



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Tom Horne
Superintendent of Public Instruction
State Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

JAN 11 2005

Dear Superintendent Horne:

The purpose of this letter is to respond to the Arizona's Department of Education (ADE) March 28, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003 and the June 2004 supplement APR submission regarding the status of Due Process Hearings. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for Part B of IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

OSEP is also responding to Arizona's July 11, 2003 Improvement Plan (IP) and Progress Report that addressed the noncompliance identified in OSEP's May 22, 2000 Monitoring Report. This IP and Progress Report provided a consolidation of ADE's initial IP and all revisions. In an October 24, 2002 letter, OSEP informed the State that it would approve ADE's IP subject to clarifications and revisions. ADE submitted these clarifications and revisions in their February and July 2003 revisions. These revisions are addressed in the cluster areas below. OSEP appreciates ADE's extensive presentation and analysis of compliance data from its monitoring system and looks forward to reviewing the data in ADE's FFY 2003 APR.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

It is OSEP's expectation that, as part of its improvement planning efforts and in reporting in the APR, Arizona will collect, analyze, and report relevant data and make data-based determinations regarding the implementation of the five clusters (as well as other areas identified by the State) to ensure compliance and improvement in program performance.

OSEP's comments regarding the APR, the June 2004 supplement APR submission regarding the status of due process hearings, and the July 2003 IP and Progress Report are listed by cluster area.

Background

OSEP's May 22, 2000 Monitoring Report identified the following areas of noncompliance: (1) ADE's monitoring system was not effective in identifying and correcting noncompliance with Part B requirements related to psychological counseling and child find; (2) ADE did not ensure that all Part B complaints where corrective action was required were properly implemented; (3) ADE did not ensure that due process hearing and State review decisions were made and issued within the required timelines; (4) ADE did not ensure that child find activities were conducted by local educational agencies (LEAs) to ensure that a Free Appropriate Public Education (FAPE) was made available to eligible children by their third birthday; (5) ADE did not ensure that LEAs provided extended school year (ESY) services to eligible children who needed services beyond the normal school year to ensure FAPE; and (6) a shortage of qualified staff, in the area of psychological counseling, resulted in a failure to provide services appropriate to the unique needs of the child, and there were delays in the provision of required services.

In December 2003, OSEP conducted a visit to Arizona to verify the effectiveness of the State's systems for general supervision, State-reported data collection, and State-wide assessment. The results of that visit are addressed under separate cover. However, these two letters overlap in the area of general supervision, i.e., monitoring, complaints, and due process hearings and are meant to be read in conjunction with each other. The required actions in the area of general supervision are set out in this letter.

The State's APR should reflect the collection, analysis and reporting of relevant data and document data-based determinations regarding the performance and compliance in each of the cluster areas (as well as other areas identified by the State to ensure improvement).

General Supervision

Monitoring: Identification and Correction of Noncompliance

OSEP's May 2000 Monitoring Report stated that ADE's method for identifying and correcting noncompliance was not always effective because the State did not identify noncompliance that OSEP identified in the areas of child find and the provision of psychological counseling services and had not ensured correction regarding ESY services. ADE proposed and implemented strategies and activities to address the underlying requirements and to improve monitoring for these requirements as reported in its IP and Progress Report. For example, ADE reported that: (1) LEAs were required to submit revised policies and procedures that included appropriate ESY service requirements and child find requirements from birth through 22; (2) the State instituted an "alert" system to notify ADE when children, birth through five, were "lost" in the system; (3) the State

provided informational pamphlets to LEAs regarding the child find system; and (4) the State also revised its monitoring to address the new procedures it instituted for the provision of psychological counseling services and to track completion of required corrective actions. OSEP also notes that, in addition to ADE's strategies and activities under Part B, the issue of child find and transition from Part C to Part B is also being addressed in the State's Part C APR.

