



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

SEP 12 2005

Dr. David P. Driscoll
Commissioner of Education
Massachusetts Department of Education
350 Main Street
Malden, Massachusetts 02148-5023

Dear Commissioner Driscoll:

The purpose of this letter is to respond to Massachusetts' March 29, 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 and the additional submissions required of MASSDE in October 2004, February 8, 2005, and May 20, 2005. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's November 19, 2004 FFY 2002 APR response letter required the Massachusetts Department of Education (MASSDE) to:

- (1) provide a report by December 2004 on the progress of changes to its due process system to ensure that decisions are issued within required timelines (34 CFR §300.511) and provide evidence of correction in the FFY 2003 APR;
- (2) submit data and analysis by January 19, 2005 demonstrating that the noncompliance regarding issue #2 (IEP development) from OSEP's 2000 Monitoring Report was corrected and continue to report progress on ensuring full compliance in the FFY 2003 APR;
- (3) provide clarification by January 19, 2005 on MASSDE's monitoring indicator SE 20 (least restrictive program selected), and if this indicator demonstrated noncompliance with the least restrictive environment requirements in 34 CFR §§300.350-300.356, MASSDE was required to submit data and analysis demonstrating that the noncompliance was corrected in

the FFY 2003 APR;

- (4) submit a plan to collect data by January 19, 2005, as required at 34 CFR §300.381, that can effectively be used to evaluate special education licensure and vacancy needs and provide data and analysis demonstrating progress toward compliance in the FFY 2003 APR;
- (5) provide, by January 19, 2005 either: (1) data and analysis demonstrating compliance with the early childhood transition requirements in 34 CFR §§300.132 and 300.121(c); or (2) a plan that includes strategies, targets, proposed evidence of change, and timelines designed to achieve compliance within one year from when OSEP accepts the plan and provide data and analysis demonstrating progress toward compliance in the FFY 2003 APR;
- (6) submit in the FFY 2003 APR, data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE identified through monitoring, complaints and hearing resolutions were corrected in a timely manner;
- (7) report, in the FFY 2003 APR, on the specific systemic change related to activities it undertook in the 2003-2004 school year, including its analysis of the impact of those activities on performance and compliance;
- (8) continue to include strategies and data in the FFY 2003 APR to demonstrate improvement in timely complaint resolution;
- (9) provide data and analysis in the FFY 2003 APR on changes to its data collection system and progress in collecting and reporting data on personnel, discipline, and private/public school special education placements;
- (10) submit an interim Progress Report in the FFY 2003 APR on compliance with the following secondary transition requirements: (a) 34 CFR §§300.29 and 300.347(b)(2) (outcome-oriented statements of transition services for students with disabilities who were age 16 or older); (b) 34 CFR §300.344(b)(3) (method for ensuring that outside agencies likely to be providing or paying for transition services were invited to the IEP meeting and that there was a method for obtaining their input if they do not attend); and (c) 34 CFR §300.347(b) (1) (a statement of transition services needs for students with disabilities beginning at age 14) and submit a final Progress Report by June 1, 2005 containing data and analysis demonstrating full compliance regarding the above issues;
- (11) submit either documentation of data, targets for improved performance and strategies to achieve those targets for skills of preschool children with disabilities, or a plan to collect the data in the FFY 2004 APR for demonstrating that early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education and related services are improving;
- (12) submit baseline data and analysis in the FFY 2003 APR regarding disproportionality in the identification and placement of children with disabilities and, if significant disproportionality is identified, the results of its review (and, if appropriate, revision) of policies, procedures and practices to ensure that they are race-neutral, educationally appropriate and consistent with Part B;
- (13) include in the FFY 2003 APR baseline data and analysis of the drop-out and graduation performance of students with disabilities; and
- (14) include baseline data and provide an analysis in the FFY 2003 APR regarding compliance regarding suspension and expulsion rates for students with disabilities compared among

local educational agencies (LEAs) in the State or to the rates for nondisabled children within the agencies.

