

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable John Taufete'e Faumuina  
Chief Executive Officer  
LBJ Tropical Medical Center  
Government of American Samoa  
Pago Pago, American Samoa 96799

**JUN -8 2004**

Dear Mr. Faumuina:

The purpose of this letter is to respond to American Samoa's Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR), its FFY 2001 APR and its May, 2003 Self-Assessment under Part C of the Individuals with Disabilities Education Act (IDEA). In addition to responding to these documents, the Office of Special Education Programs (OSEP) is responding to fiscal accountability and Part C programmatic noncompliance issues that have been recently brought to OSEP's attention. By copy of this letter to the Governor of American Samoa, we are informing the Governor's offices about the potential inability of American Samoa to continue to receive Part C funds unless the fiscal and programmatic issues identified in this letter are addressed.

States are required to submit the FFY 2001 APR for Part C funds used during the grant period July 1, 2001 through June 30, 2002 and the FFY 2002 APR for Part C funds used during the grant period July 1, 2002 through June 30, 2003. The FFY 2001 and 2002 APRs are intended to reflect actual accomplishments made by the State during the reporting periods, compared to established objectives, and are part of the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by OSEP, within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document.

**Background**

American Samoa submitted a Self-Assessment in May 2003 and was directed to submit an Improvement Plan as part of its APR. American Samoa submitted its FFY 2001 APR on June 28, 2003 and its FFY 2002 APR on April 7, 2004. The APR is intended to reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). Because it is OSEP's intent to consolidate improvement planning and performance reporting activities, OSEP is commenting on the Self-Assessment, the FFY 2001 and FFY 2002 APRs (which together constitute American Samoa's Improvement Plan) in this letter.

OSEP Memorandum regarding the submission of APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition. OSEP's responses are organized by each cluster area below.

### General Supervision

Under Part C, States are responsible for the general supervision of programs and activities that are part of the Part C early intervention system in the State. 34 CFR §303.501(a)(1). This includes the responsibility to have in place: (1) a monitoring system that identifies and timely corrects noncompliance with Part C; (2) supervision of personnel qualified to provide Part C services; (3) a dispute resolution systems that ensures the timely resolution of complaints and due process hearings; (4) a data system that ensures the compilation and accuracy of data required to be reported under Section 618 of the IDEA as well as to support the State's monitoring system; and (5) fiscal control and accounting procedures to assure proper disbursement of and accounting for Part C Federal funds.

### Monitoring

Under Part C, a lead agency must monitor agencies and institutions and organizations used by the State to carry out the implementation of Part C, enforce Part C obligations, provide technical assistance where necessary, and correct deficiencies identified through monitoring. 34 CFR §303.501(b). American Samoa's April 7, 2004 FFY 2002 APR acknowledged for the first time to OSEP that it lacks any monitoring system that can identify and correct noncompliance. Page 2 of the FFY 2002 APR states "no formalized systematic ongoing monitoring processes are in place at this time." The APR fails to include a plan to ensure the monitoring of all Part C requirements and all programs and activities providing Part C services.

American Samoa must submit within 60 days to OSEP an Improvement Plan that includes: (1) the timely development of monitoring protocols (to ensure that all Part C requirements are monitored); (2) monitoring of all documents required to be maintained under Part C (including Individualized Family Service Plan (IFSP) reviews, parent consent forms, procedural safeguard rights notice, etc.); (3) monitoring of Part C programs and activities (including data on children in the Learning Through Play (LTP) group) as well as home-based services and any other programs; and (4) monitoring of services received by infants and toddlers with disabilities and their families including data on services identified on the IFSP, actually received, and any other relevant information such as parent surveys.

### Personnel

Under Part C, the lead agency must ensure that it maintains a State-wide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families. 34 CFR §303.160. This includes ensuring that qualified personnel are available to provide early intervention services including speech-language pathology, occupational, physical and psychological services to a child as well as services to the child's family as identified on the child's IFSP. 34 CFR §303.12.

In addition, under Part C, lead agencies must ensure that fiscal control and Part C funds accounting procedures are used to assure proper disbursement of and accounting for Federal funds. 34 CFR §303.125.