During OSEP's verification visit, ADE staff described the monitoring system as being on a six-year cycle during which ADE conducts onsite compliance reviews, initiates corrective action plans, verifies the impact of the LEA corrective action plan and improvement plan, and examines the effectiveness of staff development. ADE also reviews LEAs' special education policies, procedures, forms, entitlement applications, and performance objectives. As set out below, for the areas of child find for children ages birth through three and the provision of psychological counseling, ADE's reported data were not sufficiently clear in identifying the specific Federal requirements that were monitored for compliance. Likewise, OSEP was unable to identify the Federal requirements that were used in determining compliance for the data reported in the general supervision section of the APR for "Child ID," "Evaluation," "IEP," "Services" and "Safeguards."

During the verification visit, ADE staff also explained that during the fifth and sixth years of the monitoring cycle, corrective action plans are implemented and the impact of the corrective action plan activities is verified by the State. ADE provides staff development activities where training needs are identified in the corrective action plan. The corrective action plan must be completed within: (1) 45 days from the monitoring visit for noncompliance specific to individual children; or (2) two years from the date of the approved plan for system-wide issues.¹ OSEP's review of the State's monitoring reports of five districts indicated that in cases where ADE found noncompliance, the LEAs were required to provide documentation verifying that the noncompliance had been corrected. However, the State's two-year timeline does not ensure correction of all identified noncompliance within a reasonable time not to exceed one year. This issue was not previously addressed by OSEP.

With regard to the correction of previously identified noncompliance under the State's monitoring system, on page 3 of the APR, the State reported that the corrective action plan closeout rates showed 99% correction of noncompliance for 2001 and 100% for 2002 for the 45-day child-specific items. However, the percentage of corrective action plans closed as of March 26, 2004 showed a 92% rate for 2001 and 69% rate for 2002.

¹ On page 3 of the APR, ADE provided, as an example, systemic noncompliance with the requirements for evaluating a student suspected of having mental retardation by a small school district, which ADE claimed could not be corrected until another such student was evaluated by that district. OSEP believes that in such instances, States have greater flexibility in the methods used for determining correction within a reasonable period of time not to exceed one year. For example, in small districts where such evaluations are not frequently conducted, the State could utilize interviews to ensure that district personnel have the knowledge, resources, and willingness to utilize proper evaluation procedures for such students in the future.

In summary, based on OSEP's review of the IP and Progress Report, and APR, OSEP was unable to determine what Federal requirements the State reported as being noncompliant. In addition, OSEP finds that ADE's monitoring system is not designed to ensure correction of noncompliance within a reasonable period of time not to exceed one year. In the next APR, Arizona must identify the Part B requirements reported as noncompliant in the general supervisions sections of the IP and Progress Report, and the FFY 2002 APR, and provide an updated report on the status of correction. In the next APR, ADE must also submit a plan to revise its monitoring system to ensure correction of noncompliance with Federal requirements within a reasonable time not to exceed one year.

Complaints

OSEP's May 2000 Monitoring Report stated that ADE's methods to ensure implementation of corrective actions, resulting from complaint determinations, did not result in the provision of FAPE in a timely manner. As reported on pages 12-13 of the July 2003 IP and Progress Report and pages 5-7 and 11-12 of the APR, and as OSEP noted in its verification letter, ADE reported that the State developed strategies and activities to ensure that corrective actions, resulting from complaint determinations, resulted in the provision of FAPE in a timely manner. These strategies and activities included: (1) developing a data-based tracking system for complaint corrective actions; (2) hiring a corrective action coordinator and a dispute resolution supervisor; (3) using four consultants to assist ADE with the completion of complaint investigations and corrective action follow-up; (4) requesting in the complaint findings letter that parents notify ADE if the corrective actions were not completed; and (5) publishing redacted revisions of complaint findings decisions on ADE's website, on a periodic basis, to heighten awareness of the dispute resolution process. ADE reported that these strategies and activities resulted in the early completion of corrective actions for the period of July 2002 to June 2003.

