UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Valerie Woodruff
Secretary of Education
Delaware Department of Education
The Townsend Building
P.O. Box 1402
Dover, Delaware 19903-1402

SEP -8 2005

Dear Secretary Woodruff:

The purpose of this letter is to respond to the Delaware Department of Education's (DDOE's) March 30, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

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

Background

The conclusion of OSEP's September 2004 FFY 2002 APR response letter required the State to submit to OSEP, within 60 days of that letter, an explanation of whether local educational agencies (LEAs) were participating in transition planning conferences for children leaving the Part C program as required by 34 CFR §300.132(c). If noncompliance was identified, the Delaware Department of Education (DDOE) was to submit a plan to ensure its timely correction. DDOE submitted an explanation to OSEP on November 19, 2004. Although DDOE did not identify noncompliance, OSEP required the State to ensure proper staffing to ensure smooth and effective transition meetings that are held at least 90 days before the child turns three.

OSEP also required DDOE to submit, in the FFY 2003 APR:

- Evidence to demonstrate compliance with 34 CFR §300.139(a)(2) regarding the reporting of test scores for the State's alternate assessment;

- Monitoring data related to least restrictive environment (LRE), including a report on DDOE's progress in revising the State formula for special education funding that OSEP and the State identified as a barrier to placement of children with disabilities in the LRE;

- The results of DDOE's review of policies, procedures and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race, required by 34 CFR §300.755(b);

- Data and analysis demonstrating whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for children without disabilities within the agencies, and, if significant discrepancies were identified, the results of its review and, if appropriate, revisions of policies, procedures and practices consistent with 34 CFR §300.146; and

- Either documentation of data, targets for improved performance and strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data, including a detailed timeline of the activities to implement that plan.

General Supervision

Identification and timely correction of noncompliance

On pages 1 through 6 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. DDOE uses the Continuous Improvement Compliance Monitoring System (CCMS) to monitor for compliance in LEAs and charter schools. During the 2003-2004 reporting period, eight districts completed self assessments, four of which were required to complete improvement plans to correct identified noncompliance. DDOE reported that all but one district submitted its improvement plan in a timely manner. The State indicated that it took steps to ensure timely correction. DDOE also required all new charter schools to complete a self-assessment. In addition to CCMS, on page four, DDOE stated that a database was developed to track systemic issues that are identified through complaint, mediation and due process procedures.

DDOE also submitted targets and future activities in the APR, including implementing a focused monitoring component into CCMS during the 2004-2005 school year. OSEP looks forward to reviewing the State's updated data and analysis in this area in the State Performance Plan (SPP), due December 2, 2005.

Formal written complaints

On pages 1 through 6 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. On page 3, DDOE reported that 15 complaints were filed during 2003-2004 and that all 15 complaint decisions were completed within the timelines required by 34 CFR §300.661. An enhanced data tracking system for complaints, mediation and due process hearings was developed and was to be piloted in 2004-

2005. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's updated data and analysis in this area in the SPP.

Mediation

On pages 1 through 6 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. On page 4 of the APR, DDOE reported five requests for mediation in 2003-2004, three related to due process hearing requests. All but one mediation session led to mediation agreements. Families who chose mediation reported feeling it was successful. OSEP looks forward to reviewing the State's updated data and analysis in this area in the SPP.

Due process hearings and reviews

On pages 1 through 6 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. On page 4 and attachment 1, DDOE reported that 21 due process hearing requests were filed in 2002-2003, but that only three hearings were held. Of the three hearings held, one was issued within the timelines required at 34 CFR §300.511 and two were issued within timelines extended under 34 CFR §300.511(c). DDOE also reported that hearing officers did not consistently inform DDOE when an extension was granted, but that this information would be included in the enhanced data tracking system to be implemented in 2004-2005. OSEP looks forward to reviewing the State's updated data and analysis in this area in the SPP.

