



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

Honorable Lyonel Tracy
Commissioner of Education
New Hampshire Department of Education
101 Pleasant Street
Concord, New Hampshire 03301-3860

AUG 31 2005

Dear Commissioner Tracy:

The purpose of this letter is to respond to New Hampshire's April 14, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B 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 November 10, 2004 FFY 2002 APR response letter required the New Hampshire Department of Education (NHDOE) to submit a plan to OSEP by January 10, 2005, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan, regarding: (1) timely complaint resolution; and (2) individualized education programs (IEPs) or individualized family service plans (IFSPs) in effect by the child's third birthday. OSEP also required the State to include current data and analysis demonstrating progress toward compliance in the State's FFY 2003 APR, and a final report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepted the plan. New Hampshire submitted the requested plans on January 10, 2005. OSEP's March 14, 2005 letter stated that OSEP accepted New Hampshire's plan to address the timely resolution of complaints and required NHDOE to submit a final report on or before April 14, 2006 with data and analysis demonstrating compliance with the requirements for timely complaint resolution at 34 CFR 300.661.

OSEP's March 2005 letter also required NHDOE to revise its proposed plan to ensure that all children participating in early intervention programs assisted under Part C of IDEA, and who

will participate in preschool programs assisted under Part B of IDEA, have an IEP or IFSP in effect by the child's third birthday. New Hampshire resubmitted its plan on April 13, 2005.

OSEP also required NHDOE to report in the State's FFY 2003 APR: (1) documentation of correction of the State's findings at nonpublic schools (34 CFR §300.600); (2) current data and analysis demonstrating progress toward compliance with timeliness of evaluations (34 CFR §§300.343(b) and 300.536(b)); (3) information regarding the comparison the State did to determine whether significant discrepancies are occurring in the rate of long term suspensions or expulsions, and if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them (34 CFR §300.146); and (4) documentation of data regarding preschool outcomes (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. With regard to the timeliness of evaluations, OSEP's November 2004 letter required the State to provide a final report, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days after one year from the date of the letter. Because this due date is near the date of the submission of the State Performance Plan (SPP), due December 2, 2005, OSEP requests that NHDOE submit the final Progress Report as an addendum to the SPP; however, if the State prefers, the submission regarding the timeliness of evaluations may be submitted on December 10, 2005, the original submission due date.

General Supervision

Identification and timely correction of noncompliance

On pages 1 through 7 of the FFY 2003 APR, the State included information regarding the identification and timely correction of noncompliance. OSEP's November 2004 letter required NHDOE to include documentation of correction of the State's findings of noncompliance at nonpublic schools in the FFY 2003 APR. NHDOE did not include this information in its FFY 2003 APR, but did include a statement indicating that the monitoring process requires an individualized corrective action plan for each public or non-public special education provider that has been determined to be in noncompliance with a State or Federal special education requirement to be completed in a timely manner.

On page 4 of the FFY 2003 APR, the State described its monitoring process and procedures for correction of deficiencies identified through monitoring, specifically its procedures requiring that "corrections of areas of noncompliance are to be completed in a timely manner but no more than one year from approval of the Corrective Action Plan" and that "onsite visitations and/or monitoring activities to assess progress on the Corrective Action Plan will occur prior to 12 months from when the Corrective Action Plan was approved." Regulations at 34 CFR §300.600 require that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency: (1) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and (2) meets the education standards of the State educational agency (including the requirements of this part). Under 20 U.S.C. 1232d(b)(3), each State

educational agency monitors programs under its general supervisory authority to ensure compliance with the requirements of IDEA. Data and information describing compliance with these requirements may include: (1) the number of programs/agencies monitored during the reporting period; (2) the type and number of findings of noncompliance identified by the State in these programs; (3) the type and number of findings of noncompliance identified by the State during the previous reporting period along with evidence of correction of the identified noncompliance within one year of identification (i.e., within one year of the date when the program was officially notified of the noncompliance); (4) evidence of any sanctions imposed by the State when programs did not comply within one year; and (5) explanations for any noncompliance existing beyond one year of identification.

