



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Sandy Garrett
State Superintendent of Public Instruction
Oklahoma State Department of Education
2500 North Lincoln Blvd., Rm. 412
Oklahoma City, Oklahoma 73105

AUG 29 2005

Dear Superintendent Garrett:

The purpose of this letter is to respond to Oklahoma's March 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

OSEP did not identify any noncompliance in the FFY 2002 APR. The conclusion of OSEP's August 13, 2004 FFY 2002 APR response letter required the State to present measurable performance outcome data in the FFY 2003 APR.

While OSEP did not identify noncompliance in the FFY 2002 APR, it did request that the State report on: (1) the State's progress in ensuring that transition from Part C to Part B meets IDEA requirements; (2) the State's progress in determining Part B eligibility for all potentially eligible children exiting Part C; (3) each district's progress in participating in transition planning conferences arranged by Oklahoma State Department of Education (OSDE) under section 637(a)(8) of the Act (at 34 CFR §§300.121(c) and 300.132(b) and (c)); (4) the provision of accommodations in the statewide assessment program to ensure continued compliance with IDEA requirements; and (5) how Oklahoma would achieve its goal of increasing the number of children in less restrictive settings while continuing to make the full continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) available and ensuring that each individual child was placed in a setting that meets his or her identified needs consistent with Part B of IDEA.

General Supervision

Identification and timely correction of noncompliance

On pages 12–15 of the FFY 2003 APR, the State provided data and information demonstrating that OSDE identified noncompliance and ensured correction of noncompliance within one year of identification. The State also provided baseline and trend data demonstrating an increase in identified noncompliance. The data indicated that in 2002–2003 four of 71 monitoring reviews were comprehensive, as opposed to validation reviews or focused monitoring, and 79 of the 79 reviews conducted in 2003–2004 were comprehensive reviews. The analysis provided by OSDE attributed the increased identification of noncompliance to the increased number of comprehensive monitoring reviews conducted. The State provided information regarding the development of corrective action plans and the oversight of their implementation on pages 7–8 of the FFY 2003 APR. The chart presented on page 8 indicated that 52 of the 79 corrective action plans issued as a result of the comprehensive reviews conducted during the 2003–2004 monitoring cycle were closed after 90 days from the issuance of the corrective action plan, 13 were closed between 60 and 90 days and 14 were closed in less than 60 days. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Formal written complaints

On pages 4–8 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance regarding the State's timeliness in complaint investigations. The data submitted by the State indicated that of the 63 complaints received: 52 were resolved within the 60 day timeline, 3 had documented extensions, 7 were withdrawn, 1 was set aside and addressed through due process and none were overdue. On page 8 of the FFY 2003 APR, the State also provided data and a narrative description of OSDE's follow-up activities to ensure complaint resolutions were implemented. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP due December 2, 2005.

Mediation

In the FFY 2002 APR, the State anticipated collecting the number of mediations and number of mediation agreements related to due process hearing requests by July 2005. On page 6 of the FFY 2003 APR, the State included data and analysis on its performance in this area. In their data analysis, OSDE concluded that the mediation data reflect increased use of early resolution as a timely alternative to formal complaints and due process hearing requests. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Due process hearings and reviews

On page 6 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. OSDE described the State's timeliness in reaching due process hearing decisions. The data provided indicated that 27 hearing requests were filed, four were fully adjudicated, 23 requests were cancelled/resolved/mediated and none were pending. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Personnel

On pages 23 through 33 of the FFY 2003 APR, the State included data and analysis on its performance in this area. The data provided included the percentage of trained personnel to meet the educational needs of all children with disabilities in the State. On page 23, OSDE referenced the local educational agencies' (LEAs') data that reported 98.8% of special education teachers and related service providers were fully certified. The State reported a need for speech language pathologists; however, the districts were able to meet identified needs by contracting services from outside of the districts. The State indicated that it planned to have a coordinator specializing in Speech/Language Pathology at the OSDE by August 2005.

The State outlined a number of teacher and related service provider recruitment and retention activities. OSDE continued to use the State's State Improvement Grant (SIG) to address recommendations of the Oklahoma Blueprint for Recruitment, Retention, and Retraining. The SIG activities support retention of personnel by providing first year resource support and second year coaching for new teachers. OSDE noted, "the rising number of Special Education and Related Service personnel without previous college coursework in special education (coupled with high attrition rates) suggests that more intensive training is needed." OSEP appreciates the work of the State in improving performance in this area.