Personnel

On pages 6 through 9 of the FFY 2003 APR, the State included data and analysis regarding certified teachers and personnel development. DDOE reported that the Partner's Council for Children with Disabilities (PCCD) now addresses personnel issues and that DDOE received a grant to assist in the development of a comprehensive plan for recruitment, preparation, and retention of qualified personnel. DDOE also submitted projected targets and future activities including developing a data management system to combine information from several departments. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 9 and 10 of the FFY 2003 APR, the State included data and analysis showing that DDOE was working to move all districts to a unified data-reporting system, E-School Plus. DDOE projects that 29 of 31 districts will be using E-School Plus by the end of the 2005 school year. DDOE reported working with districts to ensure the collection of accurate discipline data and planned to provide training on disciplinary data and reporting requirements in all districts. DDOE verified the accuracy of 618 data through a data verification process that was conducted regularly with each district. OSEP looks forward to reviewing the State's updated data and analysis in this area in the SPP.

Early Childhood Transition

As stated in the background of this letter, OSEP's September 2004 letter required the State to submit an explanation of whether LEAs were participating in transition planning conferences for children leaving the Part C program as required by 34 CFR §300.132(c). DDOE submitted an explanation to OSEP on November 19, 2004. Although DDOE did not identify noncompliance, OSEP required the State to ensure proper staffing to ensure smooth and effective transition meetings that are held at least 90 days before the child's third birthday as required by §300.148(a)(2)(i). On pages 11 and 12 of the FFY 2003 APR, DDOE reported that, during the 2003-2004 reporting period, the number of LEAs participating in transition meetings for Part B-eligible children exiting Part C increased from 64% to 98%.

Regulations at 34 CFR §300.132(a)-(b) require that children participating in early intervention programs assisted under Part C and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to those preschool programs and that by the third birthday of such a child, an IEP or, if consistent with 34 CFR §300.342(c) and §636(d) of the IDEA, an IFSP, has been developed and is being implemented for the child. Data describing compliance with these requirements may include: (1) the number of children exiting Part C during the reporting period who might have been eligible for services under Part B; (2) the number of those children found eligible for Part B services during the reporting period; (3) the number of eligible children for whom an IEP (or IFSP) was developed and implemented by the child's third birthday; and (4) an explanation for any eligible children who did not have an IEP (or IFSP) developed and implemented by the child's third birthday.

In its FFY 2002 APR, DDOE reported that the State did not have goals, performance indicators or baseline trend data for early childhood transition for the reporting period. The State identified targets, activities, timelines and resources for the next reporting period and stated the information would be included in the State's next APR. On pages 10 through 12 of the FFY 2003 APR, DDOE reported that there was no data available to report on the number of Part-B eligible children exiting Part C receiving services on their third birthday. DDOE began a process to track children transitioning from Part C to Part B in the DDOE data management and tracking system, but did not report on the number of children transitioning from Part C to Part B who have an IEP in place and implemented by the child's third birthday. DDOE proposed to continue to collect data related to early childhood transition and to work collaboratively with Delaware Department of Health and Social Services to develop a tracking system for children in Part B and Part C.

This is an indicator in the State Performance Plan (SPP) under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The State must submit responsive baseline data regarding the percentage of children referred by Part C prior to age 3 and who are found eligible for Part B and receive special education and related services by their third birthday in the SPP. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

Parent Involvement

On pages 12 through 15 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. A family survey was completed during the 2002-2003 school year and the results were reported in the FFY 2002 APR. DDOE continued to use the Family Satisfaction Survey data to make data-based decisions in the area of family involvement. DDOE completed other activities during the reporting period including creating a family brochure and involving parents in all on-going working committees at DDOE. DDOE also submitted future activities in the APR including disseminating the Family Satisfaction Survey again in 2004-2005. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet.