The State may identify the noncompliance through a monitoring report from the State or another type of mechanism that the State uses to inform its local educational agencies about the State's findings of noncompliance. If the State uses a process before issuing the final monitoring report (a draft report with comments back from the local educational agency or an appeal process), the date of identification would be the date of the final report, letter, memorandum or other mechanism the State uses to inform the local educational agency of the noncompliance. The State may not use a timeline of one year from the date the State approves a corrective action plan from a local educational agency (LEA) in response to notification of noncompliance.

Within 60 days from the date of this letter, NHDOE must provide evidence that the State ensures correction of identified noncompliance in a timely manner, including noncompliance identified at nonpublic schools, and noncompliance identified in transition plans, as described in the Secondary Transition section of this letter or a plan to provide such evidence within a reasonable period of time, not to exceed one year of identification. The plan must include strategies, proposed evidence of change, targets and timelines for ensuring identification of noncompliance with Part B and the correction of all identified noncompliance, including noncompliance identified at nonpublic schools, within one year of identification, as soon as possible, not to exceed one year from when OSEP accepts the plan.

Formal written complaints

The conclusion of New Hampshire's FFY 2002 APR required the State to submit a plan to correct the noncompliance regarding timely resolution of State complaints. OSEP's March 2005 letter approved the State's plan to ensure timely complaint resolutions as soon as possible but not later than 30 days following one year from the date of that letter. On pages 2-3 of the FFY 2003 APR, the State included information regarding formal written complaints. The State submitted a revised Attachment 1 on July 26, 2005 indicating that of 136 complaints filed, 56 were withdrawn or not accepted for lack of jurisdiction, 42 resulted in findings, 18 resulted in no findings, and 20 were set aside because the issue was addressed in a due process hearing. The revision also showed that 36 complaint decisions were issued within 60 days and 18 complaints had decisions issued beyond 60 days but had a documented time extension. No complaints were pending as of August 29, 2004. Thus, of the 60 complaint decisions that were issued, NHDOE provided evidence that 54 of 60 complaints were resolved within 60 days from the date the complaint was received or within a longer period if the timeline was extended because exceptional circumstances exist with respect to a particular complaint (34 CFR §300.661(a)(1))

and (b)). Although this represents an improvement from the timeliness of complaint resolutions in the FFY 2002 APR, NHDOE must report in the SPP on its progress in ensuring compliance in this area and must provide, on or before April 15, 2006 (as stated in OSEP's March 2005 letter), a final report, with data and analysis demonstrating that the State ensures timely resolution of all Part B complaints as required by 34 CFR §300.661.

Mediation

On pages 2 and 41, the State included information regarding mediation. The State reported that of 37 mediations, 12 mediations resulted in agreements and 25 did not. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Due process hearings and reviews

NHDOE must ensure that a final decision is reached in a due process hearing, and a copy mailed to each of the parties within 45 days from the date of receipt of the hearing request, unless the hearing officer extends the 45-day timeline for a specific period of time at the request of a party to the hearing (34 CFR §300.511(a) and (c)). A State educational agency must also ensure that if a hearing exceeds the 45-day timeline, there is documentation that the hearing officer extended the timeline at the request of a party and for a specific period of time. On pages 3-4 of the FFY 2003 APR, the State included information regarding due process hearings and reviews. The State reported that it received 115 due process hearing requests during the period July 1, 2003-June 30, 2004; 43 of 115 were fully adjudicated, with 16 decisions issued within the 45-day timeline and 14 decisions issued within properly extended timelines under 34 CFR §300.511, and 13 decisions issued beyond the timelines. Thus, thirty percent of the decisions were issued beyond IDEA timelines. The State had no hearings pending as of August 30, 2004. The State indicated it found noncompliance not previously identified by OSEP when reviewing this data. To correct this noncompliance, NHDOE worked with the New Hampshire Office of Legislation and Hearings and, during the last quarter of 2004, only two hearings exceeded timelines (each exceeded the timeline by one day). The strategies instituted to correct this noncompliance included weekly tracking of hearing timelines and flagging as deadlines approach. On page 5, the State indicated that during the last quarter of 2004, it completed 97 percent of due process hearings within IDEA timelines. In the SPP, when reporting on due process hearings and reviews, the State must also include data and analysis demonstrating continued compliance and information regarding the specific steps taken to ensure this continued compliance.

