



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

Honorable James S. Reinhard, M.D.  
Commissioner  
Department of Mental Health, Mental Retardation  
and Substance Abuse Services  
P.O. Box 17997  
Richmond, Virginia 23218

OCT 7 2004

Dear Commissioner Reinhard:

The purpose of this letter is to respond to Virginia's March 29, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) under Part C of the Individuals with Disabilities Education Act (IDEA). Although the APR reporting period for FFY 2002 is for Part C funds used during the grant period July 1, 2002 through June 30, 2003, Virginia reported on the period from January 1, 2003 to December 31, 2003. The APR reflects actual accomplishments during the reporting period as 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 Memorandum 03-6 (regarding the submission of Part C APRs) directed States to address the following five cluster areas in their Part C APRs: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

### ***Background***

As noted in OSEP's January 23, 2003 letter to the State, Virginia's Part C Self-Assessment included data showing that the State was not in compliance with the requirement at 34 CFR §§303.321(e)(1), 303.322(e)(2) and 303.342(a), that the Lead Agency complete an initial evaluation and assessment, and hold an initial meeting to develop an Individualized Family Service Plan (IFSP), within 45 days from referral. OSEP's January 23, 2003 letter, in which OSEP accepted Virginia's strategies to address this area of noncompliance, directed the State to correct the noncompliance within one year from the date of that letter.

On July 16, 2004, the State submitted a document entitled "Plans of Improvement," addressing issues related to "evaluation, transition, family survey, and the Part C Lead Agency's follow-up with localities on local issues of noncompliance."

The State's FFY 2002 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). This letter responds to the State's APR and its continuing improvement planning efforts. OSEP's comments are listed by cluster area.

### ***General Supervision***

In its February 27, 2004 letter responding to the State's FFY 2001 APR (submitted May 20, 2003), OSEP requested that the State include, in its FFY 2002 APR, data and conclusions based on those data, regarding the effectiveness of its general supervision system in ensuring the correction of noncompliance. On pages 40 and 41 of the State's FFY 2002 APR, the State provided data from its Monitoring and Measurement Improvement System (MIMS) that showed it had made findings of noncompliance across a broad spectrum of Part C requirements, and it was using technical assistance, written guidance and training to correct the noncompliance.

The State reported on page 35 of the FFY 2002 APR that, historically, Virginia has used these measures rather than sanctions to address issues of noncompliance. On pages 36 and 37, the State reported that localities are required to provide annual Improvement Plans, but that follow-up to these plans is an area needing improvement. On page 38, the State set a target to develop, by August 1, 2004, a plan for ensuring adequate follow-up correction plans for noncompliance within one year of the State's identification. The State also outlined its plan to develop an internal database to track compliance with contract deliverables and local noncompliance, and to convene a committee to assist in ongoing implementation of MIMS, and in the development of Virginia's monitoring program.

The State did not report noncompliance in this cluster area, but did identify the need for improved performance and included strategies for such improvement. OSEP looks forward to reviewing in the next APR the implementation of these strategies and their effectiveness on correction of State-identified noncompliance.

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

In its February 27, 2004 letter responding to the State's FFY 2001 APR, OSEP directed the State to include, in the FFY 2002 APR, a summary of the State's strategies to maintain compliance and performance in its comprehensive public awareness and child find systems, as well as any new data trends. In its FFY 2002 APR, the State reported trend data from 2001 to 2003 on the changes in child count, child count by race/ethnicity, percentage of the State's birth-to-three population served in the Part C program, trends in referral sources (including data from the family survey related to referral sources), and MIMS data collected from localities, related to local public awareness efforts and child find data. Based on information reported by the State, it appears that the State's activities to identify children (e.g., media kits, radio announcements, posters, packets of materials with tactics for reaching traditionally under served populations, training for physicians and nurses, etc.), especially below the age of one, continued to have a positive effect on locating, identifying and serving children in the State.

In its FFY 2002 APR, Virginia indicated that it will utilize prevalence data, available from a cost-study analysis in Spring 2004, to: (1) develop specific targets and activities related to child find and public awareness; and (2) allocate resources and target technical assistance, public awareness and child find efforts to address any identified weaknesses in specific localities.

Virginia makes a free appropriate public education (FAPE) available to children with disabilities beginning at two years of age. On page 5 of the APR, the State noted that its Part C child count does not include children with disabilities under the age of three who are receiving FAPE from a school district. This is inconsistent with the IDEA Section 618 reporting requirements for Part C data collection, which require States to include such children in their Part C child count if such children birth to age three who are receiving early intervention services and have IFSPs as of December 1<sup>st</sup> of the year the child count is conducted. The State must submit to OSEP, within 60 days of this letter, either: (1) documentation that the Part C child count data that it submits to OSEP were consistent with OSEP's instructions; or (2) its plan to ensure that its December 1, 2004 child count data under section 618 of the IDEA will include all children birth to age three who have IFSPs as of December 1<sup>st</sup>.