On page 5 of the APR, ADE reported that from July 1, 2002 to June 30, 2003, six of the 108 complaints were resolved within the 60-day timelines but did not document whether extensions of time were granted due to exceptional circumstances with regard to a particular complaint, for those remaining complaints that were not addressed within timelines. During OSEP's December 2003 visit to the State, OSEP's review of the complaint logs for the period of July 2002 to June 30, 2003 indicated that 27 of the 102 complaints filed were resolved within the 60-day timeline. This review also revealed that from July 2002 to November 2003, 39 of the 130 complaints filed were resolved within the 60-day timeline and 46 of the 130 complaints exceeded the 60-day timeline by 20 to 149 days. Of those 46 complaints, 45 documented exceptional circumstances. While it appears that there has been substantial progress, ADE must continue to report updated compliance data for this area in the next APR.

Due Process Hearings

OSEP's May 2000 Monitoring Report and 2004 verification letter stated that ADE's due

process hearing system was not in compliance with 34 CFR §300.511. On pages 15-17 of the July 2003 IP and Progress Report, ADE reported that the annual training for hearing officers and administrative law judges included a focus on ensuring that requests for due process hearing decisions and extension decisions were concluded within the required timelines. ADE proposed and completed five of the six strategies, as reported on page 17 of the July 2003 IP and Progress Report. The five strategies included: (1) emphasizing timelines during annual training of hearing officers; (2) disseminating due process requirements to all LEAs with special emphasis on technical assistance to new LEAs; (3) reviewing current procedures to ensure maximum effectiveness for due process hearings and reviews; (4) publishing State-level due process findings on a periodic basis to heighten awareness of the dispute resolution process; and (5) creating a representative group to meet annually to review due process procedures and their effectiveness. On page 15 of the July 2003 IP and Progress Report, ADE reported that the sixth strategy, to change the due process hearing system from a two-tier to a one-tier system, would be implemented once the State Board of Education approves it.

In addition to the five strategies implemented from the July 2003 IP and Progress Report, ADE proposed, on pages 7 and 12 of the APR and pages 4-5 of OSEP's verification letter, creating a component within its Exceptional Student Services' (ESS) data tracking system for due process hearings to encourage the timely resolution of due process hearings. The tracking system included data on timelines for due process hearing requests, decisions, and the implementation of decisions. The APR data showed that two of the 37 due process hearing requests filed for the period of July 1, 2002 to June 30, 2003 resulted in decisions being issued after the timelines or extensions expired. OSEP's review of due process hearing logs for the period of June 2002 to November 2003 showed that for the 48 due process hearings filed, 12 exceeded the 45-day timeline by 12 to 113 days with no documentation of extensions granted by the hearing officer at the request of either party.

OSEP noted during the December 2003 verification visit that Arizona did not have an effective system in place to ensure that decisions for due process hearings were reached and a copy of the decision mailed to each party within Federal timelines, unless extended at the request of either party in accordance with 34 CFR §300.511. In interviews, ADE staff informed OSEP that the State had difficulty meeting the 45-day timeline because hearing officers do not always inform the State when the case was settled and a copy of the decision mailed to each party. Therefore, ADE added a feature to its due process hearing database that provided a trigger highlighting when the due process hearing case was close to the due date.

In June 2004, OSEP received updated information from the State regarding the impact of this added feature in ensuring that due process hearing timelines were met. ADE provided OSEP with copies of due process logs for the period of December 2003 to May 2004. OSEP's review showed that of the 18 due process hearings filed during this period, 10 resulted in decisions being mailed to each party within the 45-day timeline; five were granted extensions of the timeline; two had not reached the 45-day timeline; and one exceeded the 45-day timeline by eight days with no documentation of an extension.

OSEP's review of due process hearing logs for the period of December 2003 to May 2004 indicated that the State is making progress in ensuring that the requirements at 34 CFR §300.511 are met. Although it appears that there has been substantial progress, ADE must continue to submit updated compliance data for this area in the next APR.

