



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

Honorable Rita H. Inos  
Commissioner of Education  
CNMI Public School System  
P.O. Box 50130 CK  
Saipan, MP 96950

NOV 18 2005

Dear Commissioner Inos:

The purpose of this letter is to respond to the Commonwealth of the Northern Mariana Islands' (CNMI's) May 3, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that CNMI 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 territories, and result in high-quality information across States and territories. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

CNMI'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 CNMI's FFY 2003 APR, CNMI's May 7, 2005 submission, and where appropriate, findings from OSEP's data collection activities during OSEP's March 2005 verification visit to CNMI. OSEP has set out its comments, analysis, and determinations by cluster area.

### ***Background***

In March 2005, OSEP conducted a visit to CNMI to verify the effectiveness of CNMI's Part C program in the areas of general supervision and the collection of data under section 618 of IDEA, to collect data to assess compliance in the following areas: public awareness and child find; early intervention services in the natural environment; and early childhood transition. The results of OSEP's verification activities are summarized in a separate letter, and are referenced in this letter as the verification letter. The results of OSEP's data collection activities are addressed under the appropriate sections of this APR letter.<sup>1</sup>

During the March 2005 visit, OSEP staff provided CNMI with a copy of a letter dated March 7, 2005 that responded to CNMI's FFY 2002 APR. That letter identified the following two areas of previously identified noncompliance: (1) six-month individualized family service plan (IFSP)

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<sup>1</sup> OSEP conducted an exit interview with the CNMI Public School System (PSS) officials at the conclusion of the March 2005 visit. CNMI addressed the issues raised in the exit interview in its FFY 2003 APR.

reviews were not completed within required timelines, as required by 34 CFR §303.342(b); and (2) annual IFSP meetings were not held as required by 34 CFR §303.342(c).

The March 2005 letter also identified the following three areas of noncompliance: (1) a monitoring system designed to identify and timely correct all areas of Part C noncompliance was not in place as required by 34 CFR §303.501; (2) all interagency agreements required by 34 CFR §303.523 were not in place; and (3) CNMI was not ensuring that transition plans were included for all eligible children consistent with 34 CFR §§303.148(b)(4) and 303.344(h); and (4) transition conferences were not held for all children potentially eligible under Part B at least 90 days prior to the child's third birthday, as required by 34 CFR §303.148(b)(2)(i).

Finally, the March 2005 letter identified the following three areas of potential noncompliance: (1) evaluations and assessments are conducted and an initial IFSP meeting is convened within 45 days after receipt of a referral, as required by 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a); (2) eligible children are receiving the early intervention services identified on the child's IFSP as required by 34 CFR §303.340(c); and (3) public awareness materials are translated, as required by 34 CFR §§303.128, 303.164, and 303.320.

### ***General Supervision***

#### **Identification of noncompliance**

CNMI submitted its revised monitoring procedures, EISS Monitoring System: Procedures for Monitoring the Effectiveness of Supports and Services for Infants and Toddlers with Disabilities and their Families (EISS monitoring procedures), dated April 2005, to OSEP in May 2005. OSEP's verification letter found that CNMI's monitoring system appeared to be designed to identify noncompliance with Part C requirements, as required by 34 CFR §303.501. However, OSEP could not determine the effectiveness of CNMI's monitoring system to correct identified noncompliance because CNMI has yet to fully implement its monitoring system. Although CNMI's FFY 2003 APR (and monitoring submissions) included a plan regarding monitoring and correction of noncompliance through an external review process, CNMI, as noted below, has not identified the appropriate timeliness standard to ensure timely correction of noncompliance. Therefore, CNMI must submit the corrected standard with its SPP, or within 60 days of the date of this letter, to ensure timely correction of noncompliance.

#### **Timely correction of noncompliance**

As discussed in OSEP's verification letter, although CNMI indicated that immediate correction of noncompliance was possible due to the small nature of the program, CNMI's EISS monitoring procedures do not clarify sufficiently when noncompliance must be corrected. Page 12 of the procedures provides that, after being notified by the PSS Commissioner of noncompliance with a Part C requirement, the recipient must "provide . . . a written response to the external (monitoring) report finding of noncompliance to include a plan for correction of identified noncompliance areas within one year from the time of the written response." However, noncompliance must be corrected within one year of identification by CNMI, not within one year

of the response to the PSS Commissioner. Accordingly, CNMI must revise its monitoring procedures to clarify that all identified noncompliance is corrected within one year of identification by CNMI, and submit the revised procedures (as part of its plan to ensure timely correction of noncompliance) with the SPP or within 60 days of the date of this letter.