Personnel

On pages 17 through 31 of the FFY 2003 APR, the State included information regarding personnel. The State reported trend data that showed continued critical shortages of State-certified special education personnel. On page 19, NHDOE reported the results of a staff review that showed no substantiated allegations related to "the numbers of qualified (certified, licensed, or trained as appropriate) administrators, teachers, paraprofessionals, related service specialists and other educational personnel available to provide services to children with disabilities." On pages 21 through 31, NHDOE reported on its efforts to improve the number and quality of educational personnel serving students with disabilities. For example, the State planned to

examine the speech/language specialist certification to address the shortage of qualified personnel to meet the needs of children who require speech services. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 31 through 40 of the FFY 2003 APR, the State included information regarding collection and timely reporting of accurate data, including data required by section 618. The State reported that its data system allowed educators to identify needs, strengths, and areas of noncompliance. For example, the State's monitoring process "informed local programs of low performance or noncompliance..." The State reported that it conducted training for personnel participating in the data collection and reporting processes and also upgraded its information management system to maintain system integrity. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Early Childhood Transition

OSEP's November 2004 letter stated that the State's data in its FFY 2002 APR indicated noncompliance with 34 CFR §300.132(b) and required the State to submit a plan to OSEP by January 2005 that would ensure correction of the identified noncompliance. OSEP reviewed and accepts the State's plan submitted to OSEP on April 13, 2005. On pages 42 through 53, the State included information regarding early childhood transition. On page 48, data showed that during the reporting period, 409 children exited the Part C program and transitioned to school districts. Of the 409, 236 or 57.7 percent had an IEP or IFSP in place on or before the child's third birthday. Thus, while the State presented data showing progress between 1999 and 2004, 173 of 409 children transitioning from Part C to Part B did not have an IEP or IFSP in effect by the child's third birthday as required by 34 CFR §300.132(b). New Hampshire must report on its progress in ensuring compliance in this area in the SPP. No later than 30 days after one year from the date of this letter, the State must submit a report to OSEP demonstrating compliance with 34 CFR §300.132(b).

Parent Involvement

OSEP identified no noncompliance in this area in the FFY 2002 APR. On pages 54 through 67 of the FFY 2003 APR, NHDOE discussed progress in reaching its goal that the provision of a free appropriate public education (FAPE) was facilitated by parent involvement. The NHDOE continued to work with staff from the National Center on Special Education Accountability Monitoring (NCSEAM) during 2004, gathered information related to parent involvement during the monitoring process, and worked with the National Network of Partnership Schools (a family involvement network in affiliation with Johns Hopkins University). The State reported that, "there were no substantiated due process hearings in which parents were denied rights/participation." The State reported that it was making progress in gaining meaningful parent involvement information through its work with the Division of Developmental Disabilities. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP. In preparation for submission of the SPP on December 2, 2005, the State

should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet.

Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

Disproportionality

On pages 69 through 71 and in Attachment 2 of the FFY 2003 APR, the State included information regarding disproportionality. The State reported that a review of State policies, procedures and practices and enrollment data in special education (Attachment 2) showed no evidence of disproportionate representation based on race/ethnicity with respect to the identification or placement of children with disabilities. The State's performance indicator on page 69 was "the percentage of children with disabilities receiving special education, by race/ethnicity, is significantly proportionate to the percentage of children, by race/ethnicity, in the State general student enrollment. For each particular disability category, the percentage of children, by race/ethnicity, is significantly proportionate to the percentage of children, by race/ethnicity, in the State's general student enrollment."

The proposed use of numerical goals based upon race raises serious concerns under Federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns.