Personnel

OSEP's May 22, 2000 Monitoring Report identified that noncompliance in the availability of school psychologists and social workers impacted the provision of FAPE to eligible students with disabilities. On pages 5-9 of ADE's July 11, 2003 IP and Progress Report, ADE reported that implementing strategies and activities, such as making current personnel available to provide counseling services and including psychological counseling as a service within the Medicaid Agreement, resulted in an increase in the number of LEAs in compliance with this requirements at 34 CFR §§300.16 and 300.300.

Pages 13 and 14 of the APR showed that although the numbers of students with disabilities being served in Arizona increased between 2002 and 2003, there was a small decrease in the number of special education staff who were fully certified and teaching in Arizona's schools (4,901 in 2002 and 4836 in 2003). However, the number of under-certified special education staff increased from 747 in 2002 to 862 in 2003. ADE's strategies to increase and retain the number of certified special education staff included: (1) providing graduate level courses designed to meet the requirements for special education teaching credentials and professional growth; (2) developing curriculum for and market the new Career and Technical Education (CTE) career path to districts and public charter schools; (3) employing a program specialist to the CTE; (4) establishing an education track for high school students interested in teaching (six high schools established an education professions career track in 2002); and (5) including special education and paraprofessionals in the Transition to Teaching Grant program. ADE also developed an online certification data analysis and retrieval system.

OSEP noted that the State did not include data and information to examine personnel vacancies and shortages. Under 34 CFR §300.135, each State must develop and implement a comprehensive system of personnel development that includes an analysis of relevant information on current and anticipated personnel vacancies and shortages, in accordance with 34 CFR §§300.380(a) and 300.381(b). In the next APR, ADE must submit data to meet this requirement.

Data Collection Under Section 618 of the IDEA

OSEP's May 2000 Monitoring Report and 2004 verification letter identified no noncompliance in ADE's procedures to ensure the collection and reporting of accurate data under section 618 of IDEA. ADE reported on pages 16-17 of the APR, and OSEP reported on page 7 of the verification letter, that hiring a dedicated computer programmer in 2003 to manage collection and reporting of 618 data (Child Count, Placement,

Personnel, Exit, and Discipline) and on-going activities for improving ADE's data collection system, enhanced the accuracy, reliability and validity of ADE's data. OSEP looks forward to reviewing the State's progress in implementing these strategies and their impact on the accuracy and reliability of its data under section 618, in the FFY 2003 APR.

Early Childhood Transition

OSEP's May 2000 Monitoring Report identified noncompliance in the area of child find for children ages birth through three. On pages 20-21 of the APR, ADE reported data and analysis that identified barriers to the accurate collection and sharing of data between Part C and Part B for children exiting Part C, along with strategies and timelines for improving performance. In the area of child find, the IP and Progress Report included compliance information reported as "data points in compliance" and "percentage of LEAs in compliance." The LEA compliance data for "LEAs ensuring that child find occurs from birth to 5 year olds in a timely manner" were reported as increasing yearly from 37% in 2001 to 69% in 2003. The "data points in compliance" were reported as 70% for 2001, 62 % for 2002, and 79% for 2003. OSEP was unable to determine from this report, what Federal requirements were used to determine levels of compliance. The APR submission, on pages 2-3, reported "Statewide Monitoring Results" in the area of "Child ID" with compliance at 70% for 2002 and 72% for 2003. The submission did not identify what Federal requirements were used to determine levels of compliance. Although ADE reported that it developed a database that provided information on the percentage of children from birth to age three who were eligible for early intervention services, ADE was not confident of the reliability of its compliance data, reported on page 20, for "early childhood transition," "FAPE by three" and "early childhood child find." ADE developed strategies and activities to ensure that data regarding early childhood transition requirements, including the provision of FAPE by age three, is accurate and reliable.

To the extent that the data reported in the 2002 APR constitutes new noncompliance, not previously addressed by OSEP (i.e., not related to the child find requirements for children birth through three), in the next APR, ADE must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. To the extent that the reported data is based upon noncompliance previously addressed by OSEP, ADE must provide evidence of correction of previously identified noncompliance with Federal requirements in the next APR.