### ***Family Centered Services***

In its February 27, 2004 letter responding to the State's FFY 2001 APR, OSEP requested that the State include, in its FFY 2002 APR, descriptions of results from Phase II implementation of the Family Involvement Project and the National Significance Natural Environments Theory to Practice Grant, information from the State's monitoring system, and trend data from family surveys. On pages 26 and 27 of the FFY 2002 APR, the State provided family survey data, MIMS data related to local agreements that address family-centered care, and file review data. On page 28, the State described how it used those data to design and implement strategies identifying compliance and performance in family centered services, as well as future activities for providing supports, resources, and outcomes for the children and their families. The data presented in the FFY 2002 APR also indicated an increase in the number of outcomes documented on IFSPs related to families' resources, priorities, concerns, and daily routines and activities.

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

As noted in OSEP's January 23, 2003 letter to the State, Virginia's Part C Self-Assessment included data showing that the State was not in compliance with the requirement at 34 CFR §§303.321(e), 303.322(e) and 303.342(a), that the Lead Agency complete the evaluation and assessment, and hold an initial meeting to develop an Individualized Family Service Plan (IFSP), within 45 days from referral. OSEP's letter directed the State to correct the noncompliance within one year from the date of the January 23, 2003 letter. In its FFY 2002 APR, Virginia acknowledged that it could not yet provide data demonstrating correction of this area of noncompliance. The State's November 24, 2003 Progress Report indicated that there was improvement between 2001 and 2003, and that MIMS was helpful in identifying and correcting noncompliance in this area. The FFY 2001 APR stated that the Lead Agency had identified

eleven localities that were not meeting the 45-day timeline, and the FFY 2002 APR reported on page 11 that the number had been reduced to two localities.

Although the State has demonstrated improvement in meeting Part C's 45-day timeline requirement, the State is not reporting data on the appropriate compliance standard. In its FFY 2001 APR and its November 24, 2003 final Progress Report, the State reported on the average number of days from referral to the initial IFSP meeting. In its February 27, 2004 letter responding to the FFY 2001 APR and final Progress Report, OSEP clarified that an *average* of less than 45 days from referral to holding an initial IFSP meeting does not demonstrate compliance, if the timeline for some children exceeds that timeline, and directed the State to provide documentation in its FFY 2002 APR that its procedures for correction have been effective in ensuring compliance with the 45-day timeline for all children based on actual number of days from referral to initial IFSP meeting. However, as noted above, the State reported on pages 11 and 12 of the FFY 2002 APR that all but two of the localities were now in compliance with the 45-day timeline based on the average number of days, and that that all localities would be in compliance by March 31, 2004. However, in reaching its conclusion in that all but two localities were in compliance with the 45-day timeline, the State relied on data showing that the average number of days in other localities, from referral to initial IFSP meeting, was 45 days or less.

The State has not provided documentation that it has corrected the noncompliance. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that it has corrected the noncompliance, based on the actual (not average) number of days from referral to initial IFSP meeting (i.e., that the State is ensuring that, in all localities, an initial evaluation and assessment is completed and an initial IFSP meeting held within 45 days of referral for all eligible children); or (2) if the State cannot demonstrate compliance by that date: (a) its analysis of the factors that impeded correction of the noncompliance; (b) documentation of the specific steps, including any sanctions, that it has taken to ensure correction, and the impact of those actions; and (c) 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 compliance as soon as possible but no later than the submission date for the FFY 2003 APR (due March 31, 2005). The State must also provide in the FFY 2003 APR updated data (through the submission date) on the status of correction of this area of noncompliance.

On page 15 of the FFY 2002 APR, the State included data that indicated an area of noncompliance not previously identified by OSEP. The Part C regulations require, at 34 CFR §§303.322(c)(3)(ii) and 303.344(a), that the evaluation and assessment for each child include an evaluation of the child's level of functioning in each of five specified developmental areas, and that the IFSP list the child's present level of functioning in each of those areas. The FFY 2002 APR indicated, on page 15, that the IFSP documented levels of functioning for all five developmental areas in only 66 percent of the files the State reviewed, and that hearing and vision were the areas most often omitted. The State reported that it disseminated technical assistance and policy clarification in September and October 2003 regarding this problem. On page 16 of the APR, the State also included strategies, evidence of change, targets, and timelines that it would implement to ensure compliance. On July 16, 2004, the State submitted its Plans of Improvement, which provided more specific information regarding its improvement strategies to

address these requirements. Neither the FFY 2002 APR nor the July 16, 2004 Plans of Improvement set forth a date by which the State would ensure correction of the noncompliance. OSEP accepts the State's strategies, as set forth in the two documents. In the next APR, the State must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance (i.e., that when evaluations and assessments are conducted under Part C, they are conducted in all developmental areas as required by 34 CFR §303.322(c)(3)(ii)) and that IFSPs list the child's present level of functioning in all developmental areas under 34 CFR §303.344(a), as soon as possible, but not later than 30 days following one year from the date of this letter.

