



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

Honorable Estelle B. Richman
Secretary
Department of Public Welfare
Health and Welfare Building
Room 333
7th and Forester Streets
Harrisburg, Pennsylvania 17120

SEP 27 2004

Dear Secretary Richman:

The purpose of this letter is to respond to Pennsylvania's March 30, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (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. OSEP's Memorandum regarding the submission of Part C 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.

Background

Pennsylvania was monitored by OSEP in March and October 2000. The OSEP Monitoring Report of February 1, 2002 identified the following areas of noncompliance that Pennsylvania had to address in an Improvement Plan (IP): (1) public awareness/child find activities did not ensure that all children were identified, located and evaluated; (2) family supports and services were not identified in a family assessment, or included on the Individualized Family Service Plan (IFSP); (3) the IFSPs did not include all early intervention (EI) services or medical, family and other services that the child and family need; (4) the IFSP decision-making process was not used to determine the natural environment for the provision of EI services and the location of the services; and (5) transition steps were not included on the IFSP.

Based on the information submitted in the APR, the State has addressed all of those areas of noncompliance except the issue of transition steps not being included on the IFSP. In addition, based on the data in the APR, OSEP has identified transition conferences as a new area of noncompliance.

In response to the noncompliance identified in the OSEP Monitoring Report, Pennsylvania submitted a July 31, 2002 IP to OSEP. OSEP approved Pennsylvania's IP on March 19, 2003 with the requirement that: (1) all areas of noncompliance identified in the OSEP Monitoring Report be corrected within a reasonable period of time not to exceed March 19, 2004; (2) a revised IP be submitted by May 30, 2003 to incorporate additional public awareness activities; and (3) IP Progress Reports be submitted to OSEP on August 29, 2003 and February 27, 2004. Pennsylvania submitted the revised IP in May 2003 and an IP Progress Report in September 2003. In addition, the State submitted the FFY 2001 APR in July 2003. OSEP approved the May 2003 revised IP and responded to the September 2003 Progress Report and FFY 2001 APR in a February 13, 2004 letter to Pennsylvania. The February 13, 2004 letter also changed the due date of the final IP Progress Report from February 27, 2004 to March 31, 2004, so that the FFY 2002 APR would serve as the final IP Progress Report. The State submitted its FFY 2002 APR, including its final IP Progress Report, on March 30, 2004.

The State's APR should 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). OSEP's comments regarding the March 30, 2004 IP Progress Report and the APR are listed by cluster area.

General Supervision

The OSEP February 2002 Monitoring Report did not identify noncompliance in this cluster. The State included strategies in this APR designed to maintain compliance with the supervision and monitoring requirements of IDEA at 34 CFR §303.501. Based on a review of the data and information reported in the APR, OSEP identified no concerns in this cluster.

In its FFY 2002 APR, the State provided information regarding each of the following probes: IDEA noncompliance identified and corrected in a timely manner; systemic issues identified and remediated through information from monitoring, complaint investigations, and hearing resolutions; complaint investigations, mediation, and due process hearings and reviews completed in a timely manner; sufficient personnel employed to provide EI services; and data collection and reporting done accurately and in a timely manner. The State also included targets, an explanation of progress or slippage, activities, and timelines and resources (APR, pages 3-13 APR). OSEP looks forward to reviewing the impact of Pennsylvania's strategies in the next APR.

Comprehensive Public Awareness and Child Find System

The February 2002 OSEP Monitoring Report identified the following area of noncompliance in this cluster: public awareness/child find activities were not sufficient to ensure that all children were identified, located and evaluated. See 34 CFR §303.303.321(b)(1). OSEP found that physicians were not referring in a timely manner and that public awareness activities were not sufficient to ensure that the public, including families, physicians, and the traditionally underserved populations, were informed about the provisions of the Part C program.

To address the noncompliance regarding public awareness/child find, the May 2003 revised IP included strategies to: (1) evaluate county child demographics and referrals from traditionally underrepresented populations; (2) increase referrals from the Department of Health and the medical community, targeting hospitals and physicians/pediatricians; (3) continue dissemination of public awareness materials and usage of the 1-800 number; and (4) review referral patterns and require counties to establish baseline data on when children with a high probability of developmental delay were diagnosed and referred, and where a delay in referral was indicated, require a county plan of correction. The State's IP indicated that the State would provide the following information: (1) an increase in referrals from the Department of Health and the medical community, including physicians and hospital staff; and (2) an increase in parent awareness of public awareness materials and their satisfaction with the referral process, as evidenced through parent surveys.

