



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

Honorable William J. Maloney
Commissioner
Colorado Department of Education
201 East Colfax Avenue
Denver, CO 80203

OCT 24 2005

Dear Superintendent Maloney:

The purpose of this letter is to respond to Colorado's August 10, 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 June 9, 2005 FFY 2002 APR response letter required the Colorado Department of Education (CDE) to submit, in the FFY 2003 APR, data demonstrating the correction of State-identified noncompliance, within a reasonable period of time, not to exceed one year from the date of identification; including the correction of the following identified deficiencies resulting from findings in OSEP's March 2001 Monitoring Report, related to ensuring: (a) the provision of services and supports to meet the needs of children with disabilities; (b) the consideration, availability and provision of positive behavioral supports for children who need them; (c) the provision of psychological counseling services for children who need them; and (d) that general education teachers participate in IEP development.

OSEP's June 2005 letter also required CDE to include the following: (1) data demonstrating that children who participated in Part C and were found eligible for Part B services, had an IEP or IFSP in effect by their third birthdays; (2) whether the State found significant disproportionality on the basis of race, with respect to the identification of children in certain disability categories or placements in particular education settings and, if it found significant disproportionality, provide the results of its review, and any appropriate revisions to, policies, procedures and practices governing the identification and placement of children with disabilities, consistent with Part B of the Act; (3) information indicating that, when the State identifies significant

discrepancies in the rates of suspensions and expulsions, it reviews, and if appropriate, revises (or requires the affected administrative units (AUs) to revise) policies, procedures, and practices consistent with 34 CFR §300.146; (4) strategies to ensure the collection and reporting of accurate data on graduation and drop-out rates, and report on the continued implementation of the strategies it developed to improve performance in this area; (5) documentation of data regarding preschool skills (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, including a detailed timeline of the activities necessary to implement that plan; and (6) data comparing post-school outcomes for children with and without disabilities.

In addition, OSEP's June 2005 letter required CDE to provide documentation ensuring that: (a) appropriate accommodations were provided for children with disabilities in statewide and districtwide assessments; (b) local educational agencies (LEAs) that conducted districtwide assessments developed accommodation guidelines and provided copies of those guidelines; and (c) districts that conducted districtwide assessments developed guidelines for the provision of alternate assessments, provided those guidelines, and administered alternate assessments in accordance with Part B requirements.

General Supervision

Identification and timely correction of noncompliance

OSEP's June 2005 letter directed CDE to include, in the FFY 2003 APR, data and analysis demonstrating that it ensures the correction of all State-identified noncompliance, within a reasonable period of time, not to exceed one year from the date of identification (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)). During OSEP's September 2004 verification visit, it conducted a review of the State's monitoring files for 2001-2002 and 2002-2003 to ensure the correction of identified noncompliance from OSEP's March 2001 Monitoring Report. At the time of the visit, OSEP was able to determine that the State was identifying noncompliance and working with the districts to correct that noncompliance; however, OSEP was unable to determine whether the State ensured the correction of identified noncompliance as soon as possible, not to exceed one year from the date of identification.

In the General Supervision cluster of, and documents attached to, the FFY 2003 APR, CDE provided data and information regarding the identification and correction of noncompliance through its Continuous Improvement Monitoring Process (CIMP). CDE reported that, "LEAs are not given final approval of the improvement plan until it is determined by the CDE that the improvement plan meets with reasonable timelines not to exceed one year. If plan approval is given, yearly targets and reviews of Annual Performance Profiles determine if progress is being made, again based on the evidence of change. Follow-up visits and LEA-generated updates allow the CDE to determine if correction is being made," and "Correction must occur within one year or sanctions are imposed and targeted technical assistance is provided." OSEP is not clear that CDE is ensuring correction of identified noncompliance within one year of identification; rather, it appears that the one-year timeline begins with approval of the improvement plan. Also, on page 135 of its monitoring manual, CDE states, "Any administrative unit not demonstrating

progress towards a corrective action after one year's period of time could be at-risk of losing its accreditation through the accreditation review process." Therefore, if correction is not completed within one year, sanctions are only imposed if an LEA fails to make "progress toward compliance." This language also seemed to indicate that correction is not completed within one year of identification.

With the State Performance Plan, due December 2, 2005, in addition to the information required in Indicator #15, CDE must provide documentation that State-identified noncompliance is corrected within one year of identification (not within one year from approval of the improvement plan). In addition, for any noncompliance not corrected within one year of identification, CDE must identify additional steps it has taken to get correction including the sanctions imposed, the effectiveness of the additional steps and sanctions in correcting the identified noncompliance and, for persistent noncompliance, further actions the State intends to take. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether data collected related to this area will be responsive to those requirements. The absence of data in this area will be considered in OSEP's decision about approval of the State's SPP.

