



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

Honorable Henry L. Johnson
State Superintendent
Mississippi State Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0771

SEP 15 2004

Dear Superintendent Johnson:

The purpose of this letter is to respond to Mississippi's April 12, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B 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 B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

Mississippi did not identify any areas of noncompliance or include data indicating noncompliance in either its Part B Self-Assessment or its Improvement Plan that OSEP accepted on June 8, 2004.

In March 2004, OSEP conducted a visit to the State to verify its systems for general supervision, data collection and reporting under Section 618 of IDEA, and State-wide assessment. On page 5 of its June 16, 2004 letter regarding the visit, OSEP identified one area of noncompliance: the State was not ensuring compliance with the timeline for due process hearing decisions (34 CFR §300.511(a) and (c)).

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. This letter responds to the State's FFY 2002 APR and to the documentation sent to

OSEP on April 30, 2004 regarding correction of the one area of noncompliance that OSEP identified during the verification visit. OSEP's comments are listed by cluster area.

General Supervision

As noted above, OSEP's June 2004 verification letter identified one area of noncompliance in this cluster: the State was not ensuring that a final decision was reached, and that a copy of the decision mailed to each of the parties, not later than 45 days after the receipt of a request for a hearing (unless the hearing officer granted a specific extension of time at the request of a party), as required by 34 CFR §300.511(a) and (c). In order to correct the noncompliance, the Mississippi Department of Education (MDE) sent a memorandum to all due process hearing officers in the State on April 30, 2004, informing them of the noncompliance relating to the timeliness of due process hearing decisions, and specified necessary actions to be taken immediately. OSEP appreciates the prompt action that the State took to ensure compliance with the requirements of 34 CFR §300.511(a) and (c). OSEP looks forward to reviewing MDE's data and its analysis to ensure continued compliance in this area in the next APR.

In its June 2004 letter to the State reporting on the verification visit, OSEP[▲] concluded that, "OSEP believes that MDE's monitoring procedures represent a reasonable approach to the identification and correction of noncompliance. However, without collecting data at the district level, OSEP cannot determine whether the State is fully effective in identifying and correcting noncompliance." On pages two through four of the APR, the State indicated that because it piloted its new monitoring system in 2003, no baseline data on the new monitoring system were available for 2002-2003. On pages three and four of the APR, the State included six projected targets, with strategies and timelines, to address timely resolution, focused monitoring, self-assessment, and the use of district data profiles. In its FFY 2003 APR, Mississippi must submit baseline and trend data and documentation that include both implementation of strategies and the resulting data demonstrating that it is identifying noncompliance, and in a timely manner, ensuring correction of that identified noncompliance.

On pages 2-3 of the APR (including Attachment 1), the State provided information regarding complaints and due process hearings, including targets and future activities. In Attachment 1 of the APR, Mississippi reported that 8 of 17 State complaints received during July 2002-June 2003 were completed within timelines. No additional information was provided regarding the other 9 complaints. In its June 2004 verification letter to the State, based on a review of MDE's complaint log for the period July 3, 2003 to March 9, 2004, OSEP determined that MDE had issued written decisions on Part B complaints within 60 calendar days from its receipt of the complaint, unless the timeline was extended due to exceptional circumstances that existed with regard to a particular complaint, consistent with 34 CFR §300.661(a) and (b)(1). The State also reported in the APR that 10 due process hearing requests had been received during the 2002-2003 timeframe and that no decisions were issued after the timeline expired. OSEP looks forward to reviewing MDE's data and its analysis to ensure continued compliance in this area in the next APR.

On pages six through eight of the APR, the State provided data indicating that less than eight percent of Mississippi's special education teachers were not fully licensed. Three targets were

reported as met in this area and additional projected targets, with activities and timelines, were also included. These new targets included a focus on certification of middle school teachers and on licensure options for speech/language pathologists. OSEP looks forward to reviewing MDE's data and its analysis to ensure improvement in this area in the next APR.

On page 5 of the APR, the State included documentation of MDE's procedures and practices regarding the collection and reporting of accurate and timely data. OSEP suggests that, in its FFY 2003 APR, Mississippi submit information that includes both implementation of those strategies and the resulting data demonstrating improvement.