Collection and timely reporting of accurate data

On page 35 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. The State described its efforts and process to collect accurate and timely data. OSDE developed and implemented a web based child count data submission system by which LEAs submit their data on line to facilitate timely and accurate data submissions. Additionally, OSDE continues to work with OSEP and WESTAT to align their data reporting elements with Federal requirements as well as work with the National Center for Special Education Accountability and Monitoring personnel about the State data report and the automation and interface data system needs. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Early Childhood Transition

OSEP's August 2004 letter requested the State to report: (1) its progress in ensuring that transition from Part C to Part B meets IDEA requirements; (2) its progress in determining Part B eligibility for all potentially eligible children exiting Part C; and (3) each district's progress in participating in transition planning conferences arranged by OSDE under section 637(a)(8) of the Act (at 34 CFR §§300.121(c) and 300.132(b) and (c)).

On pages 37 through 45 of the FFY 2003 APR, the State provided data from the State's monitoring system as well as survey data that addressed each of the areas identified in the FFY 2002 APR. OSDE described its provision of technical assistance, the documents disseminated and the changes OSDE made to their monitoring system to ensure that transition from Part C to Part B meets IDEA requirements.

On page 38 of the FFY 2003 APR, the State provided data addressing the State's progress in determining Part B eligibility for all potentially eligible children exiting Part C. The data presented was collected during 26 SoonerStart comprehensive quality assurance visits conducted during the 2003-2004 monitoring cycle. The SoonerStart quality assurance team is made up of State interagency partners. The program indicator used to collect this data specifically targeted "Transition evaluation and assessment completed by 24-32 months of age for children receiving services prior to 32 months of age using the Battelle Developmental Inventory." OSDE's data indicated a 93% rate of compliance calculated during the State's 2003-2004 monitoring cycle.

On page 40 of the FFY 2003 APR, the State provided monitoring data and an analysis addressing C to B transition. In the 2003-2004 school year, 79 school districts were monitored using OSDE's Part B monitoring tools. Of the 79 districts, 3 schools received citations regarding lack of documentation regarding participation in the transition planning, 3 schools received citations regarding IEP timelines and 4 additional schools received citations for both. Per the data on page 8 of the FFY 2003 APR, all 79 districts completed their required corrective actions. Per the information on page 39, of the 26 SoonerStart programs monitored, 12 sites received transition citations and completed corrective action plans. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Parent Involvement

On pages 46-47 of the FFY 2003 APR, OSDE included data collected from the 79 LEAs monitored during the 2003-2004 school year and an analysis that indicated: (1) parent consent for evaluation was not consistently obtained prior to the provision of the evaluations in 50.6% of the LEAs monitored as required by 20 U.S.C. 1414(a)(1)(D); (2) parents were not consistently notified of IEP team meetings in 44.3% of the LEAs monitored as required by 20 U.S.C. 1414(d)(1)(B); and (3) parents were not consistently informed of their child's progress toward their annual goals in 53.2% of the LEAs monitored as required by 20 U.S.C. 1414(d)(1)(A)(i)(III). OSDE cited these LEAs with noncompliance. In their targets, OSDE indicated that it would continue monitoring this area; increase the availability of information for families to address native language and other communication needs, and enhance their data system to improve the documentation of parent involvement in training and public input activities. The State indicated in its strategies that it would, "continue the monitoring process to document parent involvement and participation in decisions." Per the data on page 8 of the FFY 2003 APR, all 79 districts completed their required corrective actions. OSEP looks forward to reviewing these strategies and the State's data and analysis in this area in the SPP, due December 2, 2005.

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

Disproportionality

On page 50, the State included a performance indicator that constituted a race-specific numerical goal. The 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/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification, under 34 CFR §300.755, 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. The State must ensure that the information submitted in the SPP is consistent with the guidance above.

On pages 52 through 54 of FFY 2003 APR, OSDE included data and analysis addressing disproportionality and included information about OSDE's policies and procedures regarding the implementation of evaluation procedures that are not racially or culturally discriminatory. On page 54, OSDE stated, "through the monitoring of selected districts OSDE-SES reviewed the implementation of State-level policies, procedures, and practices to determine if inappropriate implementation could lead to any significant disproportionality."

On pages 50 and 51 of the FFY 2003 APR, the State presented data for racial and ethnic disproportionality in enrollment data, educational environment, and assignment to disability category, including data in Attachment 2 of the APR. On page 53, the State indicated that it used WESTAT's risk ratio formula and identified significant disproportionality at a risk ratio of or greater than 2.0. Using this risk ratio calculation the State identified that Black children in Oklahoma were 2.55 times more likely than all other children to receive special education and related services in the disability category of mental retardation. On page 53 of the FFY 2003 APR, OSDE stated that it looked for patterns of disproportionality across the four educational environment categories, and did not see any overrepresentation or underrepresentation, nor did they identify any disproportionality during the 2003-2004 school year from the monitoring or formal complaint processes.

