



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

SEP 21 2005

Honorable Antonia C. Novello, M.D.
Commissioner
Department of Health
Empire State Plaza
Albany, New York 12237

Dear Commissioner Novello:

The purpose of this letter is to respond to the New York State Department of Health (NYDOH's) June 16, 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 the State 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 result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State'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 the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's February 2, 2005 FFY 2002 APR response letter required the State to submit a final Progress Report by April 15, 2005 or with its FFY 2003 APR that included data, analysis, and other information to demonstrate full compliance with four previously-identified areas of noncompliance¹:

- General Supervision: (1) correction of identified noncompliance in the municipalities and agencies that were required to develop and implement a corrective action plan (CAP) to correct noncompliance as required by 34 CFR §303.501(b)(4); and (2) ensure that complaints under 34 CFR §§303.510 through 303.512 and due process hearings under 34 CFR §§303.420 through 303.425 are resolved in a timely manner.
- Early Intervention Services in Natural Environments: (1) demonstrate by using the actual number of days, rather than the average number of days, from referral to initial individualized

¹ OSEP required NYDOH to submit data for any agency or municipality not in full compliance by the submission of the FFY 2003 APR that includes: (1) analysis of the factors that have impeded correction of the noncompliance in the agencies and municipalities where the State has identified noncompliance, and whether existing strategies were effective or needed to be refined to ensure full compliance in the municipalities and agencies currently implementing a corrective action plan; (2) documentation of the specific steps, including sanctions, that have been taken to ensure correction, and the impact of those actions; and (3) if the State determined that additional strategies were needed or that existing strategies must be modified, its proposed strategies (by municipality and agency, if appropriate), evidence of change and timelines to ensure compliance as soon as possible.

family service plan (IFSP) meeting to ensure that the initial IFSP meeting is held within 45 days of the referral to Part C as required by 34 CFR §303.342(a); and (2) ensure that a justification is documented on the IFSP when early intervention services cannot be appropriately provided in the natural environment as required by 34 CFR §§303.12 and 303.344(d)(1)(ii).

NYDOH was required to submit data in the FFY 2003 APR to demonstrate improvement with the following three areas of performance:

- General Supervision: the reporting of timely and accurate data consistent with the requirements under section 618;
- Family Centered Services: the extent to which family supports and services necessary to increase the family's capacity to enhance outcomes for infants and toddlers and their families are included on the IFSPs; and
- Early Intervention Services in Natural Environments: the percentage of children that demonstrate improved and sustained functional abilities in the five developmental domains.

NYDOH was also required to submit a final Progress Report by March 2, 2006 to demonstrate full compliance with three previously-identified areas of noncompliance:

- Family Centered Services: ensure that IFSPs document family needs, supports, and services necessary to enhance the family's capacity to meet the developmental needs of the child as required by 34 CFR §303.344(c).
- Early Childhood Transition: (1) hold the transition meeting with the approval of the family at least 90 days before the child's third birthday as required by 34 CFR §303.148(b)(2); and (2) ensure that IFSPs include steps to support the transition of the child and the family to Part B or to other early intervention services as required by 34 CFR §§303.148(b)(4) and 303.344(h).

General Supervision

Identification and timely correction of noncompliance

On pages 2-14, and in Attachment III and Attachment IV of the FFY 2003 APR, the State included data and analysis regarding correction of noncompliance identified in OSEP's FFY 2002 APR response letter in the following area: correction of identified noncompliance in the municipalities and agencies that were required to develop and implement a CAP to correct noncompliance as required by 34 CFR §303.501(b)(4). NYDOH reported data that indicated the 16 municipalities, 185 contracted providers, and five providers administered by the New York State Education Department (NYSED) completed the strategies in their CAPs to demonstrate full compliance with this requirement. NYDOH stated that all municipalities, agencies, and individual providers were required to submit an attestation that the strategies in their CAPs were completed and the noncompliance corrected within one year of the date of identification. NYDOH's regional staffs were required to verify the results of the CAPs and conducted periodic follow-up, on-site focused reviews. NYDOH, in Attachment III, stated that the timeline for the remaining agencies and individuals to demonstrate compliance with this requirement extended beyond this time period and these individuals and agencies were targeted to complete the strategies in their CAPs by December 2005. NYDOH stated that sanctions and enforcement actions were implemented. NYDOH reported that currently, six providers were disqualified, five disqualifications were pending, and fiscal audits were conducted for three providers. NYDOH also reported that during the FFY 2003 reporting period that 37 municipalities, 286 agencies, and 598 individuals received a new,

