



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

NOV 21 2005

Honorable Rita H. Inos
Commissioner of Education
CNMI Public School System
P.O. Box 50130 CK
Saipan, MP 96950

Dear Commissioner Inos:

The purpose of this letter is to respond to the Commonwealth of the Northern Mariana Islands' (CNMI's) May 20, 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 CNMI 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 territories, and result in high-quality information across States and territories. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

CNMI'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 CNMI's FFY 2003 APR and, where appropriate, findings from OSEP's data collection activities during the March 2005 visit to CNMI. OSEP has set out its comments, analysis, and determinations by cluster area.

Background

The conclusion of OSEP's January 14, 2005 FFY 2002 APR response letter required CNMI's Public School System (PSS) to include, in the FFY 2003 APR, data and analysis demonstrating progress toward compliance, and submit a report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of that letter in the following areas:

1. Implementation of a formal and comprehensive monitoring system, including providing copies of the monitoring instruments, checklist, procedures and monitoring schedule, documentation of monitoring activities, monitoring procedures for out-of-district placements, and evidence that CNMI corrects any identified noncompliance within one year of identification (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3));
2. Compliance with the requirements at 34 CFR §§300.650-300.653 regarding the State Advisory Panel, including membership requirements; and
3. Compliance with requirements for ensuring that, consistent with 34 CFR §300.132(b), children transitioning from Part C to Part B have an individualized

education program (IEP) or individualized family service plan (IFSP) in effect by their third birthday.

PSS was required to submit a plan to OSEP in the FFY 2003 APR, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepted the plan, for implementing the requirements at 34 CFR §§300.125, 300.300, and 300.531 regarding the provision of a complete, individual evaluation in a timely manner for each child who was identified and referred for a Part B evaluation.

OSEP also required PSS to include, in the FFY 2003 APR, data and analysis, along with a determination of compliance in the areas listed below, and if data demonstrated noncompliance, a plan 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, or if data were not available, a plan for collection of the requested data:

1. processing formal complaints and ensuring the timely issuance of complaint decisions with implementation of appropriate corrective actions (34 CFR §§300.660-300.662);
2. supplying adequate qualified staff to provide a free appropriate public education (FAPE) (34 CFR §§300.300 and 300.381);
3. providing documentation that children with disabilities are receiving appropriate accommodations and modifications in administration of statewide assessments, when needed (34 CFR §§300.138 and 300.347(a)(5));
4. providing an explanation of whether CNMI's alternate assessment instruments are aligned with standards used for all children in the grade assessed, and if they are not, the steps CNMI is taking to ensure alignment of alternate assessments with appropriate achievement standards;
5. ensuring the participation of children with disabilities in nonacademic and extracurricular activities with their nondisabled peers, to the maximum extent appropriate to the needs of the child, or explain why this is not occurring and what will be done to correct it (34 CFR §300.553); and
6. implementing transition planning and services for youth with disabilities, including requiring the public agency to invite a student with a disability to attend IEP meetings conducted to consider transition service needs or needed transition services (34 CFR §300.344(b)(1)).

OSEP also required PSS to provide the following information, as part of the FFY 2003 APR:

1. clarification of whether the attorney training was sufficient to ensure that parents of children with disabilities initiating a Part B due process hearing have access to a trained hearing officer;
2. the results of PSS's efforts for developing and utilizing an electronic data collection system;
3. written translations of the parent's rights notice in the native language of the parent, or if not provided, an explanation of why it is clearly not feasible to do so (34 CFR §300.503(c)(1)(ii));

4. copies of updated interagency agreements, or a description of other mechanisms used to ensure the timely payment and provision of appropriate special education and related services to children with disabilities (34 CFR §300.142);
5. a system for parent training and increasing parental participation in IEP meetings; and
6. either documentation of data, targets for improved performance, and strategies to achieve those targets concerning improvement in language/communication, pre-reading, and social-emotional skills of preschool children with disabilities, or a detailed plan to collect those data.

In March 2005, OSEP conducted a visit to CNMI to verify the effectiveness of CNMI's Part B program in the areas of general supervision, the collection of data under section 618 of IDEA, and statewide assessment, and also to collect data to assess compliance in the following areas: General Supervision, Parent Involvement, Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE) and Secondary Transition. OSEP collected building-level data by reviewing 29 individual student files with the special education teachers and related service providers responsible for those files; interviewing regular education teachers, administrators, parents, and central office staff; and visiting schools. The results of OSEP's verification activities are summarized in a separate letter. The results of OSEP's data collection activities are addressed under the relevant sections of this letter.

