



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

Honorable William L. Librera  
Commissioner of Education  
New Jersey Department of Education  
P.O. Box 500  
Trenton, New Jersey 08625-0500

SEP -8 2005

Dear Commissioner Librera:

The purpose of this letter is to respond to New Jersey's April 8, 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 under 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, analyses and determinations by cluster area.

### **Background**

The conclusion of OSEP's July 13, 2004 FFY 2002 APR response letter required the State to submit evidence of progress in correcting five areas of noncompliance in the FFY 2003 APR, including supporting data and analysis and, in addition, provide reports 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 July 13, 2004 letter, in the following areas:

**1. Monitoring System.** Demonstrate that its monitoring system was effectively correcting all identified noncompliance as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3). The New Jersey Department of Education (NJSDE) was required to submit a report no later than 30 days following one year from the date of the July 13, 2004 letter, providing documentation that NJSDE had verified correction of noncompliance in all the districts outlined in the April 27, 2004 memorandum from NJSDE to OSEP. On August 19, 2004, NJSDE submitted a report on the status of noncompliance in the districts and submitted an update to that report on January 28, 2005. OSEP responded to these submissions in letters dated December 14, 2004 and February 24, 2005. OSEP's February 24, 2005 letter noted that no further action was required to resolve the previously-identified noncompliance.

2. Formal Written Complaint Timelines. Demonstrate that it can meet the timelines for resolution of formal written complaints as required by 34 CFR §300.661. Within 60 days of the date of the July 13, 2004 letter, NJSDE was required to submit an interim report on the status of the results of its efforts to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date of the July 13, 2004 letter. On September 13 and 30, 2004 and November 4, 2004, NJSDE submitted interim reports on the status of the results of its efforts to ensure correction of the complaint timelines. On January 26, 2005, NJSDE submitted a final report documenting it was meeting the required complaint timeline. OSEP responded to these submissions in letters dated December 15, 2004 and March 21, 2005.

3. Due Process Hearing Timelines. Demonstrate that it can meet the timelines for due process hearing decisions as required by 34 CFR §300.511. NJSDE was required to submit data to OSEP within 60 days of the date of the July 13, 2004 letter, along with analysis and a determination of compliance or noncompliance, or, if data were not available, NJSDE was required to submit a plan to OSEP within 60 days of the date of the July 13, 2004 letter that described how NJSDE would collect data to enable it to determine compliance or noncompliance by the FFY 2003 APR. On September 13 and 30, 2004 and November 4, 2004, NJSDE submitted interim reports on the status of the results of its efforts to collect accurate data in this area. On January 26, 2005, NJSDE submitted an interim report documenting its work with the New Jersey Office of Administrative Law (OAL) to establish accurate data in the OAL's new database to determine whether or not the required due process hearing timelines were being met. OSEP responded to these submissions in letters dated December 15, 2004 and March 21, 2005. On March 14, 2005, NJSDE submitted a report that indicated that for the FFY 2003 period, 15.8% of hearing decisions were issued outside of timelines. Further comment on this submission will be included in the appropriate section below.

4. Parent Involvement. To address noncompliance related to parent involvement, as required by 34 CFR §300.345(a), (b) and (d), that NJSDE identified in the FFY 2002 APR, NJSDE was required to provide evidence of progress in correcting the noncompliance in the FFY 2003 APR. OSEP received an update of the status of NJSDE's compliance monitoring system in this area on August 15, 2005. Further comment on this area will be included in the appropriate section below.

5. Secondary Transition. To address noncompliance related to secondary transition requirements in 34 CFR §§300.29(a)(2), 300.347(b) and 300.347(c) that NJSDE identified in the FFY 2002 APR, NJSDE was required to provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR. OSEP received an update of the status of NJSDE's compliance monitoring system in this area on August 15, 2005. Further comment on this area will be included in the appropriate section below.

