



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

Dr. Trent Blankenship
State Superintendent of Public Instruction
Wyoming Department of Education
2300 Capitol Ave, 2nd Floor
Hathaway Building
Cheyenne, WY 82002-0050

SEP 15 2004

Dear Dr. Blankenship:

The purpose of this letter is to respond to the Wyoming Department of Education's (WDE's) April 15, 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. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

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 Part B cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

In an October 10, 2002 letter, OSEP responded to Wyoming's Improvement Plan and directed the State to include, as part of its improvement planning efforts, changes to the evidence of change benchmarks, the collection and determination of baseline data for collaborative State-wide trainings, extended school year (ESY) services, pre-school programs for children with disabilities, and post-school outcomes for Secondary Transition.

OSEP conducted an on-site review during the week of October 27, 2003 to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA, and State-wide assessment. OSEP issued a letter addressing that visit on January 20, 2004. In the January 2004 letter, OSEP indicated that, "OSEP staff was unable to verify whether or not WDE has an effective system to ensure the correction of noncompliance. WDE staff also identified inadequate resources as a barrier to effective monitoring, provision of needed

follow-up, and correction of noncompliance.” OSEP requested that, by June 30, 2004, WDE submit a progress report on its Quality Improvement Plan (term used by WDE for corrective action plans) resulting from WDE on-site monitoring visits during the remainder of 2003 and submit a copy of at least one self-assessment conducted by an LEA during the 2003-2004 school year. WDE submitted the requested information on February 9, 2004. OSEP reviewed an LEA self-assessment, monitoring report, and corrective action plan and believes that WDE has demonstrated its system will identify noncompliance and require that noncompliance be corrected within one year of identification. OSEP looks forward to reviewing further data regarding the correction of noncompliance, and how WDE ensures that the correction has been implemented, in the FFY 2003 APR.

In the January 2004 verification letter, OSEP also requested that WDE “identify the sources for the state’s authority to enforce the requirements of Part B.” WDE submitted to OSEP a copy of a State statute and an example of how WDE exercised its authority in resolving a fiscal issue identified through monitoring. WDE is working to compile a list of sanctions that WDE can use in order to ensure the correction of noncompliance.

Wyoming designed its general supervision systems with the goal of ensuring both compliance and improved performance for children with disabilities. WDE’s monitoring occurs on a five-year cycle.

The State’s APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP’s comments on the APR and the State’s responses to OSEP’s Improvement Plan (October 10, 2002) and verification (January 20, 2004) letters are listed by cluster area.

General Supervision

WDE presented all General Supervision information on pages two-26 of the FFY 2002 APR. WDE provided data and information including: a description of procedures in Wyoming designed to identify and correct noncompliance with IDEA (page 3); information about complaint, mediation, and due process hearings, monitoring data, and the corresponding analyses (pages 4-15); training and oversight activities designed to ensure an adequate supply of personnel, consistent with Federal and State requirements (pages 16-22); and information outlining the State’s procedures and practices to ensure accurate and timely collection and reporting of data (pages 22-26).

On pages 13-14 of the APR, the State provided information demonstrating that it is ensuring correction of noncompliance identified through complaints and due process hearings. Although the State indicated, on page 7 that it identified noncompliance regarding evaluations and IEP documentation through monitoring, it did not include information demonstrating that it is ensuring correction of identified monitoring findings within a reasonable period of time, not to exceed one year from identification.

On page 11 of Wyoming’s APR, under GS.II, WDE indicated that they would “develop a follow-up tool to track district issues identified during mediation, complaints, due process, and

monitoring to be implemented for the 03-04 school year.” As indicated in the January 2004 verification letter, WDE had until June 30, 2004 to demonstrate its ability to ensure correction of noncompliance in a timely manner. WDE submitted copies of findings of noncompliance identified during monitoring and a corrective action plan, submitted by a district and approved by WDE, that required the noncompliance to be corrected within one year of identification. In the FFY 2003 APR, WDE must continue to report on how it ensures timely correction of noncompliance identified through monitoring.

The State identified a concern about the placement of children with disabilities outside their local district on page 9 of the APR. WDE stated that, although LEAs are responsible for special education and related services for children living in their districts, “many placements are made by the courts with recommendations for the Department of Family Services. These placements are not made by the students’ IEP teams and sometimes teams are not notified of the placements.” The State indicated that it would work to develop a system for better collaboration between the various agencies involved in these placements. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement.