General Supervision

Identification and timely correction of noncompliance

OSEP's January 2005 letter required PSS to provide OSEP with data and analysis demonstrating progress toward compliance in implementing a formal and comprehensive monitoring system (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)). CNMI was required to provide OSEP with copies of monitoring instruments, checklists, procedures, and a monitoring schedule, including documentation of monitoring activities for out-of-district placements and evidence that CNMI corrects identified noncompliance within one year of identification. On pages 1 through 3 of the FFY 2003 APR, CNMI summarized the steps it was taking to update its monitoring procedures. On page 2, PSS indicated that currently there are no out-of-district placements, but did include a reference to its monitoring procedures in this regard. During the March 2005 verification visit, PSS staff described their efforts to design a new, comprehensive monitoring system that would address all Part B requirements and effectively ensure the provision of FAPE to children with disabilities in the CNMI. It was anticipated that the new system was to be implemented in the fall of 2005. During the verification visit, PSS provided a copy of the draft monitoring procedures, which were expected to be finalized in September 2005. As indicated in OSEP's January 2005 letter responding to the FFY 2002 APR, CNMI must include data and analysis documenting progress toward compliance with the above requirements within 60 days of the date of this letter, and provide a final report to OSEP, including data and analysis demonstrating full compliance, no later than 30 days from January 14, 2005, which is February 13, 2006.

To follow up on the results of OSEP's March 2005 verification visit to CNMI, PSS must provide within 60 days of the date of this letter, copies of any monitoring reports issued pursuant to its

updated monitoring procedures. If no reports are available by that time, PSS must provide OSEP with a date certain by which monitoring reports will be issued and available for OSEP's review.

Identification and correction of noncompliance is an indicator in the SPP under section 616 of IDEA. In preparation for the submission of the SPP, CNMI 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.

Formal written complaints

In its January 2005 letter, OSEP required PSS to provide data and analysis regarding compliance with the requirements for processing formal complaints and ensuring the timely issuance of complaint decisions with implementation of corrective actions, in accordance with the requirements at 34 CFR §§300.660-300.662. On page 3 of the FFY 2003 APR, PSS provided data showing that there were two complaints and that both were addressed within timelines. During the March 2005 visit, OSEP determined that complaints were resolved in a timely manner, and that complaint decisions contained findings of fact and conclusions that addressed each allegation in the complaint. OSEP looks forward to reviewing PSS's data regarding complaint timelines in the SPP.

Mediation

In Attachment 1 to the FFY 2003 APR, PSS provided data showing that there were no requests for mediation for the FFY 2003 reporting period. OSEP looks forward to reviewing updated data and information regarding CNMI's efforts in this area in the SPP.

Due process hearings and reviews

On page 3 of the FFY 2003 APR, PSS indicated that during the APR reporting period, there was one due process hearing request that was withdrawn. OSEP's January 2005 letter required PSS to clarify whether the training provided for attorneys was sufficient to ensure that parents of children with disabilities initiating a Part B due process hearing have access to a trained hearing officer (see 34 CFR §§300.507-300.508). PSS did not include data or information in the FFY 2003 APR addressing whether parents have access to trained hearing officers. During OSEP's March 2005 visit, PSS staff identified the availability of trained hearing officers as a continuing issue, primarily due to CNMI's remote location and the few hearing requests received. OSEP has provided information and technical assistance to PSS on the availability of training for hearing officers and strategies to ensure their availability over time. Within 60 days of the date of this letter, PSS must provide the specific steps it is taking to ensure the availability of trained hearing officers, including documentation demonstrating whether the attorney training program for hearing officers at the University of Guam was sufficient to ensure that parents have access to a trained hearing officer.

Personnel

OSEP's January 2005 letter required PSS to provide data and analysis to determine whether personnel shortages have an adverse effect on the provision of FAPE for children with

disabilities, or to include a plan describing how it would collect data in order to determine compliance in this area. On page 5 of the FFY 2003 APR, PSS provided data regarding the number of personnel who provided special education and related services for children with disabilities. However, on page 6 of the FFY 2003 APR, PSS stated that it had no system in place to determine staffing and training needs, and stated that CNMI planned to hire a data manager to oversee the installation of a centralized data system. The Western Regional Resource Center is working with the Pacific island entities to develop effective systems for recruitment, training and retention of qualified staff. OSEP appreciates CNMI's efforts to improve performance in this area and encourages its continued participation in this activity.

Collection and timely reporting of accurate data

OSEP's January 2005 letter required PSS to provide the results of CNMI's efforts to develop and use an electronic data system. On pages 6 and 15 of the FFY 2003 APR, PSS stated that CNMI planned to hire a data manager in June 2005 to oversee the installation of a centralized, automated data management system and to apply for a General Supervision Enhancement Grant focusing on data management. In the letter summarizing the results of OSEP's March 2005 verification visit to CNMI issued under separate cover, OSEP has requested CNMI to provide follow-up information on its efforts to develop an integrated data system. OSEP looks forward to reviewing the results of PSS's efforts to develop and utilize an electronic data collection system in the SPP.

Other: State advisory panel

OSEP's January 2005 letter required PSS to provide in the FFY 2003 APR data and analysis demonstrating progress toward compliance with 34 CFR §§300.650-300.653 regarding the State advisory panel, including membership requirements. On page 13 of the FFY 2003 APR, PSS reported that the special education State advisory panel was reactivated during the 2003-2004 school year with parent membership at 51%. OSEP appreciates CNMI's efforts to improve performance in this area. Within 60 days of the date of this letter, PSS must provide information demonstrating that CNMI's State advisory panel meets the membership requirements under section 612(a)(21)(B) of IDEA 2004, or provide such documentation to OSEP no later than February 13, 2006.