While OSDE stated they found no pattern of overrepresentation or underrepresentation, it did present data from monitoring on pages 53 and 54 of the FFY 2003 APR that cites noncompliance with evaluation/reevaluation for 65.8% of the 79 districts monitored during the 2003-2004 school year. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether data collected related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Graduation and drop-out rates

On pages 55 through 57 of the FFY 2003 APR, OSDE presented data on graduation and drop-out rates for youth with disabilities, including the formula for calculating the rates. OSDE reported that the graduation rate for students with disabilities increased over the last four years although it was not as high as the graduation rate of students without disabilities; for 2003-2004, the State reported a 95.8% graduation rate for students without disabilities and 89.8% for students with

disabilities. All students graduating in Oklahoma receive a standard diploma. Oklahoma does not have high stakes testing for graduation.

OSDE reported that the drop-out rate for students with disabilities and students without disabilities continued to decrease over the last four years, although there is still a small gap between the two groups; for 2003-2004, the State reported a 3.7% drop-out rate for students without disabilities and 4.1% for students with disabilities. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Suspension and expulsion

On pages 58 and 59 of the FFY 2003 APR, the State included data and analysis in this area. OSDE provided information indicating that the State examined data from the State's Annual Data Report to determine whether significant discrepancies were occurring in the rate of long-term suspensions and expulsions and the number of single suspensions for more than 10 days, or expulsion, of children with disabilities compared to the rates for nondisabled children in the LEAs. On page 58, the State stated that OSDE compared suspension/expulsion rates of students with disabilities to those students without disabilities within the local education agencies; however, the State only provided information on State-level data, as opposed to demonstrating that it conducted the LEA-level analysis required by 34 CFR §300.146 and the directions for the FFY 2003 APR. That analysis indicated that the rate of long-term suspensions and expulsions were comparable at .93% for students without disabilities and .91% for students with disabilities. The number of single suspensions greater than 10 days, or expulsion, was comparable at .93% for students without disabilities and .91% for students with disabilities.

In the SPP, due December 2, 2005, the State must include the information specified, including whether it compared the suspension and expulsion rates for children with disabilities across LEAs or compared the rates for children with and without disabilities in the LEAs. If the SPP does not include this information, OSEP will conclude that the State is not complying with 34 CFR §300.146.

Statewide and districtwide assessment

20 U.S.C. 1412(a)(14)(C) requires that States have on file with the Secretary information to demonstrate that: (1) children with disabilities are included in general State and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary; and (2) as appropriate, the State or local educational agency (LEA) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State or districtwide assessment programs, develops alternate assessments in accordance with those guidelines, and conducts the alternate assessments developed.

OSEP did not identify noncompliance in the FFY 2002 APR; however, it did request that OSDE report on the provision of accommodations in the statewide assessment program to ensure continued compliance with IDEA requirements. On pages 60-71 and Attachment 3 of the FFY

2003 APR, OSDE included an analysis of compliance data and other information regarding the participation and performance of children with disabilities in statewide assessments.

On pages 60-61 of the FFY 2003 APR, the State described how State and Federal legislative changes have affected the assessment and State accountability systems. During the 2003-2004 school year, the State implemented a second alternate assessment for children with significant cognitive disabilities and changed the 3rd grade assessment from the Stanford Achievement Test-9 to the Oklahoma State Testing Program. In previous years, the State utilized a portfolio assessment for children with significant cognitive disabilities; however, this year, an out of level assessment was implemented as "another alternative for assessing children of this population." According to the State, this change made the analysis of trend data, "difficult and, in some cases impossible."

On page 5 of 8 in attachment 3 of the FFY 2003 APR, OSDE stated that high school assessment is not designated at one grade level since Oklahoma uses End-of-Instruction (EOI) assessments for Algebra I, English II, U.S. History, and Biology I. Not all students enroll in these courses in the same grade in all districts, nor would they participate in these assessments at the same time since the assessment is administered after the instruction of the competencies for each course has been completed.