comprehensive monitoring review and were in the process of developing a CAP. NYDOH stated that during FFY 2003, 61 of 286 agencies, and 222 of 598 individual CAPs were approved for implementation. OSEP appreciates the State's efforts in this area.

In the State Performance Plan (SPP), due on December 2, 2005, the State must submit updated data and analysis for the remaining agencies and individual providers targeted to complete their CAPs by December 2005 to demonstrate compliance with this requirement.

Dispute resolution

On pages 14-16 of the FFY 2003 APR, the State included data and analysis that demonstrated progress towards correction of the noncompliance identified in OSEP's February 2005 letter in the following area: ensure that formal written complaints, mediations and due process hearings were resolved in a timely manner as required by 34 CFR §303.519-303.512. The State's data in Attachment 1 indicated a decrease (from FFY 2002 to FFY 2003) in the number of formal written complaints, due process hearing requests filed and an increase in the number of mediation agreements reached. NYDOH reported that of 13 complaints filed, two were withdrawn, three had findings, one had no findings, and seven were pending at the end of the reporting period. The State reported that decisions for the four complaints that it investigated were not within timelines. NYDOH's data also indicated eight of 11 mediations requested resulted in agreements and the remaining three concluded in due process hearings. Of the five hearings requested, two hearings were held and fully adjudicated in a timely manner, two were withdrawn, and one was pending, based on parents' request for an extension. NYDOH implemented strategies, such as issuing program guidance documents to administrative law judges to facilitate rendering decisions in a timely manner. Procedural changes were implemented to reduce the timeframe for acknowledging an initial complaint and the format to compile investigation summaries and final reports to ensure timely decisions. NYDOH stated that State monitoring teams conducted follow-up visits to ensure that corrective actions were completed in a timely manner. In the SPP, due on December 2, 2005, the State must include updated data on timely resolution of complaints. Failure to demonstrate compliance may negatively impact the State's FFY 2006 Part C grant award.

Personnel

On pages 16-20 and in Attachment GS.IV.1 of the FFY 2003 APR, the State included data and analysis regarding performance in this area to ensure that sufficient personnel were available to meet the identified early intervention needs of all eligible infants and toddlers and their families. NYDOH reported data that indicated 1,725 agencies and 1,487 providers were approved by NYDOH and 735 agencies and 1,603 individual providers are under contract with the municipalities. NYDOH reported that a comprehensive State-level provider approval process was in place to ensure that sufficient numbers of trained and qualified personnel were available to meet the needs of all eligible children and their families. NYDOH reported that the development of a new software application continued in order to capture new data requirements, improve capacity to track provider approval history and integrate provider approval data with individual monitoring findings. NYDOH reported that systemic issues identified from monitoring were used to target State-level training of personnel and to design individualized technical assistance. NYDOH stated that standards for paraprofessionals were being established along with capitation rates to assist in

the delivery of early intervention services. OSEP appreciates the work of the State in improving performance in this area.

Collection and timely reporting of accurate data

On pages 20 -21 of the FFY 2003 APR, the State included data and analysis regarding its performance and compliance in this area. NYDOH reported that all municipalities used the Kids Integrated Data System (KIDS) software application for program management that complied with HIPPA requirements. All municipalities, except New York City, used the KIDS software application for fiscal management and submitted the required data on a quarterly basis consistent with the provisions in the State's contract. NYDOH stated that two issues relative to the reporting of race and ethnicity and the child's age at the time of transition were addressed and the required data was submitted to WESTAT in conjunction with the December 1, 2003 data report. NYDOH reported that proposals were under Department review to select a contractor to develop a new Early Intervention data system to centralize data at the State level and provide "real-time" access to all data related to the Early Intervention Program (EIP). OSEP looks forward to reviewing the State's data in response to this indicator in the SPP due December 2, 2005.