## ***General Supervision***

### **Identification and timely correction of noncompliance**

On pages 4 through 6 of the FFY 2003 APR, the State included data and analysis that demonstrated progress toward correction of noncompliance identified in OSEP's FFY 2002 APR response letter in the following area: verifying correction of noncompliance in all the districts outlined in the April 27, 2004 NJSDE memorandum, as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3). NJSDE reported the status of its verification of correction of noncompliance in 379 districts monitored between 1999 and 2004 using the State's four-tier system for categorizing the status of local educational agency (LEA) correction of noncompliance and State intervention and technical assistance. Of 379 districts verified by NJSDE, 52% of the districts corrected all noncompliance; 22% were in need of continued oversight and intervention by NJSDE to achieve full compliance; and 26% were in the process of implementing improvement plans and were expected to be in compliance within one year. The State must report on its continued oversight and intervention activities on the districts that have not achieved full compliance (including those mentioned in the Parent Involvement, LRE and Secondary Transition sections of this letter) in the SPP, due December 2, 2005, including documentation of the specific steps, including any sanctions that it has taken to ensure correction, and the impact of those actions; and if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data and timelines to ensure correction of all noncompliance as soon as possible.

### **Formal written complaints**

Regulations at 34 CFR §300.661(a)(4) require that, within 60 days after a complaint is filed, the State educational agency (SEA) must issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion and the reasons for the SEA's final decision. On pages 6 and 7 and General Supervision Attachment 1(a) on pages 16 and 17 of the FFY 2003 APR, the State included data and/or information indicating continued noncompliance in the following area: ensuring the required timelines for resolution of formal written complaints as required by 34 CFR §300.661. In a January 26, 2005 Progress Report to OSEP, NJSDE reported that as of December 31, 2004, all complaint investigations were within the required timelines. The State's FFY 2003 APR reports data for the earlier 2003-2004 period, during which compliance had not been achieved. OSEP looks forward to reviewing the State's data and continuing efforts to ensure compliance as a part of the SPP, due December 2, 2005.

### **Due Process Hearings and Reviews**

Regulations at 34 CFR §300.511(a), (c)-(d) require that a public agency ensure that a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties within 45 days of the demonstrated receipt of a request for a hearing. A hearing officer may grant specific extensions of time beyond 45 days at the request of either party. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. Data describing compliance with these requirements may include: (1) the number of due process hearings requested during the reporting period; (2) the number held within 45 days from the date of receipt of the request for a hearing; (3) the number

of extensions granted at the request of either party and a description of the documentation available supporting those extensions; (4) the number of hearings held within extended timelines; (5) a description of the times and locations where hearings were held and how they were convenient to the parents and child; and (6) an explanation for any hearings held beyond required timelines.

On pages 9 and 10 and GS Attachment 1(c) on page 17 of the FFY 2003 APR, the State included data and/or information indicating noncompliance in ensuring the timelines for due process hearing decisions as required by 34 CFR §300.511(a) were met. NJSDE reported the February 1, 2005 implementation of a new system of transmittal and processing of due process hearing requests between the NJSDE and the Office of Administrative Law (OAL). NJSDE reported that the new system was resulting in early case management by the administrative law judge assigned to the case by keeping the parties focused on preparing and completing the case as quickly as possible. NJSDE reported an 84% completion rate during FFY 2002 and FFY 2003 toward meeting the required timelines. Data from NJSDE's March 14, 2005 Progress Report indicated that of 240 due process hearing requests submitted during FFY 2003, a total of 38 were not completed within the required timelines. In the March 14, 2005 final report, NJSDE stated it would complete a data analysis of the new system six months after implementation and would report to OSEP in future performance reports. It also provided a plan, including the steps taken to ensure that decisions would be issued within timelines. OSEP accepts the State's plan. The State must demonstrate full compliance with the requirement to issue final decisions in due process hearings within timelines not later than 30 days after one year from the date of this letter.<sup>1</sup> In the SPP, due December 2, 2005, the State must include data and analysis demonstrating progress in ensuring compliance with this requirement.

