



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

AUG 22 2005

Honorable Hank Bounds  
State Superintendent  
Mississippi State Department of Education  
P.O. Box 771  
Jackson, Mississippi 39205-0771

Dear Superintendent Bounds:

The purpose of this letter is to respond to Mississippi's April 15, 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 State's November and December 2004 submissions. OSEP has set out its comments, analysis and determinations by cluster area.

### ***Background***

The conclusion of OSEP's September 15, 2004 FFY 2002 APR response letter required the State to: (1) submit, within 60 days of receiving the letter, a plan describing how the State would correct three areas of noncompliance related to reporting on the participation and performance of students with disabilities in statewide assessments; (2) include performance data and its analysis demonstrating its progress in reaching compliance in those areas in its FFY 2003 APR; and (3) provide a final Progress Report within 30 days following one year from the date of OSEP's letter demonstrating correction of the noncompliance, including supporting data and analysis.

In November and December 2004, the State provided OSEP with: (1) revised performance data, by grade level, for reading and mathematics; and (2) an explanation for the participation data provided in the FFY 2002 APR. OSEP responded to these submissions in a letter dated January 10, 2005, directing the State to include all of the assessment data, as required by the APR instructions, in the Attachment 3 data charts in the FFY 2003 APR, and to provide OSEP with an assurance that these data would be included in the 2004-2005 Mississippi

Report Card. Further comment on these submissions is included in the appropriate section below.

In addition, OSEP's September 2004 response to the FFY 2002 APR directed Mississippi to include the following required elements in the FFY 2003 APR: (1) baseline and trend data, and documentation that included both implementation of strategies and the resulting data, demonstrating that the State was identifying district-level noncompliance and ensuring correction of that identified noncompliance in a timely manner; (2) data and analysis regarding drop-out rates; (3) information on the results of its review of policies, procedures and practices used in the identification or placement of children with disabilities when it identified significant disproportionality on the basis of race; (4) data and analysis regarding suspension and expulsion rates (as required by the APR instructions); and (5) either data (and analysis) related to early childhood outcomes, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

### ***General Supervision***

#### **Identification and timely correction of noncompliance**

OSEP's September 2004 letter directed the State to include baseline and trend data, and documentation that included both implementation of strategies and the resulting data, demonstrating that the State is identifying district-level noncompliance and ensuring correction of that identified noncompliance in a timely manner. On pages 2-3 of the FFY 2003 APR, the State included data and information regarding the identification and correction of district-level noncompliance. Information on page 2 and in the attached charts indicated that the State monitored 24 districts in 2003-2004 (eight in each of the three targeted areas selected by the Statewide Steering Committee). The State required each of these 24 districts to submit a corrective action plan, and all districts in the State to complete a self-assessment as part of the application for IDEA funds. On page 3, the State included projected targets and future activities related to improvement in this area, including follow-up on corrective actions in districts monitored in the prior year. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating the State's ability to correct identified noncompliance within one year of identification, in the SPP.

#### **Formal written complaints**

On pages 2 and 5 of the FFY 2003 APR, the State included data and information regarding formal complaints, indicating that, of the 20 complaints received in 2003-2004, all decisions were issued within the 60-day timeline. No complaints were pending as of June 30, 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information related to the complaint system in the SPP.

### Mediation

On page 5 of the FFY 2003 APR, the State included data regarding mediations, indicating that, of the 53 requests for mediation received, 22 were related to hearing requests. Thirty-one mediations resulted in mediation agreements. No mediations were pending as of June 30, 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information related to mediations in the SPP.

### Due process hearings and reviews

On pages 2 and 6 of the FFY 2003 APR, and in updated information submitted in e-mails dated May 16 and July 27, 2005, the State included data and information related to due process hearing requests made during 2003-2004. The State's information indicated that all due process hearings were heard, settled, withdrawn, or extended within timelines. The State further indicated that, of the 33 requests received, 14 went to mediation, ten were withdrawn, two were dismissed, and seven resulted in a due process hearing. All seven hearing decisions were issued within the required timelines. No hearings were reported to be pending as of June 30, 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in the due process hearing system in the SPP.

### Personnel

On page 4 and in two attached charts of the FFY 2003 APR, the State included data and information regarding teacher and related service provider vacancies. The State indicated that, for 2003-2004, 1.23% of Mississippi teachers were not fully certified compared to 1.87% in 2002-2003 and that the number of special education teachers decreased by 131 as a result of reductions in State funding. The projected target for the State is to maintain a rate of at least 98% fully certified teachers and service providers serving children with disabilities in Mississippi. OSEP appreciates the State's efforts in this area.