Regulations at 34 CFR §300.755(b) require that in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the State shall provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of Part B of IDEA.

It is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate consistent with the requirements of Part B and are race-neutral. Such an examination generally would include a review of the availability and use of intervention strategies prior to referral for special education evaluation, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluation.

Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant disproportionality, whether statewide or by district; (2) a description of the procedures for conducting a review of policies, procedures and practices; (3) a description of the decision-making process for determining whether existing policies, procedures and practices contributed to, or were the cause of, the identified disproportionality; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the disproportionality; (5) a description of other steps taken if it is determined that policies, procedures or practices did not cause, or contribute to, the identified disproportionality

to identify the causes; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing disproportionality. In the SPP, New Hampshire must submit a revised performance indicator for disproportionality that is race-neutral.

Graduation and drop-out rates

On pages 71 through 74 and FAPE Graduation and Dropout Table II of the FFY 2003 APR, the State included information regarding graduation and drop-out rates. The State's drop-out rate for all students was 10.4 percent. The graduation rate for students with disabilities in June 2004 was 78 percent compared with 93 percent for all students, including students with disabilities. The State included future activities to increase the graduation rate and decrease the drop-out rate. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Suspension and expulsion

OSEP's November 2004 letter required NHDOE to report in the State's FFY 2003 APR, information regarding its comparison to determine whether significant discrepancies were occurring in the rate of long term suspensions or expulsions, and if significant discrepancies were occurring, a description of those discrepancies and how the State planned to address them. OSEP's November 2004 letter also required the State to follow the instructions provided by OSEP when completing the FFY 2003 APR for this area.

On pages 73 through 76 and Chart I – Suspensions and Expulsions of the FFY 2003 APR, the State included information regarding suspension and expulsion. The information provided by NHDOE addressing this requirement showed that the statewide special education data system collected and analyzed school district level data on suspensions and expulsions. The State compared local educational agencies by setting a standard of five or fewer students compared with those local education agencies that suspended (for more than 10 days) or expelled six or more students. The number of districts that suspended or expelled up to five students with disabilities for ten or more days declined by 5 percent. The number of districts that had six or more students with disabilities suspended for ten or more days or expelled remained the same; the districts were the larger school communities in the most populous region of the state, the southern tier. On page 74, the State established a target of sustaining a 10 percent reduction in suspensions and expulsions through June of 2006 and beyond. To address behavior issues that often preceded disciplinary actions, the State continued to support and expand the Positive Behavior Intervention System (PBIS) at all grade levels, including projects to prevent children with disabilities from dropping out of school. While OSEP appreciates the State's efforts in this area, New Hampshire still has not provided the information requested by OSEP in its November 2004 letter.

Under 34 CFR §300.146, the State must examine data to determine if significant discrepancies are occurring in the rate of long-term suspension and expulsions of children with disabilities, either among the 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 State did not examine data for all LEAs to determine if significant discrepancies were occurring based on one of the comparisons described above and did not conduct, or require that affected LEAs conduct, reviews of policies, procedures and practices consistent with 34 CFR §300.146. OSEP's November 2004 letter regarding the FY 2002 APR specifically directed the State to include this information in the FY 2003 APR, and noted that failure to do so would result in a finding of noncompliance. The State's 2003 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.) To conduct the comparison across LEAs required by 34 CFR §300.146, New Hampshire would need to calculate how many children with disabilities in a district were suspended or expelled divided by the number of children with disabilities in the district.

OSEP concludes that the State is not complying with 34 CFR §300.146. Within 60 days of the date of this letter, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Statewide and districtwide assessments

On pages 76 through 83, Attachment 3 on pages 96 through 100 of the FFY 2003 APR, and in Chart III in the FFY 2003 APR Appendix, the State included information regarding statewide and districtwide assessments. On pages 78 through 79, NHDOE reported that performance on the New Hampshire Educational Improvement Assessment Program (NHIAP) improved in all three grades (3, 6, and 10) in both reading and math at the basic and above basic proficiency levels. Performance also increased for children with disabilities participating in the alternate assessments. NHDOE planned to implement a new assessment program, the New England Common Assessment Program (NECAP) in 2004 through 2005.

