. Monitoring results documented that 486 of these children (32.6% or 11% of the total files reviewed) were not receiving specially designed instruction for behavior as recommended in the evaluation. The State submitted an Improvement Plan and additional supporting data in the June 2004 letter to correct the noncompliance identified in this area. OSEP accepts the June 2004 Improvement Plan and the strategies included in the FFY 2002 APR, and expects the State to demonstrate full compliance in this area within one year from the date of this letter. In the FFY 2003 APR, due April 29, 2005, Washington must submit data and analysis documenting progress in ensuring that children in need of specially designed instruction for behavior disorders are receiving required specially designed instruction, despite shortages of qualified staff, and provide to OSEP a report with data and analysis demonstrating compliance as soon as possible, but no later than thirty days following the end of the one-year timeline.

From data and information provided by the State in the FFY 2002 APR, OSEP could not determine whether OSPI has corrected the noncompliance identified in the 1999 OSEP monitoring report regarding the provision of physical therapy and occupational therapy services for children in need of those services. In the FFY 2003 APR, due April 29, 2005, Washington must submit data and analysis indicating whether the State has corrected the noncompliance previously identified in this area. Examples of this data can include monitoring data, IFSP/IEP review, etc. If data demonstrate noncompliance, OSPI must submit a plan for correction of this noncompliance, including strategies, proposed evidence of change, targets, and timelines to correct this noncompliance as soon as possible, but not later than thirty days from the date of OSEP's approval of the plan.

Other Area: Psychological Counseling Services. The 1999 OSEP Monitoring Report identified noncompliance related to 34 CFR §300.300(a)(3), which requires public agencies to provide in a timely manner any related services, including psychological counseling, at no cost to the parents, that children with disabilities may need to benefit from special education. According to page 23 of OSEP's December 1999 Monitoring Report, parents were required at times to pay for psychological counseling services deemed necessary by the IEP team, psychological services were not available to high school students regardless of need, there were delays in the provision of services for some students, and type and amount of psychological services were limited based on category of disability. On page one of Attachment 1 of the June 2004 monitoring report, the State reported that during the 2000-2003 monitoring cycle, 4,400 special education student files were reviewed. Page 1 of the June 2004 Improvement Plan Progress Report indicated 2,151 files (48.9% of the 4,400 special education student files) involved a related service, and 348 of those files involved psychological counseling. Monitoring results documented on page 1 of the June

2004 progress report indicated that 120 of the 348 students (34.5%) were not receiving needed psychological counseling services.

The State submitted an Improvement Plan in March 2004 and additional supporting data in a progress report in June 2004 with strategies to correct this noncompliance, including: (1) identifying student needs and how to address those needs on the evaluation and IEP; (2) identifying the service provider on the IEP summary page; (3) adding additional psychologists and counselors; (4) adding a field for counseling in district databases; (5) district-wide training in which all staff reviewed files for the link between evaluation, IEP, delivery of instruction, and related services; and (6) training and review for building teams surrounding the scope of related service delivery. OSEP accepts the strategies in the Improvement Plan, and expects the State to demonstrate full compliance in this area within one year from the date of this letter. In the FFY 2003 APR, due April 29, 2005, the State must submit data and analysis documenting progress in ensuring that all children in need of psychological counseling services are receiving those services in a timely manner in accordance with their IEPs at no cost to the parents (34 CFR §300.300(a)(3)), and provide to OSEP a report demonstrating compliance as soon as possible, but no later than thirty days following the end of the one-year timeline.

Collection and Reporting of Accurate and Timely Data. On page 24 of Cluster I of the APR, Washington reported the strategies that it had put in place to ensure the accurate and timely submission of data. Those strategies included: (1) an annual data collection bulletin including all Federal special education reporting requirements, timelines, forms and instructions; (2) child count data submission requirements that require submission of the data to OSPI by the third week of December and entry of the data by the Special Education Data Manager and the Special Education Fiscal Plans Analyst; (3) personnel data collection that requires submission of the data by the end of May; and (4) State requirements for submission of suspension and expulsion data 30 days after the end of the school year. OSEP looks forward to reviewing the resulting data and OSPI's analysis of this data in the FFY 2003 APR, due April 29, 2005.