American Samoa indicated to OSEP for the first time on page 2 of the FFY 2002 APR that “there were not sufficient numbers of EI providers to meet the needs of all eligible infants and toddlers [with disabilities] and their families with the greatest deficit being in the area of consistently available professional staff, i.e. physical therapists, occupational therapists, speech therapists.” Of grave concern to OSEP is American Samoa’s statement in Attachment 2 to the FFY 2002 APR that “no speech therapy or psychological services have been available for the past four years.” Based on the calendar provided in Attachment 2, it appears that American Samoa also lacked a physical and occupational therapist in FFY 2000, in FFY 2001 and FFY 2002.

These data are alarming in that American Samoa’s Self-Assessment and FFY 2001 and FFY 2002 APRs indicate a need for these critical early intervention services (speech-language pathology, psychological, physical and occupational therapy services) and the FFY 2000 through FFY 2003 Part C applications from American Samoa include amounts budgeted for these expenses. However, the FFY 2002 APR acknowledges that American Samoa has failed to provide these critical early intervention services. In addition, the FFY 2002 data directly contradicts information previously provided to OSEP in American Samoa’s June 28, 2003 FFY 2001 APR transmittal letter, which stated “With a full staff of professionals in special service ... this Summer, special services for children and their families in the Territory will continue to improve.”

American Samoa must within 60 days of the date of this letter submit documentation confirming that: (1) funds expended during FFY 1999 through FFY 2003 were not used to pay for personnel that it now appears were never employed or employed at less than full-time; (2) how amounts that were budgeted for positions that were either vacant or less than fully occupied have been expended consistent with Part C and OMB accounting principles; (3) an Improvement Plan (including strategies, timelines, benchmarks, and evidence of change) that identifies for each discipline lacking personnel, American Samoa’s (a) short-term strategies to ensure availability of personnel to conduct evaluations and provide services to eligible children and their families (including for example contracting with the local hospital for speech-language/audiology evaluations and/or services), and (b) long-term strategies (including recruitment and retention strategies).

### Complaints

American Samoa must ensure that it has dispute resolution systems that ensure the timely resolution of complaints and due process hearings. The FFY 2002 APR noted that “no complaint investigations, mediations, or due process hearings were received” but also noted on page 3 that “parental rights/responsibilities were not completed.” OSEP cannot determine whether the lack of administrative complaints and or due process hearing requests is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State’s Part C dispute resolution procedures. American Samoa acknowledged in its FFY 2002 and FFY 2001 APRs that its prior written notice required under 34 CFR §303.403(b)

and procedural safeguards are not fully developed and have not been translated into Samoan, the primary native language in American Samoa. Part C requires that the prior written notice under 34 CFR §303.403(b) (including a description of all procedural safeguards available under 34 CFR §§303.401 through 303.460 and State complaint procedures under 34 CFR §§303.510 through 303.512) be provided in the native language of the parents unless it is clearly not feasible to do so. 34 CFR §303.403(c)(1)(ii). Although page 2 of the FFY 2002 APR indicates a goal of translating the notice and other Part C materials, American Samoa acknowledged on page 3 that it is unable to meet this goal due to lack of personnel.

American Samoa must submit to OSEP within 60 days of the date of this letter: (1) its prior written notice required under 34 CFR §303.403(b) (including a description of all procedural safeguards available under 34 CFR §§303.401 through 303.460 and State complaint procedures under 34 CFR §§303.510 through 303.512) in English, Samoan and any other written languages of families in American Samoa.

#### Data

American Samoa must have in place mechanisms to collect, compile and submit data (e.g., 618 State-reported data, due process hearings, complaints, mediations, etc.) and to identify systemic issues and problems with the data. Page 2 of the FFY 2002 APR stated that "there are no procedures in place to verify accuracy of data." In addition, American Samoa confirmed in its FFY 2002 APR that it has failed to maintain adequate child records. Page 2 of the FFY 2002 APR stated that "Chart monitoring is difficult because child records are stored in manila files with no specified order of contents." Page 3 of the FFY 2002 APR reported that, "errors were found in the accuracy of [Section 618] data." American Samoa reported that it is in the process of implementing a new child record and systematic chart review system that was to be in place by April 2004 to ensure the accuracy of (1) data required to be reported to OSEP under IDEA Section 618 and (2) child IFSP and other records. On page 7 of the FFY 2002 APR, American Samoa noted that it maintained, "no consistent attendance records noted [for LTP]."

