



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

Honorable Wayne G. Sanstead
State Superintendent
North Dakota Department of Public Instruction
600 E. Boulevard Ave., Dept 201
Bismarck, North Dakota 58505-0440

SEP 17 2004

Dear Superintendent Sanstead:

The purpose of this letter is to respond to the North Dakota Department of Public Instruction's (NDDPI's) March 31, 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 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

OSEP monitored North Dakota during the weeks of August 3 and September 21, 1998 for the purpose of assessing compliance in the implementation of IDEA. In the Monitoring Report, dated September 14, 1999, OSEP identified the following areas of noncompliance: (1) an inadequate supply of qualified personnel to implement IDEA requirements (page 35); (2) not ensuring extended school year services were available to all children with disabilities (page 36); (3) insufficient support in regular education settings to ensure placement opportunities for children with disabilities in the least restrictive environment (LRE)(page 37); (4) not ensuring that students and agencies were invited to attend individualized education program (IEP) meetings where transition will be considered (page 41); (5) inadequate notification to parents regarding the consideration of needed transition services for IEP meetings (page 22); (6) not ensuring that all IEPs contained a statement of needed transition services beginning at age 16

(page 42); and (7) deficiencies identified through monitoring were not effectively corrected within one year of identification (page 48). NDDPI was required to submit an Improvement Plan (IP) identifying strategies for implementing correction for the areas of noncompliance, sources of technical assistance, timelines for completing strategies, and methods of evaluating the effectiveness of the IP. NDDPI's initial IP was submitted in March 1999 and OSEP approved a revised IP in June 2001 and Progress Reports were submitted to OSEP in January 2002, February 2003, and January 2004. On May 4, 2004, OSEP determined, based on its review of the progress reports, that NDDPI completed the improvement strategies identified in the Improvement Plan. OSEP requested that NDDPI continue the processes of self-assessment and improvement planning as part of its Part B Annual Performance Report (APR). Furthermore, OSEP requested that NDDPI monitor each of the previous areas of noncompliance and provide updates in the next APR.

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 (as well as any other areas identified by the State to ensure improvement). OSEP's comments are listed by cluster area.

General Supervision

In the September 14, 1999 Monitoring Report, OSEP identified two areas of noncompliance related to general supervision: (1) an inadequate supply of qualified personnel to implement IDEA requirements; and (2) deficiencies identified through monitoring were not corrected in an effective and timely manner. NDDPI addressed these two areas in their IP. On May 4, 2004, OSEP determined that NDDPI completed the improvement strategies.

During the reporting period, NDDPI reported in Attachment 1 that it received 37 complaints, all of which were completed/addressed within required timelines. On page 13 of the APR, NDDPI reported that twelve of 37 complaints (32%) were directly related to the lack of qualified staff in one small, rural school district. NDDPI reported that this district had come into compliance during the 2003-04 school year by recruiting and employing appropriately qualified staff. In Attachment 1, NDDPI reported that four hearing requests were made and no due process hearings were held.

During the reporting period, NDDPI monitored eight local education agency (LEA) special education units. Page 4 of the APR describes the NDDPI monitoring process as structured around six principles of IDEA: (1) zero reject (education for all); (2) nondiscriminatory assessment; (3) free appropriate public education (FAPE); (4) placement in the LRE; (5) parent participation; and (6) procedural safeguards. On page 12 of the APR, NDDPI reported the following systemic noncompliance in the following areas: (1) timely Integrated Written Assessment Reports (IWARS); (2) documentation of parent input in the present levels of educational performance (PLEP); (3) secondary transition documentation; (4) documentation of the LRE discussion; and (5) consent for initial evaluation placed in student file. However, NDDPI did not include strategies and procedures to remedy the identified systemic

noncompliance or data indicating that these identified systemic issues, or other noncompliance identified through monitoring were corrected. Therefore, the State must, within 60 days of the date of this letter, either submit data and analysis showing that it is ensuring correction of identified systemic noncompliance or a plan containing strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. If the State cannot show current compliance, it must also provide evidence of progress in correcting the noncompliance, including supporting data and its analysis, in the FFY 2003 APR and, in addition, provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