MASSDE submitted data and information in October 2004 and February 8, 2005 to OSEP in response to issues #1-#5 above. Further comment on these submissions is included in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

OSEP's November 2004 letter directed MASSDE to submit data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE identified through monitoring, complaints and hearing resolutions was corrected in a timely manner. On page 2 of the General Supervision section of the FFY 2003 APR, MASSDE reported that it had started a focused monitoring pilot in five districts. MASSDE provided a summary of its monitoring findings in Appendix B.3 (Overview of 2003-2004 Coordinated Program Review (CPR) Findings). Under Performance Indicator B on page 2 of the General Supervision section, MASSDE indicated with the first cycle of mid-cycle reviews completed, it was able to effectively ensure that noncompliance identified during the FY 01 CPRs had been corrected.¹ However, MASSDE also stated on page 1 of the General Supervision section of the FFY 2003 APR that "the [monitoring] procedures themselves are considered our data." OSEP indicated in its response to MASSDE's FFY 2002 APR that procedures are not a demonstration of MASSDE's ability to identify and correct noncompliance. During OSEP's verification visit in July 2003, OSEP was able to verify, through a review of MASSDE's monitoring files, that corrective action plans were implemented and MASSDE conducted follow-up to ensure the corrective action plans were effective. However, in the FFY 2003 APR, while MASSDE provided data demonstrating correction of noncompliance for certain indicators, MASSDE did not provide data and analysis demonstrating correction of all findings of noncompliance when it was found in districts.

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 percent of noncompliance related to monitoring priority areas and indicators corrected within one year from identification; the percent of noncompliance related to areas not included in the monitoring priority areas and indicators corrected within one year of identification; and the percent of noncompliance identified through other mechanisms corrected within one year of identification. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

¹ FY refers to the State fiscal year.

Identification and remediation of systemic issues through the analysis of data from all available sources, including monitoring

OSEP's November 2004 letter required MASSDE to report on the specific systemic change activities it identified in the FFY 2002 APR and undertook during the 2003-2004 school year, including its analysis of the impact of those activities on performance and compliance. On page 2 of the General Supervision section of the FFY 2003 APR, MASSDE stated that it "has begun to change its focus toward using data in a more effective manner to review and identify needed areas of focus." According to MASSDE, it utilized its monitoring data from the past four monitoring cycles, as well as the analysis of complaints and hearing resolutions, and its Steering Committee met in June 2004 to review its Improvement Plan and analyze systemic issues in Massachusetts. MASSDE provided an analysis and update to its Improvement Plan at Appendix B.2 that focused its activities for the current school year. For example, the Steering Committee reviewed areas from State monitoring with scores indicating low performance for indicators associated with progress reports and content, the responsibilities of school principals in special education programs within their schools, professional development in special education, and evaluation by districts of their special education programs and services. As a result, the Steering Committee recommended activities in each area. OSEP appreciates the State's efforts to improve performance in this area.

Formal written complaints

OSEP's November 2004 letter required MASSDE to provide strategies and data to demonstrate its performance regarding the timely resolution of complaints as required by 34 CFR §§300.660-300.662. On page 4 of the General Supervision section of the FFY 2003 APR, MASSDE reported an 82% completion rate for addressing complaints within timelines in 2003-2004. In order to consistently address complaints within timelines, MASSDE developed a new computer software tracking system to facilitate the management of complaints. The data provided in the APR demonstrated noncompliance with the requirement in 34 CFR §300.661 to ensure that MASSDE issue its written decision on each Part B formal written complaint within 60 days of receipt, unless the timeline is extended due to exceptional circumstances that exist with regard to a particular complaint. In the SPP due on December 2, 2005, MASSDE must submit data on the percent of signed written complaints with reports issued that were resolved within the 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint. If this data demonstrates continued noncompliance with the requirement in 34 CFR §300.661 to issue timely decisions, MASSDE must also submit a plan in the SPP that includes strategies, proposed evidence of change, targets and timelines for ensuring compliance, as soon as possible, not to exceed one year from when OSEP accepts the plan.

Mediation

In Attachment 1 of the FFY 2003 APR, MASSDE reported it conducted 690 mediations resulting

in 491 mediation agreements. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data in this area in the SPP.

