



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

Honorable Susan T. Zelman
Superintendent of Public Instruction
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215-4183

SEP 22 2005

Dear Dr. Zelman:

The purpose of this letter is to respond to the Ohio's March 30, 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 December 15, 2004 FFY 2002 APR response letter required the Ohio Department of Education (ODE) to submit, in the FFY 2003 APR, the following: (1) a revision to its complaint procedures under 34 CFR §§300.660-300.662 and a plan for the implementation and dissemination of the revised complaint procedures within a reasonable period of time, or submit documentation that this already occurred; and (2) a progress report with regard to meeting the due process hearing decision timelines (34 CFR §300.511). During OSEP's verification visit to Ohio during the week of December 13, 2004, ODE submitted the required documentation demonstrating that ODE satisfied both of the above-cited areas of noncompliance. OSEP's June 22, 2005 verification letter indicated that ODE had met the compliance requirements with regard to complaint procedures and due process hearing timelines.

OSEP's December 2004 letter also required Ohio to provide data and analysis in its FFY 2003 APR, demonstrating compliance with the following areas (including, where appropriate, correction of previously identified noncompliance): (1) ensuring correction of identified noncompliance within a reasonable period of time not to exceed one year (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)); (2) resolving formal written complaints within required timelines (34 CFR §300.661); (3) providing evidence of dissemination of the revised procedural safeguards

notice (34 CFR §300.504(b)); (4) providing related services in accordance with children's individualized education programs (IEP) (34 CFR §300.347(a)(3)); (5) providing children transitioning from Part C to Part B with an IEP developed and implemented by their third birthdays (34 CFR §300.121(c)); (6) ensuring consideration, availability and provision of positive behavioral supports and psychological counseling services for children with disabilities who need them (34 CFR §§300.121 and 300.300); (7) ensuring that least restrictive environment (LRE) requirements are met for children served by County Board Programs (34 CFR §300.550, §300.553); and (8) demonstrating compliance with the secondary transition requirements (34 CFR §§300.29 and 300.344).

OSEP's June 2005 letter, responding to information provided during the verification visit, directed ODE to submit a report within 60 days from the date of that letter, describing steps that the State is taking to ensure that districts that conducted districtwide assessments, developed guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with individual accommodations, and provide copies of samples of alternate assessment guidelines. If information collected demonstrated noncompliance with the requirements at 34 CFR §300.138, the State was to include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the identified noncompliance as soon as possible, but no later than one year from the date that OSEP accepts the plan.

OSEP issued Ohio's FFY 2005 Grant Awards with Special Conditions because OSEP found that the State was not ensuring that a free appropriate public education (FAPE) is available to each child with a disability entering the Part B program by the child's third birthday, including ensuring that an IEP or, if appropriate, an individualized family service plan (IFSP) is in effect by the child's third birthday, as required by 34 CFR §300.121(c). The Special Conditions require Ohio to submit an interim report on this issue by October 31, 2005 with a final report by May 31, 2006.

General Supervision

Identification and timely correction of noncompliance

OSEP's December 2004 letter directed ODE to include, in the FFY 2003 APR, documentation that the State ensures the correction of noncompliance that it identifies through monitoring, within a reasonable period of time not exceed one year from identification (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)). During the verification visit, ODE provided some documentation that the State ensured the correction of identified noncompliance, including the correction of noncompliance the State identified through its School Improvement Reviews under ODE's previous monitoring process. During the verification visit in December, OSEP conducted a review of the States monitoring files for 2001-2002 and 2002-2003 to ensure the correction of identified noncompliance from OSEP's March 2001 Monitoring Report. At the time of the visit, OSEP was not able to access all of the monitoring files, including 7 monitoring files that demonstrated compliance closed out by the SEA. On January 29, 2005, OSEP received documentation that the State ensured the correction of previously identified noncompliance.

On pages 16 through 26 and 29 of the FFY 2003 APR, ODE provided information on its system of general supervision, including focused monitoring (FM), to address the correction of noncompliance identified through monitoring, within a reasonable period of time not to exceed one year from identification. On pages 24 and 25, ODE included information regarding ODE's FM activities and indicated those activities would be expanded from 10 pilot districts for 2003-2004 to 48 districts for the 2004-2005 school year. ODE reported that the 10 districts in the 2003-2004 FM pilot submitted summary reports and documented progress toward correction of all compliance issues and that the 10 districts would submit evidence of correction by June 2005. ODE's 2003-2004 FM year-end data were not available for this report. Therefore, Ohio must submit data and analysis to OSEP, not later than the SPP, due December 2, 2005, demonstrating that it ensured the correction of identified noncompliance within a reasonable period of time not to exceed one year from identification.