Other: Interagency agreements

OSEP's January 2005 letter required PSS to provide copies of updated interagency agreements, or describe other mechanisms used to ensure the timely payment and provision of appropriate special education and related services to children with disabilities (34 CFR §300.142). CNMI provided copies of three updated interagency agreements between the PSS and the following agencies: the Office of Vocational Education; the Division of Youth Services, Department of Community and Cultural Affairs; and the Department of Public Health. OSEP appreciates CNMI's efforts in this area.

Other: Translation of parents' rights notice

OSEP's January 2005 letter required PSS to provide information about the availability of written translations of the parents' rights notice in the native language of the parent or, if not provided, an explanation of why it is clearly not feasible to do so (see 34 CFR §300.503(c)(1)(ii)). During OSEP's March 2005 visit, PSS staff explained that the three major languages in CNMI are primarily oral languages. Efforts have been made to transliterate Carolinian and Chamorro for reading primers, the national anthems and other short passages. There is no complete written language system that includes terminology used in the IDEA. There are no spoken words for terms such as "autism," "learning disability," etc. These terms have to be described orally, based on their distinguishing characteristics or "symptoms." Many of the school staff are multi-lingual, the parents' rights notice is provided through oral translation, and every attempt is made to clarify the language and ensure that parents understand their rights. However, PSS is making efforts to obtain translated versions of parents rights notices in more common languages, such as Tagalog, which can then be compared to CNMI's parents' rights booklet to ensure that the information conveyed is accurate.

Early Childhood Transition

OSEP's January 2005 letter required PSS to demonstrate progress in ensuring that children with disabilities transitioning from Part C to Part B have an IEP or IFSP in place by their third birthdays, consistent with the requirements at 34 CFR §300.132. On page 10 of the FFY 2003 APR, PSS reported that 74% of the children who transitioned from Part C to Part B had IEPs in effect by their third birthdays, and 26% of children with disabilities (6 of 23 children) who transitioned from Part C to Part B did not have an IEP in place by their third birthdays. PSS stated that two of these six cases involved family situations that were beyond the control of PSS. On page 10, CNMI also provided strategies to improve performance in this area, including: (1) training in transition planning; and (2) monthly tracking of data. OSEP has reviewed and accepts this plan. CNMI must include data and analysis documenting progress toward compliance in this area in the SPP, and provide a final report to OSEP, including data and analysis demonstrating full compliance, no later than February 13, 2006. 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.

Historically, CNMI has structured a birth-through-age-eight service delivery model under the supervision of the Part C Coordinator. In the past two years, this program has been restructured to include children ages birth through five. Children have retained their IFSPs throughout their participation in this program. During OSEP's March 2005 visit, in consultation with CNMI's staff attorney, a decision was made that Part C resources would focus on infants and toddlers, birth through age two, and the Part B program would take responsibility for these children beginning at the third birthday. The Part B director indicated that children with disabilities

should have an IEP beginning at age three which clearly delineates the Part B services to be provided and is developed in accordance with the requirements at 34 CFR §§300.340-300.350. With the SPP, or within 60 days of the date of this letter, PSS must provide OSEP with the revised policy and any revised procedures implementing the changes described above.

Parent Involvement

OSEP's January 2005 letter required PSS to provide information about increasing parent participation in IEP meetings and developing a system for parent training. On page 12 of the FFY 2003 APR, PSS stated that 86% of parents participated in IEP meetings, with participation ranging by location from 60% to 100%. On page 13 of the FFY 2003 APR, PSS stated that parents participated in workshops conducted in CNMI, but that data regarding attendance was unavailable. On page 13 of the FFY 2003 APR, PSS stated that it planned to develop a parent training plan by January 2006. With the SPP, due December 2, 2005, or within 60 days of the date of this letter, PSS must include strategies to improve parent participation in IEP meetings at locations where participation is low, including the implementation of its training plans and the resulting data and analysis. The SPP instructions establish a new indicator in this area, for which States and territories must provide baseline data in the FFY 2005 APR, due February 1, 2007. OSEP looks forward to reviewing CNMI's plan for collecting data, in the SPP.

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

Disproportionality

On page 14 of the FFY 2003 APR, PSS included data and analysis regarding its efforts to ensure compliance in this area, and reported that 99% of all children with disabilities who received special education and related services were in the category of "Asian/Pacific Islander." OSEP looks forward to reviewing CNMI's updated data and information in this area in the SPP.

Graduation and drop-out rates

On page 16 of the FFY 2003 APR, PSS provided data comparing the graduation rates for students with and without disabilities. The graduation rate for students with disabilities increased 16.1% from the 2001-2002 school year to the 2003-2004 school year (from 53.1% to 69.2%), while the graduation rate for students without disabilities increased 3.2% during that time (from 92.3% to 96.5%). PSS reported that some students with disabilities who aged out of special education at age 21 received a certificate of completion, but others did not, which affected the percentage of students with disabilities graduating from high school. On page 16 of the FFY 2003 APR, PSS provided data and analysis regarding drop-out rates for children with disabilities. On page 17, PSS stated that it had established a category of "Unaccounted Definition" which is accepted by all schools as meaning "drop-out." The percent of students with disabilities dropping out of school decreased for both students with and without disabilities. For students without disabilities, the rate decreased from 6.06% in 2000-2001 to 2.58% in 2002-2003, and for students with disabilities, from 5.7% in 2000-2001 to 1.2% in 2002-2003. OSEP looks forward to reviewing CNMI's updated data in this area in the SPP.