Parent Involvement

On pages 24-27 of the APR, ADE reported an increase in the identification and correction of noncompliance related to ADE's monitoring requirements for parent involvement, along with strategies to maintain increased parental involvement and timelines for improving performance. On page 24 of the APR, ADE reported data from the State's fiscal year (FY) 2001-2003 monitoring findings related to parent involvement. The data indicate potential noncompliance with some of the Part B requirements at 34 CFR

§§300.344; 300.347; 300.503; 300.504; and 300.533, not previously identified by OSEP. In the next APR, ADE must provide OSEP with a determination of compliance or noncompliance with the above requirements for parental involvement. If the data indicate noncompliance, ADE must also submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Free Appropriate Public Education in the Least Restrictive Environment

OSEP's May 2000 Monitoring Report identified the following areas of noncompliance in this cluster area related to the provision of psychological counseling services and ESY services to eligible children who needed such services.

Psychological Counseling Services

OSEP's May 2000 Monitoring Report reported that shortages in psychological counseling personnel resulted in a failure to provide services appropriate to the unique needs of the child and there were delays in the provision of required services. Implemented strategies and activities on pages 5-9 in ADE's July 2003 IP and Progress Report, addressed these issues, including: (1) providing funding for capacity building for the provision of counseling and alternatives to private residential placements; (2) monitoring related to the provision of psychological counseling services; (3) examining policies and procedures from LEAs to ensure that they reflected the new procedures related to the provision of psychological counseling services; (4) revising statute and rules to reflect the new procedures; (5) providing classes and training to LEAs on counseling and behavioral programs and services; and (6) disseminating promising practices to LEAs in the area of counseling.

On page 5 of the IP and Progress Report, and page 8 of the APR, ADE reported compliance data under the description "consideration of strategies and supports for behavior monitoring findings" and "consideration of strategies and supports for behavior," respectively. The data indicates percentage of compliance for data points ranging from 87% in 2001 to 92% in 2003. It is not clear whether the description of the compliance data is intended to address requirements of 34 CFR §300.346(a)(2), which requires that the IEP team considers, if appropriate, strategies and supports, including positive behavioral interventions in the case of the child whose behavior impedes his or her learning or that of others. To the extent that the reported data is based upon noncompliance with the requirements of 34 CFR §300.346(a)(2) related to the provision of psychological counseling services, ADE must provide evidence of correction of previously identified noncompliance with Federal requirements in the next APR. To the extent that this constitutes new noncompliance, not previously addressed by OSEP (i.e., not related to the provision of psychological counseling services), in the next APR, ADE must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Extended School Year (ESY) Services

In the May 2000 Monitoring Report, OSEP reported that LEAs failed to provide special education and related services to students beyond the normal school year, even if students needed those services to ensure FAPE. On pages 10-11 of the July 2003 IP and Progress Report, and pages 8-9 of the APR, ADE reported an increase in the percentage of data points in compliance under the descriptions, "IEP team members report that ESY services are determined and consistently made available and decisions about ESY are well documented" and "consideration of extended school years services," respectively. The reported percentages increased from 73% in 2001 to 82% in 2003. ADE attributed this increase in compliance to the publication and distribution of an ESY technical assistance document, and conducting training for LEA and school staff. ADE must provide evidence of correction of previously identified noncompliance with Federal requirements related to ESY in the next APR.

Disproportionality

On pages 28-29 of the APR, ADE reported that it needed to conduct further analysis of data and local practices to determine whether LEAs were inappropriately over- or under-identifying students in specific ethnic groups. ADE reported the following issues of disproportionality: (1) African-American students were overrepresented in the categories of mental retardation and emotional disturbance; (2) Hispanic students were underrepresented in the categories of autism, emotional disturbance, other health impairment, traumatic brain injury and visual impairments; (3) Native American students were overrepresented in eight disability groups; and (4) White students were overrepresented in the categories of autism, emotional disturbance, and other health impairments. Six of these disabilities involve sensory impairments that were not likely to be misidentified. The two categories that were considered as potentially over-identified were specific learning disabilities and mental retardation.