### Mediation

On pages 8 through 11 and Attachment I of the APR, NJSDE included data and analysis demonstrating performance in this area. NJSDE reported that mediation conferences were scheduled and completed in a manner that did not delay the completion of due process hearings in FFY 2002 and FFY 2003. OSEP looks forward to reviewing the State's data in the SPP regarding the State's efforts to resolve disputes between school districts and parents.

### Personnel

On pages 12 and 13 of the FFY 2003 APR, the State included data and analysis demonstrating continued performance in this area to ensure that sufficient personnel are available to meet the identified educational needs of all children with disabilities in the State. NJSDE reported an October 2003 amendment to New Jersey Administrative Code to include a provision that permits school districts to contract with approved clinics and agencies for speech-language services. NJSDE reported that although the vacancy rate did not decrease, the regulatory change may have prevented an increase in the vacancy rate. NJSDE also reported the January 2004 adoption of new licensing regulations that introduced an "alternate route" to the Teacher of Students with Disabilities Certification. NJSDE expects the results of this new provision to increase the pool

---

<sup>1</sup> Hearing timelines will be computed differently under IDEA 2004.

of potential candidates eligible for the “Teacher of Students with Disabilities” endorsement. OSEP appreciates the State’s efforts in this area.

Collection and timely reporting of accurate data

On pages 14 and 15 of the FFY 2003 APR, the State included data and analysis demonstrating its efforts to ensure collection and reporting of accurate and timely data. NJSDE reported that through the use of written instructions for online district data submissions, it received data from districts in a shorter timeframe and with fewer late submissions. NJSDE reported that as a result of their IDEA General Supervision Enhancement Grant (GSEG), a data warehouse was developed that merged a variety of data from multiple NJSDE sources, including due process and complaint tracking systems; LEA online data submissions; and NJSDE’s self-assessment and monitoring systems. OSEP looks forward to reviewing the State’s data in this area in the SPP, due December 2, 2005.

***Early Childhood Transition***

On pages 18 through 21 of the FFY 2003 APR, the State included data and analysis demonstrating continued performance and compliance in this area, ensuring that all children eligible for Part B services received special education and related services by their third birthday. NJSDE reported that, utilizing its system of categorical designation regarding the status of correction of noncompliance and/or state intervention, as of March 31, 2005, 89 LEAs were found noncompliant regarding early childhood transition requirements. Of these 89 LEAs, 38 corrected noncompliance; 20 are expected to be compliant within one year from the identification of noncompliance; and 31 remained noncompliant and are receiving State technical assistance and sanctions. Through other initiatives with the New Jersey Department of Health and Senior Services, the lead agency responsible for Part C, NJSDE reported increased dissemination of information and increased knowledge for families, early intervention personnel and local school district personnel; and increased data sharing regarding the transition of children from Part C to Part B.

In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP’s responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements.

***Parent Involvement***

On pages 23 through 30 of the FFY 2003 APR, the State included data and analysis that demonstrated progress toward correction of noncompliance identified in OSEP’s July 2004 letter in the following area: ensuring notice to parents as required by 34 CFR §300.345(a) and (b); and documentation of attempts to secure parent participation as required by 34 CFR §300.345(d). The State provided a report on August 15, 2005, that indicated that 379 districts were monitored between FFY 2000 and 2004. Of 140 districts identified as noncompliant, 103 demonstrated compliance and nine are expected to be compliant within one year of identification of the noncompliance. The remaining 28 districts and charters demonstrated improvement in some

areas; however, these districts did not demonstrate compliance in all areas within a year of identification. NJSDE indicated that all of these districts and charter schools have approved compliance plans and that it is either providing technical assistance or has imposed sanctions on these districts and charter schools and is closely supervising their progress to compliance through continued verification activities. The State must continue to report on these activities as indicated in the General Supervision section of this letter.