Due process hearings and reviews

In OSEP's October 2003 verification letter, OSEP found that MASSDE was not in compliance with the requirement in 34 CFR §300.511(a) and (c) to ensure that a final decision is reached in each due process hearing and a copy of the decision mailed to each of the parties not later than 45 days after the receipt of a request for a due process hearing, unless the hearing officer grants a specific extension of time beyond the 45-day timeline at the request of a party. MASSDE provided a corrective action plan that was approved by OSEP in December 2003 to correct the noncompliance in this area. OSEP's November 2004 letter required MASSDE to provide a report by December 2004 on its progress and evidence of correction of the noncompliance with due process hearing timelines at 34 CFR §300.511. MASSDE submitted reports on its progress in correcting timelines on October 28, 2004 and February 8, 2005. On October 28, 2004, MASSDE indicated that it made internal process changes to its due process system and proposed revisions to the Hearing Rules to ensure the issuance of timely decisions. MASSDE provided data that demonstrated a decrease in the number of days from "close of record" to issuance of a hearing decision, from 75 to 32 days. In Attachment 1 of the FFY 2003 APR, MASSDE reported that it held 12 fully adjudicated due process hearings with 4 due process hearing decisions falling outside the timelines. MASSDE reported on page 3 of the General Supervision section of the FFY 2003 APR that these figures do not reflect implementation of new administrative procedures begun in July 2004, which have significantly reduced noncompliance with timelines. MASSDE demonstrated progress in compliance with this requirement. MASSDE must provide data demonstrating compliance in this area in the SPP, due December 2, 2005.

Personnel

OSEP's November 2004 letter required MASSDE to submit, by January 2005, a plan to collect data on current and anticipated personnel vacancies and shortages as required under 34 CFR §300.381, and provide a report that included data and analysis demonstrating progress toward compliance in the FFY 2003 APR. MASSDE provided a plan in its February 8, 2005 submission and reported that it began several activities, including an educator database, to collect the required data. Although MASSDE hired a contractor and received an appropriation for FY 2005, it indicated that it will take "multiple years" to complete and implement a new data collection system. In the interim, MASSDE developed a district survey that will be utilized beginning in Spring 2005 and identified other data sources that could be used to evaluate current and anticipated personnel vacancies and shortages. On page 5 of the General Supervision section of the FFY 2003 APR and Appendix D.1, MASSDE reported data from the interim sources regarding its personnel needs and its progress in developing a comprehensive system for collecting educator data. OSEP appreciates the State's efforts to improve performance in this area.

Collection and timely reporting of accurate data

In the FFY 2002 APR, MASSDE reported on changes to its data collection system and its progress in collecting and reporting accurate data on personnel, discipline, conflicting definitions in least restrictive environment, and placement data for private/public school special education placements. MASSDE was required to report its continued progress in the collection and reporting of accurate and timely data in the FFY 2003 APR. On pages 6 through 8 of the General Supervision section of the FFY 2003 APR, MASSDE acknowledged that it was overdue in submitting some of its data to OSEP. Although MASSDE turned in three of the four section 618 tables late, it reported that it was able to submit data for Table 1 and Table 3 “much earlier than in previous years.” MASSDE provided information regarding changes made to its data collection system to provide more reliable, accurate, and timely data. MASSDE must continue to report its progress in meeting the Federal requirements under §618 of IDEA for the collection and timely reporting of accurate data in the SPP. OSEP appreciates the State’s efforts to improve performance and compliance in this area and looks forward to reviewing the State’s data in this area in the SPP.