Strategies to determine if the LEAs were inappropriately over- and under-identifying students in specific ethnic groups included: (1) establishing a task force to look at disproportionality issues with the goal of providing assistance to districts with high rates of disproportionality; (2) planning State meetings to formulate strategies for change in LEAs with disproportionate numbers and/or placements; (3) continuing the development of the disproportionality task force by expanding membership to form subgroups that addressed each identified strategy; (4) developing a disproportionality database that allowed the State to look at district level data; (5) identifying and providing resources and training to LEAs with high disproportionate numbers identified in 2003; and (6) establishing capacity building grants to LEAs with significant disproportionality.

Information presented in the APR suggested that ADE will examine practices to determine if significant disproportionality based on race is occurring in the State or LEAs. However, OSEP was unable to identify information indicating that the State had reviewed and ensured that the policies and procedures used in the identification and placements of students with disabilities comply with requirements of Part B of IDEA, as required by 34

CFR §300.755 (b). In addressing evidence of disproportionate identification, it would be appropriate for the State to look at policies, procedures and practices in the evaluation and identification process to determine if they are educationally appropriate consistent with the requirements of Part B, and race-neutral. Such an examination would generally include a review of policies, procedures and practices at both the State and local level, with regard to the availability and use of pre-referral intervention services, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluations. Such reviews would generally examine policies, procedures and practices from both an educational and legal perspective to ensure that any proposed revisions are educationally appropriate and legally consistent with Part B and other civil rights laws.

OSEP also noted that ADE did not include any information, data and analysis to address significant disproportionality in the placement of students with disabilities into educational settings. In its FFY 2003 APR, ADE must submit data and analysis that fully meets the requirements of 34 CFR §300.755, including both disaggregated identification and placement data, the State's significant disproportionality analysis, and the results of the review, and if appropriate, revisions to policies, procedures and practices.

Graduation and Drop-out Rates

On pages 30-34 of the APR, ADE included information, data and analysis that identified barriers to calculating and reporting graduation and drop-out rates for children with disabilities comparable to graduation and drop-out rates for nondisabled children. ADE reported that ADE does not have the ability to compare graduation and dropout rates for children with disabilities to the rates of their nondisabled peers. However, ADE used four formulas for calculating graduation and dropout rates for nondisabled children and children with disabilities. Plans are currently underway to pilot a program where a number of LEAs will collect comparable graduation and drop-out rates for children with disabilities and their nondisabled peers in FY 2005. The full implementation of the program will occur State-wide by FY 2006. ADE must revise its methods for collecting and reporting graduation and drop-out rates to allow comparability of children with and without disabilities. In the FFY 2003 APR, ADE must report on status of the data system to compare graduation data of students with disabilities to nondisabled students including the implementation of strategies and their impact.

Suspension and Expulsion Rates

The provisions at 34 CFR §300.146 require that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education programs (IEPs), the use of behavioral interventions, and procedural safeguards to ensure that the

policies procedures and practices comply with Part B. The instructions to the 2002 APR directed 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 were occurring, a description of those discrepancies and how the State planned to address them.

On pages 34-35 of the APR, ADE included information, data and analysis that identified barriers to calculating and reporting suspension and expulsion rates for children with disabilities comparable to suspension and expulsion rates for nondisabled children, along with strategies and timelines for improving performance. Because ADE does not have the ability to compare suspension/expulsion rates for children with disabilities to their nondisabled peers, the method used to analyze suspension/expulsion rates for students with disabilities is to compare suspension/expulsion rates among LEAs within the State.

