



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

Honorable John A. Tompkins
Commissioner of Education
Kansas Department of Education
120 South East Tenth Avenue
Topeka, Kansas 66612-1182

OCT 18 2005

Dear Commissioner Tompkins:

The purpose of this letter is to respond to the Kansas Department of Education's (KSDE) March 25, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis, and determinations by cluster area.

Background

The conclusion of OSEP's September 2, 2004 FFY 2002 APR response letter required the State to include, in the FFY 2003 APR, data and analysis to:

- Demonstrate that the State corrects the noncompliance that it identifies within one year;
- Clarify how it is ensuring, as required by 34 CFR §300.146, the review and, if appropriate, revision of policies, procedures, and practices relating to development of individualized education programs (IEPs), use of behavioral interventions, and procedural safeguards in districts identified with significant discrepancies in suspension and expulsion rates between general education and special education students; and
- For preschool outcomes, either submit documentation of data, targets for improved performance, and strategies to achieve those targets for this area, or its plan to collect the data.

In addition, OSEP's September 2004 letter required Kansas to demonstrate that it ensures compliance with the requirement that IEPs for students age 14 and over contain a statement of transition services needs by September 9, 2004 (see 34 CFR §300.347(a)(1)).

KSDE submitted a letter to OSEP on September 8, 2004 demonstrating compliance with IDEA secondary transition requirements. OSEP reviewed the submitted materials and determined that KSDE met the requirements. OSEP responded to that submission and approved KSDE's submission in an October 6, 2004 letter.

General Supervision

Identification and timely correction of noncompliance

In its September 2004 letter, OSEP required that KSDE include in the FFY 2003 APR, data and analysis to demonstrate that the State corrects the noncompliance that it identifies within one year (see 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)). On pages 2-21 of the FFY 2003 APR, the State included data and analysis describing its progress in meeting this goal. KSDE described the components of its special education support and monitoring system: district capacity building, process review, and performance review (to be fully implemented in 2005-2006). The process review included KSDE's Continuous Improvement Monitoring (CIM) to monitor LEAs for compliance with 66 indicators, including IDEA requirements, through self-assessment, file review and audits, data verification, and dispute resolution procedures audits. On page five, KSDE reported that remediation was required for noncompliance identified through CIM and that beginning in spring 2005, noncompliance with legal requirements must be corrected within one year. KSDE also reported sanctions and incentives used to ensure LEA compliance. On pages 9 and 10, KSDE reported an increase in the number of indicators met by LEAs monitored during the reporting period. KSDE planned to continue to provide requested technical assistance to districts through District Capacity Building Workshops as they attend to special education improvements.

Because KSDE did not demonstrate compliance with the requirement that noncompliance be corrected within one year of its identification, KSDE must provide with the State Performance Plan (SPP) evidence that the State ensures correction of identified noncompliance in a timely manner. Kansas must include evidence that districts with identified noncompliance have corrected the noncompliance within one year or a plan to provide such evidence within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. A plan must include strategies, proposed evidence of change, targets, and timelines for ensuring identification of noncompliance with Part B and the correction of all identified noncompliance, including evidence that the noncompliance identified in the past has been corrected. OSEP looks forward to reviewing the State's data in this area as part of the SPP, due December 2, 2005.

Formal written complaints

On pages 22-24 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure continued compliance in this area. KSDE received 44 complaints in the 2003-2004 reporting period. All formal complaint investigation reports and mediations were completed within 60 days. Thirty-two complaints resulted in decisions within the 60-day timeline. Three complaints at the second-tier level were granted extensions beyond the 60-day timeline. The regulations at 34 CFR §300.661(b)(1) permit an extension of the 60-day time limit only if exceptional circumstances exist with respect to a particular complaint. OSEP notes that

failure to meet the 60-day timeframe due to an appeal process should not be considered an exceptional circumstance justifying an extension of time. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Mediation