American Samoa must provide within 60 days of the date of this letter: (1) its procedures to ensure accuracy of Section 618 data; (2) examples of at least ten current child record files (including IFSPs); and (3) for these ten children, attendance records (or other documentation indicating provision of services) for all early intervention services provided including the LTP services.

#### **Comprehensive Public Awareness and Child Find System**

American Samoa reported in its FFY 2002 APR that its rate of identification of eligible infants and toddlers with disabilities served under Part C (.24% for 0-1 year olds and 1.39% for 0-3 year olds) is below the national average (.96% for 0-1 and 2.13% for 0-3). In addition, American Samoa reported its child find trend indicates a decline in the identification of eligible infants and toddlers with disabilities (for 2000 - 1.8%, for 2001 - 1.69% and for 2002 - 1.39%).

On pages 3 and 6 respectively of the FFY 2002 APR, American Samoa indicated that "Referrals will increase and child count begins to increase to close gap between national average and

American Samoa child count” and “0-1 child count will increase to 10 by January 31, 2004 and to 15 by June 20, 2004.” While it is not inconsistent with Part C of the IDEA to include a numerical goal to increase the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor that eligibility decisions for infants and toddlers are made in conformity with the individual evaluation and assessment requirements of IDEA (34 CFR §§303.320 through 303.323) and not based upon a numerical goal.

OSEP requests that American Samoa submit as part of its next APR an explanation of the slippage in its child find trend data and provide timelines for completion of all child find activities identified as needed for improvement.

### **Family Centered Services**

The FFY 2001 and FFY 2002 APRs provided no data in this cluster area. Given American Samoa's acknowledged data inaccuracy and lack of IFSP documentation, OSEP cannot determine how and whether family assessments are conducted when consented to by parents. OSEP requests that American Samoa submit as part of the next APR, IFSP review or other data that demonstrates that families are offered assessments and, when consented to, family assessments are conducted and family resources, priorities and concerns are reflected on the IFSP as required under 34 CFR §303.344(b).

### **Early Intervention Services in Natural Environments**

#### **Evaluations and Assessments**

The Part C regulations require that children suspected of a disability receive an individual evaluation and assessment that meets the requirements of 34 CFR §§303.320 through 303.323. Part C requires that evaluations and assessments be conducted by qualified personnel. 34 CFR §303.323(d). The regulations also require that children be evaluated in all developmental areas listed under 34 CFR §303.322(c)(3)(ii) (which includes physical development, communication development, social or emotional development, cognitive development and adaptive development). As noted above, Attachment 2 to the FFY 2002 APR states that “no speech therapy or psychological services have been available for the past four years” and also provides data indicating that physical and occupational therapists have been less than part time from FFY 2000 through FFY 2002 although budgets indicate full time positions.

American Samoa was unable to document that it ensures that evaluations are conducted by qualified personnel and also that they are conducted in all developmental areas. Within 60 days of the date of this letter, American Samoa must submit an Improvement Plan (including strategies, timelines, benchmarks, and evidence of change) that identifies for each discipline lacking personnel needed to conduct evaluations and assessments, American Samoa's (1) short-term strategies to ensure availability of personnel to conduct evaluations and provide services to eligible children and their families (including for example contracting with the local hospital for speech-language/audiology evaluations and/or services), and (2) long-term strategies (including recruitment and retention strategies).