Early Childhood Transition

The State's Self-Assessment indicated that timely transition planning was an issue and subsequently included Part C to B transition as a goal area in the State's Improvement Plan. On page 9 of the APR, the State reported that it had met its targets to: (1) improve communication between Parts B and C; (2) apply for a General Supervision Grant focused on C to B Transition; (3) investigate coordination of data systems to ensure timely transition planning and services; and (4) develop and submit its State Improvement Plan for C to B Transition. On page 10, the State included a projected target to "increase the percentage of eligible children receiving services at age 3 by 2 percent to 30.4 percent". While it is not inconsistent with IDEA to include a numerical goal to increase the percentages of children with disabilities determined eligible for services, Mississippi must continue to monitor to ensure that eligibility decisions for all children are made in conformity with the requirements of Part B of IDEA (at 34 CFR §§300.531 through 300.535) and not based upon a numerical goal. In the next APR, OSEP looks forward to reviewing MDE's data, and its analysis, to ensure compliance and improvement of the State's efforts in this area.

Parent Involvement

The APR did not include baseline data or analysis to identify barriers or issues regarding parent involvement. On pages 10-13 of the APR, the State did include projected targets, activities, and timelines for collecting baseline data and increasing parent involvement. OSEP looks forward to reviewing the 2003 parent survey data and analysis, including the identification of any barriers, and strategies and timelines for improving performance in this cluster area in the next APR.

Free Appropriate Public Education in the Least Restrictive Environment

On pages 15-17, 23-24 and 27 of the APR, the State included performance indicators, data, and analysis regarding the overrepresentation of Black students in certain disability categories.¹ Although the percentages, by race/ethnicity, of children with disabilities receiving special education was not significantly disproportionate from the percentages of children in the State's

¹ The Mississippi State Improvement Plan includes goals that are based on a consent decree entered into by the State to resolve allegations of discrimination on the basis of race in the implementation of special education programs and violations of the IDEA. (*Mattie T., et al. v. Henry Johnson, et al.*, N. D. Mississippi, No. DC75-31-S, 2003 Modified Consent Decree (Dec. 23, 2003)).

general student enrollment, the data showed a disproportionately high representation of Black students in the categories of specific learning disabilities and mental retardation. The APR included several activities, with timelines, for improving the State's performance in this area and indicated that it was reviewing district level practices regarding evaluation to ensure that they complied with Part B. 34 CFR §300.755 requires that States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or in placements into particular settings must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement to ensure that they comply with Part B. As stated in the April 2004 OSEP letter responding to the State's Improvement Plan, "If the State determines that significant disproportionality based on race with respect to the identification or placement of children with disabilities is occurring, the State must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification process to ensure that they comply with the Part B requirements." In the next APR, the State must provide information that includes both implementation of strategies and the resulting data.

Baseline data in the State's Improvement Plan showed that 18.2 percent of students with disabilities graduated with a high school diploma in 1998-1999. The State reported data on page 18 of the APR showing that, while graduation rates for children with disabilities remain much lower than those for their nondisabled peers, the graduation rate for the State's students with disabilities nearly doubled over a three-year period, increasing to 23 percent in 2000-2001, and to 34.8 percent in 2001-2002. The rates for nondisabled students were 76.6 percent in 2000-2001, and 80.5 percent in 2001-2002.

Mississippi's Drop-out Prevention Plan includes the following goal that applies to both nondisabled students and students with disabilities: "By 2007-2008, local educational agencies will show evidence of annually reducing their dropout rate for grades 7-12 and the longitudinal/cohort dropout rate for grades 9-12." The State did not, however, address drop-out rates in its FFY 2002 APR, and must address this area in its FFY 2003 APR.

Regarding suspension and expulsion rates, on page 24 of the APR the State notes that it does not have data for disabled students that is comparable to the data it has for all students, and on page 28 it identifies as a future activity determining methods of calculating comparable data (presumably the rate for disabled students to the rate for nondisabled students). Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education programs (IEPs), the use of behavioral interventions, and procedural safeguards to ensure that the policies, procedures, and practices comply with Part B. 34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. The instructions to the 2002 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. The State's 2002 APR, however, did not include any

information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of comparisons described above. (If a State does not have comparable data for students with and without disabilities, it must determine whether significant discrepancies exist in the rate for children with disabilities across LEAs.) In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

The Part B regulations require, at 34 CFR §300.139, that each State must report to the public, with the same frequency and in the same detail as it reports on the assessment of nondisabled children: (1) the number of children with disabilities participating in regular assessments and in alternate assessments; and (2) the performance results of these children on regular assessments and on alternate assessments, if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children. Those reports to the public must include: (1) aggregated data that include the performance of children with disabilities together with all other children; and (2) disaggregated data on the performance of children with disabilities. As further explained below, the State has not met these requirements.

