



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

Honorable John Winn
Commissioner of Education
Florida Department of Education
Capitol Building Room PL 08
Tallahassee, Florida 32399-0100

AUG 19 2005

Dear Commissioner Winn:

The purpose of this letter is to respond to Florida's March 31, 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) 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. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's October 4, 2004 FFY 2002 APR response letter summarized the Special Conditions that the State was required to address. Specifically, FDE's July 2004 Grant Award letter established Special Conditions for three areas of noncompliance. To document its progress in ensuring the correction of the noncompliance, FDE was directed to submit quarterly reports related to:

- Ensuring that psychological counseling, when required as a related service, is provided to all children who need this service to benefit from special education consistent with requirements at 34 CFR §§300.24(b)(14) and 300.300;
- Ensuring that speech and language services, when required as a related service, are provided to all children who need this service to benefit from special education as required at 34 CFR §§300.24(b)(14) and 300.300; and
- Ensuring that formal written complaints filed through the State complaint process are resolved within the timelines required at 34 CFR §300.661(a) and (b)(1).

The conclusions of OSEP's October 4, 2004 FFY 2002 APR letter also required the State to submit the following to OSEP no later than December 4, 2004:

- A revised plan to achieve compliance with the due process hearing requirements at 34 CFR §300.511 regarding timelines and specific requests for extensions. FDE was directed to submit data and analyses demonstrating progress toward compliance in the next APR and a report to OSEP, with data and analyses demonstrating compliance, within 30 days following one year from the date OSEP accepted the plan. FDE submitted a plan on December 6, 2004. OSEP accepted the plan in a letter dated February 28, 2005.
- A determination of compliance or noncompliance with the individualized education program (IEP) requirements for parental involvement. If the data showed evidence of noncompliance, FDE was directed to provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, and, in addition, provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year from the date of the FFY 2002 APR letter.

In addition, the October 2004 letter required the State to include the following in the FFY 2003 APR:

- A determination of compliance or noncompliance with the early childhood transition requirements at 34 CFR §300.132(a)-(b). If the data showed evidence of noncompliance, FDE was directed to provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, and, in addition, provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than November 4, 2005;
- An analysis of FDE's review of district policies, procedures and practices with regard to disproportionality consistent with regulations at 34 CFR §300.755(a);
- Information indicating that the State examined all data for all local educational agencies (LEAs) to determine whether 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, and if it identified significant discrepancies, the results of the review and, if appropriate, revision (or of the affected State agency's or LEA's review and revision) of policies, procedures and practices consistent with 34 CFR §300.146;
- An analysis of compliance data related to the participation of children with disabilities in statewide assessments consistent with regulations at 34 CFR §300.138; and
- A report on progress to identify and remediate systemic issues identified through the analysis of monitoring data across school districts as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3).

General Supervision

Identification and timely correction of noncompliance

In a January 21, 2004 letter to FDE, OSEP provided the results of its verification visit to Florida and summarized how FDE used general supervision, State-reported data collection and statewide assessment systems to assess and improve State performance. In that letter, OSEP indicated that FDE's monitoring system was a reasonable approach to the identification and correction of noncompliance. In its October 2004 letter, OSEP requested FDE to report on its progress in identifying and remediating systemic issues identified through the analysis of data from its monitoring system across school districts. FDE provided this information throughout the General Supervision Cluster of the FFY 2003 APR. For example, on pages 10-14 of the APR, there was specific information regarding common issues and trends identified through data from its monitoring system. On page 5 of the APR, FDE included data showing findings of noncompliance related to individual student records that required immediate correction (within 90 days) and systemic or districtwide concerns that required correction within a year. On page 11 of the APR, FDE provided data summarizing systemic concerns. The areas of noncompliance regarding the provision of psychological services and speech and language services as related services identified in the FDE's Special Conditions are addressed below in this cluster.

OSEP looks forward to reviewing data and information regarding the timely remediation of systemic issues that FDE identified through its monitoring system in the State Performance Plan (SPP), due December 2, 2005.

Formal written complaints

On pages 1-16 and Attachment 1 of the APR, FDE provided data and analysis that demonstrated progress toward correction of noncompliance identified in FDE's Special Conditions. Specifically, FDE described its efforts to ensure that complaints were resolved within 60 calendar days after a complaint was filed, unless an extension of time was granted if exceptional circumstances existed with respect to a particular complaint.

In FDE's June 2005 quarterly report under the FFY 2004 Special Conditions, FDE reported that since the November 15, 2004 implementation of FDE's revised internal process for complaint inquiry, 100% of the complaints received have been resolved within 60 calendar days or within appropriately extended timelines. Because FDE demonstrated full compliance in meeting the Special Conditions outlined in FDE's FFY 2004 grant award by ensuring that complaints are resolved in accordance with required timelines as set forth in 34 CFR §300.661(a) and (b)(1), OSEP removed this Special Condition from the State's FFY 2005 grant award.