OSEP's June 2005 letter also required CDE to submit, in the FFY 2003 APR, data demonstrating the correction of State-identified noncompliance, within a reasonable period of time, not to exceed one year from the date of identification; including the correction of identified deficiencies resulting from findings in OSEP's March 2001 Monitoring Report, specifically: (a) ensuring the provision of services and supports to meet the needs of children with disabilities; (b) ensuring the consideration, availability and provision of positive behavioral supports for children who need them; (c) ensuring the provision of psychological counseling services for children who need them; and (d) ensuring that general education teachers participate in IEP development. While CDE included information under the Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) cluster indicating the identification of noncompliance in these four areas, and that some of these areas were being corrected, the data did not specifically clarify that the corrections were made, except with respect to the participation of general education teachers at IEP meetings. Therefore, with the SPP, CDE must provide data to clearly demonstrate that the State is effectively ensuring correction of identified noncompliance. Failure to demonstrate the correction of identified noncompliance in the remaining areas noted in the 2001 Monitoring Report may impact the State's FFY 2006 Grant Award.

Formal written complaints

In Attachment 1 of the FFY 2003 APR, CDE included data indicating that of 19 formal written complaints received, 11 decisions were issued within 60 days and one complaint was resolved beyond 60 calendar days, with an appropriate extension. CDE reported that five complaints were not investigated or were withdrawn because it had no jurisdiction and two complaints resulted in no findings. The State reported on page 7 of its FFY 2003 APR that all complaints were resolved within timelines. However, the data in Attachment 1 suggest that two complaints were not resolved within timelines, presumably because the State did not include the two complaints reported in cell 4 in cells 7 or 8, as appropriate. In the SPP, the State should report data in

Attachment 1 consistent with the instructions. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Mediation

In Attachment 1 of the FFY 2003 APR, CDE indicated that of 17 mediation requests received, 100% resulted in mediation agreements. OSEP looks forward to reviewing the State's data in this area in the SPP.

Due process hearings and reviews

In Attachment 1 of the FFY 2003 APR, data indicated that of 19 hearing requests received during the FFY 2003 reporting period, three hearings resulted in written decisions issued within the timelines appropriately extended under 34 CFR §300.511(c). The remaining 16 requests were settled, withdrawn, or dismissed within the 45-day timeline. OSEP appreciates the State's efforts in this area and looks forward to reviewing data in this area in the SPP.

Personnel

OSEP's June 2005 letter directed CDE to continue to report data resulting from the implementation of strategies to ensure an adequate supply of qualified personnel to provide FAPE. In the General Supervision cluster of the FFY 2003 APR, CDE included data and information regarding the State's efforts to improve the quantity and quality of special education staff in Colorado and its efforts to ensure that special education teachers and related services providers are fully qualified. CDE reported CIMP data and analysis for the 2003-2004 school year that indicated: 94.9% of IEPs reviewed included services appropriate to children's needs; and 88.7% of parents reported on a survey, that their child was receiving the services included on their IEPs.

CDE identified the lack of qualified personnel as an issue in Colorado. CIMP data from 2003-2004 indicated that 7 of 10 AUs were cited for a lack of qualified personnel to provide services to children with disabilities. CDE also stated that the seven AUs submitted improvement plans and were under review for evidence of correction for this noncompliance and CDE provided guidance and support to AUs. OSEP appreciates CDE's efforts to improve performance in this area.

Collection and timely reporting of accurate data

In the FAPE in the LRE section of the FFY 2003 APR, CDE included information regarding the collection and timely reporting of accurate data, indicating continued efforts to maintain a system that provides accurate data. CDE reported that the State ensured the integrity of its graduation and drop-out data collections, a problem identified by OSEP during its September 2004 visit; specifically, CDE reported the provision of detailed data collection instructions, training on data submissions each year at the orientation for new special education directors, and an ongoing analysis of graduation and drop-out data as part of the State's CIMP. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data in the SPP.