On pages 61 through 64, OSDE presented data from the 2002-2003 school year compared to the 2003-2004 school year. The data presented demonstrated a rise in the percentage of children with disabilities scoring at or above satisfactory. OSDE's analysis indicated that the "data collected indicates in regular assessment alone that disabled students are showing progress at a rate that is decreasing the gap between disabled and non-disabled peers scores on large scale assessments. With the data from Alternate Assessment there is a definite gain in performance of disabled students performing at or above satisfactory in the area of fifth grade [eighth grade and EOI] math and reading." OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

On pages 60 and 61, the State stated, "some LEAs continue to need technical assistance on providing appropriate accommodations for student with disabilities. Those training needs potentially affect the performance of some students with disabilities." OSDE included a detailed narrative indicating what technical assistance mechanisms were being used to effect change. Based on the information provided, OSEP is unclear as to whether the State has determined whether or not the LEAs referenced in the FFY 2003 APR are in compliance and/or whether corrective actions were required. OSDE must submit data to OSEP, within 60 days of the date of this letter, along with a determination of compliance or noncompliance with the requirements of 20 U.S.C. 1412 (a)(16). If the data demonstrate noncompliance, the State must also include a plan to correct the noncompliance within a reasonable period of time, not to exceed one year from OSEP's acceptance of the plan. In the SPP, due December 2, 2005, the State must include data and analysis demonstrating progress toward compliance and provide documentation that the State's procedures are effective in ensuring compliance with 20 U.S.C. 1412(a)(16).

Least restrictive environment (LRE)

OSEP did not identify noncompliance in the FFY 2002 APR; however, it did request that OSDE describe how Oklahoma would achieve its goal of increasing the number of children in less restrictive settings while continuing to make the full continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) available and ensuring that each individual child was placed in a setting that meets his or her identified needs consistent with the Part B of IDEA.

On pages 72 and 73 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. On page 72, OSDE described its efforts to ensure that children with disabilities are educated to the maximum extent appropriate with nondisabled children. OSDE reported that they continued to make the full continuum of alternative placements available and ensure that each individual child was placed in a setting that met his or her identified needs consistent with Part B regulations. The data presented by OSDE indicated that “47% of students with disabilities are receiving FAPE in the regular classroom at least 79% of the day. The percentage of students with disabilities outside of the regular classroom for more than 60% of the day continues to decrease.” OSEP looks forward to reviewing the State’s data and analysis in this area in the SPP, due December 2, 2005.

Preschool performance outcomes

The State did not include data in the FFY 2003 APR addressing preschool performance outcomes for preschool students with disabilities receiving special education and related services. On pages 74 through 76 of the FFY 2003 APR, OSDE included data and analysis that were the result of a survey conducted by Georgetown University and administered to pre-kindergarten and kindergarten children in Tulsa. This information did not address the early language/communication, pre-reading, and social/emotional skills of preschool children with disabilities receiving special education and related services.

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 77 through 79, OSDE provided data and analysis regarding the graduation rates of students with and without disabilities. OSDE noted, on page 56, that Oklahoma does not have high stakes testing for graduation.

OSDE’s data analysis did not include post-school outcome data for nondisabled youth or students with or without disabilities. The State used graduation rates of students with and without disabilities as a proxy for post-school activities. In the FFY 2002 APR, the State indicated that it would explore the possibility of including data that captured anticipated post-

school outcome activities for all students in the State-wide Student Information System. The strategies OSDE outlined on page 79 of the FFY 2003 APR were the same strategies OSDE identified in the FFY 2002 APR. The State did not include data in the FFY 2003 APR addressing the percentage of youth with disabilities participating in post-school activities (e.g., employment, education, etc.) comparable to that of nondisabled youth.

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

As noted above, within 60 days of the date of this letter, OSDE must submit data to OSEP, along with a determination of compliance or noncompliance with the requirements of 20 U.S.C. 1412 (a)(16) addressing participation in assessments.

In the State's Performance Plan, due December 2, 2005, Oklahoma must include:


- (1) Data, analysis, and targets addressing significant disproportionality related to identification, under 34 CFR §300.755 in a manner that is consistent with the guidance provided by OSEP in the disproportionality section;
- (2) Data and analysis regarding the percentage of districts identified by the State as having significant discrepancy in the suspension and expulsion of children with disabilities and whether OSDE compared the suspension and expulsion rates for children with disabilities across LEAs or compared the rates for children with and without disabilities in the LEAs; and
- (3) Data and analysis demonstrating progress toward compliance and provide documentation that the State's procedures are effective in ensuring compliance with 20 U.S.C. 1412(a)(16).

Additionally, the State must work to ensure that it will have baseline data regarding early childhood outcomes and post-school outcomes data for students with disabilities for the APR due February 1, 2007.

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 Ellen Safranek at (202) 245-7515.

Sincerely,

A handwritten signature in cursive script that reads "Troy R. Justesen". The signature is written in black ink and is positioned above the printed name.

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Misty Kimbrough