In addition, the regulations require that an evaluation and assessment of a child and an initial IFSP meeting be held within 45 days of referral to Part C. 34 CFR §§303.321(e)(2), 303.322(e), 303.342(a). Although American Samoa did not provide any data on the 45-day timeline, OSEP is concerned that evaluations and assessments are not timely given American Samoa's acknowledged lack of personnel in Attachment 2 of the FFY 2002 APR. Within 60 days of the date of this letter, American Samoa must submit data on how long the evaluation and assessment process took for each child who was referred to Part C since July 1, 2003 and for each of these children, how many of their IFSPs did not include the required evaluation and assessment content within the require timeline. In addition, if the data indicate noncompliance with these requirements, American Samoa must also submit within 60 days an Improvement Plan (including strategies, timelines, benchmarks and evidence of change) that ensures that American Samoa will be in compliance within one year from when OSEP approves its proposed strategies regarding this area.

On page 10 of the FFY 2002 APR, American Samoa noted that "evaluation and assessments were not consistently conducted and did not utilize a standardized testing instrument but rather clinical observation of child and family" and "chart reviews revealed that not all children currently in Part C received a comprehensive developmental evaluation utilizing a standardized testing instrument." Informed clinical opinion can be used to establish eligibility of a child under Part C at 34 CFR §303.322(c)(2). However, American Samoa's statements raise concerns about its ability to ensure that no single procedure is used as the sole criterion for determining a child's Part C eligibility under 34 CFR §303.323(c). Within 60 days of the date of this letter, American Samoa must submit confirmation that it is in compliance with the evaluation and assessment requirements or, if American Samoa determines it is not compliant with these requirements, an Improvement Plan (including strategies, timelines, benchmarks and evidence of change) that ensures that American Samoa will be in compliance within one year from when OSEP approves its proposed strategies regarding this area.

American Samoa indicated in its FFY 2002 APR that it has revised its testing instruments to include the use of the Hawaii Early Learning Profile (HELP) instrument. American Samoa must submit within 60 days to OSEP its revised procedures for determining eligibility (including evaluations and assessments) and in any event must submit any revised Part C policies and procedures that are part of its Part C application for OSEP approval after meeting the public participation requirements of 34 CFR §§303.110 through 303.113 and may not implement its revised application procedures until approved by OSEP.

### IFSP Content & Other Requirements

Part C requires that all eligible children have IFSPs and that each IFSP contains child goals and outcomes. 34 CFR §§303.344(c)(1) and (2). Page 10 of the FFY 2002 APR indicates "child ... goals were not consistently developed" on IFSPs. It is also unclear from page 10 of this APR whether all children have IFSPs. Within 60 days of the date of this letter, American Samoa must (1) provide its Improvement Plan to ensure that child outcomes are consistently identified on the IFSP consistent with the Part C regulations and (2) assure that all eligible children have IFSPs.

### Provision of Early Intervention Services

Part C requires that children receive early intervention services identified on the IFSP. Page 10 of the FFY 2002 APR states, "early intervention services did not occur in a timely manner." Within 60 days of the date of this letter, American Samoa must provide data (by type of service needed) on how many children of all children eligible since July 1, 2003, including current children have been waiting for a particular service and the length of time from the development of the child's IFSP and the implementation of the service. In addition, American Samoa must provide its Improvement Plan strategies including timelines, benchmarks and evidence of change to ensure that early intervention services are provided in a timely manner.

### Natural Environments

The Part C regulations at 34 CFR §§303.12(b), 303.18 and 303.344(d)(1)(ii) require that, to the maximum extent appropriate, early intervention services be provided in natural environments, including the home and community settings in which children without disabilities participate. If the IFSP meeting participants (including the parent) determine that services are to be provided in a setting other than the natural environment, the child's IFSP must include an appropriate (child-based) justification for the service setting as required under 34 CFR 303.344(d)(1)(ii).

