



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

Dr. James M. McBride
State Superintendent of Public Instruction
Wyoming Department of Education
2300 Capitol Avenue, 2nd Floor
Hathaway Building
Cheyenne, WY 82002-0050

OCT 21 2005

Dear Dr. McBride:

The purpose of this letter is to respond to Wyoming's March 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 15, 2004 letter, responding to Wyoming's FFY 2002 APR, (September 2004 letter) required the State to submit to OSEP data and a determination of compliance or noncompliance regarding transition planning for children with disabilities ages 14 and/or 16-years old as required by 34 CFR §300.347. On November 5, 2004 and December 16, 2004, the Wyoming Department of Education (WDE) provided information and data demonstrating that the State was in compliance with the requirements of 34 CFR §300.347. Effective July 1, 2005, IDEA 2004 no longer requires the beginning of transition planning by age 14 (or younger, if determined appropriate by the IEP team), however, OSEP continues to encourage the early planning of the transition from school to work for children with disabilities.

In the September 2004 letter, OSEP also directed the State to include the following information in the FFY 2003 APR: (1) continue to report on how the State ensures timely correction of noncompliance identified through monitoring; (2) address the provisions of special education services to a child with a disability by their third birthday; (3) include

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 and revised targets on this issue consistent with Federal law; (4) include data and analysis regarding suspension and expulsion rates; (5) include an analysis of compliance data related to the participation and reporting on children with disabilities in State assessments; and (6) clarify how students with disabilities who take an alternate assessment are assessed against the extended content standards of the State and whether the WDE's system enables the State to report on these students' performance in the same content areas and with the same frequency as their nondisabled peers.

Further, in a letter dated January 18, 2005, issued as a follow-up to the State's meeting with OSEP leadership on October 15, 2004, OSEP requested that in the FFY 2003 APR, the State demonstrate that the Part B general supervision instruments and procedures used by WDE identify and correct IDEA noncompliance in the preschool programs administered by the Developmental Disabilities Division (DDD) by providing the following information: (1) the number of preschool programs operated by the DDD that were monitored from July 1, 2003-December 31, 2004; (2) a summary of any findings of noncompliance identified in those programs; (3) the actions WDE was taking to correct any identified noncompliance in those programs in a timely manner; and (4) future activities, timelines, and resources to demonstrate on-going monitoring of the DDD preschool programs for compliance and program improvement.

General Supervision

Identification and timely correction of noncompliance

The September 2004 letter required that the State continue to report on how the State ensures timely correction of noncompliance identified through monitoring. On page 1 of the FFY 2003 APR, the State reported that it requires the development and implementation of a quality improvement plan for areas of noncompliance. The quality improvement plan must be received by WDE within 30 days of the monitoring report. On page 6 of the FFY 2003 APR, WDE reported that although all quality improvement plans were not submitted within the timeline, all required plans were received after contacting and working with the districts.

On page 3 of the FFY 2003 APR, the State reported that, prior to the 2003-2004 school year, monitoring reports included Positive Areas and Areas Identified for Improvement. Areas Identified for Improvement were not necessarily out of compliance, but districts were still required to develop Quality Improvement Plans. The language used by WDE in its monitoring reports did not clearly identify areas of noncompliance. As a result, WDE changed its classifications to compliant and noncompliant. OSEP understands that WDE changed its monitoring classifications and anticipates seeing data and analysis on the identification and correction of noncompliance in the State Performance Plan (SPP), due December 2, 2005.

On page 4 of the FFY 2003 APR, WDE provided data regarding the monitoring of the DDD, which provides special education and related services to preschool-aged children with disabilities in Wyoming through the DDD's Child Development Centers (CDCs). On page 2 of the FFY 2003 APR, WDE reported that the DDD conducts compliance monitoring of its 14 regions on a three-year cycle. Beginning in 2005-2006, the DDD added a yearly self-assessment to the monitoring process applied to the CDCs. As requested by OSEP, in its January 18, 2005 letter, Wyoming included data for both the 2003-2004 and 2004-2005 school years; two regions were monitored by DDD during each of the identified school years. None of the four regions monitored were cited with noncompliance. On page 5 of the FFY 2003 APR, WDE reported that it requested narratives from the DDD to supplement the monitoring reports in order to gain a better understanding of potential systemic issues. The State reported that the additional information provided in the narratives did not support noncompliance but did raise areas of concern. While the State did not articulate what concerns were raised, it did state that it would follow-up on the "alleged irregularities" through on-site focused monitoring.