The State provided data indicating that it was meeting timelines regarding complaints and due process hearings, describing current staffing and personnel needs, and discussing its current data collection and verification systems (pages 13-15). It also included strategies to improve performance in these areas. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement.

Early Childhood Transition

WDE presented all Early Childhood Transition data on pages 27-40 of the FFY 2002 APR. WDE did not identify systemic noncompliance in this cluster. Data and information provided to support its conclusions included: the policies and procedures established between WDE and the Wyoming Department of Health are designed to ensure the identification and provision of services to children with disabilities who are transitioning from Part C programs and services to Part B programs and services (page 27); data regarding the determination of eligibility of all children exiting Part C by their third birthday (pages 28-31); and analyses of data and activities planned to maintain the identification and provision of services to children with disabilities who are transitioning from Part C to Part B (page 32-40).

While WDE provided data regarding the determination of eligibility and the development of the IEP/IFSP prior to the child’s third birthday, the State did not address the provision of services to the child by their third birthday, as required by 34 CFR §300.132(b) which states, “by the third birthday of a child described in paragraph (a) of this section, an IEP or, if consistent with §300.342(c) and section 636(d) of the Act, an IFSP, has been developed and is being implemented for the child consistent with §300.121(c).” WDE must address this issue in the next APR. WDE should include strategies and timelines for improving performance, along with documentation of the implementation of the strategies and resulting data demonstrating improvement.

Parent Involvement

WDE presented all Parent Involvement data on pages 40-48, as well as an appendix that included their 2000 Parent and Educator survey, 2002 Wyoming Special Education Parent Needs Assessment, Parent Surveys completed as a part of district self assessments, and monitoring data. WDE did not identify systemic noncompliance in this cluster. Wyoming used the above-mentioned appendices and the analyses provided in the APR to support this conclusion.

The data reported on page 42 of the APR, from the 2002-2003 Self Assessment, indicated that 93% of the parents surveyed reported that they were actively involved in the special education process for their child. The data on page 43 of the APR indicated that 83% of the parents surveyed reported that special education and related services were implemented according to the IEP and 93% reported that Wyoming schools provided a free appropriate public education in the least restrictive environment for eligible children with disabilities (page 42). The State also included activities to increase parent involvement and awareness. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement.

Free Appropriate Public Education in the Least Restrictive Environment

WDE presented all Free Appropriate Public Education in the Least Restrictive Environment information on pages 49-77 of the FFY 2002 APR. WDE did not identify systemic noncompliance in this cluster. Data and information provided to support its conclusions included: information on race, ethnicity, disability, and placement (pages 50-57 and attachment 2); analysis of the data (pages 58-59); graduation data and analysis (pages 60-63); suspension/expulsion data and analysis (pages 64-67); State-wide/alternate assessment and instructional strategies (pages 68-73); monitoring data on least restrictive environment and analysis (pages 74-76); and the performance of preschool children with disabilities (page 77).

The State identified areas of concern regarding disproportionality and over-representation of particular ethnic groups in particular disability categories (pages 52-57). WDE outlined specific activities, including the review of State eligibility and placement criteria, policies, procedures, and practices for areas of over-representation to determine if they were appropriate and race neutral. Further, WDE indicated that, by March 1 of each year, the State would identify districts that had significant disproportionality of race/ethnicity in identification and/or placement of children with disabilities, require them to review relevant local policies, procedures and practices and make revisions when appropriate, and provide them targeted assistance (page 59). The State indicated they planned to conduct targeted monitoring, among other things, in districts whose disproportionality is significant in the State. 34 CFR §300.755 requires that States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or in placements into particular settings must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement to ensure that they comply with Part B. If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices

used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation.

Pages 50 and 58-59 of the APR contain goals for the number of children with disabilities of certain racial or ethnic backgrounds who would be identified as eligible for services under Part B and who would be placed in certain educational settings. The proposed use of numerical goals based upon race raises serious concerns under federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification, under 34 CFR §300.755, it is appropriate 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. Such an examination generally would include, for identification, a review of 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. For placements, such a review generally would include a review of policies, procedures and practices related to: the continuum of placement options; the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. WDE must submit revised language, consistent with Federal law, in the next APR.