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

Disproportionality

DDOE's FFY 2002 APR, while identifying significant disproportionality, did not include any information indicating that the State provided for a review of policies, procedures or practices used in identification or placement of children with disabilities. In its September 2004 letter, OSEP required DDOE to include, in the FFY 2003 APR, the method used to determine possible discrepancies, what constituted a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies were occurring, a description of how the State planned to address them. OSEP wrote that if the 2003 APR did not include information indicating that the State, when it identified significant disproportionality, had 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 would conclude that the State was not complying with the regulation.

On pages 16 through 23 of the FFY 2003 APR, DDOE identified significant disproportionality in several areas including specific over-representation of Black children in the categories of mental retardation, emotional disturbance and specific learning disability. DDOE also reported that Black children were overrepresented in separate and self-contained (outside of the regular classroom greater than 60 percent of the day) settings. DDOE identified two districts with significant disproportionality for focused monitoring to determine causes and identify possible solutions. DDOE did not include information indicating that the State had 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.

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

In the FFY 2003 APR, the State also included strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable time, not to exceed one year from the date of this letter. DDOE's plan included an analysis of disproportionality data by district and the review and revision of district policies, procedures and practices used in the identification and placement processes. OSEP accepts this plan. In the SPP, the State must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance (including evidence of a review of policies, procedures and practices, and if necessary, revisions to those policies, procedures and practices) as soon as possible, but not later than 30 days following one year from the date of this letter.

Graduation and drop-out rates

On pages 24 through 29 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. DDOE reported an increase of 2%, from 48% to 50%, in the number of special education students graduating from high school with the class of 2004. DDOE also reported that the drop-out rate increased from 5.2% to 7.3% in 2002-2003, which may be the result of revised drop-out data collection procedures. Districts were no longer allowed to report students as "unknown." The drop-out rate for 2003-2004 was not yet calculated. DDOE's proposed activities in this area include ensuring that CCMS focuses on student graduation and drop-out rates and other transition indicators. OSEP appreciates DDOE's efforts in this area and looks forward to reviewing the State's updated data and analysis in this area in the SPP.

Suspension and expulsion

Regulations at 34 CFR §300.146 require the State to have on file with the Secretary information to demonstrate that the State educational agency (SEA) examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among local educational agencies (LEAs) in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, the SEA must review and, if appropriate, revise (or requires the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education programs (IEPs), the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA. The State's FFY 2002 APR, however, did not include any information indicating that the State 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 its September 2004 letter, OSEP required DDOE to include the information required.

On pages 29 through 34 of the FFY 2003 APR, DDOE reported data on the numbers and percentages of children with disabilities removed to interim alternative education settings and the number of children suspended for greater than ten days or expelled. DDOE however, did not include the analysis demonstrating compliance with 34 CFR §300.146 as required by OSEP's

September 2004 letter. Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant discrepancies among LEAs or compared to children without disabilities in the agencies; (2) a description of the procedures for conducting a review of policies, procedures and practices; (3) a description of the decision-making process for determining whether existing policies, procedures and practices contributed to, or were the cause of, the identified discrepancies; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the discrepancies; (5) a description of other steps taken if it is determined that policies, procedures or practices did not cause, or contribute to, the identified discrepancies, to identify the causes; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing discrepancies.

In the FFY 2003 APR, the State did not include strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance; therefore, the State must submit a plan to OSEP within 60 days of the date of this letter, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date OSEP accepts the plan. In the SPP, DDOE must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

DDOE described plans to continue to develop an accurate data reporting system for reporting suspension and expulsion data and planned to provide training on data collection and reporting. Positive Behavior Support (PBS) staff provided technical assistance in 22 schools to assist in maintaining or improving suspension and expulsion rates. DDOE included goals to decrease the number of suspensions and expulsions and discipline referral rates, and indicated that LEAs would be required to address the behavior and emotional needs of students each year in their Annual Progress Report.