Suspension and expulsion

On page 16 of the FFY 2003 APR, PSS provided information about suspension and expulsion, and indicated that suspension/expulsion rates between general and special education cannot be compared because general education still does not use categories comparable to the reporting categories for suspension and expulsion used for special education. PSS further indicated that although the special education suspension/expulsion rate is increasing by 50 percent each school year, it is still very low. On page 16 of the FFY 2003 APR, PSS reported that, in the 2003-2004 school year, the suspension rate for children with disabilities was .01%. It was anticipated that by February 2006, training updates on IDEA regulations on discipline would occur for all administrators and hearing officers. OSEP looks forward to reviewing CNMI's updated data in this area in the SPP.

Suspension and expulsion is an indicator in the SPP under section 616 of the IDEA due December 2, 2005, and baseline data for indicator #4A is due December 2, 2005. In preparation for the submission of the SPP, CNMI 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 SPP instructions also establish a new indicator in this area (#4B), for which States and territories 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 or territory's performance and compliance required under section 616(d) of the IDEA. CNMI should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing CNMI's plan for collecting this data, in the SPP.

Statewide and districtwide assessment

OSEP's January 2005 letter required PSS to provide data and analysis, along with a determination of compliance or noncompliance with the requirement to provide appropriate accommodations and modifications in administration of statewide assessments, when needed by children with disabilities (34 CFR §§300.138 and 300.347(a)(5)). CNMI did not provide the requested information in its FFY 2003 APR. However, during the March visit, based on OSEP's review of 29 records, OSEP asked whether testing accommodations/modifications were included on the IEP, and if they were, whether they were provided. OSEP did not identify compliance concerns in this regard. OSEP's letter also required an explanation of whether PSS's alternate assessments were aligned with standards used for all children in the grade assessed and, if not, the steps being taken to ensure alignment of alternate assessments with appropriate achievement standards.¹ During the March 2005 visit, PSS staff reported to OSEP about the steps it was

¹ Under section 612(a)(16)(C)(i) of IDEA 2004, which became effective on July 1, 2005, the State, or in the case of a districtwide assessment, the local educational agency, must ensure that it has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with accommodations as indicated in their respective IEPs. These guidelines must provide for alternate assessments that are aligned with the State's challenging academic content standards and challenging student academic achievement standards. See section 612(a)(16)(C)(ii)(I) of IDEA 2004. CNMI must ensure compliance with this new IDEA requirement as it develops and implements its guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments.

taking to ensure that alternate assessment instruments are appropriate. OSEP has addressed CNMI's progress in this regard in the assessment section of the letter summarizing the results of OSEP's March 2005 visit to CNMI issued under separate cover. Assessment is an indicator in the SPP. In preparation for the submission of the SPP, PSS 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. PSS must submit responsive baseline data regarding the participation and performance of children with and without disabilities for both regular and alternate assessments, aggregated and disaggregated, in all grades/areas assessed, in the SPP.

Least restrictive environment (LRE)

OSEP's January 2005 letter required PSS to provide data and analysis, along with a determination of compliance or noncompliance, regarding the participation of children with disabilities in nonacademic and extracurricular activities with their nondisabled peers, to the maximum extent appropriate to the needs of the child, or explain why it was not occurring and what would be done to correct it (34 CFR §300.553).

PSS did not include this information in the FFY 2003 APR, nor did PSS provide data about the time children with disabilities spend in the regular classroom and outside of the regular classroom. Data and information describing compliance with these requirements may include: (1) a description of nonacademic and extracurricular services and activities provided by public agencies across CNMI; (2) the number and percentage of children with disabilities who participate in nonacademic and extracurricular activities across the State compared with the participation of children without disabilities; (3) a description of the types of nonacademic and extracurricular services and activities in which children with disabilities participate across CNMI; and (4) an explanation of why children with disabilities do not participate in certain activities (when applicable), or why children with disabilities participate to a lesser extent in these services and activities than do children without disabilities. CNMI must include information with the SPP, or submit to OSEP within 60 days of the date of this letter, information to address the steps it is taking to ensure compliance with 34 CFR §300.553.

CNMI should note that in the instructions to the SPP packet, data regarding preschool LRE (children with disabilities aged three through five) and school age LRE (children with disabilities aged six through twenty-one) are separate indicators in the SPP. 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. OSEP looks forward to reviewing this information in the SPP.

Preschool performance outcomes

OSEP's January 2005 letter required PSS to submit either documentation of data (whether collected through monitoring, individual IEP review, or other methods), targets for improved performance, and strategies to achieve its targets concerning improvement in the language/communication, pre-reading and social-emotional skills of preschool children with disabilities, or a plan to collect that data. PSS did not provide data, but on page 18 of the FFY

2003 APR, PSS stated that by the 2005-2006 school year, all children entering school would be assessed on early language communication, early literacy, and social and emotional skills. Data for the 2005-2006 school year would be used as CNMI's baseline data for determining preschool performance outcomes.