WDE used a State formula to compare graduation rates of general education students and students with disabilities. WDE found that students with disabilities graduate at a rate lower than the general education population and drop out at a higher rate than the general education population (page 62). While the WDE provided data in the APR it did not include strategies and timelines for improving performance. In the next APR, the WDE should include strategies and timelines for improving performance, along with documentation of the implementation of the strategies and resulting data demonstrating improvement.

On page 66 of the APR, WDE indicated that the number of children with disabilities that have been suspended or expelled for more than 10 cumulative days in a school year had increased from 7 in 2000-2001 to 84 in 2002-2003. WDE outlined activities and timelines to ensure compliance and improve performance of 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. 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 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. 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 based on either one of comparisons described above. 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.

Attachment 3 of the State's APR provided information about participation in State assessments that indicated that significant numbers of 8th and 11th grade students with disabilities may not be participating in math assessments. OSEP could not determine from the APR whether any students with disabilities did not participate in the State-wide assessment due to a failure by a public agency to meet the requirements of 34 CFR §300.347(a)(5) or 300.138. The State must include an analysis of compliance data related to those requirements as a part of its FFY 2003 APR.

The data the WDE provided, in attachment 3 of the APR, on the alternate assessment performance results indicate that substantial portions of that population are not assessed against all of the extended content standards developed by the State. In the next APR the WDE must clarify how students with disabilities are being assessed 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.

As mentioned in the General Supervision Cluster the State identified a concern about the placement of children with disabilities outside their local district on page 9 of the APR. This raises an issue regarding the provision of services in the least restrictive environment for those students. The State indicated that it would work to develop a system for better collaboration between the various agencies involved in these placements. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement.

In the October 2002 letter, OSEP identified the lack of benchmarks and evidence of change for the preschool programs for children with disabilities as an area of concern. WDE partially addressed this concern in the Free Appropriate Public Education in the Least Restrictive Environment section of the APR on page 77. WDE stated that no data had been collected for this performance indicator and no targets had been set. The State was working to develop options for data collection and a means by which they can be used to evaluate the performance of preschool children with disabilities. 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. In the FFY 2003 APR, WDE 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 plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

WDE presented all Secondary Transition data on pages 78-82 of the APR. WDE did not identify systemic noncompliance in this cluster. Data and information provided to support its conclusions included monitoring data (page 78-79).

In the October 2002 letter, OSEP identified the lack of benchmarks and evidence of change for the post-school outcomes section for Secondary Transition as an area of concern. While WDE did not identify systemic noncompliance in this cluster, the data presented on page 78 of Wyoming's APR stated that "4 of 9 school districts held transition meetings for 14 and 16-year-old students within the required timelines and transition plans were complete." This information indicated potential noncompliance with 34 CFR §300.347. WDE must submit data to OSEP, within 60 days of the date of this letter, along with a determination of compliance or noncompliance with these requirements. If the State identifies noncompliance, it must include a plan including strategies, benchmarks, targets, evidence of change, and timelines to ensure the correction of noncompliance, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan, in the districts that did not conduct transition meetings for 14 and 16-year-old students within the required timelines and/or in which transition plans were not completed. In the next APR, the State must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline. In the FFY 2003 APR, Wyoming must provide documentation that its procedures are effective in ensuring compliance with 34 CFR §300.347.

Conclusion

As noted above, within 60 days from the date of this letter, Wyoming must submit to OSEP data and a determination of compliance regarding transition planning for children with disabilities ages 14 and/or 16-years old as required by 34 CFR §300.347, and, if the State identified noncompliance, a plan including strategies, targets, evidence of change, and timelines to address the noncompliance or potential noncompliance listed below within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. In the next APR, the State must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

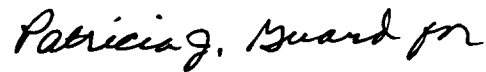
In addition, in the next APR, WDE must:

- continue to report on how it ensures timely correction of noncompliance identified through monitoring;
- address the provision of special education services to a child with a disability by their third birthday (34 CFR §300.132(b));

- 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 (34 CFR §300.755);
- include data and analysis regarding suspension and expulsion rates (as required by the APR instructions) (34 CFR §300.146);
- include an analysis of compliance data related to 34 CFR §§300.347(a)(5) and 300.138 regarding the participation and reporting on children with disabilities in State assessments; and
- 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.

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 Ellen Safranek at (202) 245-7515.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education
Programs

cc: Nance Shelsta