Early Childhood Transition

The instructions to this cluster ask States to determine whether children participating in the Part C program who are eligible for Part B services have an IEP or IFSP in effect by their third birthday, as required by 34 CFR §300.132(b). Based on the data and information included in the APR, the State acknowledged an area of potential noncompliance with 34 CFR §300.132(b) not previously identified by OSEP. On page one of Cluster II of the APR, the State explained, "that for preschool children determined eligible for Part B services, there is currently no method or process in place to assess if all [eligible] children leaving the Part C program are receiving special education and related services by their third birthday" because the system does not track data about individual children. On page 2 of Cluster II of the APR, the State included strategies, proposed evidence of change, targets and timelines to ensure compliance with 34 CFR §300.132(b).

The State also included the following strategies in the Improvement Plan on page two of Cluster II of the APR submitted as part of the FFY 2002 APR: (1) implementation of a data sharing agreement between Part B (OSPI) and Part C (Department of Social and Health Services); (2)

implementation of a common child identifier system that creates a data link between the Part C infant and toddler data system and the K-12 core student record system. OSEP accepts the Improvement Plan and the strategies included in the FFY 2002 APR, and expects the State to demonstrate full compliance in this area within one year from the date of this letter. In the FFY 2003 APR, due April 29, 2005, the State must include data and analysis demonstrating progress toward compliance with 34 CFR §300.132(b) and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year from the date of this letter.

OSEP assumes that any Part C to Part B tracking system that Washington develops will not involve the disclosure of personally identifiable information from students' education records, or if it will, that it is consistent with the IDEA and the Family Educational Rights and Privacy Act (FERPA). OSEP has enclosed for your information a copy of its February 11, 2004, letter to Mary Elder, Executive Director, Texas Interagency Council on Early Childhood Intervention, which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

Parent Involvement

In Cluster III of the APR, Washington reported data and analysis that demonstrated Washington's progress in correction of noncompliance previously identified in OSEP's 1999 Monitoring Report and December 2001 Improvement Plan letter in the following areas: (1) parents did not have the opportunity to participate as part of the group that reviewed existing data as part of initial evaluation or reevaluation of their child as required by 34 CFR §300.533(a)(2)(i); and (2) parents were not included in the multidisciplinary team that makes the child's placement decision as required by 34 CFR §300.501(c). On page 1 of Cluster III of the APR, the State reported that: (1) as part of its monitoring process, parent surveys were sent to 10 percent of the population of children with disabilities in the districts monitored; (2) data indicated that 96 percent of the parents surveyed were invited to their child's evaluation meeting to discuss the evaluation and received a copy of the evaluation report; and (3) the 2004 Improvement Plan chart documented State regulation changes implemented in January 2000 that made parent participation in the evaluation and reevaluation process a required activity rather than an optional activity. OSEP appreciates the work of the State in ensuring compliance with these requirements. Washington must continue to report in the FFY 2003 APR, due April 29, 2005, on its progress in ensuring full compliance in this area.

With regard to parent participation in the multidisciplinary team that makes placement decisions, (34 CFR §300.501(c)(1)), the State included data on page 1 of Cluster III of the APR indicating that, based on 755 responses to 2,460 parent surveys, parents were included in placement decisions related to the IEP approximately 89 percent of the time. Monitoring data supported the findings of the parent survey. Monitoring data on page 3 of Cluster I of the APR indicated that monitoring violations related to parent participation occurred in only 2 percent of the districts State-wide. The APR included strategies and targets to continue to increase parent participation. OSEP accepts these strategies. Washington must continue to report in the next APR on its progress in ensuring full compliance with this requirement.

Free Appropriate Public Education in the Least Restrictive Environment

Disproportionality. In Attachment 2 of the APR, Washington identified disproportionality in the following ethnic groups and disability categories:¹

1. Black children with: specific learning disabilities, 0.50 percent; mental retardation, 0.72 percent; and emotional disturbance, 1.25 percent;
2. Hispanic children with: mental retardation, 0.27 percent; and hearing impairments, 0.26 percent; and
3. American Indian children with: specific learning disabilities, 0.59 percent; mental retardation, 0.73 percent; hearing impairments, 0.22 percent; and emotional disturbance, 0.56 percent.