Early Childhood Transition

OSEP’s November 2004 letter required MASSDE to provide data and analysis demonstrating compliance with the early childhood transition requirements at 34 CFR §§300.132 and 300.121(c), or a plan designed to achieve compliance with these requirements, by January 2005. In its February 8, 2005 submission, MASSDE corrected errors in the data reported in the FFY 2002 APR, and provided data and analysis from its State monitoring that demonstrated 84% compliance with SE 15 and 79% compliance with SE 17 in FY 2002 with these requirements. (We note that on page 1 of the Early Childhood section of the FFY 2003 APR, MASSDE reported 88% compliance with SE 17 in FY 2002.) The data that MASSDE provided demonstrated that 1 out of 49 districts monitored in FY 02 for SE 15 and 1 out of 34 districts for SE 17 remain out of compliance on those indicators. For those districts where MASSDE found continued noncompliance, it scheduled follow-up activities. On page 1 of the Early Childhood section of the FFY 2003 APR, MASSDE reported 87% compliance on SE 17 in those districts it visited during CPRs for FY 2004. This is an indicator in the SPP under section 616 that is due on 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.

Parent Involvement

On page 1 of the Parent Involvement section of the FFY 2003 APR, MASSDE reported that 92% of the districts monitored during the FY 2004 cycle were found in compliance with its indicator

to evaluate parental participation in IEP meetings (SE 26). MASSDE indicated that compliance in this area increased over the two previous years and reported monitoring data for parental participation in districts on two other indicators: parent advisory councils (a State requirement) and communication with parents in the primary language of the home (SE 32 AND SE 29). Although compliance rates were 70% and 62%, respectively, MASSDE demonstrated on pages 3 and 4 of the Parental Involvement section, that most districts were brought into full compliance by its mid-cycle monitoring reviews. MASSDE continues to work with those districts out of compliance by the mid-cycle review to ensure correction is implemented. For example, on page 4 of the Parent Involvement section of the FFY 2003 APR, MASSDE reported 24 of 56 (43%) LEAs out of compliance in FY 2001 on its indicator for evaluating that communications with parents are in their primary language. By mid-cycle, MASSDE's review indicated that 22 out of these 24 districts were compliant. The two LEAs that remained noncompliant were required to submit a Corrective Action Plan and Progress Report to MASSDE. 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 of 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 plan for this collection.

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

Disproportionality

OSEP's November 2004 letter required MASSDE to submit baseline data and analysis of disproportionality in the identification and placement of children with disabilities and, if it identified significant disproportionality, the results of its review (and if appropriate revision) of policies, procedures and practices to ensure that they were race-neutral, educationally appropriate and consistent with Part B, in accordance with 34 CFR §300.755.

On page 1 of the FAPE section of the FFY 2003 APR, MASSDE identified a performance indicator for addressing disproportionality regarding the numbers of children with disabilities receiving special education and the numbers of children with disabilities in each educational setting. On page 3 of the FAPE section, MASSDE identified a target for this indicator. The State's performance indicator and target address whether "the percentage of children with disabilities, by race/ethnicity, receiving special education, is proportionate to the percentage of children, by race/ethnicity, in the general population and their educational environments." 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. Therefore, the State must not use numerical goals/targets based on race in implementing the requirements of IDEA.

On pages 1-2 of the FAPE section of the FFY 2003 APR and in Appendix A.4 and Appendix A.7, MASSDE reported that, in FY 03, it designed a framework for identifying, monitoring, and addressing disproportionality and in FY 04 built upon this framework and developed a directed guide for identifying, monitoring and addressing disproportionality. MASSDE piloted a monitoring process for disproportionality over three years and implemented the process during FY 2004. Appendix A.7 included CPR procedures for monitoring and addressing disproportionality. Pages 12-13 of Appendix A.7 indicated that if significant disproportionality is identified in a district, the on-site team would investigate the disproportionality further and if no educationally valid reason for significant disproportionality had been shown, the district would be found in noncompliance and corrective actions would be designed to be responsive to the root causes of the disproportionality. Corrective actions might include revisions to policies and procedures, monitoring of targeted staff and awareness training.