On page 5 of the FFY 2003 APR, WDE reported that it appointed a consultant to be the liaison between WDE and DDD and to facilitate collaboration and to improve and align the two monitoring systems. OSEP cannot determine what two monitoring systems WDE is referring to, since the information provided indicated that only the DDD was conducting monitoring. WDE reported on page 2 of the FFY 2003 APR that it maintains general supervisory responsibility to monitor preschool special education programs as required by 34 CFR §300.600. However, other than requesting the narratives from DDD and conducting some follow-up based on those narratives, OSEP cannot determine how WDE is exercising its general supervisory responsibility. With the SPP, due December 2, 2005, WDE must clarify how WDE maintains general supervisory responsibility over the preschool special education programs operated by DDD and provide the results of the on-site monitoring it is conducting to follow-up on alleged irregularities identified in narratives provided by DDD.

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.

Formal written complaints

On page 4 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance regarding the State's timeliness in complaint investigations. The data submitted by the State indicated that there were no complaints filed with the State

during the 2003-2004 school year. On page 6 of the FFY 2003 APR, to ensure that the absence of filed complaints was not due to a lack of knowledge of parental rights, the State reported modifying its parent survey to include a question specifically addressing whether or not someone at the district fully explained all of their rights. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Mediation

On page 4 of the FFY 2003 APR, the State included data and analysis that indicated that there was one mediation request, which resulted in one mediation agreement during the 2003-2004 school year. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Due process hearings and reviews

On page 5 of the FFY 2003 APR, the State included data indicating that there were two hearing requests filed during the 2003-2004 school year; one fully adjudicated hearing was held and a decision issued within the required timelines. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Personnel

On page 12 of the FFY 2003 APR, WDE acknowledged that it faced many challenges in recruiting and retaining highly qualified special education professionals and was actively working with districts to ensure all positions were filled. On page 12, the State reported, "the Wyoming Legislature mandated the House Bill 0078 study to examine special education expenditures and staff levels." The results of that statewide audit prompted WDE to recommend a regionalized service center that would function as a clearinghouse of special service providers enabling districts to collaborate in hiring "high-need" providers; however, the center was not funded by the legislature. The data provided on pages 13 and 14 represented the number of special education teachers in the State, the participants in the Wyoming Collaborative Mentorship Academy and the number of unfilled special education positions in 2003-2004, as identified via the House Bill 0078 study.

The State outlined a number of teacher and related services provider recruitment and retention activities. WDE's State Improvement Grant (SIG) initiative, the Wyoming Collaborative Mentorship Academy, provided a field-based alternate route to teacher certification in special education. The State also applied for, and was awarded, a grant from the National Personnel Center to support the recruitment of highly qualified personnel from diverse backgrounds. The Wyoming Project Readiness for para-educators provided multiple ways for para-educators to meet requirements to be highly qualified. OSEP appreciates the work of the State in improving performance in this area.

Collection and timely reporting of accurate data

On pages 16-19 of the FFY 2003 APR, the State described its efforts and process to collect accurate data and report it in a timely manner. WDE developed and implemented an electronic tracking system for local educational agencies (LEAs) to submit data that facilitated timely and accurate data submissions. Additionally, the State was in the initial phases of developing the Wyoming Integrated Statewide Education Data System (WISE). The system was intended to lessen the reporting loads for districts and reduce data errors. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Early Childhood Transition

OSEP's September 2004 letter requested that the State address the provision of special education services to a child with a disability by their third birthday. On pages 20-23 of the FFY 2003 APR, the State provided data that addressed the area required in OSEP's September 2004 letter. WDE reported that the fact that DDD is responsible for the administration of early intervention under Part C of IDEA and preschool special education and related services under Part B of IDEA allows for a smooth transition for children exiting Part C and determined eligible for Part B. WDE described the collaboration between WDE and DDD and the child find initiatives in the State.

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. OSEP is unable to determine the State's compliance with this requirement since this data was not included in the FFY 2003 APR.

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 pages 24-29 of the FFY 2003 APR, WDE utilized data from the parent survey element of its monitoring, and the four parent support/advocacy groups that serve the State to establish their baseline and demonstrate trends.