On pages 97 and 99 (Attachment 3), the State provided incomplete data regarding the participation and performance of children with disabilities on the statewide assessment. The State did not provide information about how NHDOE reports the participation and performance of children with disabilities, on the regular and alternate statewide assessments, to the Secretary and to the public in the same manner and with the same frequency that it reports on children without disabilities. OSEP determined that this omission does not constitute noncompliance because the data were reported on the State's website; however, the State must submit, within 30 days of the date of this letter, an accurate, complete copy of FFY 2003 Attachment 3 regarding

the participation and performance of children with disabilities in statewide assessments, including alternate assessments (34 CFR §§300.138-300.139).

Least restrictive environment (LRE)

On pages 84 through 86 of the FFY 2003 APR, NHDOE reported data related to LRE. New Hampshire compared the State's enrollment data with national statistics and found that children with disabilities in New Hampshire were more likely to be placed in regular education classrooms: 75 percent of all children with disabilities were educated in regular education classroom for 79 or more percent of their day compared with the national average of 51 percent; 17 percent were outside of the regular education classroom between 21 percent and 60 percent of their school day compared with the national average of 28 percent; and 3 percent were out of the regular education classroom more than 60 percent of their school day compared with the national average of 19 percent). OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Preschool performance outcomes

In the November 2004 letter, OSEP required NHDOE to report in the State's FFY 2003 APR documentation of data regarding preschool outcomes (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 the plan.

On pages 86 through 87 of the FFY 2003 APR, the State included information regarding preschool performance outcomes. The State planned to continue to participate with the Early Childhood Outcomes Center (ECO) to develop a system to measure outcomes for young children with disabilities. NHDOE included a plan to collect data regarding preschool outcomes and a timeline to implement the plan. OSEP appreciates the State's efforts in this area and looks forward to reviewing information in the SPP. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements.

Other: Timeliness of Evaluations

OSEP's November 2004 letter required NHDOE to report in the State's FFY 2003 APR current data and analysis demonstrating progress toward compliance with requirements for timely initial evaluations (34 CFR §300.343(b)) and reevaluations (34 CFR §300.536(b)). On pages 12 through 14 of the FFY 2003 APR, the State reported the steps it was taking to address this issue so that accurate compliance data on evaluations and reevaluations could be included in the SPP. On page 12, the State reported that only 69 percent of the initial evaluations to determine a child's eligibility for special education were conducted within the State's 45-day timeline for such evaluations and that 80 percent of the reevaluations for children with disabilities were conducted within IDEA timelines at 34 CFR §300.536(b). Thus, 31 percent of the children

evaluated for special education services were evaluated beyond the State's timeline for such evaluations and 20 percent of the students who required a reevaluation did not receive a reevaluation within the required IDEA timeline. To correct this noncompliance, the State selected 26 school districts with the highest number of overdue evaluations. NHDOE asked these districts to provide a verification of the accuracy of the district's data, to identify activities to overcome barriers to compliance, and to report to NHDOE by February 1, 2005. OSEP's November 2004 letter required NHDOE to provide a final report, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days after one year from the date of the November 2004 letter. Because this date is near the date of submission of the SPP, due December 2, 2005, OSEP requests that NHDOE submit the final report as an addendum to the SPP; however, the State may submit the final report on December 10, 2005, in accordance with the original requirement.

Secondary Transition

On pages 101 through 109 of the FFY 2003 APR, the State included information regarding secondary transition. In a review of randomly selected files during the State's monitoring process, three of 26 files for students, aged 16 or older, lacked a complete transition plan. For students with disabilities in private schools, aged 16 or older, seven of 16 files showed incomplete information regarding transition plans. After the State identified the noncompliance, it required the private and public schools to develop a corrective action plan; however, the State did not include in the FFY 2003 APR documentation as to whether the corrective actions were implemented, the results of the corrective actions, and whether compliance was corrected within one year from identification by the State. In the SPP, due December 2, 2005, NHDOE must include data and information, as specified in the previous sentence, regarding the correction of identified noncompliance within one year of identification, including data and information regarding the adequacy of secondary transition plans for students with disabilities, aged 16 or older, in private schools.