Mediation

On pages 1-10 of the APR, FDE included data and analysis demonstrating performance in this area. FDE reported that requests for mediation remained fairly consistent and the results of satisfaction surveys were positive. OSEP looks forward to reviewing the State's data in the SPP regarding the percent of mediations resulting in settlement agreements.

Due process hearings and reviews

On February 28, 2005, OSEP accepted FDE's plan for ensuring compliance with the due process hearing requirements. In its correspondence, OSEP requested that FDE clarify the steps it is taking to ensure the timely correction of identified deficiencies. In addition, OSEP requested that FDE include in the FFY 2003 APR, data and analysis demonstrating progress toward compliance with the due process hearing timelines and specific requests for extensions. On pages 9, 10, 15 and Attachment 1 of its FFY 2003 APR, FDE described strategies and activities including: (1) establishing a baseline with a plan for additional tracking (for the FFY 2003-2004 period, timely decisions issued in 22 of 38 fully adjudicated hearings – 58% met timelines); (2) attempts to reduce the number of cases that go beyond the 45-day timeline or documented extensions; and (3) training of administrative law judges. As FDE implements its plan for ensuring compliance with the due process hearing requirements, FDE must report data and analysis demonstrating progress toward compliance in the SPP and, as required by OSEP's February 2005 letter, submit a report demonstrating full compliance not later than March 28, 2006.

Personnel

On pages 16-25 of the FFY 2003 APR, the State included data and analysis demonstrating continued performance in this area. Having sufficient numbers of qualified personnel available to provide effective instructional and related services to children with disabilities was one of FDE's primary goals for improvement. As noted on page 22 of the APR, the percentages of qualified special education related services personnel and administrative personnel exceeded the target of 94%. Ninety-eight percent of demand for qualified special education administrative personnel was met in 2003-2004, as well as 97% of the demand for related services personnel. The percentage of qualified teachers, however, did not meet the targeted percentage for the 2003-2004 reporting period. FDE included a variety of steps to address teacher demand, including utilization of resources available from the IDEA State Improvement Grant. OSEP appreciates the State's work in ensuring performance and compliance with this requirement.

Collection and timely reporting of accurate data

OSEP did not identify noncompliance in the FFY 2002 APR. On pages 26-27 of the APR, the State included data and analysis demonstrating its continued efforts to maintain a system that provides accurate and timely data. FDE reported that it sustained its efforts

to maintain accurate and timely data collection and reporting through its comprehensive automated student database and assessment data. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Speech and language therapy as related services¹

FDE's July 2004 Grant Award letter established Special Conditions for three areas of noncompliance, including the provision of speech and language therapy as a related service for all children with disabilities who need this service to benefit from special education. On pages 27-28 of the APR, FDE included data and analysis with regard to this area. As noted in the APR and in the quarterly reports required in response to its Special Conditions, FDE demonstrated progress in correcting this area of noncompliance. During the most recent quarterly reporting period between January 1, 2005 and March 31, 2005, no findings of noncompliance were made in this area and no complaints were filed pertaining to the provision of speech and language as a related service. FDE will continue to pursue its plans to revise the State statute to include speech and language therapy as a related service. In addition, FDE will issue a technical assistance memorandum to school districts regarding updated procedures in the provision of speech and language therapy. FDE must report data and analysis demonstrating progress in meeting the Special Conditions outlined in FDE's FFY 2005 grant award with its submission of the SPP.

Psychological counseling as a related service

On pages 28-29 of the APR, FDE explained the steps taken toward correction of noncompliance identified in OSEP's July 2004 Special Conditions related to ensuring that psychological counseling, when required as a related service, is provided to all children who need this service to benefit from special education.

As noted in the APR and in the quarterly reports required in response to its Special Condition, FDE has made significant progress in correcting this area of noncompliance. FDE revised its monitoring protocols to more directly address the provision of psychological counseling services and to clarify the manner in which these services are provided and documented. For the period from January 2, 2005 through March 31, 2005, FDE monitored six districts for compliance with this requirement. FDE made one finding of noncompliance and a corrective action plan was developed requiring that individual student issues be corrected immediately (within 90 days) and systemic or districtwide concerns be corrected within a year. There have been no complaints filed

¹ On May 12, 2005, FDE submitted an amendment to the APR that more clearly reflected FDE's position regarding the provision of speech/language pathology as related services. FDE confirmed that all children with communication needs may receive the services of speech/language pathologists either through direct services or consultation with general and special education teachers to support classroom instruction. These services may be provided to students who need speech and/or language pathology as a related service in order to benefit from special education, regardless of eligibility. Although FDE reported that the memorandum and additional technical assistance would be provided to school districts regarding these issues by June 30, 2005, to date, this document has not been issued.

regarding the provision of psychological counseling during this time period. In response to concerns raised by districts, FDE drafted a memorandum providing clarification about the differences between counseling and psychological counseling. OSEP approved this memorandum in an email dated April 28, 2004. FDE issued this memorandum to District School Superintendents on June 13, 2005. Because FDE demonstrated full compliance in meeting the Special Conditions outlined in FDE's FFY 2004 grant award for the provision of psychological counseling as a related service in accordance with 34 CFR §§300.24(b)(14) and 300.300, OSEP removed this Special Condition from the State's FFY 2005 grant award.