In Attachment 2, MASSDE reported that for 2003-2004, it continued to use relative difference as its calculation for determining possible instances of disproportionality. MASSDE stated on page 3 of the FAPE section of the FFY 2003 APR, that in FY 04, for the first time, it was able to utilize student-level data collected through the Student Information Management System in order to determine if significant disproportionality based on race is occurring in the State with respect to identification and placement of children with disabilities, and that before MASSDE is able to determine if systemic disproportionality is occurring at the State level, at least three years of data are needed. MASSDE also indicated its current disproportionality data “were considered baseline data” and that it was looking at different statistical methods to calculate significant disproportionality. In reporting its statewide disproportionality data in Attachment 2, MASSDE listed a “number of possible areas of State disproportionality” in the identification of children as children with disabilities overall, identification of children as children with a particular disability and the identification of children as children in a particular environment. However, the State did not provide the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race-neutral, for those districts with significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings.

With the SPP due on December 2, 2005, MASSDE must (1) provide the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race-neutral, for those districts with significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; or (2) submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure that policies, and procedures and practices are reviewed for those districts with significant disproportionality in accordance with 34 CFR §300.755 as soon as possible and not more than one year after OSEP accepts the plan.

Graduation and drop-out rates

OSEP's November 2004 letter required MASSDE to provide baseline data and its analysis of the drop-out and graduation rates of students with disabilities. On page 4 of the FAPE section of the FFY 2003 APR, MASSDE reported that the drop-out rate for students with disabilities was higher, at 5.3%, than the drop-out rate of 3.7% for students without disabilities during the 2003-2004 school year. The drop-out rates for both students with and without disabilities increased from 2003 to 2004.

On page 5 of the FAPE section and Appendix F.1 of the FFY 2003 APR, MASSDE reported a proxy rate for assessing graduation performance until MASSDE will begin reporting graduation rates using the NCLB definition in the 2005-2006 school year. MASSDE reported a "Competency Determination Rate" of 83.8% for students with disabilities, compared to a rate of 97.4% for students without disabilities during the 2003-2004 school year. MASSDE concluded the data demonstrated that, although the rate for students with disabilities was below that of students without disabilities, students with disabilities were making significant progress toward the goal of graduating at rates comparable to students without disabilities. OSEP appreciates MASSDE's efforts in this area and looks forward to reviewing MASSDE's data and information demonstrating continued improvement in the SPP.

Suspension and expulsion

OSEP's November 2004 letter required MASSDE to include baseline data and provide an analysis of its compliance regarding suspension and expulsion rates for children with disabilities compared among LEAs in the State or to the rates for children without disabilities within the agencies as required by 34 CFR §300.146. Where the State determines that significant discrepancies are occurring, it must review, and, if appropriate, revise (or require the affected LEAs 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 these policies, procedures and practices comply with Part B. MASSDE provided baseline data on suspensions and expulsions for FY 2004. It reported a rate of 2.8 per 1,000 students enrolled for children with disabilities, compared to a rate of 1.5 per 1,000 students enrolled for children without disabilities. On page 8 of the FAPE section of the FFY 2003 APR in Figure 6, MASSDE presented its initial analysis of LEA level data to compare the rate at which each district is suspending or expelling students with disabilities to the rate at which each district is suspending or expelling nondisabled students. The data indicated that there were 92 districts where the rate for students with disabilities with suspensions greater than 10 days is higher than the rate for nondisabled students in the district. Of the 92 districts, six districts were found to have a difference in disabled and nondisabled rates of more than 10 per 1,000 enrolled students. OSEP is unable to determine from the information included in the FFY 2003 APR, whether MASSDE reviewed and, if appropriate, revised (or required the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of

IEPs and the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA, as required by 34 CFR §300.146(b), based on the discrepancy between the suspension/expulsion rates of children with and without disabilities. The State must include updated information related to this area in the SPP, including evidence of the review, and if appropriate, revision of the policies, procedures and practices of districts with significant discrepancies.

Statewide and districtwide assessments

On page 12 of the FAPE section of the FFY 2003 APR, MASSDE reported that Massachusetts exceeded the State and Federal participation goals with 99% of all children with disabilities participating in statewide testing. MASSDE reported that although performance goals for children with disabilities were not met in each of the target areas for language arts and math, a positive trend was noted, in that children with disabilities were closing the performance gap with children without disabilities. On page 9 of the FAPE section of the FFY 2003 APR, MASSDE reported that children with disabilities received a Composite Performance Index (CPI) of 64.2 in English/language arts and 47 in mathematics, as compared to a CPI for children without disabilities of 83.7 and 70.4, respectively. In Attachment 3, MASSDE reported that an alternate assessment was available and administered to children with disabilities for whom the regular statewide testing was not appropriate.