In the review of files for students, aged 14 and 15, the State also found that some of the transition plans in the files were incomplete. Effective July 1, 2005, IDEA 2004 no longer requires the beginning of transition planning by age 14 (or younger, if determined appropriate by the IEP team). OSEP continues to encourage the early planning of the transition from school to work for children with disabilities; however, this is no longer a compliance requirement.

On pages 97 through 99, the State reported that it was not able to collect baseline data to determine the rate of youth with disabilities who are exiting school prepared for employment, post-secondary education, independent living or supported employment. The State planned to gather and analyze such data in 2003-2004 as well as review data, identify key partners, and present findings for inclusion in the SPP. On page 98 of the FFY 2003 APR, the State indicated that by June of 2005, the NHDOE Bureau of Special Education "will identify key strategies to better assess post school outcomes for students with disabilities, but that data would be analyzed for purposes of developing the SPP." The SPP instructions establish a new indicator in this area, for which States must provide baseline 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 the State's performance and compliance required under section 616(d) of the IDEA.

The State should carefully review the instructions to the SPP in developing its plans for data collection on post-school outcomes.

Conclusion

New Hampshire must provide the following information to OSEP, within 60 days from the date of this letter:

1. Evidence that the State ensures correction of identified noncompliance in a timely manner, including noncompliance identified at nonpublic schools, and noncompliance identified in transition plans, as described in the Secondary Transition section of this letter or a plan to provide such evidence within a reasonable period of time, not to exceed one year of identification. The plan must include strategies, proposed evidence of change, targets and timelines for ensuring identification of noncompliance with Part B and the correction of all identified noncompliance, including noncompliance identified at nonpublic schools, within one year of identification, as soon as possible, not to exceed one year from when OSEP accepts the plan.
2. A plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with 34 CFR §300.146 regarding calculation of rates for suspension and expulsion, as soon as possible, but not later than 30 days following one year from the date that OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Within 30 days from the date of this letter, New Hampshire must provide an accurate, complete copy of FFY 2003 Attachment 3 regarding the participation and performance of children with disabilities in statewide assessments, including alternate assessments (34 CFR §§300.138-300.139).

In the State Performance Plan, due December 2, 2005, NHDOE must provide:

1. Data and analysis demonstrating progress toward compliance with the revision of monitoring procedures to ensure the timely correction of noncompliance (no later than one year after identification by the State).
2. A progress report indicating that all Part B complaints are resolved within the 60-day timeline or within a properly extended timeline (34 CFR §300.661).
3. Progress toward compliance with the requirements regarding timelines for issuing decisions in due process hearings (34 CFR §300.511(a) and (c)).

4. A progress report demonstrating that children participating in early intervention programs assisted under Part C of IDEA, and who will participate in preschool programs assisted under Part B of IDEA, have an IEP or IFSP in effect by the child's third birthday (34 CFR §300.132(b)).
5. As an addendum, a final report with data and analysis demonstrating that initial evaluations and reevaluations are timely (34 CFR §§300.343(b) and 300.536(b)).

On or before April 15, 2006, NHDOE must provide a final report, with data and analysis demonstrating that the State ensures timely resolution of complaints (34 CFR §300.661).

Not later than 30 days after one year from the date of this letter, NHDOE must provide a final report to OSEP, with data and analysis demonstrating that children participating in early intervention programs assisted under Part C of IDEA, and who will participate in preschool programs assisted under Part B of IDEA, have an IEP or IFSP in effect by the child's third birthday (34 CFR §300.132(b)).

IDEA 2004, §616, requires each State to submit an 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 looks 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 Marie Mayor at (202) 245-7433.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Santina Thibedeau