On page 2 of Cluster IV of the APR, OSPI indicated only that it intended to meet and discuss disproportionality with the Washington State Association of School Psychologists. The State did not include specific timelines for convening the meeting or intended outcomes of the meeting. Further, the State did not indicate that it would review State policies, procedures or practices as a result of the meeting to determine if revisions were necessary.

The Part B regulation at 34 CFR §300.755 requires 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 to 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. In the next APR, due April 29, 2005, Washington must report not just on its procedures for review of LEAs with significant disproportionality, but on the results of the review, and if appropriate, revision of policies, procedures and practices that occurred during the reporting period. If the State does not include information in the FFY 2003 APR indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures, and 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 pages 3 through 10 of Cluster IV of the APR, the State included data and analysis identifying the State's special education graduation and drop-out rates for the 2001-2002 reporting period. The State's graduation rate calculated from data on page 3 through 10 of Cluster IV of the APR for the reporting period July 1, 2002 through June 30, 2003, was 52 percent. The State target rate was 73 percent. The State's drop-out rate reported in the APR for the 2001-2002 reporting period was 41 percent. The State submitted strategies, proposed evidence of change, targets, and timelines, to improve performance and ensure compliance in this area. OSEP looks forward to reviewing information in the next APR that includes both implementation of those strategies and the resulting data demonstrating improvement.

Suspension and Expulsion. From data and information provided in the APR, OSEP could not determine performance or compliance with regard to suspension and expulsion of children with

¹ OSPI calculated its disproportionality percentage using the relative size of the difference between the child count percentage and the student enrollment percentage. A relative difference greater than 0.20 indicates over representation. A relative difference of -0.20 indicates under representation.

disabilities. On page 11 in Cluster IV of the APR, the State reported data that indicated the suspension rates for children identified as needing special education services by disability and race/ethnicity categories. The breakdown on page 11 of Cluster IV of the APR did not indicate if there was a discrepancy in suspension or expulsion across local educational agencies (LEAs) or compared to the rate for children without disabilities, as required by 34 CFR §300.146. Page 12 of this cluster included activities that, if implemented, should assist the State in this effort including: (1) incorporating data systems between the Safe and Civil Schools Section of OSPI and the Special Education Operations section; (2) involvement of the Special Education Advisory Council in review and analysis of data; and (3) if needed, the addition of a subcommittee or researcher who will work to promote improvement in this area. OSEP looks forward to reviewing the results of these strategies in the FFY 2003 APR.

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 individualized education programs (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.

Washington's 2002 APR, however, did not include specific information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of the 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 one of the comparisons described above, and that when it identifies significant discrepancies, it reviews, and if appropriate, revises (or requires the affected LEAs to revise) policies, procedures, and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

Participation of Children with Disabilities in State-wide and District-wide Assessments. On pages 15 through 26 in Cluster IV of the APR, OSPI reported on the performance and participation of children with disabilities on State-wide assessments. OSPI concluded that there continued to be large gaps between the academic performance of children with disabilities and children without disabilities. OSPI reported that children with disabilities, except children with parental exemptions², or children who were absent the day of the test, participated in the math

²All children are required to take State-wide assessments; however, for those children whose parents refuse to have their child, disabled or nondisabled, participate in State-wide regular assessments or alternate assessments, State policy recommends that the parent be requested to include the reason for not wanting the child tested. If any parent is unwilling to put the refusal in writing, the school should document that the request was made but the parent would not put the refusal in writing (Washington Assessment of Student Learning – Assessment Coordinators Manual).

and reading regular assessment or alternate assessment. Enrollment data indicated that there were the following numbers of students with IEPs: (1) in the 4th grade, 10,061 took the math assessment and 10,067 took the reading assessment; (2) in the 7th grade, 9,651 took the math assessment and 9,652 took the reading assessment; and (3) in the 10th grade, 7,441 took the math assessment and 7,425 took the reading assessment. Approximately 6 percent of children with IEPs in the 4th grade, 4 percent of children with IEPs in the 7th grade, and 4.7 percent of children with IEPs in the 10th grade took the math alternate assessment. At the high school level (10th grade), children identified as absent or exempt from taking the regular or alternate assessment accounted for 10 percent of the 10th grade enrollment data for the math assessment.