Early Childhood Transition

As described in the background section, OSEP's October 2004 letter directed FDE to make a determination of compliance or noncompliance with the early childhood transition requirements. If the data showed evidence of noncompliance, FDE was directed to provide evidence of progress in correcting the noncompliance, including supporting data and its analysis in the FFY 2003 APR, and in addition, provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than November 4, 2004.

On pages 31-34 of the APR, FDE included data and analysis demonstrating progress in correcting noncompliance related to transition issues identified during program monitoring. Specifically, Table II.1 on page 31 showed one finding of noncompliance for each of 4 years from 2000-2001, 2001-2002, 2002-2003 and 2003-2004. All but one finding was corrected. FDE was providing technical assistance related to evaluation and transition services to that district. On page 34 of the APR, FDE reported very few findings of noncompliance regarding general supervision for Part C to Part B transition. OSEP looks forward to reviewing data and analysis demonstrating its performance regarding the early childhood transition requirements in the SPP.

Although, as described above, FDE's monitoring system includes components designed to identify and correct noncompliance related to transition issues, FDE reported a need to improve its data collection methods related to tracking services to eligible children by their third birthdays. On pages 35-37 of the APR, FDE listed various activities including a detailed chart containing projected timelines and resources intended to result in the development of more consistent data reporting methods for evaluating the provision of services to eligible children by their third birthdays. For example, FDE planned to work closely with the Part C program, administered by the Department of Health, to revise its interagency agreement and to include activities designed to improve its tracking system for children transitioning from Part C to Part B. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in the SPP, due December 2, 2005.

Parental Involvement

In its October 2002 letter, OSEP directed FDE to make a determination of compliance or noncompliance with the IEP requirements for parental involvement. On page 42 of the APR, FDE included data and analysis demonstrating noncompliance with these requirements. In its April 2004 Progress Report, the State reported that of 343 IEPs reviewed, only two IEPs (.6%) were found to be out of compliance as determined by the lack of notice and signatures on the IEPs. The State also indicated that funding adjustments were made and it required documentation of corrective action taken by the district involved, such as reconvening the IEP team and the submissions of district systems improvement plans. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

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

Disproportionality

On pages 50-59 of the APR, FDE included data and analysis that addressed disproportionality, including information about its review of district policies, procedures and practices, as required in OSEP's October 2004 letter.

In August 2000, FDE and the Office for Civil Rights entered into a partnership agreement concerning the overrepresentation of Black children in the disability category of mental retardation (particularly educable mental handicapped) and a trend indicating the provision of special education and related services to Black children in more restrictive settings than for other racial/ethnic groups. In its analysis on page 51 of the APR, FDE also noted an additional area of concern regarding the overrepresentation of Black children in the disability category of emotional disturbance. On page 52 of the APR, FDE's data showed that there was no change from previous years with regard to disproportionate representation. Additionally, improvement plans created through FDE's continuous improvement monitoring had little impact. On page 52 of the APR, FDE described plans, including convening a team of individuals to address disproportionate representation to determine if progress is being made on new referrals to special education. FDE will also continue to review policies and procedures in the area of disproportionate representation in districts identified for continuous improvement monitoring in the area of disproportionate representation to ensure that such policies, procedures and practices are non-biased. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Graduation and drop-out rates

On pages 53-55 of the APR, FDE included data and information regarding graduation and drop-out rates. FDE reported that the graduation rates for students with disabilities in 2003-2004 increased by 8.6% from 2002-2003. Additionally, the discrepancy between students with disabilities and students without disabilities went from 15.3% in 2002-2003

to 8.4% in 2003-2004. The State also reported that the drop-out rates for children with and without disabilities was increasing slightly. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement, in both the graduation and drop-out rates in the SPP.

Suspension and expulsion

OSEP's October 2004 letter directed FDE to provide information indicating that the State examined data from the State's 67 school districts to determine whether significant discrepancies were occurring in the rate of long-term suspensions and expulsions of children with disabilities compared to the rates for children without disabilities. On pages 55-62 of the FFY 2003 APR, FDE included data and detailed analysis demonstrating continued improvement in this area. FDE listed factors that may have had a positive effect on decreasing the gap in suspension rates between children with and without disabilities. These included: special funding and other resources resulting in intensive interventions to students with behavioral difficulties; the development of Continuous Improvement Monitoring Plans regarding discipline for districts with the highest suspension rates; the provision of targeted technical assistance to schools and districts with high in-school and out-of-school suspension rates; classroom management training, and the provision of psychological counseling as a related service (a Special Condition in FDE's FFY 2004 grant award). OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in the SPP.