Fiscal responsibility

In Attachment 2 of the FFY 2003 APR, the State included data and analysis regarding its performance in this area to ensure the coordination of funding resources within the State to ensure the provision of early intervention services as required by section 640 of the IDEA. NYDOH stated that State funds constituted the greatest financial support. The other sources of funding included: (1) Medicaid [Federal, State and local]; (2) State general funds; (3) private insurance; and (4) in-kind contributions from local administrators. OSEP appreciates the State's effort in this area.

Comprehensive Public Awareness and Child Find System

On pages 25-29, page 42 and Figures 1, 2, 3 and 4 in the Appendix of the FFY 2003 APR, the State included data and analysis regarding its performance and compliance in this area. NYDOH provided data from the analysis of its public awareness and child find activities as required by 34 CFR §§303.320-303.323. NYDOH reported that the State had a moderate eligibility definition² and the number of eligible children birth to age three served remained constant from 4.79% in FFY 2002 to 4.42% in FFY 2003, above the national average of 2.24%. The number of eligible children under the age of one, as compared to the State's under-one population, remained steady at 1.02% during the past two years. NYDOH stated that referrals from primary referral sources were constant, with the greatest number of referrals from community programs. NYDOH reported that the effectiveness of the State's child find and public awareness efforts were demonstrated by the fact that 86% of the infants and toddlers referred to Part C had a multidisciplinary evaluation; of those, 75% were found eligible for Part C services. Of the 75% of infants and toddlers found eligible for Part C: (1) 11% had a diagnosed condition³ and 89% had only a developmental delay;

² NYDOH eligibility criteria specify that eligible infants and toddlers must present a 12-month delay in one area, or 33% delay in one area or 25% delay in two areas, or 2 standard deviations in one area or 1.5 standard deviations in two areas, or informed clinical opinion by a multidisciplinary team.

³ NYDOH reported that the infants and toddlers with a diagnosed condition with a high probability of developmental delay included: (1) dyspraxia; (2) mixed developmental disorder; (3) speech/language disorder; (4) Down syndrome;

(2) more than 50% with Down syndrome were referred before one month of age; (3) 60% with communication delays were referred between 16 and 24 months of age; (4) 57% with a hearing loss were referred by six months of age; and (5) those with a diagnosis of autism/pervasive developmental disorders increased from 188 in FFY 1999 to 974 in FFY 2003. OSEP appreciates the State's efforts in this area. OSEP looks forward to reviewing the State's data in response to the child find indicators in the SPP, due December 2, 2005.

Family Centered Services

On pages 30-35 of the FFY 2003 APR, the State included data and analysis demonstrating 100% compliance with the following requirements as required by OSEP's February 2005 letter: (1) IFSPs documented family needs, supports, and services necessary to enhance the family's capacity to meet the developmental needs of the child as required by 34 CFR §303.344(c); and (2) mechanisms were in place to determine the extent to which family supports and services enhanced the family's capacity to assist the child to achieve stated outcomes. NYDOH stated that the results of on-site monitoring reviews and follow-up activities on CAPs demonstrated that all municipalities were in compliance with the requirement to ensure that IFSPs documented: (1) when families had the opportunity to participate in a family assessment and those that declined; (2) a statement of family strengths, resources, and concerns; (3) services that were linked to the child's multidisciplinary evaluation; (4) other services funded outside of the EIP that were needed by the child and family; and (5) other public benefit programs for which the family was eligible.