WDE's targets include a compliance measure establishing 100% of parents involved in the IEP process and a parent satisfaction measure establishing 90% or better satisfaction rating on parent surveys. The State's monitoring data indicated that it identified and corrected noncompliance in parent involvement in one district during the 2003-2004 school year. In its analysis, the State indicated that it had met the goal regarding parent satisfaction. On page 25, WDE stated that it was working with the University of Miami to develop a new survey to be used in the monitoring process beginning the 2005-2006 school year. OSEP looks forward to receiving information on this indicator in the SPP, due December 2, 2005.

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

Disproportionality

OSEP's September 2004 letter required that the State include 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 and revise targets on this issue consistent with Federal law. On pages 30-47 of the FFY 2003 APR, WDE included data and analysis addressing disproportionality. On page 30, WDE stated that, due to its homogeneous population, the determination of disproportionality was a challenge. While the State utilized the risk ratio presented by WESTAT to determine disproportionality, WDE found it ineffective in determining if any racial/ethnic groups were disproportionately underrepresented. WDE reported that it continued to research methods of determining disproportionality that would be relevant and meaningful for Wyoming's population.

Using the WESTAT ratio, four categories were identified in which Asian/Pacific Islanders were underrepresented. The State determined that, based on the small population and above-average performance on statewide testing, these four areas were not considered in need of additional review. WDE reported that, while data regarding autism identification in two districts was investigated, no disproportionality was found; however, the data presented a potential trend and WDE planned activities to address this issue. Five districts demonstrated overrepresentation of Black children in the category of emotional disturbance; however, the ED eligibility criteria were not found to be discriminatory and WDE planned follow-up visits to ensure that identification procedures and practices were not discriminatory. Hispanic children were overrepresented in the category of mental disability (MD) in seven districts. Investigation determined that in the district that had the highest risk ratio of 27.61, only 1 student from that district was identified as MD. WDE identified no systemic problems and no discriminatory

identification policies. American Indian/Alaska Natives were overrepresented in specific learning disabilities (SLD). WDE acknowledged this as a systemic issue within the State; however, WDE found no State or district policies or procedures to be discriminatory. As a means of addressing the issue, WDE intended to pilot a Response to Intervention program for groups of children with high SLD identification.

On pages 46-47 of the FFY 2003 APR, WDE provided data regarding environment disproportionality. The State focused its analysis on overrepresentation of racial/ethnic groups in the categories of students placed outside the regular classroom for more than 60% of the day and in combined separate facilities. The WDE reported that the State-level data flagged 3 areas in need of further analysis. The risk ratios for American Indian/Alaska Native were high in both categories and the risk ratio for Blacks in combined separate facilities was also slightly above the discrepancy criterion. OSEP appreciates the State's efforts in this area and looks forward to receiving updated information in this area in the SPP, due December 2, 2005.

Graduation and drop-out rates

On pages 48-52 of the FFY 2003 APR, WDE presented data on graduation and drop-out rates for youth with disabilities, including the formula for calculating the rates. WDE reported that; even though the graduation rate for students with disabilities increased over the last three years, it was still significantly lower than the rate for students without disabilities. WDE also reported that the drop-out rate for students with disabilities decreased over the last three years; however, it was still significantly higher than the rate for students without disabilities. All students graduating in Wyoming received a standard diploma. The State reported that graduation and drop-out rates continued to be areas of concern. In June 2004, a consultant was appointed to focus on secondary transition issues and to reform the Wyoming Transition Council. WDE conducted community forums to gather stakeholder input and were addressing high drop-out and low graduation rates through their annual yearly progress (AYP) monitoring. Districts not meeting AYP in these areas would be required to develop Targeted Intervention Plans. These plans were designed to meet individual schools' specific needs and included parent-community collaboration. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Suspension and expulsion

OSEP's September 2004 letter required the State to include data and analysis regarding suspension and expulsion rates consistent with 34 CFR §300.146 in the FFY 2003 APR. On pages 53-55 of the FFY 2003 APR, WDE stated that, for the purposes of the APR, only suspensions of more than 10 days, or expulsions, were examined; there were 77 suspensions longer than 10 days, or expulsions, during the 2003-2004 school year. Of the 77, eight were students with disabilities and no district had more than one student with a disability suspended or expelled for longer than 10 days. WDE defined a significant discrepancy to be greater than 3% difference in rates; no significant discrepancies were found.