Early Childhood Transition

OSEP's June 2005 letter directed CDE to submit data and analysis for the FFY 2003 APR reporting period (July 1, 2003-June 30, 2004) indicating whether children who participated in Part C, who were found eligible for Part B services, had an IEP in effect by their third birthdays (34 CFR §300.132(b)). If data demonstrated noncompliance, CDE was to include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance as soon as possible, but not later than one year from the date that OSEP accepts the plan. In the Early Childhood Transition cluster of the FFY 2003 APR, CDE included monitoring data and information for the FFY 2003 APR reporting period, indicating compliance with this requirement. The State reported that both Part C and Part B have focused on communication between the two systems and provided 2003-2004 CIMP data indicating that 94% of staff interviewed reported that services were in place by each eligible child's third birthday. Parent survey data indicated that 96% of parents reported that the transition to preschool was smooth and effective. The State included a description of its ongoing activities and timelines to ensure compliance with 34 CFR §300.132(b).

Early Childhood Transition is an indicator in the SPP that is due December 2, 2005. In preparation for the submission of the SPP, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The State must submit responsive baseline data regarding the percentage of children referred by Part C prior to age three, who are found eligible for Part B, and have an IEP developed and implemented by their third birthdays. OSEP looks forward to reviewing the State's data in the SPP.

Parent Involvement

In the Parent Involvement cluster of the FFY 2003 APR, CDE included data and information regarding whether the provision of FAPE to children with disabilities is facilitated through parent involvement in special education services. CDE reported trend data that indicated an increase of parents reporting awareness of programs, projects and services for children with disabilities. CDE reported on its continued partnerships with parent organizations, as well as the State's support and training through its statewide Parents Educating Parents Conference series. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding the State's efforts to ensure performance in this area in the SPP.

The SPP instructions establish a new indicator in this area (#8), for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection.

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

Disproportionality

OSEP's June 2005 letter required CDE to include its determination of whether the identification and placement patterns noted in its FFY 2002 APR constituted significant disproportionality on

the basis of race. If significant disproportionality was identified, the State was to include a description of its review of policies, procedures, and practices used in the identification and placement of children with disabilities, and the results of that review, to ensure that they are consistent with Part B and race-neutral. In the FAPE in the LRE cluster and Attachment 2 of the FFY 2003 APR, CDE provided an analysis of its disproportionality data and described the method the State used to calculate disproportionality. CDE reported the overidentification of Black and American Indian children in special education and the overidentification of Black children in the specific categories of learning disabilities (7.9% compared with 5.9% for the total student population) and mental retardation (14% compared with 5.9% for the total student population). CDE reported its concern regarding the large numbers of Black children in restrictive settings such as outside the regular class more than 60% of the day, in private separate schools, and in public residential facilities. However, CDE did not identify significant disproportionality and did not include information about the review of its policies, procedures, and practices as required in OSEP's June 2004 letter and on page 6 of the Submission Requirements for the FFY 2003 APR.

The State included a target of identification of students with disabilities at "rates consistent with Federal guidelines for ethnicity, placement and setting (within plus or minus Natural Population Rate *.20)." The Federal government does not have guidelines for identification or placement based on ethnicity in the general population. Please consult the instructions for completing this section of the APR for further information. The State's proposed use of numerical targets or 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.

The SPP instructions establish two new indicators in this area (#9 and #10), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under §616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Graduation and drop-out rates

OSEP's June 2005 letter required CDE to include strategies to ensure the collection and reporting of accurate data on graduation and drop-out rates. In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported 2003-2004 data indicating the graduation rate for students with disabilities increased to 75.5% from 74.8% in 2002-2003, and drop-out rates decreased to 18.2% from 19.5% during the same time period. CDE reported that the State ensures the integrity of its data collections by providing detailed data collection instructions, training on data submissions each year at the orientation for new special education directors, and an ongoing analysis of graduation and drop-out data as part of the State's CIMP. CDE explained that graduation and drop-out rates for students with and without disabilities are calculated differently and are not comparable.

These are indicators in the SPP (#1 and #2) that is due December 2, 2005. In preparation for the submission of the SPP, 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 youth with IEPs graduating from high school with a regular diploma compared to the percent of all youth in the State graduating with a regular diploma and the percent of youth with IEPs dropping out of high school compared to the percent of all youth in the State dropping out of high school, in the SPP.

Suspension and expulsion

OSEP's June 2005 letter required CDE to include information indicating that the State examined data to determine whether significant discrepancies were occurring in the rate of long-term suspensions and expulsions of children with disabilities, based on one of the comparisons described in 34 CFR §300.146 and, that when significant discrepancies were identified, CDE reviewed, and if appropriate, revised (or required the affected LEAs to revise) policies, procedures, and practices consistent with 34 CFR §300.146(b). In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported suspension and expulsion data, along with a description of the State's guidance and monitoring activities designed to ensure that corrective action plans are developed to address any identified noncompliance.