This is an indicator in the State Performance Plan (SPP) under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The State must submit responsive baseline data regarding the percentage of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than 10 days in a school year in the SPP. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

Statewide and districtwide assessment

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 34 through 42 and Attachment 3 of the FFY 2003 APR, DDOE reported on the participation and performance of children with disabilities on statewide assessments. DDOE reported an increase in the percentages of children with disabilities participating in the Delaware Student Testing Program (DSTP) in all grades except grade 10 and an increase in the percentage of students participating in the Delaware Alternate Portfolio Assessment (DAPA) in all grades. DDOE also

reported some progress in the performance of children with disabilities on statewide assessments. During the reporting period, the State implemented, in coordination with the State Improvement Grant, a pre-kindergarten teacher-training program and a professional development system to train teachers in using instructional supports to assist children with and without disabilities to achieve higher levels of literacy. DDOE included goals in its FFY 2003 APR to increase the percentage of children with disabilities participating in the DSTP and DAPA and set performance targets for children with disabilities that would indicate progress. DDOE included strategies and timelines to meet those targets including creating a professional development plan to specifically address interventions to work with "at risk" children with and without disabilities, and "non-responders," and training more teachers through the professional development system previously implemented. DDOE also planned to utilize the CCMS process to monitor the performance of children with disabilities in the area of reading at the school and district levels as part of the planned FM process. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding the State's efforts to improve performance and ensure compliance in this area in the SPP.

Delaware's FFY 2004 Part B Grant Award was released with Special Conditions because Delaware had not yet reported publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments (science and social studies), as required at 20 U.S.C. 1412(a) and 34 CFR §300.139(a)(2). In its September 2004 letter, OSEP required DDOE to include in the FFY 2003 APR, information to demonstrate compliance with 34 CFR §300.139(a)(2). In the FFY 2003 APR, DDOE reported that the remodeling of DAPA was completed and the DAPA was completed for all subject areas for the applicable grades. DAPA scores for science and social studies were reported for grades eight and eleven in October 2004 and for grades four and six in February 2005. DDOE reported the scores and the scores are available online. As stated in OSEP's May 2005 letter, DDOE met the requirements of the Special Condition.

Least restrictive environment

The placement of children in the least restrictive environment (LRE) has been a longstanding issue in Delaware. Although DDOE made progress that impacted the placement of students with disabilities in the LRE, the State had not yet succeeded in eliminating those barriers that prevented children with disabilities from being educated in regular classes to the maximum extent appropriate, including with the use of supplementary aids and services.

In its September 2004 letter, OSEP required Delaware to report monitoring data related to LRE, including a report on DDOE's progress in revising the State formula for special education funding that OSEP and the State identified as a barrier to placement of children with disabilities in the LRE, monitoring data related to LRE and the success of inclusive school initiatives in the next APR. On pages 1-5 of the APR, DDOE included information about its monitoring system, including the September 30 Audit and focused monitoring process. While LRE was among the areas selected for focused monitoring, it was not clear what, if any, determinations the State made with regard to the appropriate placement of students with disabilities in the LRE.

On pages 42 through 47 of the FFY 2003 APR, DDOE reported that two school districts continued in the funding pilot for the proposed placement neutral funding system. DDOE set a target for the funding system to be placement neutral by 2005 and reported that it would continue to work with the Governor's Office and Delaware Legislature to modify the funding structure to provide placement neutral funding for all students with disabilities. DDOE reported that the State Budget Director and the Controller General, in consultation with the Delaware Secretary of Education, agreed to continue the funding pilot and that at the end of the school year, a third-party evaluator report would be available.

DDOE reported, on pages 42 through 47 of the FFY 2003 APR, that the percentage of children with disabilities served in the general education classroom 80% or more of the school day increased from 38% to 40%. DDOE reported that five pilot schools were selected to participate in the Inclusive Schools Initiative (ISI) and that instructional Universal Design for Learning (UDL) training was offered for all teachers. DDOE planned to increase training on and implementation of ISI and UDL in pilot schools and to develop modules for training for new schools. DDOE also reported recommendations were made to the Delaware Secretary of Education for new school building construction standards to include classrooms that are inclusive and ensure full accessibility for children with disabilities.