NDDPI reported on page 15 of the APR that 98% of special education personnel were fully certified; however, there remain unfilled special education positions: specific learning disabilities (3); emotional disturbance (5); mental retardation (1); speech pathology (12); and other (5). NDDPI improvement strategies, including the achievement of State Improvement Grant (SIG) goals, resulted in a high percentage of fully certified personnel in special education (94.6 % in the 2001-2002 school year) with only a few vacancies remaining (31 in the 2002-2003 school year). SIG goals included the recruitment and retention of qualified personnel and the support of the Resident Teacher Program. As a projected target, NDDPI intended to increase to 100% the number of appropriately qualified personnel to meet the educational needs of children with disabilities. OSEP looks forward to reviewing the results of the State's future activities in the next APR.

NDDPI reported on page 19 of the APR that the State has consistently complied with OSEP data submission requirements. In addition, NDDPI reported that General Supervision Enhancement Grant (GSEG) goals will expand capability for accurate CIFMS data collection and that an Online Reporting System (ORS) was introduced Spring 2004. OSEP looks forward to reviewing the results of the State's future activities in the next APR.

Early Childhood Transition

There were no areas of noncompliance identified in OSEP's September 1999 Monitoring Report related to Part B Early Childhood Transition and the data included in the APR did not identify noncompliance in this area. In the FY 2002 APR at page 20, NDDPI reported 98% of the three year olds who exited Part C were evaluated in order to determine Part B eligibility. Seventy-four percent were found eligible for preschool special education services and 26% did not qualify for special education services.

NDDPI should consider whether other data available to it relevant to early childhood transition, such as: (1) data on meeting transition planning deadlines; and (2) data on LEA participation in transition conferences that it obtains through monitoring (this could assist in improving transition for children between the Part C and Part B programs). The APR on pages 21 through 22 refers to a General Supervision Enhancement Grant which the State received at least in part "to develop and implement a coordinated system for collecting and analyzing relevant and usable Part B and

Part C data for focused monitoring and improvement planning purposes.” OSEP assumes that this system does not involve disclosure of personally identifiable information from a child’s education records or, if it does, that it is consistent with the IDEA and the Family Education Rights and Privacy Act (FERPA). Enclosed with this letter is a copy of OSEP’s February 11, 2004 Letter to Elder on the permissible limited disclosure of personally identifiable information for purposes of meeting IDEA’s child find mandate, which provides some clarification on meeting IDEA and FERPA requirements in early childhood transition.

Parent Involvement

There were no areas of noncompliance identified in OSEP’s September 1999 Monitoring Report related to Parent Involvement. NDDPI reported that the State did not collect data to measure parent involvement on a State-wide basis. NDDPI reported that parent perception surveys were provided to LEAs as part of their self-assessment procedures within the continuous improvement monitoring process. However, a State-wide data collection and analysis system for this cluster had not been implemented. NDDPI stated that the development of a State-wide, web-based parent survey was in progress. Because of the lack of a comprehensive system for collecting parent involvement data, NDDPI did not report baseline/trend data, targets, and projected targets. Nor did the APR indicate that the State considered monitoring data available to it relevant to parent involvement, such as: parent input in the evaluation process under §300.532(b); parent consent to conduct an evaluation under §300.505; and parent participation in IEP meetings under §300.501.

OSEP did not previously identify noncompliance within the parent involvement cluster. In the next APR, North Dakota must respond to the data requested and include, where requested, projected targets specific to the State’s goal. As noted in the APR instructions, these projected targets are to be data-based and measurable (e.g., an increase in parent involvement in their child’s education). In addition, NDDPI must include its specific strategies and activities to achieve its projected targets and explanations of progress and slippage.