The State's 2002 APR, however, did not 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 and whether reviews and revisions were conducted. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

Participation and Performance of Children with Disabilities on Large-Scale Assessments

On pages 56-63 of the APR, ADE reported that from 2001 to 2003, there was a small improvement in the percentage of students with disabilities scoring at the proficient or above levels on the State-wide reading and math assessments. Although the State did not note any significant improvement in narrowing the achievement gap between nondisabled students and students with disabilities, ADE reported that the gap in the scores in math were markedly less than the gap in reading.

ADE reported that due to a data collection issue related to the assessment of students in private schools, home schooling and secure care settings, the APR did not include accurate information regarding the participation rates and reasons for not participating in State-wide assessments for public school students with disabilities. The State indicated that it is aware of the problem and expects that it will be resolved by the use of individual student identifiers. In the FFY 2003 APR, the State must include data and analysis to make accurate determinations of the extent to which students with disabilities are participating in Arizona's assessment program.

The directions to Attachment 3 of the APR state: "Include students who took out-of-level tests and students whose changes to the assessment invalidated their score. These students are to be counted in the lowest achievement column. States that can provide documentation of the linking or equating evidence for the levels of their tests may report out-of-level tests on all achievement levels. This linking or equating evidence must be provided." Arizona did not report scores from out-of-level testing in the lowest achievement category and did not provide linking or equating evidence. In the next APR, Arizona must ensure that students who take out-of-level tests are reported according to the directions for Attachment 3 of the APR.

ADE set targets and designed strategies and activities to improve the performance of students with disabilities on State-wide assessments and close the gap between the performance of nondisabled students and students with disabilities. OSEP looks forward to reviewing the FFY 2003 APR regarding both implementation of these strategies and any resulting data changes.

Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent Appropriate

Arizona identified this as an area in need of improvement. On page 41 of the APR, ADE reported that the State's school construction funding system, lack of training to LEAs, limited number of qualified teacher training programs, and inconsistent data collection may be barriers to preschool inclusion of children with disabilities into regular preschool programs. On page 42 of the APR, ADE identified strategies to eliminate barriers for increasing the inclusion of preschool students with disabilities in the least restrictive environment. OSEP looks forward to reviewing the impact of those strategies in the State's next APR submission.

Skills of Preschool Children with Disabilities

On pages 43-44 of this section, the APR noted that Arizona did not collect data on this issue and indicated that it would develop a plan to collect the data. Under 20 U.S.C. 1418(a)(2), States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by or for the Secretary. 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 socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In ADE's FFY 2003 APR submission, Arizona must either submit 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.

Secondary Transition

OSEP's May 2000 Monitoring Report and 2004 verification letter identified no noncompliance in the area of secondary transition. On page 47 of the APR, ADE reported that Arizona's Special Education Advisory Panel had determined no mechanism existed for collecting data regarding the percentage of youth with disabilities participating in post-school employment, education, and other activities comparable to those of youth without disabilities.

On pages 45-47 of the APR, ADE reported both monitoring results and the results of its participation in the Transition Outcomes Project. Some of the areas that were compliance data appear to track specific Federal requirements. That is, although the compliance data did not reference the specific Part B requirement, some of the abbreviated descriptions appear to track certain Federal requirements under Part B. For example, "IEP team included the required participants" and "documentation that student was invited" in the context of transition services, appear to refer to the Federal requirement at 34 CFR §300.344(b)(1) that if the purpose of the IEP meeting is the consideration of the student's secondary transition services needs or needed secondary transition services, the LEA shall invite the student with a disability. In addition, the former description also appears to refer to the Federal requirement at 34 CFR §300.344(b)(3) that the LEA shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. The compliance data on page 45, for 2003, ranges from 73% for "[b]y age 14, course of study leading to post school outcomes"² to 89% for "[b]y 16, a statement of needed transition services."³ The Transition Outcomes Project results data on pages 46 and 47 ranges from 23% for "[i]f a representative did not attend... the public agency t[ook] steps to obtain participation in the planning of transition"⁴ to 99% for "...the IEP include[s] a statement regarding transfer of rights at the age of majority."⁵ On page, 46 of the APR, ADE reported that for each item of noncompliance, the public agency develops a corrective action plan.

