



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Rick Melmer
Secretary of Education
South Dakota Department of Education
700 Governors Drive
Pierre, South Dakota 57501-2291

MAY - 6 2004

Dear Secretary Melmer:

The purpose of this letter is to respond to South Dakota's March 26, 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

South Dakota was monitored by OSEP in April and May of 1999. The OSEP Monitoring Report of December 1999 identified areas of noncompliance that South Dakota had to address in an Improvement Plan (IP). South Dakota's IP was submitted to OSEP in June 2000 and revised and resubmitted in November 2001. OSEP approved South Dakota's IP on April 4, 2002 with the requirement that Progress Reports be submitted to OSEP in June 2002, December 2002, and June 2003 to report progress towards implementing strategies identified in the revised IP. OSEP received all required documents from South Dakota and on February 24, 2004, OSEP closed the State's IP. Since that time, OSEP has not identified any areas of noncompliance.

It was OSEP's expectation that, as part of the State's self-assessing and improvement planning efforts, the APR 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 each cluster area within the APR are set forth below.

General Supervision

OSEP's February 24, 2004 response to South Dakota's FFY 2001 APR requested that the State include strategies in the March 31, 2004 APR designed to maintain compliance with the supervision and monitoring requirement of IDEA at 34 CFR §303.501. The State included strategies and benchmarks designed to maintain compliance. OSEP approves the implementation of these strategies.

On page 3a of the APR, the State reported the following information regarding monitoring: three applicant areas (synonymous to regions) were monitored during the reporting period. All three applicant areas were out of compliance with the content of prior notice requirement at 34 CFR §303.403(b); two applicant areas were out of compliance with the 45-day timeline requirement at 34 CFR §303.321(e). All three applicant areas submitted Improvement Plans. Improvement Plan strategies included technical assistance to service coordinators on the 45-day timeline requirement; contacts, with and letters to, school districts, informing them of their timeline requirements; revision of the State-suggested prior notice form; examples of suggested language to ensure that all appropriate content was included in the notice; and sharing strategies that assist service coordinators in meeting timelines, at the Fall 2002 Service Coordinator's Conference. Two applicant areas submitted data to support that all noncompliance had been corrected. The third applicant area had not submitted all of the data to support correction of all noncompliance; the State was working with the third applicant area so that it can submit the remaining data.

In Attachment 1 of the APR submission, the State reported that no complaints, mediations, or due process hearings occurred during the reporting period. OSEP suggests that the State examine its policies and procedures related to prior written notice document to ensure that they include all of the required content in 34 CFR §303.403(b), and whether any lack of required notice content might be a factor in the lack of complaint, mediation, and due process hearing requests. Under 34 CFR §303.403(b), "the notice must be in sufficient detail to inform the parents about - (1) the action that is being proposed or refused; (2) the reasons for taking the action; (3) all procedural safeguards that are available under 34 CFR §§303.401-.460 of this part; and (4) the State complaint procedures under 34 CFR §§303.510-.512, including a description of how to file a complaint and the timelines under those procedures."

In the next APR (for FFY 2003), the State must provide data and its analysis to support the correction of all noncompliance in the third applicant area, as well as strategies implemented during FFY 2003 to maintain compliance with the supervision and monitoring requirement of IDEA at 34 CFR §303.501.

Comprehensive Public Awareness and Child Find System

OSEP's February 24, 2004 response to South Dakota's FFY 2001 APR requested that the State include strategies in the March 31, 2004 APR designed to maintain compliance with the requirements of IDEA: 34 CFR §303.321(b)(1), all infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; 34 CFR §303.300, State eligibility criteria and procedures; and 34 CFR §303.322(c)(2), evaluation and assessment of the child must be based on informed clinical opinion. The State has included strategies and benchmarks designed to maintain compliance. OSEP approves the implementation of these strategies.

Family Centered Services

OSEP's February 24, 2004 response to South Dakota's FFY 2001 APR requested that the State include strategies in the March 31, 2004 APR designed to maintain compliance with the requirements of IDEA: 34 CFR §303.344, content of an Individualized Family Service Plan (IFSP); 34 CFR §303.322, evaluation and assessment; and 34 CFR §§303.400-460, procedural safeguards. The State included strategies and benchmarks designed to maintain compliance. OSEP approves the implementation of these strategies.

Early Intervention Services in Natural Environments

OSEP's February 24, 2004 response to South Dakota's FFY 2001 APR requested that the State include strategies in the March 31, 2004 APR designed to maintain compliance with the requirements of IDEA: 34 CFR §303.344(d), early intervention services; 34 CFR §303.344(f), dates; duration of services; 34 CFR §303.312, definitions of early intervention services; 34 CFR §303.322(d), family assessment; 34 CFR §303.344(e), other services; and 34 CFR §303.344(c), outcomes. In addition, the February 24, 2004 letter instructed South Dakota to include data indicating that all identified areas of noncompliance have been corrected in the five applicant areas that fell below 100% compliance in the area of supports and services necessary to enhance the family's capacity to meet the developmental needs of their child are identified and included on the IFSP.

On page 21 of the APR, the State reported the following information regarding this issue: monitoring results reflected that family needs assessments were being completed but information was not incorporated into the IFSP development process. Additional training occurred in the Fall of 2002 for service coordinators on the intent of the needs assessment, and each item identified by the family is required to be addressed within the IFSP development. All local applicant areas identified out of compliance met corrective action/improvement plan requirements within one year of review. Some of these applicant areas will be monitored again in 2004. The State included strategies and benchmarks designed to maintain compliance. OSEP approves the implementation of these strategies.

Submission requirements for 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 developmental areas listed in 34 CFR

§303.322(c)(3)(ii)). On page 23 of the APR, the State reported the following information regarding this issue: no baseline data was available for the reporting period; the APR indicated that a form had been developed to collect evaluation scores prior to exiting the program; the State's data system had been updated to capture improved scores; developmental levels upon entering the program were encoded in the State's data system, updated until the child exits the program, and encoded at the child's transitioning from the program. In the next APR (for FFY 2003), OSEP expects responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

Early Childhood Transition

OSEP's February 24, 2004 response to South Dakota's FFY 2001 APR requested that the State include strategies in the March 31, 2004 APR designed to maintain compliance with the requirement of IDEA at 34 CFR §303.148, transition to preschool programs. The State has included strategies and benchmarks designed to maintain compliance. OSEP approves the implementation of these strategies.


Conclusion

As noted in the General Supervision cluster, in the next APR (for FFY 2003), the State must provide data and its analysis to support the correction of all noncompliance in the third applicant area regarding the content of prior notice requirement at 34 CFR §303.403(b), and the 45-day timeline requirement at 34 CFR §303.321(e), if applicable.

Also, as noted in the Early Intervention Services in Natural Environments cluster, in the next APR (for FFY 2003), OSEP expects responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

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 questions, please contact Mary A. Williams at (202) 205-5386.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Barb Hemmelman