### Collection and timely reporting of accurate data

On pages 3-4 and in an attached chart of the FFY 2003 APR, the State included data and information regarding the accuracy and timeliness of data, reporting that verification visits conducted by the State educational agency (SEA) indicated that data collected through the Mississippi Student Information System (MSIS) are accurate. During 2003-2004, the State made 31 unannounced district-level data verification visits, including a review of 10% of student records in those districts. On page 3, the State reported that less than 2% of the schools in those 31 districts had data inaccuracies in students' records that needed to be corrected. The State further reported, however, that timeliness of data reporting is still unsatisfactory, and addressed this issue through its targets and activities. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

### ***Early Childhood Transition***

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 individualized education program (IEP) or, if consistent with 34 CFR §300.342(c) and §636(d) of the IDEA, an individualized family service plan (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.

On page 7 of the FFY 2003 APR, the State reported that the number of children served by Part B at age three increased from 1,016 in 2002-2003 to 1,163 in 2003-2004. The State did not include data on the number of children leaving the Part C program who were eligible for Part B, or the number of those children for whom an IEP (or IFSP) was developed and implemented by the child's third birthday, explaining that information on the number of eligible children receiving services at age 3 was not available at the time that the State submitted its APR. Through the use of a General Supervision Enhancement Grant (GSEG), the State has been collaborating with the Part C Lead Agency to define the processes for data collection, with a target of collecting, analyzing, and distributing to local education agencies (LEAs), data indicating the percentage of eligible students receiving services at age 3.

This is an indicator in the 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 three 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 8-9 (and in the attached survey) of the FFY 2003 APR, the State included data and information regarding parent involvement activities, indicating that parents served as active members on all 24 of the focused monitoring visits conducted in 2003-2004, and that the State continues to offer parent-training opportunities through a variety of organizations and services. In addition, a parent survey was developed and piloted in 2003-2004. The State refined the survey in 2004-2005 and will incorporate its use as a data-collection tool for focused monitoring purposes. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information related to parent involvement in the SPP.

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

Disproportionality

OSEP's September 2004 response letter directed the State to include information on the results of its 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. On pages 10-12 of the FFY 2003 APR, and in several related attachments, the State provided data and analysis indicating a need to improve performance in the area of disproportionality, including a review of the targets set by Mississippi to address overrepresentation of Black children in certain disability categories.<sup>1</sup> The State reported on page 11 that, even with the implementation of the *Mattie T.* Consent Decree Implementation Plan and the related activities conducted in 2003-04, the State determined that the data did not reflect the desired impact, and that more intensive interventions would be necessary to improve performance. However, the State provided no information about the specific strategies it had used during this period to address significant disproportionality. On page 12, the State included several future activities to improve performance in this area, including the development of a three-tiered intervention policy (approved by the State Board of Education in December 2004.) When implementing more intensive interventions, it will be important for the State to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B and race-neutral. OSEP looks forward to reviewing information in the SPP addressing this area, including the State's analysis of the strategies it has implemented and the resulting data.

Graduation and drop-out rates

On pages 12 and 13 (and in attached charts) of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the area of high school graduation. The State reported that, for 2003-2004, the graduation rate for children with disabilities was 34%, as compared to 84% for nondisabled children. The graduation rate for children with disabilities has remained relatively constant over the past three years. OSEP's September 2004 response letter directed Mississippi to provide data and analysis on the State's drop-out rate for children with disabilities. On page 12 and in attached charts, the State reported drop-out rates for children with disabilities and compared the rate to the total enrollment. For 2003-2004, children with disabilities represented 11.52% of the total number of dropouts, which is a slight increase over the previous year but not disproportionate to the general population. The State included strategies to improve performance in Mississippi's graduation and drop-out rate for children with disabilities. OSEP looks forward to reviewing information in the SPP, including the implementation of strategies and resulting data and analysis.

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<sup>1</sup> The Mississippi State Improvement Plan includes goals that are based on a consent decree entered into by the State to resolve allegations of discrimination on the basis of race in the implementation of special education programs and violations of the IDEA. (*Mattie T., et al. v. Henry Johnson, et al.*, N. D. Mississippi, No. DC75-31-S, 2003 Modified Consent Decree (Dec. 23, 2003)).

Suspension and expulsion

OSEP's September 2004 response letter directed Mississippi to provide data and analysis regarding the State's suspension and expulsion rate. On page 13-14, and in attached charts of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in this area. The State reported that, of the suspensions that occurred during the 2003-2004 school year, 20.61% were administered to students with disabilities, which is well above the 12.57% of the student population with disabilities for that year. The State further reported that, even though the number of expulsions decreased for both disabled and non-disabled students, the percentage of students with disabilities who were expelled increased from 12.35% in 2002-2003 to 15.75% in 2003-2004. The number of suspensions also increased slightly from 19.73% in 2002-2003 to 20.61% in 2003-2004. The State included activities in the APR to improve performance in this area.