The APR did not provide conclusions with regard to findings of noncompliance with Federal requirements. This information indicates areas of potential noncompliance, not previously identified by OSEP. In the next APR, ADE must provide OSEP with a determination of compliance or noncompliance with the Part B requirements for secondary transition services. If the data indicate noncompliance, ADE must also submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Since no mechanism existed for collecting data regarding the percentage of youth with disabilities participating in post-school employment, education, and other activities

² This appears based upon the Federal requirement at 34 CFR §300.347(b)(1).

³ This appears based upon the Federal requirement at 34 CFR §300.347(b)(2).

⁴ This appears based upon the Federal requirement at 34 CFR §300.344(b)(3)(ii).

⁵ This appears based upon the Federal requirement at 34 CFR §300.347(c).

comparable to that of youth without disabilities, ADE proposed strategies for collecting data regarding post-school outcomes for nondisabled students and students with disabilities. OSEP looks forward to reviewing such data in the FFY 2003 APR.

Conclusion

Although it appears that there has been progress in these areas, in the next APR, ADE must continue to submit updated compliance data for complaint timelines and due process hearing timelines.

In the FFY 2003 APR, the ADE must: (1) include data and analysis to determine accurate determinations of the extent to which students with disabilities are participating in Arizona's assessment program; (2) report on the status of the data system to compare graduation data of students with disabilities to nondisabled students including the implementation of strategies and their impact; (3) include information indicating that the State has examined all data to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146; (4) submit data and analysis that fully meets the requirements of 34 CFR 300.755, including both disaggregated identification and placement data, the State's significant disproportionality analysis, and the results of the review, and if appropriate, revisions to policies, procedures and practices; and (5) an analysis of relevant information on current and anticipated personnel vacancies and shortages data, in accordance with 34 CFR §§300.380(a) and 300.381(b).

In the next APR, Arizona must also: (1) identify the Part B requirements reported as noncompliant in general supervision sections of the IP and Progress Report, and the FFY 2002 APR, and provide an updated report on the status of correction; (2) submit a plan to revise its monitoring system to ensure correction of noncompliance with Federal requirements within a reasonable time not to exceed one year; and (3) provide evidence of correction of previously identified noncompliance with Federal requirements related to ESY.

To the extent that the data reported in the 2002 APR constitutes new noncompliance, not previously addressed by OSEP (i.e., not related to the child find requirements for children birth through three), in the next APR, ADE must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. To the extent that the reported data is based upon noncompliance previously addressed by OSEP, ADE must provide evidence of correction of previously identified noncompliance with Federal requirements in the next APR.

To the extent that ADE reported data in the 2002 APR that is based upon noncompliance with the requirements of 34 CFR §300.346(a)(2) related to the provision of psychological counseling services, ADE must provide evidence of correction of previously identified

noncompliance with Federal requirements in the next APR. To the extent that the data constitutes new noncompliance with Federal requirements not previously addressed by OSEP (i.e., not related to the provision of psychological counseling services), in the next APR, ADE must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

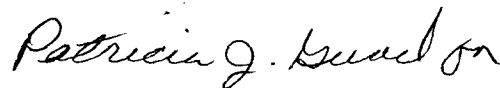
In the next APR, ADE must provide OSEP with a determination of compliance or noncompliance with the requirements at 34 CFR §§300.344; 300.347; 300.503; 300.504; and 300.533, regarding parental involvement. If the data indicate noncompliance, ADE must also submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

In ADE's FFY 2003 APR submission, Arizona must either submit 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 skills for preschool students with disabilities, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

In the next APR, ADE must provide OSEP with a determination of compliance or noncompliance with the Part B requirements for secondary transition services. If the data indicate noncompliance, ADE must also submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Debra Jennings at (202) 245-7389.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Joanne Phillips