American Samoa's Self-Assessment noted that two examples of eligible children (example 3 on page 22 and example 5 on page 23) who did not receive services in the home although it appeared that there were strong factors suggesting that the home would have been an appropriate natural environment for these children. Example 3 noted that services were not provided to the child and family because the mother was unable to attend LTP due to a newborn child and older sibling at home. Page 22 of the Self-Assessment further noted that "We do make home visits when we are able to advise the mother in ways to help her child, but again, follow through is limited." This and other narrative and data in American Samoa's FFY 2002 and 2001 APRs and the Self-Assessment indicate that American Samoa is not providing services in the natural environment and only providing services in the LTP center-based program. OSEP notes that it approved the purchase of a vehicle for Part C personnel use for the provision of Part C services and is troubled to learn in the FFY 2001 APR (page 8) that "home visits" are limited to every three months for those attending the LTP program. The delivery of early intervention services in natural environments is critical to the interventions necessary for infants and toddlers with disabilities and their families. The purpose of home-based services is not solely to advise parents on how to help their children but also to provide, as determined by the IFSP meeting participants, direct early intervention services to a child as well as the family to support the family in meeting the needs of the child.

Please provide within 60 days the data on how many children receive direct early intervention services (such as physical therapy, occupational therapy, family counseling, etc.) in the home or other natural environments. Also, within 60 days of the date of this letter, American Samoa must submit to OSEP its Improvement Plan strategies, benchmarks, evidence of change, timelines to ensure that services are provided to the maximum extent appropriate in natural environments.

The Part C FFYs 2001 and 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). American Samoa did not provide OSEP with any data in the APRs in response to this performance indicator. Please provide to OSEP in the next APR responsive data (whether collected through monitoring, sampling, individual IFSP review or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)).

### **Early Childhood Transition**

The FFY 2001 and FFY 2002 APRs provided no data in this cluster area. Given American Samoa's lack of IFSP documentation and other child record inconsistencies, OSEP cannot determine how American Samoa is able to determine compliance with the three primary Part C transition requirements of 34 CFR §303.148 including for all children - transition steps on IFSPs, notification of the local educational agency, and the convening of the 90-day transition conference for children potentially eligible under Part B. Within 60 days of the date of this letter, American Samoa must submit data demonstrating compliance with these three requirements or, if American Samoa determines it is not compliant with these requirements, Improvement Plan strategies, timelines, benchmarks and evidence of change that ensure that American Samoa will be in compliance within one year from when OSEP approves its proposed strategies regarding these areas.

In the Self-Assessment, American Samoa provided examples of two eligible children (Example 1 on page 21 and Example 6 on pages 23-24) for whom it appears that Part C funds may have been used beyond each child turning age three. Please provide within 60 days of the date of this letter information on any children presently receiving services who have reached the age of three for which Part C services are being used.

### **Conclusion**

As noted throughout this letter, American Samoa provided data that indicates noncompliance, potential noncompliance, and insufficient data to determine compliance. OSEP is concerned with the systemic problems that exist in all areas of the Part C system in American Samoa. Within 60 days of the date of this letter, American Samoa must provide the data and/or information requested under General Supervision for: (1) monitoring; (2) complaints; (3) personnel; and (4) data. For Early Interventions Services in Natural Environments, American Samoa must provide data and/or information for: (1) evaluation and assessment; (2) IFSP content and other requirements; (3) provision of early intervention services; and (4) natural environments. For Early Childhood Transition, American Samoa must provide data and/or information for: (1) transition steps on IFSP; (2) notification of LEA; and (3) convening the 90 day transition conference for children potentially eligible for Part B.

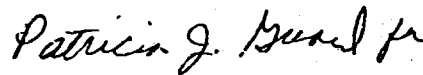
In addition, American Samoa must report in its next APR on the information requested above under Child Find: (1) trend data and child find timelines; and (2) timelines for completion of all child find activities identified as needed for improvement. For Family Centered Services: (1)



IFSP review or other data that demonstrates that families are offered assessments and, when consented to, family assessments are conducted and family resources, priorities and concerns are reflected on the IFSP as required under 34 CFR §303.344(b). For Early Intervention Services in Natural Environments: (1) child functional abilities data.

OSEP is concerned about the ability of the American Samoa Part C program to provide early intervention services to eligible infants and toddlers with disabilities and their families. We look forward to hearing from you. If you have questions, please contact Julia Martin at (202) 205-1912.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: The Honorable Togiola Talalelei Tulafona  
American Samoa Governor

Jean Asuega  
Acting Part C Coordinator