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

#### Disproportionality

On pages 32 through 38 and Attachment 2 of the FFY 2003 APR, the State included data and analysis demonstrating its continued efforts in this area. New Jersey reported that, using the new formula of risk ratios for the 2002-2003 reporting year in examining disproportionality in New Jersey, many of the trends reported for the 2001-2002 year still exist to the same degree with the major exception of American Indian children who, while fewer in numbers (730 of 208,804 children with disabilities), appear to be disproportionately represented across a number of categories (all disabilities; more than 60% outside regular class; separate public school; private day school and home instruction). NJSDE reported its continued collaboration with the Office of Civil Rights Region One Office, the New York University Equity Assistance Center and the Northeast Regional Resource Center to address the issue of disproportionality in targeted districts, including assisting in the review and correction (where necessary) of policies, procedures, and practices related to disproportionality. NJSDE reported two positive trends based on 2003-2004 data with respect to: (a) a decrease in the difference between the African-American male and white male classification rates and/or (b) a decrease or stabilized African-American male classification rate, in the presence of an increased African-American male enrollment. An evaluation of NJSDE's "Minorities in Special Education" initiative reported that: (1) technical assistance helped district administrators increase awareness of disproportionate representation issues among district staff and a decrease in initial resistance to working on the issue; (2) districts reported being more data-driven in targeting their resources and focusing on specific schools and/or populations; and (3) the process helped bring general and special educators more closely together in joint efforts to address disproportionality. OSEP looks forward to reviewing the State's information in this area in the SPP due on December 2, 2005.

#### Graduation and drop-out rates

On page 40 of the FFY 2003 APR, the State included data and analysis demonstrating its continued efforts in this area. NJSDE reported that the New Jersey Department of Education Student Database continued to be in the "pilot stage" and was awaiting funding for further implementation. NJSDE reported a steady increase in the number of graduating students with disabilities (82.3%) compared to their nondisabled peers (90.6%).<sup>2</sup> NJSDE reported that the number of students dropping out of special education decreased from 17.4 percent in 2002 to 10.9 percent in 2004. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due on December 2, 2005.

---

<sup>2</sup> The graduation rate for the general population is calculated differently than the rate for students with disabilities.

### 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 positive behavioral interventions and supports and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA. While pages 41 through 45 of the APR included data and other information related to suspension and expulsion rates for children with disabilities throughout the school districts in the State, it was not clear whether NJSDE reviewed (or required the LEAs to review) and if appropriate revised, the policies, procedures and practices of LEAs with significant discrepancies. In the SPP, NJSDE must describe how it reviewed and, if appropriate, revised (or required the LEAs with significant discrepancies to review and revise) policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with the IDEA.

On pages 41 through 45 and attached related reports (Violence, Vandalism and Drug Offenses report; Table 5 - Report of Children with Disabilities Unilaterally Removed to an Interim Alternative Educational Settings or Suspended or Expelled for More than 10 Days – School Year 2003-2004; and district comparison of reported disciplinary actions) of the FFY 2003 APR, the State included data and analysis demonstrating its continued efforts in this area. NJSDE reported that methods for improving data collection in this area would be enhanced by a recently awarded U.S. Department of Education grant focused on data collection related to drug and violence offenses. NJSDE anticipated that this grant would assist in the development of the data warehouse, current data collections and make more feasible comparisons between discipline rates for children with and without disabilities. NJSDE also conducted an internal analysis of disciplinary actions and reported that at both district and statewide levels, roughly 30% of all children disciplined tended to be children with disabilities, while roughly 70% tended to be children without disabilities. For in-school suspensions, 74% were children without disabilities and 26% were children with disabilities. NJSDE concluded that while the disciplinary percentages for children with disabilities were significantly smaller than for children without disabilities, the percentages for children with disabilities (approximately 35%) were nearly double that of their overall representation of the entire school age population (16.5). NJSDE reported on continued strategies to address school-wide behavior supports. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due on December 2, 2005.