On page 14 of the FAPE section of the FFY 2003 APR, MASSDE also indicated that the opportunity for children with disabilities to progress in the general curriculum remained a priority in MASSDE's Improvement Plan and that MASSDE would continue to use this outcome data as a measure of success in this priority area. MASSDE used annual yearly progress (AYP) data to identify low-performing schools and provided assistance to those schools in developing improvement plans, along with training and technical assistance regarding assessment requirements. In addition, MASSDE was working with the State's accountability staff to include special education assessment data in the "TestWiz" software program that would allow schools and districts to conduct detailed item analysis of student assessment data in order to effectively plan for improved student results. Finally, MASSDE was working on several additional initiatives targeting improved student performance, such as: (1) analyzing outcome data by looking at factors related to performance, such as placement, LEA size, income level and performance by disability; (2) identifying district or school-based professional development models that support strong achievement by students with disabilities; (3) providing professional development opportunities for parents and medical community members on how placement in the LRE can contribute to better outcomes; (4) examining closely, performance results of children in out-of-district placements; and (5) exploring opportunities for providing small grants to higher education institutions to encourage research projects on the performance of students with disabilities. OSEP appreciates MASSDE's efforts in this area and looks forward to reviewing MASSDE's data in the SPP.

Least restrictive environment (LRE)

In the FFY 2002 APR, OSEP required MASSDE to provide clarification regarding MASSDE's monitoring for compliance with the LRE requirements at 34 CFR §§300.550-300.556 by January 2005; and to report in the FFY 2003 APR on ensuring that the requirements regarding placement in the LRE were met. In its February 8, 2005 submission, MASSDE provided data and analysis of its findings on this indicator. MASSDE reported that the compliance figure for this criterion (SE 20) in FY 2002 was 63%; 16 (89%) of the 18 districts found out of compliance implemented the required corrective action and were found to be in compliance and only 2 of 49 districts (4%) monitored remained out of compliance on MASSDE's LRE indicator. For those districts where MASSDE did not verify correction, MASSDE scheduled follow-up activities. On page 16 of the FAPE section of the FFY 2003 APR, MASSDE reported that 71% (FY 2003) and 61% (FY 2004) of districts were in compliance with this indicator during the initial monitoring visits that MASSDE used to evaluate compliance. Through corrective actions and mid-cycle reviews, MASSDE reported "high rates of corrected noncompliance." This area remained a focus of MASSDE's Improvement Plan. MASSDE indicated that it began to review placement data by disability and performance in FY 2004. On page 15 of the FFY 2003 APR and Appendix G, MASSDE reported its placement data. MASSDE indicated that changes made to the data collection system and definitions were "beginning to provide more reliable and accurate placement data." OSEP looks forward to reviewing data from these activities in the SPP.

Preschool performance outcomes

OSEP's November 2004 letter required MASSDE to either submit in the FFY 2003 APR 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, including a detailed timeline of the activities necessary to implement that plan. On page 18 of the FAPE section of the FFY 2003 APR, MASSDE provided a plan that anticipated a kindergarten readiness assessment system by June 30, 2006 and pilot of the system in September 2007. 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 of 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 plan for this collection.

Other: IEP development

OSEP's November 2004 letter required MASSDE to submit data and analysis demonstrating compliance with IEP development requirements under 34 CFR §§300.340-300.350 in the districts it monitored. Specifically, OSEP required MASSDE to show correction in its monitoring in FY 2002 for the following indicators: (1) SE 18A#1 (If the district chooses to draft any element(s) of the IEP for discussion, the TEAM (IEP) chairperson ensures that those