The SPP instructions establish a new indicator in this area, for which States and territories must provide entry data in the FFY 2005 APR due February 1, 2007. Failure to provide that information at that time will have consequences for OSEP's annual determination on the status of the State's or territory's performance and compliance under section 616(d) of the IDEA. CNMI should carefully review the instructions to the SPP in developing its plans for this collection.

Other: Provision of a timely, appropriate initial evaluation or reevaluation

OSEP's January 2005 letter required PSS to submit, in the FFY 2003 APR, a plan for implementing the requirements at 34 CFR §§300.125, 300.300, and 300.531 to provide a complete, individual evaluation in a timely manner for each child who is identified and referred for a Part B evaluation. The plan was to include: (1) data and information about the number and dates of referrals of children for initial evaluation over the past year; (2) information showing the dates when those evaluations were completed; (3) an analysis of the availability of personnel to conduct evaluations when referrals are made; and (4) data and information demonstrating that children with behavioral problems or children with suspected emotional and behavioral problems are referred and evaluated. CNMI did not provide this information as part of the FFY 2003 APR.

During OSEP's on-site visit to CNMI in March 2005, OSEP staff reviewed 29 student records, with the participation of the children's special education teachers and related services providers. In 10 of the 29 records reviewed, there was no documentation indicating that a child's initial evaluation or reevaluations were conducted in a timely manner, as required by 34 CFR §§300.300 and 300.536(b). All teachers involved in the on-site review agreed that the provision of timely initial evaluations and reevaluations was a problem, often related to the availability of qualified personnel.

PSS must provide a plan within 60 days of the date of this letter, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance in this area within a reasonable period of time, not to exceed one year from the date that OSEP accepts the plan. The plan must also address the concerns that OSEP identified during its March 2005 visit to CNMI and interviews with CNMI staff and must include: (1) data and information about the number and dates of referrals of children for initial evaluation over the past year; (2) information showing the dates when those evaluations were completed; (3) an analysis of the availability of personnel to conduct evaluations when referrals are made; and (4) data and information demonstrating that children with behavioral problems or children with suspected emotional and behavioral problems are referred and evaluated.

CNMI should also note that child find is a new indicator in the SPP under section 616 of IDEA for which States must provide baseline data in the FFY 2005 APR due February 1, 2007.

Absence of this information at that time will have consequences for OSEP's annual determination on the status of the State's or territory's performance and compliance required under section 616(d) of the IDEA. CNMI should carefully review the instructions to the SPP in developing its plans for this collection.

Other: Conduct of evaluations

In 22 of the 29 records reviewed during OSEP's March, 2005 on-site visit to CNMI, there was no documentation indicating that evaluations were conducted in accordance with the requirements of 34 CFR §§300.532-300.533 and 300.542, as follows:

1. in 20 of 29 records reviewed, for children suspected of having limited English proficiency, the evaluation was not provided or administered in the child's native language in accordance with 34 CFR §300.532(a)(1)(ii), which requires that tests be provided or administered in the child's native language or other mode of communication, unless clearly not feasible to do so;
2. in 22 of 29 records reviewed, there was no documentation that children were assessed in all areas related to the suspected disability (34 CFR §300.532(g));
3. in 20 of 29 records reviewed, there was no documentation indicating that PSS used assessment tools and strategies that provide relevant information that directly assisted persons in determining the educational needs of the child (34 CFR §300.532(j));
4. in 20 of 29 records reviewed, there was no documentation that the decision about whether more evaluation information and data were needed was made by the IEP team and other qualified professionals (34 CFR §300.533(a)); and
5. in 7 of 8 cases (only 8 of the 29 files reviewed were for children with specific learning disabilities), the evaluation did not include an observation by a team member other than the child's classroom teacher (34 CFR §300.542). All teachers involved agreed that the provision of appropriate initial evaluations and reevaluations was a problem, often related to the availability of evaluators.

Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure appropriate initial evaluations and reevaluations are conducted in accordance with the above requirements as soon as possible, not to exceed one year from the date OSEP accepts the plan.

In 27 of the 29 records reviewed, the IEPs did not contain documentation that parents received a copy of the evaluation report and the documentation of the determination of eligibility (34 CFR §300.534(a)(2)). All teachers involved agreed that parents did not routinely receive this documentation. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure that a copy of the evaluation report and documentation of the determination of eligibility is provided to the parent, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Determination of eligibility

In 13 of the 29 records reviewed during OSEP's March, 2005 on-site visit to CNMI, the IEPs did not contain documentation that in determining eligibility, the IEP team drew upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior (34 CFR §300.535(a)(1)), and in 20 of 29 records there was no documentation that in determining eligibility, the team ensured that the information from all of the above sources was documented and carefully considered (34 CFR §300.535(a)(2)). According to OSEP's teacher interviews, teachers involved agreed that eligibility determinations were often the decision of one team member (typically, the school psychologist), and that the evaluation often consisted of only two assessments: intelligence and achievement, both completed by the psychologist. Some school psychologists demonstrated a high degree of understanding of the application of assessments that were inherently culturally-biased for the population being assessed. Eligibility results are often determined strictly on numbers. All staff acknowledged that nearly all tests were given under non-standard conditions and that the assessments were inherently biased for this population. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure that the eligibility determination is made in accordance with the requirements of 34 CFR §300.535 as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: IEP availability to teachers