Approximately 6.6 percent of the children with IEPs in the 4th grade, 4 percent of the children with IEPs in the 7th grade, and 4 percent of the children in the 10th grade took the reading alternate assessment. At the high school level (10th grade), children identified as absent or exempt from taking the regular or alternate assessment accounted for 11 percent of the 10th grade enrollment data for the reading assessment. In addition, there were a large number of students whose scores were not valid for the reading and math assessments in grade 10. In the reading assessment, 32.4 percent of the scores were not valid and in the math assessment 20 percent of the scores were not valid.

OSPI provided strategies for improving performance of children with disabilities. Examples provided on page 15 of Cluster IV of the APR include: (1) continuing to develop appropriate alternate assessments for children in special education programs; (2) increasing the supply of highly qualified special education personnel; and (3) increasing the distribution of professional development materials targeting instructional adaptations for children. OSEP looks forward to reviewing the results of these strategies in the next APR.

Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent

Appropriate. On page 24 in Cluster IV of the APR, Washington reported data indicating preschool children with disabilities were more often served in special education settings compared to the national data. On page 24 of Cluster IV of the APR, the data indicated that, for the 2002-2003 APR reporting period, preschool special education settings represented 58 percent of all settings for three- to five-year-olds in the State. OSPI provided strategies to improve performance in this area. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement.

On page 24 of Cluster IV of the APR, Washington included a numerical goal for increasing the number of preschool children with disabilities in more inclusive settings by 10 percent. While it is not inconsistent with Part B of the IDEA to include a numerical goal to increase the percentage of children with disabilities educated with nondisabled peers, the State must continue to monitor to ensure that placement decisions for all children are made in conformity with the requirements of Part B of IDEA (34 CFR §§300.550 – 300.556), and are not based on a numerical goal. In the next APR, due April 29, 2005, OSPI must provide information demonstrating that placement decisions for preschool children are made on an individualized basis in accordance with applicable regulations.

Early Language/Communication, Pre-Reading, and Social-Emotional Skills of Preschool Children with Disabilities. From data and information provided by the State in the APR, OSEP

could not determine performance in early language and communication, pre-reading, and social-emotional skills of preschool children with disabilities. On page 25 of Cluster IV of the APR, OSPI reported that it was not able to provide data in this area since it was a new data collection requirement.

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. OSPI included strategies to develop a system to collect this data, and OSEP looks forward to reviewing data and analysis on the results of these strategies in the FFY 2003 APR, due April 29, 2005. In the FFY 2003 APR, Washington must submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), and 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, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

OSEP's 1999 monitoring report found that students with disabilities were not always invited to IEP meetings when the purpose was the consideration of needed transition services and that public agencies did not routinely invite to IEP meetings representatives of other agencies that were likely to be responsible for providing or paying for needed transition services (34 CFR §300.344(b)). Washington's March 2004 Improvement Plan included data and information that also indicated these areas of noncompliance related to 34 CFR §300.344(b). In Cluster V of the APR, Washington included strategies to ensure that the percentage of youth with disabilities participating in post-school activities (employment, education, etc.) was comparable to that of nondisabled youth. On page two of Cluster V of the APR, the State reported that approximately 61 percent of the districts monitored (three out of every five districts monitored) and 15 percent of the student files monitored had findings of noncompliance related to the provision of secondary transition services and planning for those services. Examples of corrective actions from one sample district provided in Attachment 1 of OSPI's June 2004 letter to OSEP, in addition to those identified in the APR, included:

- (1) development of a special education procedures manual, outlining the need for transition plans that included a course of study to meet student's post-school outcomes provided to all certificated special education staff;
- (2) centralization of all special education files in a district to facilitate administrative monitoring and review to ensure that transition plans for all students age 14 and above included a statement of transition services needed to meet the student's post-school plans; and
- (3) in-service training provided by secondary transition coordinators for all secondary, middle and high school, special education staff with regard to current transition regulations, model transition plans, and specific training for transition plans for all students age 14 and above that include a statement of transition services needed to meet the needs of the student's post-school plans.