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 local educational agencies (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 review and, if appropriate, 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 these policies, procedures and practices comply with IDEA.

Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant discrepancies among LEAs or compared to children without disabilities in the agencies; (2) a description of the procedures for conducting a review of policies, procedures and practices; (3) a description of the decision-making process for determining whether existing policies, procedures and practices contributed to, or were the cause of, the identified discrepancies; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the discrepancies; (5) a description of other steps taken if it is determined that policies, procedures or practices did not cause, or contribute to, the identified discrepancies, to identify the causes; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing discrepancies.

In a table in the FAPE in the LRE cluster of the FFY 2003 APR, CDE included numbers of children suspended or expelled more than ten days in a school year compared with the "unduplicated count of children." The data showed, for example, that children with disabilities,

aged 3-21, numbered 57, of whom 58 were suspended more than ten days in a school year. Of 331 children with emotional disturbance, 347 were suspended more than ten days in a school year. On the following page, CDE stated, "overall, the number of children unilaterally removed has decreased . . .," but did not include percentages or numbers documenting that decrease.

The State did indicate that discrepant disciplinary removals are an issue reviewed in its CIMP process but did not identify the basis for that analysis or whether the LEAs with identified discrepancies had their policies, procedures and practices regarding the development and implementation of individualized education programs (IEPs) and the use of behavioral interventions and procedural safeguards reviewed, to ensure that these policies, procedures and practices comply with IDEA, as required by 34 CFR §300.146 and the instructions for this section of the APR.

With the SPP, due December 2, 2005, the State must provide either:

- (1) data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that the State 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, CDE 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; or
- (2) a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Indicator #4A is an indicator in the SPP, for which baseline data is due December 2, 2005. In preparation for the submission of the SPP, 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 in the SPP.

The SPP instructions establish a new indicator in this area (#4B), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Statewide and districtwide assessment

OSEP's June 2005 letter required CDE to provide data and analysis demonstrating compliance with: (1) 34 CFR §300.138(a) that requires children with disabilities to be included in general statewide and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary; and (2) 34 CFR §300.347(a)(5) requiring that IEPs include a statement of any individual modifications in the administration of statewide or districtwide assessment of student achievement that are needed for the child to participate in the assessment. In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported 2003-2004 CIMP data indicating that 81.9% of IEPs reviewed had an accommodation indicated for participation in statewide and districtwide assessments, when appropriate. CDE determined, through the CIMP, that districts were using the Colorado State Assessment Program (CSAP) Accommodation Guidance for their assessments. OSEP appreciates CDE's effort to correct the noncompliance in this area. With the SPP, CDE must continue to report its progress in reaching full compliance with these requirements.

In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported that 96.8% of children with disabilities participated on the CSAP and CSAP-A assessments. The State reported on the performance of children with disabilities on the CSAP; specifically, data for reading indicated a mean score of 1.7 (scale of 1-4) for 2003 and 1.8 for 2004. The mean scores in math were 1.8 to 1.4 for 2003 and 2004, respectively. CDE included targets and activities designed to improve performance.

During the September 2004 visit, OSEP learned through discussions and review of CDE's assessment system that some AUs conducted districtwide assessments; however, at the time of OSEP's visit, CDE did not know the extent of this practice or whether children with disabilities were included in those districtwide assessment programs, including the development and administration of alternate assessments, in accordance with 34 CFR §300.138(b)(2). OSEP's June 2005 response to Colorado's FFY 2002 APR required CDE to provide documentation in the FFY 2003 APR ensuring that appropriate accommodations were provided for children with disabilities in districtwide assessments, that accommodation guidelines were developed and provided, and that AUs that conducted districtwide assessments developed guidelines for the provision of alternate assessments and administer such assessments in accordance with 34 CFR §300.138(b)(2). If the data demonstrated noncompliance, CDE was to provide a plan with strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepted the plan.

In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported that in Phase II of the CIMP, teams investigate whether alternate districtwide assessments are provided. CDE reported, "In the current reporting cycle the CIMP identified one administrative unit where no districtwide assessment was provided and has cited this district as out of compliance with IDEA on this issue." CDE did not include information regarding the provision of appropriate accommodations in districtwide assessments, the development and provision of guidelines or any data regarding the extent to which AUs administer districtwide assessments. In addition, OSEP is concerned that CDE cited an AU for not providing districtwide assessment, if that citation is the result of

OSEP's investigation into this issue. There is no Federal requirement that districts administer districtwide assessments. 34 CFR §300.138(b)(2) requires that an LEA develop alternate assessments when the LEA otherwise administers districtwide assessments.