From data and information provided by the State in the FFY 2002 APR, OSEP could not determine compliance in one area related to this cluster. The Part C regulations state, at 34 CFR §303.12(a)(3)(iii), that early intervention services are provided in conformity with an IFSP. On page 19 of the FFY 2002 APR, the State reported difficulty determining, based on the available data, whether all families received all early intervention services identified on their IFSPs. OSEP has not previously identified noncompliance within this area. Within 60 days of the date of this letter, Virginia must submit to OSEP, data, along with analysis and a determination of compliance or noncompliance. If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available to support such a determination, the State must submit, within 60 days of the date of this letter, a plan that describes how the State will collect data to enable it to determine compliance or noncompliance by the time that it submits its FFY 2003 APR, due March 31, 2005.

The Part C FFY 2001 and FFY 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)). The State did not provide OSEP with any data, in either the FFY 2001 APR or FFY 2002 APR, regarding how children in Part C demonstrate improvement in functional abilities in response to this performance indicator. The State submitted a plan in its FFY 2002 APR to develop a mechanism to document improved and sustained functional abilities. Part of this plan was to determine if there are existing mechanisms that can be incorporated into the current monitoring system and the target date was March 31, 2004. Virginia also reported, on page 24 of the APR, relevant data from its Infant and Toddler Online Tracking System (ITOTS) and the family survey. In the next APR (due March 31, 2005), Virginia must report 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***

In its February 27, 2004 letter in response to the State's FFY 2001 APR, OSEP stated its expectation that Virginia would, in developing the FFY 2002 APR, review its MIMS data that 69% of children have the 90-day transition conference and determine if noncompliance existed with respect to 34 CFR §303.148(b)(2)(i). OSEP also requested that the State review its data to

determine the cause(s) for any noncompliance and to evaluate the effectiveness of its past efforts to ensure timely correction of noncompliance in this area.

The State reported on page 54 of the FFY 2002 APR, that data indicated that there might be systemic noncompliance with Part C's 90-day transition conference requirement. The State addressed the noncompliance by submitting strategies, reasons for slippage, and targets, and stated that it would be submitting a plan of improvement to OSEP. On page 54 of the APR, the State indicated that anecdotal information suggested that the noncompliance with the 90-day timeline might be largely due to misinterpretation of the requirements. As a result, the State had established corrective actions and technical assistance on a local and regional basis. Localities not providing a transition planning conference at least 90 days before the child's third birthday on a consistent basis were expected to address the issue in their local improvement plan and all localities were expected to begin implementing record reviews, at least quarterly, using a checklist developed by the Virginia Part C office that prompts the locality to check each IFSP to ensure that transition planning activities are included and that the transition planning conference took place. In its July 16, 2004 Plans of Improvement, the State provided more specific information regarding its improvement strategies to ensure compliance with Part C's transition conference requirements at 34 CFR §303.148(b)(2). Neither the FFY 2002 APR nor the July 16, 2004 Plans of Improvement set forth a date by which the State would ensure correction of the noncompliance. OSEP accepts the State's strategies, as set forth in the two documents. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance with the transition planning requirements, as soon as possible, but not later than 30 days following one year from the date of this letter.

### ***Conclusion***

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

1. Either documentation that the Part C child count data that it submits to OSEP are consistent with IDEA Section 618 requirements, or the State's plan for ensuring that the child count it will report to OSEP as of December 1, 2004 meets those requirements.
2. Documentation that the State is ensuring that an initial evaluation and assessment are completed and an initial IFSP meeting is held within 45 days of referral for all eligible children. If the State cannot demonstrate compliance by that date, the State must include: (a) its analysis of the factors that have impeded correction of the noncompliance; (b) documentation of the specific steps, including any sanctions that it has taken to ensure correction, and the impact of those actions; and (c) 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 compliance as soon as possible. OSEP will review the information and determine what, if any, further action is required.
3. Data, along with analysis and a determination of compliance or noncompliance, demonstrating whether all families receive all services identified on their IFSPs. If the data demonstrate noncompliance, the State must include a plan with strategies,

benchmarks, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available to support such a determination, the State must submit a plan within 60 days of the date of this letter that describes how the State will collect data to enable it to determine compliance or noncompliance by the time that it submits its next APR, due March 31, 2005.

In addition, the State must include in its FFY 2003 APR (due March 31, 2005) documentation of progress toward correction of the following areas of noncompliance, and provide a final Progress Report, showing correction of the noncompliance, as soon as possible, but no later than 30 days following one year from the date of this letter:

1. Ensuring that the evaluation and assessment for each child include an evaluation of the child's level of functioning in each of five specified developmental areas and that the IFSP reflects the function levels for each of the areas; and
2. Ensuring that, 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, a conference is 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 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive.

Further, in the next APR (due March 31, 2005), the State must include data indicating the percentage of children participating in the Part C program who 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 Barbara Route at (202) 245-7510.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Mary Ann Discenza  
Part C Coordinator