#### Dispute resolution

On pages 6 and 7 of the FFY 2003 APR, PSS provided information about two complaints that had been filed and resolved within the required timeline. On page 7 of the FFY 2003 APR, CNMI reported that there had been no requests for mediation or due process hearings. OSEP confirmed this information during the March 2005 verification visit. CNMI provided additional information on pages 8 and 9 of its FFY 2003 APR regarding its strategies to ensure that parents receive prior written notice documents, including information regarding complaints.

However, as noted in OSEP's verification letter, OSEP interviewed parents and EISS service coordinators and providers and learned that not all parents were aware of the right to file a complaint or the complaint procedures. Based on this information, CNMI submitted on May 7, 2005, a revised prior written notice under 34 CFR §303.403(b) that CNMI indicated it had revised to include the Part C complaint procedures in 34 CFR §§303.510 through 303.512. OSEP has reviewed this May 7, 2005 notice to determine whether it describes the complaint procedures in 34 CFR §§303.510-303.512 and determined that the revised prior written notice does not describe specific complaint procedures, including the required corrective actions under 34 CFR §303.510(b) and the time limitations under 34 CFR §303.511(b). Therefore, CNMI must revise its prior written notice to include the requirements of 34 CFR §303.510(b) and 303.511(b). With the SPP, due December 2, 2005, or within 60 days of the date of this letter, CNMI must submit a written assurance that its prior written notice has been revised to include this required content.<sup>2</sup>

#### Personnel

On pages 9 through 11 of the FFY 2003 APR, CNMI provided personnel data and stated that CNMI maintained a sufficient number of qualified service providers. OSEP appreciates CNMI's efforts in this area.

#### Collection and timely reporting of accurate data

On page 14 of the FFY 2003 APR, CNMI stated that it had a system in place for collecting and reporting timely data, and that PSS would continue to collect and report all data, as required (see

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<sup>2</sup> OSEP did not review the May 7, 2005 prior written notice to determine whether all content requirements of 34 CFR §303.403(b) were included; however, a cursory review confirmed that the notice also did not include a description of: (1) the Part C due process hearing requirements that CNMI has adopted under 34 CFR §303.420, including specifically 34 CFR §300.507(c), 300.508, 300.509(d), 300.510(a) and 300.511; and (2) the revised due process hearing and mediation provisions in section 615, such as dispute resolution procedures, that are contained in the IDEA 2004 Amendments. CNMI indicated in Section II of its FFY 2005 Part C Application that it would revise its procedural safeguards (including its prior written notice) to comply with IDEA 2004 Amendments by June 30, 2006.

OSEP's verification letter). OSEP looks forward to reviewing CNMI's updated data in this area in the SPP.

#### Interagency agreements

OSEP's March 2005 letter required CNMI to confirm whether there were interagency agreements between PSS and the Department of Public Health (DPH), including agreements between those agencies on the islands of Rota and Tinian, and if so, to provide OSEP with copies of the interagency agreements. On pages 9 and 10 and in Attachment 4 of the FFY 2003 APR, PSS provided information demonstrating that PSS revised its interagency agreement with DPH to include the provision of services and supports on Saipan, Rota, and Tinian. CNMI provided copies of the interagency agreements. OSEP appreciates CNMI's efforts in this area.<sup>3</sup>

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

OSEP's March 2005 letter required PSS to provide evidence that CNMI determined which languages were needed for public awareness activities, and confirmation that CNMI translated public awareness activities into those languages, or submit a plan for providing the needed translations, as required by 34 CFR §§303.128, 303.164 and 303.320.

On page 20 of the FFY 2003 APR, PSS stated that it provided translations of public awareness materials in Chamorro, Carolinian, Tagalog, Chuukese, Pohnpeian, Chinese, and Korean. OSEP appreciates the work of CNMI in this area.

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

On pages 24 through 27 of the FFY 2003 APR, PSS included data and information regarding supports, services, and resources for increasing families' capacities to enhance outcomes for infants and toddlers that were collected through family surveys, interviews, and file reviews. On page 26, PSS stated that file reviews showed that 100% of the IFSPs were developed with parents and described the family's concerns, priorities, and needs. OSEP appreciates CNMI's efforts to improve performance in this area and looks forward to CNMI's response to the family outcome indicator (#4), in the SPP.