Formal written complaints

As indicated above, ODE corrected the noncompliance identified in OSEP's December 2004 letter, related to complaint resolution timelines at 34 CFR §300.661. On pages 6 through 8, 26 through 29, and Attachment 1 of the FFY 2003 APR, ODE provided data and analysis indicating that ODE resolved 95% of the complaints within mandated timelines and that approximately 5% of the complaints were not being resolved within timelines. The State included targets, activities and timelines to ensure that all formal complaints are resolved within Federal timelines. OSEP looks forward to reviewing the State's data and analysis demonstrating compliance in this area in the SPP, due December 2, 2005.

Mediation

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 9 through 12 and Attachment 1 of the FFY 2003 APR, ODE included data and analysis indicating that in 2002-2003, 76 of 98 mediation requests resulted in successful mediations; and in 2003-2004, 72 of 99 mediation requests resulted in successful mediations. ODE's analysis attributed the decline in successful mediations to a transition period in which ODE revised the mediation process, including the recruitment of 13 new mediators. The State included targets, activities and timelines to improve performance. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding the State's efforts in this area in the SPP.

Due process hearings and reviews

As indicated above, ODE corrected the noncompliance identified in OSEP's December 2004 letter, related to due process hearing decision timelines at 34 CFR §300.511. On pages 13 through 16, 28 and 30 and Attachment 1 of the FFY 2003 APR, ODE included data and analysis regarding due process hearings and reviews that indicated continued compliance with the due process hearing timeline requirements at 34 CFR §300.511(a) and (c). On page 13 and Attachment 1, the State reported data indicating that of 22 due process hearings fully adjudicated, all written decisions were issued within the required timelines. The State also reported that eight of nine State level reviews were completed within timelines. One due process

hearing was pending, and the remainder of the hearing requests were settled, withdrawn or dismissed. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data and information regarding the State's efforts to ensure compliance in this area in the SPP.

Personnel

In its December 2004 letter, OSEP directed ODE to document how related services were provided in the absence of qualified personnel, and report on the State's progress in ensuring full compliance with the requirement that all children with disabilities received the related services listed on their IEPs required at 34 CFR §300.347(a)(3). However, the State did not demonstrate correction of the noncompliance in the APR. As noted above, ODE's 2003-2004 FM year-end data were not available for this report. Therefore, Ohio must submit data and analysis to OSEP, demonstrating that children received the related services indicated on their IEPs, in the absence of qualified personnel, not later than the SPP, due December 2, 2005. Ohio may submit this data and analysis with the interim report that it will submit under the FFY 2005 Grant Award Special Conditions.

On pages 31 through 36 of the FFY 2003 APR, ODE included information along with targets, activities, timelines and resources designed to ensure the availability of an adequate supply of qualified related services personnel. These included: (1) ODE's continued partnerships and activities to address personnel shortages (e.g., vision teachers, orientation and mobility specialists, speech/language pathologists and school psychologists); (2) ODE's coordinated monitoring system; and (3) ongoing professional development through the State's Special Education Regional Resource Center (SERRC).

Collection and timely reporting of accurate data

On pages 36 through 38 of the FFY 2003 APR, ODE included information regarding the collection and timely reporting of accurate data indicating its continued efforts to maintain a system that provides accurate and timely data. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data in the SPP.

Dissemination of the procedural safeguards notice

During OSEP's verification visit in December 2004, Ohio provided data and information demonstrating that ODE disseminated the revised procedural safeguards notice (34 CFR §300.504(b)). OSEP is satisfied that ODE has addressed the identified noncompliance and appreciates the State's efforts in this area.

Early Childhood Transition

In its December 2004 letter, OSEP directed ODE to submit accurate data and analysis demonstrating compliance regarding early childhood transition as required by 34 CFR §300.121(c). On pages 39 through 54 of the FFY 2003 APR, ODE included data and information indicating continued noncompliance in this area. As indicated above, ODE's FFY

2005 Grant Award was released subject to Special Conditions regarding Early Childhood Transition as required by 34 CFR §300.121(c). On pages 39 through 54, ODE reported on its FM process and data collection efforts; however, the 2003-2004 FM year-end data and analysis were not available for this reporting period. On or before October 31, 2005 the State must submit an interim report, as required by the Special Conditions, on the State's progress in this area.