On pages 22-24 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure continued compliance in this area. KSDE indicated that during the reporting period there were 17 mediations not related to hearing requests and that 12 resulted in a mediation agreement. Additionally, there were 21 requests for mediation related to a hearing request and 16 of them resulted in an agreement. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Due process hearings and reviews

On pages 22-24 and Attachment 1 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure continued compliance in this area. KSDE reported that for the 12 due process hearings held, all resulted in decisions being issued within timelines under 34 CFR §300.511. KSDE planned to continue data collection on the timeliness of due process hearings. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Personnel

On pages 25-28 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. KSDE conducted analyses of the numbers of special education teachers and paraprofessionals compared to the number of children with disabilities receiving special education services and found that the number of students receiving special education services has increased at a rate comparable to the growth in the number of professional educators but less than the growth in the number of paraeducators. However, because of changes in reporting techniques, KSDE believes that in fact there are fewer teachers providing special education services to 4% more children ages 6-21 than there were in 2000. In addition, KSDE believes there has been only a 2.8% increase in the number of ECSE providers to accommodate a 13% increase in the number of children receiving those services. The number of special education teachers teaching on waivers decreased during the reporting period. KSDE implemented a new licensure system in July 2003 and listed five issues that need to be monitored to determine if future changes are necessary. KSDE continued to work with State universities through the State Improvement Grant to strengthen their teacher education programs.

Collection and timely reporting of accurate data

On pages 37-40 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. KSDE was awarded a one-year General Supervision Enhancement Grant (GSEG) to update its management information system and personnel databases and procedures. KSDE expected those databases to be in use by the beginning of the 2004-2005 school year but did not report whether that was accomplished. KSDE continued to

implement its data verification procedures. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Early Childhood Transition

OSEP did not identify noncompliance in this area in the FFY 2002 APR but requested that KSDE report on the following in the FFY 2003 APR: (1) the State's progress to ensure transition from Part C to Part B meets IDEA requirements; (2) the State's progress in determining eligibility of all children exiting Part C by the child's third birthday; and (3) each district's progress in participating in transition planning conferences arranged by KSDE, as required under section 637(a)(8) of the Act and 34 CFR §§300.121(c) and 300.132 (b) and (c).

On pages 42-50 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. KSDE reported that the number of three-year-old children receiving services increased. During 2003-2004 CIM onsite file reviews, KSDE monitored the timely transition from Part C to Part B by verifying that Part B-eligible children received services by their third birthday. No systemic findings were made. KSDE reported it planned to continue to monitor IDEA Part C to Part B transition requirements through self-assessments and on-site file reviews. KSDE also planned to implement a new data collection system that would allow KSDE to follow children with disabilities from Part C to school services.

In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements.

Parent Involvement

On pages 51-63 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. KSDE collaborated with the Kansas Parent Information Resource Center (KPIRC) to support the goal of providing training, information, and supports to parents. KSDE reported an increase in the number of parents using the toll free telephone number available to parents to request information and that KSDE continued to maintain a website for parents. CIM file reviews showed that the percent of files reviewed with findings for lack of documentation of parent participation in the IEP process decreased from 1.9% to 0.9% and the percent of findings for lack of parent notification of rights decreased from 7.8% to 6.4%. KSDE also reported that survey results reported by districts through CIM show general parent satisfaction. KSDE planned to continue to use the same survey for the 5-year CIM cycle so that it will have comparable data across districts that can be analyzed for patterns. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

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

Disproportionality

On pages 65-75 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. On page 64, KSDE stated as probe BF.I the following question:

Is the percentage of children with disabilities, receiving special education, by race/ethnicity, comparable to the percentage of children, by race/ethnicity, in the general population; and are their educational environments and disability categories comparable with national data?

In addition, KSDE provided as performance indicator BF.I the following:

The percentage of children with disabilities, receiving special education, by race/ethnicity, is comparable to the percentage of children, by race/ethnicity, in the general population, in disability categories and in educational placements.