#### ***Early Intervention Services (EIS) in Natural Environments (NE)***

##### Service coordination

On pages 28 through 30 of the FFY 2003 APR, PSS provided data and information, showing that families continued to have access to service coordinators. OSEP appreciates CNMI's efforts in this area.

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<sup>3</sup> OSEP will provide its analysis of these interagency agreements in a separate letter.

#### 45-day timeline

OSEP's March 2005 letter required CNMI to confirm, within 60 days of the date of that letter, that, within 45 days after receiving a referral, an evaluation and assessment are conducted and the initial IFSP meeting is convened, in accordance with the requirements at 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a). PSS provided data and analysis regarding the implementation of these requirements on pages 31 through 33 of the FFY 2003 APR. In Table 25 on page 32 of the FFY 2003 APR, data indicated that of 24 initial IFSP meetings conducted from 2001 to 2004, 18 were conducted within the 45-day timeline and six were delayed due to family and child circumstances outside the lead agency's control. OSEP looks forward to the State's updated information in this area in the SPP, due December 2, 2005.

#### Individualized family service plans (IFSPs)

OSEP's March 2005 letter required PSS to submit a plan for ensuring that there was a six-month review of an IFSP for an eligible child and the child's family, in accordance with 34 CFR §303.342(b), and that an annual review was conducted to evaluate the IFSP for each child's family in accordance with 34 CFR §303.342(c). In Attachment 3B to the FFY 2003 APR, PSS included strategies, proposed evidence of change, targets, and timelines designed to ensure compliance with the requirements at 34 CFR §§303.342(b) and 303.342(c), including: (1) revising procedures for completing the six-month review and the annual meetings; (2) training on the procedures for the six-month review and annual IFSP meetings; (3) updating the tracking and reporting process; and (4) establishing sanctions for noncompliance. OSEP has reviewed and accepts this plan. CNMI must include data and analysis demonstrating progress toward compliance with 34 CFR §§303.342(b) and 303.342(c) with the SPP, and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

OSEP's March 2005 letter accepted CNMI's strategies to correct potential noncompliance with the requirement that eligible children and their families received early intervention services identified on their IFSPs, as required by 34 CFR §303.340(c). The March 2005 letter required PSS to provide baseline and evidence of change/correction data and information by August 1, 2005, demonstrating completion of strategies. If the data demonstrated continued noncompliance, PSS was required to include a plan in that report with additional or revised strategies, proposed evidence of change, targets, and timelines to ensure compliance as soon as possible.

On pages 35-37 of the FFY 2003 APR, PSS provided data demonstrating that from September 2003 through June 2004, out of a total of 353 early intervention services that should have been provided during that time period, 143 were not provided. Of those 143, 62 were not provided because of system issues. Thus, approximately 17% of early intervention services identified on IFSPs were not provided during this time period for reasons that were within the control of the lead agency. Accordingly, CNMI was in noncompliance with the requirement that eligible children and their families received early intervention services identified on their IFSPs, as required by 34 CFR §303.340(c). On page 37 of the FFY 2003 APR, PSS included strategies,

proposed evidence of change, targets, and timelines designed to ensure compliance as soon as possible, including: (1) monitoring the provision of services; (2) rescheduling visits with families that missed their scheduled services; (3) implementing procedures to provide early intervention services when service providers cancel on short notice, due to illness, etc.; and (4) training staff regarding IFSP outcomes that were based upon family concerns, priorities, and resources. OSEP has reviewed and accepts this plan. CNMI must include data and analysis documenting progress toward compliance with 34 CFR §303.340(c) with the SPP, or within 60 days of the date of this letter, and a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

#### Natural environments

On page 38 of the FFY 2003 APR, PSS included data and information demonstrating that 96% of children received services in programs for typically developing children or at home, and that 100% of IFSPs provided a justification for services that were not provided in the natural environment. OSEP appreciates the work of CNMI in this area and looks forward to reviewing CNMI's updated data in this area in the SPP.

#### Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional and adaptive developmental areas. The Part C FFY 2001, 2002, and 2003 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 pages 40 and 41 of the FFY 2003 APR, PSS included data and analysis indicating that CMNI was collecting data on outcomes, but needed to improve its performance in collecting these data. On page 41 of the FFY 2003 APR, PSS included strategies to improve performance, including the development of a system for reporting outcomes and providing training about functional outcomes.