### Statewide and districtwide assessment

On pages 46 through 49, and pages 64 through 68 of Attachment 3<sup>3</sup> of the FFY 2003 APR, the State included data and analysis demonstrating its continued efforts in this area. NJDSE

<sup>3</sup> NJSDE submitted an APR addendum on May 27, 2005 with an explanation and percentages related to statewide assessment participation rates for children with disabilities for 2005.

indicated that the 2004 administration of statewide tests showed a consistently high participation rate for all students with disabilities. Specifically, NJSDE reported that participation data indicated approximately a 100% participation rate for all statewide tests at all grade levels. NJSDE also reported a decrease in the gap in performance at all grade levels in both mathematics and language arts literacy. NJSDE issued a guidance paper on New Jersey's Reading First Initiative and prepared a cooperative grant agreement with the Office of Urban Literacy focused on the Abbott Districts to support literacy instruction of students with disabilities in kindergarten to fourth grade. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP due on December 2, 2005.

#### Least restrictive environment (LRE)

On pages 49 through 60 of the FFY 2003 APR, the State included data and analysis demonstrating its continued efforts in this area. NJSDE reported that, utilizing its system of categorical designation regarding the status of correction of noncompliance and/or State intervention, of the 379 districts monitored between 1999 and June 30, 2004, 316 LEAs were identified as noncompliant with the requirements related to a free appropriate public education in the least restrictive environment when they were monitored. Of these 316 LEAs, 164 corrected noncompliance; 76 were expected to be compliant within one year from the identification of noncompliance; and 76 were beyond the one-year period, remained noncompliant and were receiving technical assistance and sanctions by the State. The State must continue to report on these activities as indicated in the General Supervision section of this letter.

To further ensure that children with disabilities were placed in the least restrictive environment, NJSDE amended its administrative code for the operation of an approved private school and, in June 2004, the Commissioner of Education established a moratorium on the approval of special education programs located in separate facilities. During the moratorium, NJSDE revised the approval procedures for separate special education programs. NJSDE also reported continued utilization of Local Capacity Building and Improvement Grants opportunities for LEAs resulting in an increased number of partnerships between LEAs and separate service providers; and an increased number of children transitioning from separate settings to general education settings. The State also reported on its efforts to increase the number of qualified interpreters for children who are deaf or hard of hearing and improve assistive technology.

#### 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. On pages 60 and 61 of the FFY 2003 APR, the State did not provide OSEP with any data or plan in response to this performance indicator. NJSDE reported that the development of the New Jersey Department of Education student database remains in the pilot phase and will continue to be implemented once funding is secured and that NJSDE will continue to provide input during the pilot and implementation phases of this database development.



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

### ***Secondary Transition***

On pages 69-76 of the FFY 2003 APR, the State included data and analysis that demonstrated progress toward correction of noncompliance identified in OSEP's July 2004 letter in the following area: ensuring secondary transition requirements required by 34 CFR §§300.29(a)(2), 300.347(b) and 300.347(c). The State provided a report on August 15, 2005, that indicated that 379 districts and charter schools were monitored between FFY 2000 and 2004. Of 249 identified as noncompliant, 158 demonstrated compliance, and an additional 33 are expected to be compliant within one year of identification of the noncompliance. The remaining 58 districts demonstrated improvement in some areas; however, these districts did not demonstrate compliance in all areas within a year of identification. NJSDE indicated that all of these districts and charter schools have approved compliance plans and that it is either providing technical assistance or has imposed sanctions on these districts and charter schools and is closely supervising their progress to compliance through continued verification activities. The State must continue to report on these activities as indicated in the General Supervision section of this letter. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

### ***Conclusion***

In the SPP, due December 2, 2005, NJSDE must:

- (1) Report on its continued oversight and intervention activities on the districts that have not achieved full compliance (including those mentioned in the Parent Involvement, LRE and Secondary Transition sections of this letter);
- (2) Include data and analysis demonstrating that it is meeting the required timelines for due process hearing decisions under 34 CFR §300.511; and
- (3) Describe how it reviewed and, if appropriate, revised (or required the LEAs with significant discrepancies in suspension and expulsions under 34 CFR §300.146 to review and revise) policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with the IDEA.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Sheila Friedman at (202) 245-7349.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Barbara Gantwerk