elements are genuinely considered prior to adoption at the TEAM meeting); (2) SE 18A#2 (The IEP includes specially designed instruction to meet the needs of the individual student, and related services that are necessary to allow the student to benefit from the specially designed instruction, or consists solely of related services that are necessary to allow the student to access the general curriculum, consistent with Federal and State requirements); and (3) SE 49 (For each student with special education needs found to require related services, the school district provides or arranges for the provision of transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education or to access the general curriculum, and includes psychological services). The data that MASSDE provided in its February 8, 2005 submission demonstrated 46 of 49 districts (94%) monitored in FY 2002 were in compliance on SE 18A#1, 47 out of 49 districts (96%) were in compliance on SE 18A#2, and 45 of 49 districts (92%) were in compliance on SE 49. For those districts where MASSDE was unable to verify correction, MASSDE scheduled follow-up activities to ensure compliance through its mid-cycle monitoring reviews.

Secondary Transition

In its November 2004 letter, OSEP accepted the strategies submitted as part of the FFY 2002 APR to improve compliance with secondary transition requirements at 34 CFR §§300.29, 300.344(b), and 300.347(b). MASSDE was required to submit an interim Progress Report in the FFY 2003 APR and a final Progress Report by June 1, 2005, including data and analysis demonstrating compliance in this area. On pages 1 through 2 of the Secondary Transition section of the FFY 2003 APR, MASSDE provided its interim Progress Report. MASSDE reported that State monitoring data over the past four years indicated that LEA compliance levels are consistently in the 60% to 70% range. However, MASSDE was able to demonstrate that through implementation of corrective actions, noncompliance was corrected. For example, on the three indicators that MASSDE used to evaluate compliance in this area (SE6#3, SE6#2 and SE6#1), compliance of 96% to 100% was attained by the mid-cycle review for districts monitored in FY 2001. For the LEAs that remained noncompliant with SE6#3 and SE6#1, MASSDE prescribed additional corrective actions and required the LEAs to implement the corrective action without delay or face possible loss of funds or other enforcement action.

MASSDE also noted in a May 20, 2005 submission that, although the initial monitoring findings were disappointing, the results suggest that the noncompliance findings in transition changed in “nature and degree.” For example, transition discussions took place, but the “documentation and breadth of discussion were insufficient.” MASSDE also reported on page 2 of the Secondary Transition section of the FFY 2003 APR and in its May 20, 2005 submission, activities to improve its performance in secondary transition, including designating secondary transition as a priority area during the 2005-2006 school year, trainings, development of a Transition Planning Chart for use by IEP Teams, and technical assistance, and the impact of its State Improvement Grant, that included programs to help students with disabilities build sound planning and learn skills necessary to ensure successful post-secondary outcomes. OSEP appreciates MASSDE efforts in this area

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 of 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 plan for this collection.

Conclusion

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

- (1) responsive baseline data regarding the percent of noncompliance related to monitoring priority areas and indicators corrected within one year from identification; percent of noncompliance related to areas not included in the monitoring priority areas and indicators corrected within one year of identification; and the percent of noncompliance identified through other mechanisms corrected within one year of identification in meeting the Federal requirements at 34 CFR §300.600;
- (2) data demonstrating compliance with complaint timelines in meeting 34 CFR §300.661, or a plan that includes strategies, proposed evidence of change, targets and timelines for ensuring compliance, as soon as possible, not to exceed one year from when OSEP accepts the plan if MASSDE is unable to demonstrate compliance with 34 CFR §300.661;
- (3) data demonstrating compliance with due process timelines in meeting 34 CFR §300.511;
- (4) 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;
- (5) the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race-neutral, for those districts with significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; or submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure that policies, and procedures and practices are reviewed for those districts with significant disproportionality in accordance with 34 CFR §300.755 as soon as possible and not more than one year after OSEP accepts the plan; and
- (6) data and analysis documenting review of district-level policies, procedures and practices in districts with significant discrepancies regarding disciplinary suspensions and expulsions.

IDEA 2004, §616 requires each State to submit a 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.

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OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Dr. Ken Kienas at (202) 245-7621.

Sincerely,



Troy R. Justesen
Acting Director

Office of Special Education Programs

cc: Ms. Marcia Mittnacht