With the SPP, due December 2, 2005, in addition to the information required in Indicator #3, CDE must submit data indicating: (1) the extent to which AUs throughout the State are conducting districtwide assessments; and (2) for each AU that conducts districtwide assessments: (a) whether that AU conducts alternate assessments for those children who cannot take the regular districtwide assessment with accommodations; (b) whether that AU developed and provided accommodations; and (c) whether that AU developed guidelines for the provision of alternate assessments and provided samples of alternate assessment guidelines. If the data indicate noncompliance or are not available, CDE must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of any identified noncompliance or obtain relevant data as soon as possible, but no later than one year from the date that OSEP accepts the plan. Failure to provide the required information may impact CDE's FFY 2006 Part B Grant Awards.

Least restrictive environment (LRE)

In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported data and information regarding its efforts to ensure that children with disabilities were educated with nondisabled peers to the maximum extent appropriate, including preschool. State-reported data indicated that 70.3% of Colorado's children with disabilities received their special education services outside the regular classroom less than 21% of the day. The State included targets, activities, timelines and resources designed to improve performance. OSEP appreciates the State's efforts in this area and looks forward to reviewing data regarding both preschool and school-age placements in the SPP.

Preschool performance outcomes

OSEP's June 2005 letter required CDE to 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, including a detailed timeline of the activities necessary to implement that plan. In the FAPE in the LRE cluster of the FFY 2003 APR, CDE reported on its targets, activities and progress to collect data to address this new data collection. CDE reported that the State received technical assistance from the National Early Childhood Technical Assistance Center (NECTAC) and received a General Supervision Enhancement Grant (GSEG) to further develop the "Results Matter" program for collecting data to meet the needs of the early childhood programs and to meet the Federal reporting requirements. OSEP appreciates CDE's efforts in this area.

The SPP instructions establish a new indicator in this area (#7), for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Secondary Transition

OSEP's January 2005 letter directed CDE to include, in the FFY 2003 APR, data comparing post-school outcomes of students with and without disabilities. In the Secondary Transition cluster of the FFY 2003 APR, CDE reported that the State was developing a post-school outcomes study, anticipated piloting the study in Spring 2006 and implementing the study statewide during 2006-2007. CDE included data and analysis based on IEPs reviewed, indicating an increase in the percentage of IEPs that included statements of transition services. CDE included targets and activities designed to improve transition services to students with disabilities.

The SPP instructions establish two new indicators in this area (#13 and #14), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007 (#13) and FFY 2006 APR, due February 1, 2008 (#14). The State should carefully review the instructions to the SPP in developing its plans for these collections. OSEP looks forward to reviewing the State's plans for collecting these data, in the SPP.

Conclusion

With the State's Performance Plan, due December 2, 2005, Colorado must submit:

- (1) documentation that State-identified noncompliance is corrected within one year of identification (not within one year from approval of the improvement plan). In addition, for any noncompliance not corrected within one year of identification, CDE must provide the additional steps it has taken to get correction including the sanctions imposed, the effectiveness of the steps and sanctions in correcting the identified noncompliance and, for persistent noncompliance, further actions the State intends to take;
- (2) data to clearly demonstrate that identified noncompliance is corrected for the following three areas: (a) ensuring the provision of services and supports to meet the needs of children with disabilities; (b) ensuring the consideration, availability and provision of positive behavioral supports for children who need them; and (c) ensuring the provision of psychological counseling services for children who need them;
- (3) either:
 - (a) data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that CDE 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, CDE 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; or
 - (b) a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than

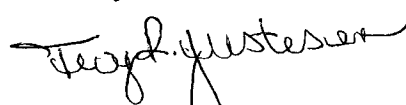
one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline; and

- (4) data indicating: (a) the extent to which AUs throughout the State are conducting districtwide assessments; and (b) for each AU that conducts districtwide assessments: (i) whether that AU conducts alternate assessments for those children who cannot take the regular districtwide assessment with accommodations; (ii) whether that AU developed and provided accommodation; and (iii) whether that AU developed guidelines for the provision of alternate assessments and provided samples of alternate assessment guidelines. If the data indicate noncompliance or are not available, CDE must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of any identified noncompliance or obtain relevant data as soon as possible, but no later than one year from the date that OSEP accepts the plan. Failure to provide the required information may impact CDE's FFY 2006 Part B Grant Awards.

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 represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Margaret Romer at (202) 245-7501.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Terri Connelly