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 or targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns.

Regulations at 34 CFR §300.755 require that in the case of a determination of significant disproportionality related to identification, 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 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. In addressing significant disproportionality related to placement, under 34 CFR §300.755, it is appropriate to look at policies, procedures, and practices related to placement in the least restrictive environment consistent with the requirements at 34 CFR §§300.501 and 300.550-300.556 in order to determine if they are educationally appropriate, consistent with the requirements of Part B, and race neutral. This would generally include a review of policies, procedures, and practices related to the following: 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. KSDE must ensure that information submitted in the SPP is consistent with this guidance.

KSDE reported analyzing disproportionality data across districts, disability categories, and placements to identify significant discrepancies. KSDE identified several concerns including that seven districts had 55% or more of Black students classified under emotional disability and

mental retardation and that those students were put in restrictive placements. KSDE reported evaluations of policies, procedures, and practices that could be influencing disproportionate representation of ethnic groups in special education. KSDE identified several factors, including the following: early intervening, family involvement, and ensuring correct special education procedures and practices during evaluation and eligibility determination. KSDE made efforts in each of those areas and described plans to establish procedures for its Performance Monitoring that would include a disproportionality indicator sensitive enough to identify issues and to more closely examine disproportionality across districts for Hispanic and American Indian subgroups.

Not later than December 2, 2005, the State must submit a plan to OSEP, 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. The State may submit this information with the SPP.

Graduation and drop-out rates

On pages 76-85 of the FFY 2003 APR, the State included data and analysis regarding its performance in this area. KSDE reported that graduation rates of students with disabilities increased considerably from the 2002-2003 to the 2003-2004 school years and that the drop-out rates decreased for both students with and without disabilities. KSDE planned to use graduation rates, disaggregated by ethnicity, and other indicators to monitor districts more carefully in order to determine root causes of student performance issues. Graduation was also added as an indicator for all districts in the performance monitoring process. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Suspension and expulsion

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 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 the IDEA.

OSEP's September 2004 letter required KSDE, in the FFY 2003 APR, to clarify how it was ensuring, as required by 34 CFR §300.146(b), the review and, if appropriate, revision of policies, procedures, and practices related to the development of IEPs, use of behavioral interventions, and procedural safeguards in districts it identified with significant discrepancies in suspension and expulsion rates between general education and special education students. On pages 86-93,

KSDE reported on suspension and expulsion rates for children with disabilities. Districts in Kansas continued to make progress in reducing the suspension rates for children with disabilities, although the gap between the rates of the two groups of students remained about the same. On page 89, KSDE discussed suspension and expulsion rate issues reported in CIM. KSDE indicated that 53% of school districts indicated that the differences in suspension and expulsion rates between special education and general education students are still a concern.

In the FFY 2003 APR, KSDE did not include the requisite analysis to demonstrate compliance with 34 CFR §300.146; nor did KSDE include strategies, proposed evidence of change, targets, and timelines to ensure correction of the noncompliance. Therefore, the State must submit a plan to OSEP with the SPP, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date OSEP accepts the plan. In addition, KSDE must provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

Statewide and districtwide assessment

On pages 94-105 and Attachment 3 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. KSDE reported that 99.4% of children with disabilities participated in the Kansas assessments. Charts included in the FFY 2003 APR and Attachment 3 showed that the percentage of children with disabilities with proficient performance on both the reading and mathematics statewide assessments increased for all grades assessed. Trend data indicated that continued progress was made in decreasing the gap in performance between children with and without disabilities. For example, in 2003-2004, 20% more 4th grade children with disabilities scored proficient or above on the math assessment, while 12% more children without disabilities increased scores to proficient levels. KSDE identified specific categories of children with disabilities not performing at proficient levels and planned to develop specific supports to assist those children, including a focus on early intervening services and providing guidance for language-literacy connections for evaluations for children receiving speech and language services. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Least restrictive environment (LRE)