The State indicated that it implemented the strategies listed in the May 2003 IP. The State provided information regarding child demographics, collaboration with the Department of Health, analysis of referral patterns, use of public awareness materials, county child find procedures, and outreach to traditionally underrepresented populations (APR, pages 16-22). For example, referral source data indicated an increase in physician and parent referrals over time; a decrease in hospital referrals over time; and no change in referrals over time from social service agencies and "other referral sources (APR, page 21). Based on the information in the APR, OSEP has not identified any further concerns regarding this issue.

In addition to addressing the noncompliance issue above, the State reported the following performance information regarding State and national data: the Part C program served 2.64% of the State birth rate in 2002, and the national average was 2.24% for that same time period (APR, pages 19 and 23). The APR also indicated that the Part C program served 1.28% of the infants under the age of 12 months in the State (APR, page 23).

The Comprehensive Public Awareness and Child Find System section of the FFY 2002 APR contained numerical goals regarding the number of children identified by Part C, such as the following type of goal on page 22: "Pennsylvania will continue to serve a percentage of infants and toddlers that is comparable to national data." While it is not inconsistent with Part C of the IDEA to include a numerical goal regarding the percentages of infants and toddlers with disabilities determined eligible for services, the

State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal.

The APR may also contain goals for the number of infants and toddlers with disabilities of certain racial or ethnic backgrounds who would be identified as eligible for services under Part C by including the following type of goal on page 22 of the APR:

“Pennsylvania will continue to promote the identification of infants and toddlers from traditionally underrepresented groups at a rate that is comparable to state-level data.”

The State cannot interpret the use of “underrepresented groups” in those goals to mean racial or ethnic subgroups. The use of a goal for a racial or ethnic subgroup is inconsistent with Federal law, specifically Title VI of the Civil Rights Act. OSEP assumes that the State does not interpret the term “underrepresented populations” in those goals to mean racial or ethnic groups and if this assumption is incorrect, please provide in the next APR clarification that the State will not define underrepresented populations to include racial or ethnic subgroups.

Family Centered Services

The February 2002 OSEP Monitoring Report identified the following area of noncompliance in this cluster: family supports and services were not identified in a family assessment, or included on the IFSP. See 34 CFR §303.322(d)(1). OSEP found that Pennsylvania did not ensure that the assessment of each child identified the resources, priorities and concerns of the family, and the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the child, and that IFSPs include the services and supports needed to meet the unique needs of the child’s family. OSEP’s comments regarding this cluster will be limited to assessment information. Comments regarding IFSP content will be discussed in the Early Intervention Services in Natural Environments section of this letter.

To address noncompliance regarding assessment, the July 2002 IP included strategies to: (1) provide trainings on identifying family needs/supports and the use of community resources; and (2) provide guidance for assessing and documenting the needs of families. The July 2002 IP indicated that the State would provide the following information: (1) an increase in documentation of family needs on the multidisciplinary evaluation (MDE); and (2) a significant decrease in noncompliance with Section M of the State’s compliance monitoring tool.

In the FFY 2002 APR, the State included the following information to demonstrate its progress in meeting the assessment requirement at 34 CFR §303.322(d)(1): trend data over a four-year time period that demonstrated improvement in the percentage of counties indicating that assessment information regarding the family’s resources, priorities, and concerns is obtained on an ongoing basis (93% compliance in 2002-2003) (APR, page 34); and parent survey data from Section M of the State’s compliance monitoring tool indicating an overall increase in positive responses from families regarding outcome

statements, (85% positive feedback in 2002-2003) (APR, page 25). In the FFY 2003 APR due March 31, 2005, Pennsylvania must continue to report its progress on its efforts to ensure full compliance with this requirement.

Early Intervention Services in Natural Environments

The February 2002 OSEP Monitoring Report identified two areas of noncompliance in this cluster: (1) IFSPs did not include all EI, medical, family and other services that the child and family need (34 CFR §303.344(d) and (e)); and (2) the IFSP decision-making process was not used to determine the natural environment for the provision of EI services and the location of services (34 CFR §303.344(d)(1)(ii) and (iii)). OSEP found that Pennsylvania had not ensured that the IFSP include the services and supports needed to meet the unique needs of the child and the child's family, and had not ensured that the IFSP team determined the natural environments in which EI services would be provided and the location of the services.