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 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 require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA. While the WDE described the method it used to determine a significant discrepancy, the State did not identify which calculation noted above it applied to yield the data presented. Further, the WDE did not state whether or not the calculations examined data from all of its LEAs.

With the SPP, due December 2, 2005, the State must submit either: (1) evidence demonstrating that it is meeting the requirements of 34 CFR §300.146, as described above; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible, but not later than one year from the date 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

On page 56 of the FFY 2003 APR, WDE reported that its current assessment system is the Wyoming Comprehensive Assessment System (WyCAS). All students participate in WyCAS using one of three options: regular WyCAS without accommodations, regular WyCAS with accommodations, or the WyCAS alternate assessment, which is based on alternate achievement standards and is taken by less than 1% of the population. On page 56 of the FFY 2003 APR, WDE stated that there was a new assessment called the Proficiency Assessment of Wyoming Students (PAWS) being implemented for the 2005-2006 school year. This assessment was developed with Harcourt Assessment and was designed to provide timely feedback for teachers, parents and State personnel.

On pages 61-64 and in Attachment 3 of the FFY 2003 APR, WDE presented data and trend analysis from the 1999-2000 school year through the 2003-2004 school year regarding the participation and performance of children with disabilities in statewide assessments. The data presented demonstrated a rise in the percentage of children with disabilities who scored at or above the proficiency level. WDE's analysis concluded that the data reflected a general narrowing of the performance gap; however, the State indicated that there seemed to be a widening gap in the areas of 8th grade math, 11th grade reading and math, and a decline in performance for children with disabilities in 11th grade writing and math. The State believed the implementation of the PAWS assessment

would improve performance. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Least restrictive environment (LRE)

On pages 65-67 of the FFY 2003 APR, WDE described the procedures the State had in place to ensure that children with disabilities are educated to the maximum extent appropriate with children without disabilities. WDE reported that it continued to make the full continuum of alternative placements available and ensured that each individual child was placed in a setting that met his or her identified needs consistent with Part B regulations. WDE's analysis indicated that the percentage of children with disabilities in each category was stable over the past three years. The State also indicated the percent of children with disabilities who were removed from the regular classroom less than 21% of the day was higher than the national average. The Wyoming legislature funded a study to examine the placement of students with disabilities outside of their local district. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Preschool performance outcomes

On pages 68-69 of the FFY 2003 APR, WDE stated it does not currently collect preschool outcome data on a statewide basis; however, information was collected from its Kindergarten Readiness Survey. This survey was completed by kindergarten teachers throughout Wyoming and collected information on the ability of different types of preschool programs to develop children who are "ready" for kindergarten.

While the State applied for a General Supervision Enhancement Grant (GSEG) to implement an outcome-based system, it was not awarded the grant. WDE planned to proceed with the planning of that system. WDE will collaborate with the DDD, other Wyoming stakeholders and other States to develop a quality assessment system for young children with disabilities.

On page 69 of the FFY 2003 APR, WDE established a target for the 2004-2005 school year that the State will, "develop [a] plan for appropriate data collection that will support analysis of the issues for this indicator." The SPP instructions establish a new indicator in this area, for which States must provide entry 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.

Secondary Transition

On pages 70-72 of the FFY 2003 APR, WDE provided data and analysis regarding its secondary transition initiatives and its efforts to ensure that all districts are in compliance in this area. On page 70, the State reported that, in June of 2004, WDE appointed a

secondary transition consultant to work on a statewide plan for providing ongoing technical assistance to LEAs in the area of secondary transition; however, the hiring of this consultant was postponed. On page 71, WDE described how it was investigating potential data collection options for postsecondary school outcomes.

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2006 APR due February 1, 2008. 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 SPP, due December 2, 2005, Wyoming must include:

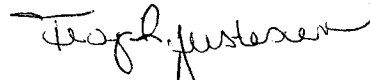
- 1) Clarification of how WDE maintains general supervisory responsibility over the preschool special education programs operated by DDD and the results of the on-site monitoring WDE is conducting to follow-up on alleged irregularities identified in narratives provided by DDD;
- 2) Responsive baseline 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; and
- 3) Either evidence demonstrating that the State is meeting the requirements of §300.146 regarding suspension and expulsion rates, or a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance regarding 34 CFR §300.146 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.

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 represents 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 any questions, please contact Ellen Safranek at (202) 245-7515.

Sincerely,

A handwritten signature in cursive script, appearing to read "Troy R. Justesen".

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Peg Brown Clark