The SPP instructions establish a new indicator in this area, for which States and territories must provide entry 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 CNMI's performance and compliance required under §616(d) of the IDEA. CNMI should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing CNMI's plan for collection of this data in the SPP.

#### ***Early Childhood Transition***

OSEP's March 2005 letter accepted CNMI's plan to correct noncompliance with: (1) the transition conference requirement in 34 CFR §303.148(b)(2)(i); and (2) the transition plan requirements in 34 CFR §§303.148(b)(4) and 303.344(h), and required PSS to submit two

Progress Reports. The first Progress Report was due with the FFY 2003 APR and the final Progress Report on this issue, demonstrating compliance, is due April 6, 2006.

Regarding the transition conference requirement in 34 CFR §303.148(b)(2)(i), PSS did not provide data in the FFY 2003 APR regarding transition conferences that were held at least 90 days prior to the child's third birthday.<sup>4</sup> During OSEP's March 2005 verification visit, CNMI staff indicated to OSEP that they thought the requirement was to convene a transition conference *any time within 90 days from the child's third birthday*. OSEP clarified during the verification visit that the timeline for this requirement is, at the very earliest, nine months prior to the child's third birthday (at the discretion of all parties) but no later than 90 days prior to the child's third birthday. On page 44 of the FFY 2003 APR, PSS stated that it recognized this error and in Attachment 3C of the FFY 2003 APR, PSS provided additional strategies designed to ensure compliance. In the SPP, CNMI must provide in response to Indicator #8, its baseline compliance data for this requirement. No later than April 6, 2006, CNMI must provide a final progress report to OSEP, including data and analysis demonstrating compliance with the transition conference requirements in 34 CFR §303.148(b)(2)(i).

Regarding the transition planning requirements in 34 CFR §§303.148(b)(4) and 303.344(h), on page 42 of the FFY 2003 APR, PSS provided data regarding the number of transition plans that were developed at least 90 days prior to a child's third birthday, showing an increase from 31% in 2003, to 76% in 2004. This data indicates significant improvement. The Part C regulations at 34 CFR §§303.148(b)(4) and 303.344(h) require that transition plans be established but do not specify a time period for the IFSP to include the transition plan. The SPP in Indicator #8 also requires reporting compliance with Part C's transition plan requirements. In submitting its final Progress Report on this issue, which is due April 6, 2006, CNMI may wish to report data on the number of transition plans that are developed and reflected in eligible children's IFSPs by their third birthday as required by 34 CFR §§303.148(b)(4) and 303.344(h).

### ***Conclusion***

CNMI must submit to OSEP with the SPP an interim Progress Report (and a final Progress Report no later than 30 days following one year from the date of this letter) on the following areas of noncompliance identified in this letter:

1. Six month and annual IFSP reviews as required by 34 CFR §§303.342(b) and 303.342(c);
2. All eligible children and their families receive the services listed on their IFSPs as required by 34 CFR §303.340(c);

With the SPP, or within 60 days of the date of this letter, CNMI must submit written confirmation that its prior written notice has been revised to include the requirements in 34 CFR §§303.510(b) and 303.511(b). With the SPP, or within 60 days of the date of this letter, CNMI

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<sup>4</sup> Section 637(a)(9)(A)(9ii)(II) of the IDEA Amendments of 2004 changed the transition conference timeline from "not more than 6 months" to "not more than 9 months" before the child is eligible for preschool services (i.e., before the child's 3<sup>rd</sup> birthday).

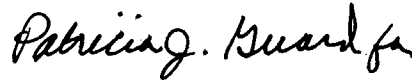
must also submit its plan to ensure timely correction of noncompliance as required by 34 CFR §303.501(b) (and include as part of this plan its revised timeliness standard to ensure correction by CNMI within one year of when it identifies the noncompliance).

By April 6, 2006, CNMI must provide a final Report to OSEP, including data and analysis demonstrating compliance with the 90-day transition conference at 34 CFR §303.148(b)(2)(i) and transition planning requirements at 34 CFR §§303.148(b)(4) and 303.344(h).

IDEA 2004, §616, requires each State and territory to submit a 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 CNMI 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 CNMI and looks forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities with their families. If you have questions, please contact Lucille Sleger at (202) 254-7528.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Suzanne Lizama  
Part C Coordinator