In 10 of the 29 records reviewed during OSEP's March, 2005 on-site visit to CNMI, the IEP did not contain documentation that the IEPs were accessible to each regular education teacher, special education teacher, related service provider, or other service provider responsible for its implementation (34 CFR §300.342(b)(2)). Special education teachers that OSEP interviewed during the March visit agreed that IEPs were not accessible to all staff responsible for their implementation. In addition, teachers were in agreement, and in 16 of 29 records, the IEP did not contain documentation that each responsible teacher and/or provider was informed of his/her specific responsibilities related to implementing the child's IEP, as required by 34 CFR §300.342(b)(3)(i). In 17 of 29 records, the IEP did not contain documentation that each responsible teacher and/or provider was informed of the specific accommodations, modifications, and supports that must be provided for children in accordance with their IEPs as required by 34 CFR §300.342(b)(3)(ii). Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure compliance with 34 CFR §300.342(b)(2)-(3) as soon as possible, not to exceed one year from the date that OSEP accepts the plan.

Other: Special considerations in the development of the IEP

In 5 of the 10 records reviewed during OSEP's March, 2005 on-site visit to CNMI, where the child's record indicated behavioral issues, the IEP did not contain documentation that the IEP team had considered, if appropriate, in the case of a child whose behavior impedes his or her learning or that of others, strategies, including positive behavioral interventions, and supports to address that behavior (34 CFR §300.346(a)(2)(i)). Teachers agreed that addressing behavioral

issues was a problem. There was one behavioral consultant to serve the entire population. Teachers, most of whom had associate degrees, were not trained or prepared to address behavioral issues of children with disabilities in school settings.

In 2 of 3 records reviewed involving children with limited English proficiency, the IEP did not contain documentation that the IEP team considered the language needs of the child as those needs relate to the child's IEP, as required by 34 CFR §300.346(a)(2)(ii). Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets and timelines to ensure compliance with 34 CFR §300.346(a)(2)(i)-(ii) regarding behavior and limited English proficiency as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: IEP content

In 10 of the 29 records reviewed during OSEP's March, 2005 on-site visit to CNMI, the IEP did not contain the anticipated frequency of the services and modifications described in the IEP, and in 12 of 29 records, the IEP did not contain the anticipated duration of each of the services and modifications described in the IEP (34 CFR §300.347(a)(6)). Teachers agreed that the IEP form currently used did not require this information, except for special education services. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure compliance with 34 CFR §300.347(a)(6) regarding the anticipated frequency of each of the services and modifications, along with the duration of each, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Prior written notice

In 9 of the 27 records reviewed during OSEP's March, 2005 on-site visit to CNMI (for two records, the item was not applicable), there was no documentation that the parent was provided with prior written notice that included the required content in accordance with 34 CFR §300.503(b), and teachers whom OSEP interviewed concurred with these findings. From the review of records: (1) in 22 of 27 records, the notice did not contain a description of the action proposed or refused (34 CFR §300.503(b)(1)); (2) in 20 of 27 of the records, the notice did not contain an explanation of why the school proposed or refused to take the action (34 CFR §300.503(b)(2)); (3) in 12 of 27 records, the notice did not contain a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action (34 CFR §300.503(b)(4)); (4) in 12 of 27 cases, the notice did not include a description of any other factors that were relevant to the agency's proposal or refusal (34 CFR §300.503(b)(5)); (5) in 19 of 27 records, the notice did not include a statement that the parents have protection under the procedural safeguards and, if the notice was not an initial referral for evaluation, the means by which a copy of the description of the procedural safeguards could be obtained (34 CFR §300.503(b)(6)); and (5) in 20 of 27 records, the notice did not contain the sources for parents to contact to obtain assistance in understanding the provisions of the notice (34 CFR §300.503(b)(7)). In addition, in 17 of 27 records, the notice was not provided in the native language of the parent or other mode of communication used by the parent (34 CFR §300.503(c)(1)(ii)). Further, there was no documentation of oral translation or that the parents understood the content of the notice (34 CFR §300.503(c)(2)). Within 60 days of the date of this

letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure compliance with the requirements of 34 CFR §300.503 described above regarding provision of prior written notice, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Provision of extended school year (ESY) services

In 12 of 22 (7 were not applicable) records reviewed during OSEP's March, 2005 on-site visit to CNMI, the IEP did not contain documentation that children with disabilities received the ESY services indicated in their IEPs, in accordance with 34 CFR §300.309. Teachers concurred that the provision of ESY services was a problem and in the instances cited, was not related to parent refusal of services. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure compliance with 34 CFR §300.309 regarding provision of ESY services to children with disabilities, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Qualified representative of the local educational agency on the IEP team