NYDOH reported that families whose infants and toddlers had an established condition or were experiencing developmental concerns had access to family support services that included counseling, support groups, sibling groups, respite and social work services that increased the family's capacity to enhance the outcomes for their child and family. NYDOH stated that further activities would be implemented to better understand the impact of family supports on child outcomes, including: (1) development of guidance documents on the family assessment process; (2) development of new curricula and training on the development of the IFSP; (3) implementation of a family survey regarding the family perspectives, family assessment and family support services; and (4) dissemination of the parent survey in the summer of 2005. OSEP appreciates the State's efforts in this area. OSEP looks forward to reviewing the State's data in response to the family outcomes indicator in the SPP, due December 2, 2005.

Early Intervention Services in Natural Environments

Service coordination

On pages 36-40 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure continued performance and compliance in this area. NYDOH reported that service coordinators were appointed, on the average, within four days of the referral to Part C, to ensure the identification of a single service coordinator, as required by 34 CFR §§303.12, 303.23 and 303.321(e). NYDOH reported data that indicated 98.3% of the infants and toddlers and their families determined eligible received ongoing service coordination that included all required

(5) developmental language disorder; (6) prematurity, 750 to 999 grams; (7) infantile autism; (8) extreme prematurity, 500 to 749 grams; and (9) cleft palate.

services and activities. OSEP appreciates the work of the State in ensuring compliance with this requirement.

Evaluation and identification of needs

On pages 41-46 of the FFY 2003 APR, the State included data and analysis regarding its efforts to ensure compliance in this area. NYDOH reported that 86% of the children referred to Part C received a multidisciplinary evaluation and 100% of the evaluators utilized the results from existing evaluations to complete the evaluation process to determine eligibility as required by 34 CFR §§303.322(c)-(d) and 303.322(e). Of the children referred during the reporting period who were evaluated and found eligible, 92.6% continued to receive an initial IFSP (representing 65% of all children referred during the reporting period). During the reporting period, 86% of children referred received a multidisciplinary evaluation. Reasons the remaining 14% of infants and toddlers referred to Part C did not receive an evaluation and assessment, included: (1) family declined to participate in early intervention services [36% were followed-up within two months]; (2) family could not be located; (3) child was not age-eligible for Part C [6.3% referred to Part B preschool]; (4) child identified as at-risk; and (5) family moved to another location. OSEP appreciates the State's efforts in this area.

Individualized family service plans (IFSPs)

On pages 37-40 of the FFY 2003 APR, the State included data and analysis that demonstrated 100% correction of noncompliance identified in OSEP's February 2005 letter in the following area: to hold the initial IFSP meeting within 45-days of the referral to Part C as required by 34 CFR §303.342(a). NYDOH reported data that indicated 80% of IFSPs were completed within 45-days of the referral to Part C and a random sample of 16 counties completing their CAPs identified that 100% of the delays were due to child-or family-related circumstances. OSEP appreciates the State's efforts in this area. OSEP looks forward to reviewing the State's data in response to the IFSP indicator in the SPP, due December 2, 2005.

On pages 47-52 of the FFY 2003 APR, the State included data and analysis that demonstrated 100% correction of noncompliance identified in OSEP's February 2005 letter in the following area: ensure that all services identified on the IFSP were provided as required by 34 CFR §303.344. NYDOH reported that based on child record reviews, 100% of the municipalities documented on the IFSPs: (1) services linked to developmental needs of the child and family; (2) dates to initiate services; (3) implementation of all services as specified; (4) other services needed by the child and family; and (5) other public programs or benefits for which the child and family were eligible. OSEP appreciates the State's efforts in this area.

Natural environments

On pages 53-57 of the FFY 2003 APR, the State included data and analysis that demonstrated 100% correction of noncompliance identified in OSEP's February 2005 letter in the following area: ensure that services were provided in the natural environment and an appropriate justification was written on the IFSP when early intervention services were not provided in the natural environment as required by 34 CFR §303.342(d)(1)(ii). NYDOH reported that 89% of the IFSPs reviewed indicated that services were provided in natural environments and the remaining 11% had an

appropriate child-related justification that included steps needed to ultimately provide services in the natural environment. OSEP appreciates the State's efforts in this area. OSEP looks forward to reviewing the State's data in response to the natural environment indicator in the SPP, due December 2, 2005.