The State included strategies to correct these areas of noncompliance in the Improvement Plan submitted as part of the FFY 2002 APR. OSEP accepts the strategies in the Improvement Plan and expects the State to demonstrate compliance regarding participants at IEP meetings involving transition services within one year from the date of this letter. In the next APR, the State must include data and analysis demonstrating progress in ensuring that IEP meetings for transition services include the student when the purpose of the meeting is consideration of transition services and that representatives of other agencies involved in providing or paying for transition services are routinely invited to IEP meetings (34 CFR §300.344(b)), and provide a report to OSEP documenting correction of this noncompliance as soon as possible, but not later than 30 days from the one-year timeline.

Conclusion

As noted above, in the next APR, due April 29, 2005, Washington must provide: a plan for correcting noncompliance involving individual students identified through monitoring, within one year of identification, in accordance with the measures set out in the verification letter (34 CFR §300.600(a)(2)(ii) and 20 U.S.C. §1232d); data and analysis demonstrating progress toward compliance, including copies of monitoring procedures requiring timely correction of noncompliance involving individual students; and a report to OSEP with data and analysis documenting correction of this noncompliance as soon as possible, but not later than 30 days from the date that OSEP accepts the plan.

In the next APR, Washington must provide data and analysis demonstrating progress toward compliance and submit a report to OSEP, with documentation of compliance as soon as possible, but not later than 30 days following one year from the date of this letter to ensure:

- children in need of specially designed instruction for behavior disorders receive required services despite personnel shortages (34 CFR §§300.380(a)(2) and 300.300(a)(3));
- children in need of psychological counseling services receive those services in accordance with their IEPs, at no cost to the parents (34 CFR §300.300(a)(3));
- students are invited to IEP meetings when the purpose of the meeting is consideration of transition services and that representatives of other agencies involved in providing or paying for transition services are routinely invited to IEP meetings (34 CFR §300.344(b));
- complaints are resolved within 60 days from the date of receipt of the complaint, unless the timeline is extended due to exceptional circumstances with respect to a particular complaint (34 CFR §300.661(a)A(4) and (b));
- decisions in due process hearings are issued no later than 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension of time, at the request of either party (34 CFR §300.511); and
- each child eligible for Part B services who participated in the Part C program has an IEP or IFSP in effect by the child's third birthday (34 CFR §300.132(b)).

In the next APR, Washington must provide data, whether collected through IEP or IFSP review or monitoring, demonstrating whether children with disabilities in need of physical therapy and occupational therapy services are receiving those services despite personnel shortages (34 CFR §§300.380(a)(2) and 300.300(a)(3)). If data demonstrate noncompliance, OSPI must submit a

plan for correction of this noncompliance, including strategies, proposed evidence of change, targets, and timelines to correct this noncompliance as soon as possible, but not later than thirty days from the date of OSEP's approval of the plan.

In the next APR, Washington must also provide:

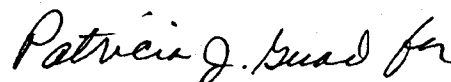
- the results of its review of procedures of LEAs with significant disproportionality in the identification and placement of students with disabilities (34 CFR §300.755(b)), and if appropriate, revision of policies, procedures and practices that occurred during the reporting period; and
- data and analysis (as required by the APR instructions) regarding suspension and expulsion rates for children with disabilities, as compared to nondisabled children or across LEAs in the State.

As noted above, OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement in the following areas:

- collection and reporting of accurate and timely data;
- improvement of data regarding parent participation at meetings of the evaluation and placement teams;
- improvement in graduation and drop-out rates;
- performance with regard to suspension and expulsion of children with disabilities;
- performance of children with disabilities on State- and District-wide assessments;
- children with disabilities educated with nondisabled peers to the maximum extent appropriate;
- placement decisions for preschool children are made on an individual basis in accordance with applicable regulations; and
- early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities, including documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), and targets for improved performance and strategies to achieve those targets, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

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 Dr. Al Jones, at (202) 245-7394.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Dr. Douglas Gill