During OSEP's March, 2005 on-site visit to CNMI, teachers and administrators reported, and central office staff concurred, that the representative of the local educational agency (LEA) at the IEP meeting was not always qualified to fulfill that role. Under 34 CFR §300.344(a)(4), the LEA representative must be: (1) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (2) knowledgeable about the general curriculum; and (3) knowledgeable about the availability of resources of the public agency. The individuals serving in this capacity in PSS generally met at least one or two of these requirements, but seldom met all three. Sometimes a related services provider was the LEA representative and, as reported by PSS staff, might not be knowledgeable about the general curriculum or the availability of resources. Counselors also commonly filled this role, and they might be neither qualified to provide, nor to supervise the provision of, special education. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets and timelines to ensure compliance with 34 CFR §300.344(a)(4) regarding the participation of a qualified LEA representative in IEP meetings, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Timely provision of assistive technology devices and services

During OSEP's March, 2005 on-site visit to CNMI, teachers, parents, and administrators reported, and special education central office staff concurred that, in the majority of instances, assistive technology devices and services included in the IEPs of children with disabilities, and required in order to provide FAPE in accordance with 34 CFR §300.300, were delayed often up to, or exceeding, one year. Procurement and fiscal issues interfered with the acquisition and distribution of devices specified in children's IEPs in accordance with 34 CFR §300.308. Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure compliance with 34 CFR §300.300 regarding the provision of assistive technology devices and services required for FAPE, as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Other: Least restrictive environment (LRE)

During the March 2005 visit, OSEP discussed placement of children with disabilities in the LRE with a variety of individuals, administrators, parents, regular education teachers and special education teachers, and visited elementary, middle, and high school classrooms where children with disabilities were included in regular education classes, as well as some self-contained special education settings. It was clear that PSS provides support and assistance to children in reading and math and the majority of children with disabilities are in regular education classrooms for these subjects. Children placed in self-contained settings are working toward skills and behaviors that prepare them for less restrictive placements as soon as possible. OSEP was concerned, however, about whether special education supports were provided to those children with disabilities placed in regular education settings for science and social studies. OSEP was unable to ascertain whether modifications and accommodations were in place to ensure children's success in these settings, and staffing issues prevented collaborative teaching models, for the most part. An exception to this situation was at Hopwood Junior High School where a fully collaborative team teaching model was in place. At Hopwood, teachers used collaborative planning and teaching time to ensure that the needs of children with disabilities were met in all settings and subjects throughout the school day. In order for children currently receiving services for science and social studies in the regular classroom, PSS must ensure that IEPs address all required supplementary aids and services and program modifications necessary for children with disabilities to be successful in these settings. PSS also must monitor to ensure that the services and modifications are implemented as required by the IEPs. Within 60 days of the date of this letter, PSS must include data and information describing how it ensures that IEPs contain all required supplementary aids and services and program modifications for children with disabilities to be successful in regular education settings for science and social studies.

During OSEP's data collection activities during the March 2005 visit, 22 of 29 records reviewed indicated that placement decisions were not made in conformity with all of the LRE provisions at 34 CFR §§300.550-300.554. Teachers concurred with these findings: (1) in 26 of 29 cases, there was no documentation that the placement group ensured that, to the maximum extent appropriate, the child was educated with children who were not disabled (34 CFR §300.550(b)(1)); (2) in 23 of 29 cases, there was no documentation that the placement group ensured that special classes, separate schooling, or other removal of the child from the regular educational environment occurred only if the nature or severity of the disability was such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily (34 CFR §300.550(b)(2)); (3) in 25 of 29 cases, the continuum of placements made available did not make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement, where the students' IEPs indicated the need for such services or instruction in conjunction with regular class placement (34 CFR §300.551(b)(2)); (4) in 6 of 19 cases (10 cases were not applicable), the child was removed from age-appropriate regular classrooms solely because they needed modifications in the general curriculum (34 CFR §300.552(e)); and (5) in 24 of 29 cases, there was no provision for the participation of the child in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the child (34 CFR §300.553). Within 60 days of the date of this letter, PSS must submit a plan, including strategies, proposed evidence of change, targets, and timelines to ensure that children with disabilities are placed in

the least restrictive environment, in accordance with 34 CFR §§300.550-300.554 as soon as possible, not to exceed one year from the date OSEP accepts the plan.

Secondary Transition

OSEP's January 2005 letter required PSS to provide data and information, along with a determination of compliance or noncompliance, regarding the requirements for providing transition planning and services for youth with disabilities, including the requirements at 34 CFR §§300.344(b) and (b)(1), 300.347(b), and 300.348. PSS did not include data or a determination of compliance or noncompliance in the FFY 2003 APR; however, during its visit in March 2005, OSEP staff interviewed administrators, parents and central office staff regarding secondary transition. Information provided by parents and administrators indicated a highly successful system of transition for children with disabilities in CNMI. There were a variety of job opportunities and job coaching available in CNMI administrative offices, PSS facilities, and private businesses. The transition program assists children with disabilities in obtaining summer employment and many students obtain permanent employment after graduation as a result of these summer experiences. Assistance was provided for students who wanted to attend the junior college. Parents and administrators expressed an extremely high level of satisfaction with the transition planning and services provided by PSS.