On pages 106-117 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance and improve performance in this area. KSDE compared its enrollment data with enrollment data from other States and territories and reported progress in the area of percentage of children with disabilities placed in separate facilities. KSDE reported that while the data for early childhood settings had not changed significantly, new data collection methods were used, which caused the data to portray significant changes in early childhood placements. KSDE planned to educate children with disabilities aged 3-21 with their non-disabled peers to the maximum extent appropriate by providing technical assistance to LEAs and providing statewide training to ensure accurate reporting of data. OSEP looks forward to reviewing the State's updated data in this area in the SPP.

Preschool performance outcomes

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. OSEP's September 2004 letter required Kansas, in the FFY 2003 APR, 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 its plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

On pages 116-118 of the FFY 2003 APR, the State provided a plan to collect data and information in this area by developing a system to collect the appropriate data, and working with OSEP and the Early Childhood Outcomes Center to determine the data needed to meet this indicator. KSDE also planned to provide guidance to early childhood service providers about the instruments and processes for collecting preschool performance outcome data. KSDE planned to complete these activities as outlined for the GSEG. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The absence of entry data in this area will be considered in OSEP's decision about approval of the State's SPP. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Secondary Transition

OSEP's September 2004 letter required KSDE to demonstrate that it ensured compliance with the requirement that IEPs for students age 14 and over contain a statement of transition services needs by September 9, 2004 (see 34 CFR §300.347(a)(1)). KSDE submitted information demonstrating compliance with the requirements on September 8, 2004. OSEP reviewed the submitted information and, in its October 6, 2004 letter, determined KSDE satisfied the requirements specified in the September 9, 2003 letter regarding KSDE's Improvement Plan.

On pages 119-131 of the FFY 2003 APR, the State included data and analysis regarding its efforts to continue to improve performance in this area. During the reporting period, KDSE disseminated newly developed State guidance on transition requirements. IEP training was also developed to ensure practices were in compliance with the new requirements on secondary transition. In September 2004, KSDE conducted a review of IEPs for compliance with secondary transition requirements. Each IEP was reviewed against 20 secondary transition requirements and 96% were found in compliance. Those with errors were returned to the school for correction and all corrections were made.

KSDE planned to focus on practices that will improve outcomes for youth with disabilities. KSDE committed its State Improvement Grant resources to establishing Communities of Practice for secondary transition and planned to develop quality indicators to measure

performance related to secondary transition. The SPP instructions establish a new indicator in this area. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Conclusion

KSDE must provide, with the SPP, evidence that the State ensures correction of identified noncompliance in a timely manner. Kansas must include evidence that districts with identified noncompliance have corrected the noncompliance within one year or a plan to provide such evidence within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. A plan must include strategies, proposed evidence of change, targets, and timelines for ensuring identification of noncompliance with Part B and the correction of all identified noncompliance, including evidence that the noncompliance identified in the past has been corrected. OSEP looks forward to reviewing the State's data in this area as part of the SPP, due December 2, 2005.

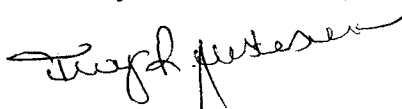
Not later than December 2, 2005, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines designed to ensure compliance with the regulations at 34 CFR §300.755 regarding disproportionality as soon as possible and not more than one year after OSEP 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. The State may submit this information with the SPP.

In the SPP, due December 2, 2005, Kansas must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance with requirements at 34 CFR §300.146(b) regarding the review of policies, procedures, and practices in cases of discrepancies in the suspension and expulsion rates between children with and without disabilities, as soon as possible, not to exceed one year from the date OSEP accepts the plan. In addition, KSDE must provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

IDEA 2004, §616, requires each State to submit a 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 well as the instruction packet to the SPP 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 Ellen Safranek at (202) 245-7515.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: ZoAnn Torrey