Statewide and districtwide assessment

On pages 12, and 62-67 and Attachment 3 of the APR, FDE included an analysis of compliance data and other information regarding the participation and performance of children with disabilities in statewide assessments. FDE reported that on the Florida Comprehensive Assessment Test (FCAT), the target for fourth-grade performance was attained in both reading and math but the targets for eighth and tenth grade were not achieved. FDE attributes the trends in performance, in part, to the significant efforts that FDE made to improve the quality of instruction for all students at the elementary level. FDE was focused on middle school reform and expected to see improvement at these grade levels within the next few years. Participation rates in 2003-2004 were significantly higher than the previous year. FDE explained that the lower performance results at the secondary level and the higher participation rates may be related to the fact that children with more severe learning problems were included in regular assessments. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information including the implementation of strategies and resulting data and analysis, particularly at the middle school level, in the SPP.

Least restrictive environment

On pages 67-72 of the FFY 2003 APR, FDE described its efforts to ensure that children with disabilities were educated with children without disabilities to the maximum extent

appropriate. FDE reported that the State continued to devote a significant amount of resources toward the goal of ensuring that all children with disabilities were served in the least restrictive environment and the 2003-2004 data revealed an increase in the placement of children with disabilities in the regular class. Specifically, the percentage of children with disabilities in the regular class, aged 6-21, increased from 49.3% in 2002-2003 to 51.2% in 2003-2004.

For children with disabilities, aged 3-5, the data indicated an overall decrease in the number of children receiving education in early childhood settings for children without disabilities. FDE explained that this decrease might be due to a restructuring of the early childhood programs resulting in an increase in options available through programs not run by the school districts. FDE plans to address this issue by reporting data that would include all the available options (not just those provided by the school district) in order to have a more complete picture of the settings used for children with disabilities, ages 3-5.

With regard to monitoring to ensure that eligibility decisions are made in conformance with the requirements of Part B, FDE noted that placement rate data was used as a trigger for selecting school districts for focused monitoring. Additionally, districts self-selected least restrictive environment as an area of focus through the development of local continuous improvement plans.

FDE reported a lack of progress in the placement setting data for children identified as educable mentally handicapped, even after efforts to increase the integration of these children in less restrictive settings. Among the activities and resources listed on page 71 of the APR, several were intended to address this challenge.

OSEP looks forward to reviewing the State's efforts to improve performance in this area, including children ages 3-5, in the SPP.

Preschool performance outcomes

On pages 72-73, FDE discussed the goal of improving early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services. FDE included data and analysis of preschool outcomes for these children based on the School Readiness Uniform Screening System (SRUSS). FDE reported that the percentage of students with disabilities identified as "ready" by the SRUSS declined by 2% from 2002-2003 to 2003-2004 and therefore, the target set for 2003-2004 was not met. However, the State noted that the data were somewhat equivocal as the percentage of students identified as "not ready" also declined slightly. The State theorized that these trends might be the result of an increase in the percentage of children exempted from testing. 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, made available to States on August 5, 2005. The State must

make a determination whether data collected related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Secondary Transition

On pages 75-81 and in Table GS.1.4 on page 5 of the APR, FDE reported its progress in meeting the goals for secondary transition. FDE included strategies to improve performance for students with disabilities as follows: (1) those who exited school and found employment; and (2) those who exited school and were in continuing education. FDE also included monitoring data regarding school districts' compliance with transition requirements. For 20 school districts monitored in the 2003-2004 school year, two districts had findings related to secondary transition. These districts were required to address transition in their system improvement plans that required correction within one year. FDE also included strategies to address specific concerns related to secondary transition (e.g., involvement of agencies) and to positively impact post-secondary employment and continuing education for students with disabilities. OSEP looks forward to reviewing the State's efforts to improve performance in these areas in the SPP, due December 2, 2005.

Conclusion


As noted above, FDE must submit to OSEP data and analysis demonstrating progress toward compliance with the due process hearing timelines in the SPP and, as required by OSEP's March 2005 letter, a report demonstrating compliance no later than March 28, 2006.

In addition, FDE must submit to OSEP data and analyses with the SPP to demonstrate its performance in the area of noncompliance identified in FDE's FFY 2005 Grant Award Special Conditions regarding the provision of speech and language services, when required as a related service, to all children who need this service to benefit from special education.

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 will be, 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 Ms. Sheila Friedman at (202) 245-7349.

Sincerely,

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

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Ms. Bambi Lockman