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. If the State identifies significant discrepancies, the SEA must review, and if appropriate, 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 the IDEA. The instructions to the FFY 2003 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. In addition, OSEP's September 15, 2004 letter regarding the FFY 2002 APR specifically directed the State to include this information in the FFY 2003 APR, and noted that failure to do so would result in a finding of noncompliance. The State's FFY 2003 APR did not, however, include any 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 comparisons described above. (If a State does not have comparable data for students with and without disabilities, it must determine whether significant discrepancies exist in the rate for children with disabilities across LEAs.) Therefore, OSEP concludes that the State is not complying with 34 CFR §300.146. Within 60 days of the date of this letter, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including 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.

### Statewide and districtwide assessment

OSEP's January 2005 response to the State's Progress Reports directed the State to provide all assessment data, as required by the APR instructions, in the Attachment 3 data charts in the FFY 2003 APR, including the following: (1) participation rates of children with disabilities in the alternate assessment by content area and grade-level, or a plan to remedy the issue by July 1, 2005; (2) participation data for children with disabilities reported by number instead of (or in addition to) percentage; and (3) reporting of performance data for children with disabilities taking the alternate assessment by content area and by grade-level. On pages 14-15, in Attachment 3, and in additional charts in the FFY 2003 APR, the State provided all required information and data regarding participation and performance of children with disabilities on statewide assessments. For the 2003-2004 school year, Mississippi reported that 96% of children with disabilities (in the grades assessed) participated in the statewide assessments, as compared to 99% of nondisabled children. Of the children with disabilities that participated, 48% took an out-of-level test in 2003-2004. In comparing trend data, the State reported that children with disabilities are improving their performance in the statewide assessments; however, they are not improving at the same rate as nondisabled children, which will result in a widening of the achievement gap between the two groups. On page 15, the State indicated that they plan to provide data profiles to each district specifying participation and performance on statewide assessments. In addition, the State will use its focused monitoring system to identify districts with promising practices and those in need of improvement. OSEP looks forward to reviewing information in the SPP related to statewide assessment, including the implementation of strategies and resulting data and analysis.

### Least restrictive environment

On pages 16-17 of the FFY 2003 APR, and in several attached charts, the State included data and analysis indicating a need to improve performance in the area of least restrictive environment (LRE). The State reported that LRE targets set forth in the *Mattie T* Consent Decree were met for 2003-2004, and that it will continue to address the identification and placement of children with disabilities through numerous activities designed to improve setting and access to the general curriculum. The State further reported that it intends to use its focused monitoring system to identify districts with promising practices and those in need of improvement. OSEP looks forward to reviewing information in the SPP related to LRE, including the implementation of strategies and resulting data and analysis.

### Preschool performance outcomes

OSEP's September 2004 response letter directed Mississippi to provide in the FFY 2003 APR either data (and analysis) related to early childhood outcomes, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan. 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 17 of the

FFY 2003 APR, the State did not provide OSEP with any data in response to this performance indicator, or a plan to collect data and information in this area. The State only indicated that it had begun to study efforts of other States and that it would continue to do so. 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 page 25 of the FFY 2003 APR, the State reported that data on post-school activities were not collected in 2003-2004 and that the State will continue to investigate methods of collecting data on post-school outcomes. The State further indicated that focused monitoring reports and findings of due process did not indicate transition planning to be a problem. Page 25 included a planned activity to "study and plan for collection of data on post-school outcomes"; however, no specific timeline was included for addressing this activity. This strategy is similar to the target set forth in the State's FFY 2002 APR, and appears to indicate that the State has made no further progress 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. The State must make a determination whether plans currently in place to collect data related to post-school outcomes will be responsive to those requirements. 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.

### ***Conclusion***

As noted above, within 60 days from the date of this letter, Mississippi must submit to OSEP, the following: a plan to address discrepancies in the rate of long-term suspensions and expulsions of children with disabilities, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. In addition, no later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance with 34 CFR §300.146 as soon as possible, but not later than 30 days following the end of the one year timeline.

As further noted above, Mississippi must include the following in the SPP: responsive baseline data regarding the percentage of children referred by Part C prior to age three and who are found eligible for Part B and receive special education and related services by their third birthday in the SPP.

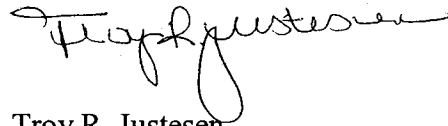
IDEA 2004, §616, requires each State to submit a State Performance Plan that measures performance on monitoring priorities and indicators established by the Department. These



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 children and youth with disabilities and their families. If you have questions, please contact Cynthia Bryant at (202) 245-7284.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy R. Justesen". The signature is fluid and cursive, with a large loop at the end of the last name.

Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Dr. Melody Bounds