Free Appropriate Public Education in Least Restrictive Environment

In the September 1999 Monitoring Report, OSEP identified the following area of noncompliance related to the cluster of Free Appropriate Public Education in Least Restrictive Environment: insufficient support in the regular education setting to ensure placement opportunities for children with disabilities in the LRE. NDDPI addressed the identified area of noncompliance in the IP. On May 4, 2004, OSEP determined that NDDPI completed the improvement strategies identified in the IP and that the State should continue to monitor each of the previous areas of noncompliance and provide updates in the next APR. In the FFY 2002 APR, NDDPI reported on disproportionality, State-wide Assessments, graduation and drop-out rates, and suspension/expulsion data.

Disproportionality. In attachment 2 of the APR, NDDPI reported disproportionality among racial/ethnic groups beyond the relative difference (.0.20 or <-0.20) in several categories for both

identification and settings. Baseline data for 2002-2003 indicated an over-representation in identification of students with disabilities in the race/ethnicity categories of Black, Hispanic, and American Indian. The State noted that although, the relative difference for Black and Hispanic students showed over-representation, the number of students is relatively low. Overall, the number of Black students is 1.05% of the total and the number of Hispanic students is 1.29% of the total. A comparison of data reported in the 2001 NDDPI biennial performance report (BPR) indicated continued over-representation of American Indian students receiving special education services. NDDPI indicated that it would focus on the over-representation of American Indian students as the numbers in other categories was relatively small or there was no significant disproportionality. NDDPI reported one of its activities was sharing data with LEA administrators regarding the over-representation of American Indian students in special education.

In educational settings, NDDPI reported an underrepresentation of Asian students. In the category outside regular class 21%-60%, data showed an over-representation for Black, Hispanic, and American Indian students. In the category of outside regular class more than 60%, data showed over-representation for Black and American Indian students. Overall, North Dakota educational settings data were comparable to or above the national average. In the area of outside regular class less than 21%, NDDPI reported 78.3 %, significantly above the national average of 48.44%.

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. The instructions to the FFY 2002 APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. The State's FFY 2002 APR, however, while identifying significant disproportionality, did not include any information indicating that the State had provided for a review of policies, procedures or practices used in identification or placement of children with disabilities. In the next APR, the State must include the information required by the instructions. If the FFY 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation.

Graduation and Drop-out Rates. There were no areas of noncompliance identified in OSEP's September 1999 Monitoring Report related to this area. In the APR, NDDPI reported data on graduation and drop-out rates.

NDDPI reported that of the total number of students with disabilities ages 14 through 21, 3.6% dropped out of school during the 2002-2003 school year. This represented a slight increase from the 3.4% reported in 2001. American Indian students comprised 20% of the students with

disabilities dropping out of school. According to NDDPI, the percentage of students with disabilities dropping out was computed by dividing the number of exiters with exit reason of "dropping out" by the total number of students with disabilities ages 14-21. Drop-out information was collected at the school level and there was no disaggregation between students with and without disabilities. During 2002-2003, NDDPI reported that 72.1% of the students with disabilities exited through graduation. In comparison, data showed that 94.34% of all students exited through graduation. There were no targets established for this performance indicator during the 2002-2003 school year. As projected targets for 2003-2004, NDDPI reported the following: (1) high school graduation rates and drop-out rates for students with disabilities would be comparable to graduation rates and drop-out rates for nondisabled students; and (2) further analysis of data that reflects a higher drop-out rate for American Indian students with disabilities compared to White students with disabilities. To achieve the projected targets, NDDPI reported the implementation of a State-wide positive behavioral supports (PBS) initiative to provide further support for children with disabilities in the general education setting. The data included in the APR did not include noncompliance in these areas. NDDPI should implement their proposed future activities such as the PBS initiative. OSEP looks forward to reviewing the results of the State's future activities in the next APR.

State-wide Assessments. Data reported by NDDPI in Attachment 3 showed consistency between the number of students enrolled with IEPs and the number participating in State-wide assessments. NDDPI tested and reported assessment results for grades 4, 8, and 12. For 2002-2003, NDDPI reported that 12.4% of students with disabilities achieved a level of proficient or advanced proficiency on State-wide math assessments. This is a decrease of 1.75% from 14.1% in 2001-2002. On State-wide reading assessments, NDDPI reported for 2002-03 that 24.8% of students with disabilities achieved proficient or advanced proficiency levels. This is a decrease of 1.2% from 26% in 2001-2002. NDDPI on page 35 of the APR identified a number of strategies it would undertake to improve the performance of children with disabilities on State-wide assessments. OSEP looks forward to reviewing the results of the State's future activities in the next APR.