Section 612 (a)(5)(A) of IDEA requires that, to the maximum extent appropriate, children with disabilities, including children, in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or several of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Further, Section 612(a)(5)(B) of IDEA states that a State funding mechanism shall not result in placements that violate the requirements of subsection (A); and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with disabilities a free appropriate public education according to the unique needs of the child as described in the child's IEP. If the State does not have policies and procedures to ensure compliance with this requirement, the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in placements that violate LRE requirements.

OSEP notes that the national average for the percent of children with disabilities served in regular classrooms for 80% or more of the day is 50%, while Delaware serves 40% in regular classroom for 80% or more of the day, which is among the lowest in the nation. While OSEP recognizes that Delaware made progress toward ensuring that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, it does not appear that the State succeeded in removing those barriers that impact the appropriate placement of children in the LRE. OSEP is concerned that DDOE's funding formula continues to be a barrier to the placement of children in the LRE and that the State did not provide monitoring data related to LRE as required by the September 2004 letter. No later than December 2, 2005, the date that the SPP is due, DDOE must provide the following:

- Sufficient documentation, including policies and procedures, and documentation of the implementation of these policies and procedures, including monitoring data demonstrating that placement decisions are made in accordance with the LRE provisions.

- If the State is unable to provide this information, DDOE must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in inappropriate placements of children with disabilities.

Failure to provide this information could result in the designation of the State as a high-risk grantee and impact the State's FFY 2006 Part B funds.

Page 45 of the FFY 2003 APR contained a numerical goal for increasing the percentage of children receiving special education services in general education classes greater than 80% of the school day, as the State did in the FFY 2002 APR. While it is not inconsistent with IDEA to include a numerical goal, 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 at 34 CFR §§300.531-535 and are not based upon a numerical goal.

Preschool performance outcomes

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. On page 47 and 48 of the FFY 2003 APR, the State provided a plan to collect data and information in this area. DDOE planned to identify a statewide Child Outcomes Work Group, with the support of the General Supervision Enhancement Grant (GSEG), continue to actively direct the State's early childhood accountability planning initiative, complete a statewide survey of current assessment practices, and to recommend a set of child-level indicators and evidence statements to assess children's progress as well as an assessment system aligned to those indicators.

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Secondary Transition

On pages 49 through 51 of the FFY 2003 APR, the State presented the results from the Exit Survey, which is administered to youth with disabilities 18 months after they should have graduated with their original 9th grade cohort. The survey showed that 55% of youth with disabilities from the Class of 2002 cohort were working. DDOE also included in the APR plans to improve performance in this area. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with

OSEP's responses, against the requirements related to this indicator in the SPP packet. OSEP looks forward to reviewing the State's information in this area in the SPP.

Conclusion

As noted above, within 60 days from the date of this letter, DDOE must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of noncompliance with the requirements at 34 CFR §300.146 regarding the analysis of suspension and expulsion data.

In the State's Performance Plan, due December 2, 2005, DDOE must submit to OSEP:

1. Data and analysis regarding the early childhood transition requirements at 34 CFR §300.132(a)-(b) that Part B-eligible children exiting Part C receive services by their third birthday;

2. Data and analysis demonstrating progress toward compliance with regulations at 34 CFR §300.755(b) requiring that in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the State shall provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of Part B of IDEA. DDOE must submit 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; and

3. Data and analysis regarding the percentage of districts identified by the State as having significant discrepancy in rates of suspensions and expulsions for greater than 10 days in a school year for children with disabilities, as required by 34 CFR §300.146.

Not later than December 2, 2005, DDOE must provide either sufficient documentation, including policies and procedures, and documentation of the implementation of these policies and procedures, including monitoring data demonstrating that placement decisions are made in accordance with the LRE provisions, or , if the State is unable to provide this information, an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in inappropriate placements of children with disabilities.

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

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for and youth with disabilities and their families. If you have questions, please contact Sheila Friedman at (202) 245-7349.

Sincerely,

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Martha Toomey