OSEP's February 13, 2004 letter indicated that, in its final IP Progress Report, the State must demonstrate full compliance with each area of identified noncompliance by providing updated information regarding its review of contract language and evidence of change data (including IFSP reviews, monitoring or other data), as well as any other strategies used to address this issue, demonstrating that: IFSPs include the requisite content as specified in the February 2002 Monitoring Report; and all infants and toddlers with disabilities are receiving EI services in natural environments or have IFSPs that include a justification of the extent to which the services are not provided in natural environments.

To address noncompliance regarding IFSP content, the July 2002 IP included strategies to: (1) provide written clarification regarding medical and other non-EI services; (2) ensure that service coordinator training addresses medical and other services; and (3) require State-wide use of the new MDE format which would ensure coordination of medical and other supports. The July 2002 IP indicated that the State would provide the following information: (1) a decrease in the percentage of counties in noncompliance in the area of medical and other services not being included on the IFSP; and (2) State-wide use of the new MDE format.

In its FFY 2002 APR, the State indicated that it has completed all strategies in the IP related to this cluster (pages 28 and 29 of the APR). The State indicated that service coordinator trainings that included information on coordination of medical and other non-EI services, and documenting those services on the IFSP, were held; all county EI programs were required to use the new MDE format starting February 2003; and on-going training on the use of the format was provided at the local level (APR, page 35). The State also provided monitoring data regarding compliance with this IFSP content issue. Based on the information provided in the APR, OSEP has not identified any further concerns regarding this issue.

To address noncompliance regarding the IFSP team decision-making process in determining natural environments, the July 2002 IP included strategies to: (1) revise provider contract language to ensure team development of the IFSP and the determination of natural environments; (2) provide service coordination training on facilitating and problem solving with the IFSP team related to natural environments; and (3) expand reporting options related to home and community settings. The July 2002 IP indicated that the State would provide the following information: (1) an increase in counties that developed specific contract language regarding team decisions for natural environments; (2) an increase in competency of service coordinators in IFSP team meeting facilitation as evidenced through county self-assessment and videotaping of IFSP meetings; and (3) an increase in home and community settings used in delivering services in natural environments.

In the FFY 2002 APR, the State indicated that it implemented the strategies listed in the June 2002 IP, and provided information regarding revision to contract language, service coordination training, and an increase in home and community settings used in delivering services in natural environments. For example, revisions to contract language were validated through the monitoring process; numerous trainings were held for service coordinators, including training held in each region of the State for new service coordinators; and service settings included the home, childcare facilities, recreation sites, and other community settings (APR, pages 35-38). The State also provided the following result from its 2002-2003 monitoring of county programs: 91% of counties monitored provided services in natural environments, to the maximum extent appropriate, or included justifications on the IFSP for services not provided in natural environments (APR, page 38). The State further explained that of the four counties found out of compliance in 2002-2003, none of them were found out of compliance for two consecutive years, and they all developed a corrective action plan. Based on the information provided in the APR, OSEP has not identified any further concerns regarding this issue.

The Part C FFY 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 development areas listed in 34 CFR §303.322(c)(3)(ii)). In its FFY 2002 APR, the State indicated that, in 2002-2003, 89% of counties collected assessment information to document the attainment of desired outcomes by children and families; and in 2002-2003, 93% of the counties' periodic IFSP reviews documented the degree to which progress towards achieving outcomes is being made (APR, page 40). In the FFY 2003 APR, Pennsylvania must provide an update on its process to collect responsive data and, if available, responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods, at the county or other levels) that shows the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas, targets for improved performance and strategies to achieve those targets for this area.

Early Childhood Transition

The February 2002 OSEP Monitoring Report identified the following area of noncompliance: transition steps were not included on the IFSP. See 34 CFR §303.344(h).

To address noncompliance regarding the inclusion of transition steps in IFSPs, the July 2002 IP proposed strategies to: (1) pilot the new transition form and transition steps guidelines and adopt the finalized version statewide; (2) use feedback from the transition teach-back process (involving families) to improve transition procedures; and (3) provide a series of 10 regional trainings jointly sponsored by Part C and Part B. In its IP, the State indicated it would provide the following information: (1) State-wide use of the new transition form as part of the IFSP; (2) improvement in county procedures/activities based on teach-back recommendations; and (3) an increase in the percentage of counties in compliance with the requirement to include steps on the IFSP to support transition.