Early childhood outcomes

On pages 58-60 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance with the requirement that children participating in the Part C program demonstrate improved and sustained functional abilities. NYDOH reported data indicating: (1) 25% of the children exiting EIP in FFY 2003 had their developmental delays resolved compared to 18% in FFY 1999; (2) 47% of a sample of 790 children with an initial and follow-up evaluation demonstrated improvement in their developmental status as measured by a positive change in the severity index; and (3) 39% of the children who exited EIP on or before their 3rd birthday demonstrated that developmental delays or conditions were resolved.

NYDOH reported that, with support from the General Supervision Enhancement Grant (GSEG), it would continue to develop mechanisms to determine the extent to which children participating in EIP demonstrated improved and sustained functional abilities in the five developmental domains. NYDOH stated that a three-phase action plan was initiated to accomplish this goal that included: (1) implementation of concept mapping; (2) conduct field study in three counties (including New York City); and (3) utilization of evaluation results to develop recommendations for statewide data collection and monitoring. In preparing the SPP, the State must determine whether data collected related to this area will be responsive to those requirements. OSEP looks forward to reviewing the State's response to the early childhood outcomes indicator in the SPP, due December 2, 2005.

Early Childhood Transition

OSEP's February 2005 letter required NYDOH to submit a final Progress Report on March 2, 2006 to demonstrate full compliance with the requirements to: (1) hold the transition meeting with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §303.148(b)(2); and (2) ensure that IFSPs include steps to support the transition of the child and the family to Part B or to other early intervention services as required by 34 CFR §§303.148(b)(4) and 303.344(h). The State was to provide in the FFY 2003 APR an interim progress report in these two areas.

On pages 61-65 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting the noncompliance as follows: (1) holding the transition conference with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §303.148(b)(2); and (2) including steps on the IFSP to support the transition of the child and family to Part B or other early intervention services as required by 34 CFR §§303.148(b)(4) and 303.344(h).

NYDOH reported monitoring results and completion of EIP CAPs that demonstrated: (1) implementation of revised policies and procedures; (2) IFSPs included a transition plan; and (3) transition conferences were held with parental consent. NYDOH reported that local providers and agencies where noncompliance was identified continued to implement strategies in their CAPs that

were targeted for completion by December 2005. In the SPP due December 2, 2005 the State must provide updated data and information to demonstrate progress towards compliance with this requirement and a final Progress Report by March 2, 2006 to demonstrate full compliance with this requirement. OSEP looks forward to reviewing the State's data in response to the transition indicator in the SPP, due December 2, 2005.

Conclusion

As noted above, the State must submit to OSEP, data and information for the two previously-identified areas of noncompliance in conjunction with the SPP, due on December 2, 2005 to demonstrate full compliance with the following:

- General Supervision: (1) correction of identified noncompliance among the EIPs that were required to complete the strategies in their CAPs by December 2005 as required by 34 CFR §303.501(b)(4); and (2) timely resolution of complaints for the seven complaints pending as of June 30, 2004, and any additional complaints as required by 34 CFR §303.510-303.512 and timely resolution of due process hearings required under 34 CFR §303.425.

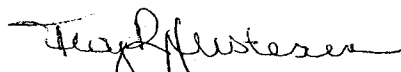
In the SPP, due December 2, 2005, NYDOH must submit data demonstrating or progress towards correcting the two previously-identified areas of noncompliance and a final Progress Report on March 2, 2006 to demonstrate full compliance with the following:

- Early Childhood Transition: (1) transition meetings are held at least 90 days prior to the child's third birthday; (2) the lead agency notifies the appropriate local education agency; and (3) IFSPs include steps to support the transition of the child and the family, as required by 34 CFR §§303.148 (b) and 303.344(h).

IDEA 2004, Section 616, requires each State 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 the State 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 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 Alma McPherson at (202) 245-7443.

Sincerely,



Troy R. Justesen
Acting Director

Office of Special Education Programs

cc: Barbara McTague
Acting Director