The SPP instructions establish two new indicators in this area, for which CNMI must provide baseline data in the FFY 2005 APR, due February 1, 2007. These indicators are: (#13) the percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals; and (#14) the percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of postsecondary school, or both, within one year of leaving high school. CNMI should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing CNMI's plan for collecting data around these indicators, in the SPP.

Conclusion

In the SPP, due December 2, 2005, or within 60 days of the date of this letter, CNMI must provide data and analysis demonstrating progress toward ensuring that all children who previously participated in Part C who are found eligible for services under Part B have an IEP or IFSP in effect by their third birthday (34 CFR §300.132(b)); and a report demonstrating full compliance with these requirements not later than February 13, 2006. PSS must include strategies to improve parent participation in IEP meetings at locations where participation is low, including the implementation of its training plans and the resulting data and analysis. CNMI must include information with the SPP, or submit to OSEP within 60 days of the date of this letter, information to address the steps it is taking to ensure compliance with 34 CFR §300.553 related to LRE. Also, CNMI must attach to the SPP its revised policies and any revised procedures for providing services for infants and toddlers and preschool children with disabilities that were presented during OSEP's visit (34 CFR §§300.340-300.350).

Within 60 days of the date of this letter, PSS must provide the following:

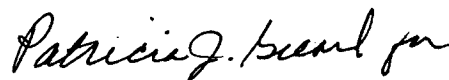
1. data and analysis demonstrating progress toward compliance with the requirement to identify noncompliance and correct it in a timely manner and provide a final report, demonstrating full compliance with the requirements of 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) not later than February 13, 2006. In addition, PSS must provide copies of any monitoring reports issued under CNMI's updated monitoring procedures. If no reports are available by that time, PSS must include a date certain by which monitoring reports will be provided for OSEP's review. PSS must also provide OSEP with copies of its monitoring instruments, checklists, procedures, and monitoring schedule;
2. specific steps taken to ensure the availability of trained hearing officers (34 CFR §300.508);
3. information demonstrating that CNMI's State advisory panel meets the membership requirements at section 612(a)(21)(B) of IDEA 2004. PSS must provide a final report demonstrating full compliance with this requirement not later than February 13, 2006.
4. data and information describing how it ensures that IEPs contain all required supplementary aids and services and program modifications for children with disabilities to be successful in regular education settings for science and social studies;
5. a plan including strategies, proposed evidence of change, targets, and timelines to ensure compliance as soon as possible, not to exceed one year from the date OSEP accepts the plan, with the following requirements:
 - (a) children with disabilities are placed in the least restrictive environment, in accordance with 34 CFR §§300.550-300.554, including the following:
 - (i) the placement group ensures that, to the maximum extent appropriate, the child is being educated with children who were not disabled (34 CFR §300.550(b)(1));
 - (ii) the placement group ensures that special classes, separate schooling, or other removal of the child from the regular educational environment occur only if the nature or severity of the disability was such that education in regular classes with the use of supplementary aids and services could not be achieved satisfactorily (34 CFR §300.550(b)(2));
 - (iii) where necessary to ensure FAPE, the continuum makes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement (34 CFR §300.551(b)(2));
 - (iv) the child was not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum (34 CFR §300.552(e)); and
 - (v) provision is made for the participation of the child in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of the child (34 CFR §300.553).
 - (b) initial evaluations and reevaluations are timely, in accordance with 34 CFR §§300.300 and 300.536(b), including:
 - (i) data and information about the number and dates of referrals of children for initial

- evaluations over the past year;
 - (ii) information showing the dates when those evaluations were completed;
 - (iii) an analysis of the availability of personnel to conduct evaluations when referrals are made; and
 - (iv) data and information demonstrating that children with behavioral problems or children with suspected emotional and behavioral problems are referred and evaluated;
- (c) initial evaluations and reevaluations are conducted in accordance with 34 CFR §§300.125; 300.531-300.533, and 300.542;
 - (d) the parent received a copy of the evaluation report and documentation of the determination of eligibility;
 - (e) eligibility determinations are appropriate, in accordance with 34 CFR §300.535;
 - (f) the IEP is made available to all of a child's teachers, and that teachers are informed of their responsibilities in implementing the IEP in accordance with 34 CFR §300.342(b);
 - (g) IEPs for children with behavioral issues and limited English proficiency are in compliance with 34 CFR §300.346(a)(2)(i)-(ii);
 - (h) IEPs are in compliance with 34 CFR §300.347(a)(6) regarding the anticipated frequency of each of the services, modifications, supplementary aids and services, along with the duration of each;
 - (i) prior written notice is provided in accordance with 34 CFR §300.503;
 - (j) IEPs are in compliance with 34 CFR §300.309 regarding provision of ESY services to children with disabilities;
 - (k) IEPs are in compliance with 34 CFR §300.344(a)(4) regarding the participation of a qualified LEA representative to participate in IEP meetings; and
 - (l) IEPs are in compliance with 34 CFR §§300.308 and 300.346(a)(2)(v) regarding the provision of assistive technology devices and services required for FAPE.

IDEA 2004, section 616, requires each State and territory 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 CNMI 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 CNMI 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 Lucille Sleger at (202) 245-7528.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Ms. Joanne Nicholls, Coordinator
Special Education Programs