Suspension/Expulsion Data. There were no areas of noncompliance identified in OSEP's September 1999 Monitoring Report related to this area. In the APR, NDDPI reported data on suspension/expulsion rates.

NDDPI reported a significant reduction in the number of students with disabilities who were suspended or expelled. For 2002-2003, 12 students were reported in NDDPI's suspension and expulsion data; nine were White and three were American Indian. This was a reduction from 22 in 2001-2002. Four of these students were removed to interim alternative education settings by school personnel. A hearing officer removed two students for more than ten days for weapon or drug violations. Six students were removed by the schools for reasons other than weapon or drug violations for more than ten days. As a projected target, NDDPI reported that the State would maintain or reduce the number of students with disabilities who are suspended or expelled. Activities to achieve project targets included the implementation of positive behavioral supports.

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. 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 IEPs, the use of behavioral interventions, and procedural safeguards to ensure that the policies procedures and practices comply with Part B. The instructions to the FFY 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 FFY 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. In the next APR, the State must include the information required by the instructions. If the FFY 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.

Placement in Least Restrictive Environment (LRE). On page 36 of the APR, NDDPI reported 78.3% of students with disabilities ages 6-21 are outside the regular class less than 21% of the day. Historical data showed that North Dakota consistently ranked high in the area of general education placement for services and educational supports for students with disabilities. NDDPI reported that the State-wide PBS initiative will result in further supports for all children with disabilities in the general education setting.

Outcomes for Pre-school Children with Disabilities.

On page 37 of the APR, the State reported that it had no data related to the early language/communication, pre-reading and socio-emotional development of preschool children with disabilities. NDDPI indicated that the GSEG will support development of a coordinated monitoring system across Part C and Part B for the purpose of collecting accurate, consistent data related to early childhood outcomes. 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 socio-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

In the September 1999 Monitoring Report, OSEP identified three areas of noncompliance related to the Secondary Transition cluster: (1) students, and agencies likely to be responsible for providing or paying for secondary transition services, were not invited to attend IEP meetings where transition would be considered; (2) IEP meeting notification provided to parents did not include information that a purpose of the meeting was the consideration of needed transition services, and that the student and other agency representatives, when appropriate, would be invited; and (3) IEPs did not always reflect a statement of needed transition services beginning at age 16 (or younger, if appropriate). NDDPI addressed the three identified areas of noncompliance in its IP. On May 4, 2004, OSEP determined that NDDPI had completed the improvement strategies identified in the IP, that the State should continue to monitor each of the previous areas of noncompliance and provide updates in the next APR.

NDDPI's targets, projected targets, and future activities on pages 41-42 of the APR focused on the North Dakota Transition Follow-up Project (NDTFP). The NDTFP provided the State with a broad look at secondary outcomes, including the following: (1) percent of students attending/attended post-secondary schools; (2) percent of students currently employed; (3) percent of unemployed students currently looking for a job; (4) average wages, hours, and time on the job for students. OSEP looks forward to reviewing the results of the NDTFP in the next APR.

Conclusion

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

data and analysis showing that it is ensuring correction of noncompliance identified through monitoring or a plan containing strategies, proposed evidence of change, targets, and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

As noted above, in the next APR, North Dakota must submit to OSEP:

- (1) information indicating that the State had provided for a review of policies, procedures, or practices used in identification or placement of children with disabilities, if the State identified significant disproportionality based on race;
- (2) information indicating that the State examined data to determine if significant discrepancies were occurring in the rate of long-term suspensions and expulsions of

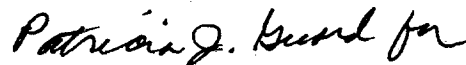
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children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies; and

- (3) data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve targets for 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 Tony G. Williams at (202) 245-7577.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

Enclosure

cc: Bob Rutten