OSEP's February 13, 2004 letter responding to the State's FFY 2001 IP required that the State, in its final IP Progress Report (which was to be submitted by the State with its FFY 2002 APR), demonstrate full compliance with the identified noncompliance by providing evidence of change data, that IFSPs include the requisite transition content.

In its FFY 2002 APR, the State indicated the need for improvement in this cluster (APR, page 42). The State reported trend data that demonstrated some improvement in compliance over time regarding including on the IFSP steps to support transition (59% of the counties were found to be out of compliance for not including steps related to transition on the IFSP in 2000-2001, 43% of counties in compliance in 2001-2002 and 61% of counties in compliance in 2002-2003) (September 2003 progress report, page 13; APR, page 43). However, additional improvement is still needed.

Within 60 days of the date of this letter, the State must provide to OSEP clarification as to whether the data reported on page 43 of the FFY 2002 APR (Table 30) is compliance data and reflects a review of IFSPs of children at transition age or whether it is broader and represents IFSPs from eligible children at all ages. If the data is compliance data, the State must also provide to OSEP within 60 days of the date of this letter: (1) the number of county programs found out of compliance with the IFSP transition content requirements of 34 CFR 303.344(h), and for each of the counties found to be out of compliance, either documentation of evidence of correction of the noncompliance, or if not corrected yet, a copy of the annual training and technical assistance plan which contains the activities designed to correct the issue, as required by the State,¹ and a schedule of when those counties will complete the correction of that issue; and (2) 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 full compliance as soon as possible. If the data in the APR was reporting on all children, and

¹ On page 45 of the FFY 2002 APR, the State indicated that "all county MH/MR early intervention programs who are out of compliance with issues related to the transition planning for toddlers will include activities designed to correct transition issues on their annual training and technical assistance plans."

not just children at transition age, then within 60 days of the date of this letter, the State must provide compliance data based on the review of IFSPs of children at transition age, or if such data are not yet available, its plan to ensure that it can report on such compliance data by the next APR submission.

The APR included data that indicated the following area of noncompliance regarding transition conferences, not previously identified by OSEP: the State provided data indicating that 54% of counties 2001-2002 and 65% of counties in 2002-2003 were in compliance with the transition conference requirement (APR, page 43). 34 CFR §303.148(b)(2)(i) requires, in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, that a conference be convened among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to six months, before the child is eligible for the preschool services, to discuss any services that the child may receive. The State did not include, in the APR, strategies, proposed evidence of change, targets, and timelines that would ensure correction of the noncompliance. Therefore, the State must submit to OSEP, within 60 days of the date of this letter, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Conclusion

As noted above, within 60 days from the date of this letter, Pennsylvania must submit to OSEP:

1. Clarification as to whether the data regarding inclusion of transition steps in the IFSP is compliance data and reflects a review of IFSPs of children at transition age or whether it is broader and represents IFSPs from eligible children at all ages. If the data is compliance data, the State must also provide to OSEP within 60 days of the date of this letter: (1) the number of county programs found out of compliance with the IFSP transition content requirements of 34 CFR 303.344(h), and for each of the counties found to be out of compliance, either documentation of evidence of correction of the noncompliance, or if not corrected yet, a copy of the annual training and technical assistance plan which contains the activities designed to correct the issue, as required by the State, and a schedule of when those counties will complete the correction of that issue; and (2) 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 full compliance as soon as possible. If the data in the APR was reporting on all children, and not just children at transition age, then within 60 days of the date of this letter, the State must provide compliance data based on the review of IFSPs of children at transition age, or if such data are not yet available its plan to ensure that it can report on such compliance data by the next APR submission; and
2. A plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of

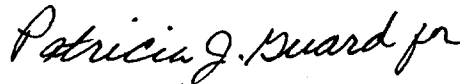
noncompliance regarding transition conferences, within a reasonable period of time, not to exceed one year from the date OSEP approves the plan.

In the next APR due March 31, 2005, Pennsylvania must submit to OSEP:

1. Progress on its efforts to ensure full compliance with the assessment requirement in the Family Centered Services cluster of this letter;
2. An update on its process to collect responsive data and, if available, responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods, at the county or other levels) that shows the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas, targets for improved performance and strategies to achieve those targets for this area; and
3. Clarification that the State will not define "underrepresented populations" (as used in the goals discussed in the child find section of this letter) to include racial or ethnic subgroups, if the State currently interprets that term to mean racial or ethnic groups.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have any questions, please contact Mary A. Williams at (202) 245-7586.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Maureen Cronin