First, the State did not meet the requirements of 34 CFR §300.139, to report on the participation of students with disabilities on State-wide assessments in the same detail as it reports on the participation of nondisabled children. In the Superintendent's 2002 Annual Report posted on MDE's website, the State reported, by grade and content area, on the number of students participating in State-wide assessments. While not expressly stated on the website, the numbers reported appear to include both students with and without disabilities. The website did not provide any disaggregated participation data for students with disabilities. In Attachment 3 of the APR, the State provided participation data for students with disabilities *across* all grade levels, and again did not provide data that were *disaggregated by* grade level. Further, the State reported an identical participation percentage for the reading and math assessments, and acknowledged in Attachment 3 that the State does not calculate participation rates by content/grade level.

Second, the participation data that the State provided were not fully accurate, as evidenced by the fact that the sum of the percentages of students with disabilities exceeds 100%: students tested on grade-level achievement standards, 53%; students who participated in out-of-level assessments, 41%; students who participated in Alternate Assessments, 11%; and students not tested, 6%.

Third, Mississippi did not report *performance* on the alternate assessment by grade level or content, and further indicated on Attachment 3 that in 2003-2004, the State would be able to disaggregate performance on the alternate assessment by content area but not by grade. The data and information in the State's FFY 2002 APR indicated that the State was not reporting on the

performance of children with disabilities who took alternate assessments in the same detail as it reports on the assessment of nondisabled students, as required by CFR §300.139(a)(2)(ii).

As noted above, the data in the APR and information posted on the State's website indicated three areas of noncompliance with the requirement of 34 CFR §300.139: (1) the State did not report on participation of students with disabilities in State-wide assessments in the same detail as for nondisabled students; (2) the State did not report accurate participation data; and (3) the State did not report on performance of students with disabilities in alternate State-wide assessments in the same detail as for nondisabled students. The State did not include, in the APR, strategies, evidence of change, targets and timelines that would ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date of OSEP's acceptance of the proposed strategies. Therefore, the State must provide a plan to OSEP, within 60 days of the date of this letter that describes how the State will correct these three areas of noncompliance. Mississippi must include performance data and its analysis demonstrating its progress in reaching compliance in this area in the next APR, and provide a final progress report within 30 days following one year from the date of this letter demonstrating correction of the noncompliance, including supporting data and analysis. OSEP has included special conditions on the Part B grant awards of States with similar failures to meet the reporting requirements of 34 CFR §300.139. If the State has not remedied this issue by July 1, 2005, the Department may well impose special conditions relating to this issue on the State's FFY 2005 grant.

On page 15, 21-22 and 29 of the APR, the State provided an analysis of data, along with strategies and timelines for increasing the placement of children with disabilities in the least restrictive environment (LRE). Pursuant to the long-standing consent decree in *Mattie T. v Holiday*, MDE must collect and report specified data regarding identification and placement of children with disabilities, particularly children identified in the categories of specific learning disability (SLD) and mental retardation (MR), and those having low-incidence disabilities. The State included data in the APR indicating an increase in the number of children with disabilities served in general education settings, and a decrease in the number of children served in self-contained classrooms.

On page 15 of this section, the APR noted that Mississippi did not currently collect skills data on preschool children, and indicated that the State would investigate various methods of data collection and analysis relative to this area. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, OSEP expects States to include either data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

Although the State did not identify any areas of noncompliance in its Self-Assessment, it did identify secondary transition as an area of concern. Mississippi indicated on pages 30-31 of the APR that the State did not collect data on post-school activities. The APR included targets for addressing this area, including investigating ways of collecting data on post-school activities and increasing the percentage of students with disabilities who participate in appropriate transition planning. OSEP suggests that, in the next APR, Mississippi include baseline data, strategies, and timelines for improving performance, along with documentation of the implementation of the strategies and resulting data demonstrating improvement in the area of secondary transition.

Conclusion

As stated above, within 60 days of receiving this letter, Mississippi must submit to OSEP a plan that describes how the State will correct the three areas of noncompliance related to reporting on the participation and performance of students with disabilities in State-wide assessments. The State must include performance data and its analysis demonstrating its progress in reaching compliance in these areas in the next APR, and provide a final progress report within 30 days following one year from the date of this letter demonstrating correction of the noncompliance, including supporting data and analysis.

In addition, as noted above, in the next APR, due March 31, 2005, Mississippi must include the following:

- Baseline and trend data, and documentation that includes both implementation of strategies and the resulting data, demonstrating that the State is identifying noncompliance and ensuring correction of that identified noncompliance in a timely manner;
- Data and analysis regarding drop-out rates;
- Information on the results of its review of policies, procedures and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race;
- Data and analysis regarding suspension and expulsion rates (as required by the APR instructions); and
- Either data (and analysis) related to early childhood outcomes, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

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 children and youth with disabilities and their families. If you have questions, please contact Cynthia Bryant at (202) 245-7284.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Melody Bounds, Ed.D.
Director of Special Education