Parent Involvement

On pages 55 through 60 of the FFY 2003 APR, ODE included information regarding the provision of a free appropriate public education (FAPE) to children with disabilities facilitated through parent involvement. Specifically, ODE reported parent participation through the State's State Improvement Grant partnerships; Positive Behavior Support trainings; and FM family survey. On page 58, ODE reported that districts would collect parent input and feedback during FM activities and that ODE would work collaboratively with the Ohio Coalition for the Education of Children with Disabilities to improve meaningful parent involvement.

The SPP instructions establish a new indicator in this area (#8), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan to collect this data, in the SPP.

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

Disproportionality

OSEP's December 2004 letter instructed ODE to report on significant disproportionality in the identification and educational placements and on the results and reviews of, and any appropriate revisions to, policies, procedures and practices. On pages 61 through 68 of the FFY 2003 APR, ODE included data and analysis that addressed disproportionality, including its efforts to ensure compliance and improve performance in this area. On pages 64 through 68, ODE provided an analysis of its disproportionality data and a description of its review of district data through FM. ODE reported on its efforts to develop effective strategies, practices and formal working relationships statewide so that more targeted technical assistance can be delivered in districts that report disproportionate representation of racial and ethnic groups in special education and related services. The State identified significant disproportionality and looked at policies, procedures and practices in the referral, evaluation and identification process to determine if they were educationally appropriate, consistent with the requirements of Part B and race-neutral. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APR, along with OSEP's responses, against the requirements related to indicators 9 and 10 in the SPP packet. OSEP looks forward to reviewing the information in the State's SPP.

Graduation and drop-out rates

On pages 69 through 76 of the FFY 2003 APR, ODE included data and information regarding graduation and drop-out rates. ODE reported that the graduation rates from 2001-2002 through 2003-2004 for students with disabilities increased by 4.5% while the graduation rates for the general population of students increased by 3%. ODE reported that graduation rates increased from last year in the following disability categories: speech/language impairment; orthopedic impairment; emotional disturbance; cognitive disability; specific learning disability; and traumatic brain injury. The State reported that drop-out rates for children with disabilities in 2003-2004 decreased by 2% from 2002-2003 and that drop-out rates for students without disabilities decreased by 1.3% for the same period. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement, in both graduation and drop-out rates in the SPP.

Suspension and expulsion

OSEP's December 2004 letter directed ODE to report on the result of its review of, and any appropriate revisions to, the State's and/or LEA's policies, procedures and practices when gaps existed in the suspension and expulsion rates for children with disabilities and without disabilities. On pages 76 through 81 of the FFY 2003 APR, ODE included data and a detailed description of activities demonstrating continued improvement in this area, including the examination of school-wide data, policies, procedures and practices. On page 76, ODE provided statewide data on out-of-school suspensions indicating that, although there was a small decrease in the suspensions of children with disabilities, suspensions occurred within the population of students with disabilities at nearly twice the rate they occurred for children without disabilities. ODE's 2003-2004 FM included the examination of discipline data at the district level. For example, based on its rank order data, ODE selected two districts for FM in the priority area of discipline. On pages 79 through 81, the State included targets, activities and timelines to improve performance. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in this area in the SPP.

Statewide and districtwide assessment

OSEP's June 2005 letter directed ODE to submit a report, due 60 days from the date of that letter (August 22, 2005), describing steps the State was taking to ensure that districts conducting districtwide assessments, developed guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in the regular assessments with individual accommodations, and provide samples of alternate assessment guidelines. If data demonstrated noncompliance, the State was required to include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of any identified noncompliance as soon as possible, but no later than one year from the date that OSEP accepted the plan. OSEP received the State's plan on August 18, 2005, and a revised plan dated September 7, 2005. OSEP reviewed the plan, and remains unclear how the State will ensure, through its system of general supervision, district compliance with the requirements of 34 CFR §§300.138 and 300.139. While the plan includes steps the State will take to determine which

districts administer districtwide assessments, the plan does not include the mechanism(s) the State will use to ensure that districts that administer districtwide assessments of student achievement develop and administer an alternate assessment of student achievement that meets the requirements of 34 CFR §300.138. ODE must submit, not later than the SPP, due December 2, 2005, a description of how the State will ensure compliance with these requirements.

On pages 81 through 87 and Attachment 3 of the FFY 2003 APR, ODE included data and other information regarding the participation and performance of children with disabilities in statewide assessments. On page 82, ODE reported that the improved performance for children with disabilities did not match the improved performance for children without disabilities and that significant performance gaps existed between children with and children without disabilities. ODE reported on its efforts to close the performance gaps between children with and without disabilities through increasing access and progress in the general curriculum for children with disabilities and aligning instruction for children with disabilities with Ohio's academic content standards. State-reported data in Attachment 3 indicated 98% participation of children with disabilities on statewide assessments. ODE selected 35 districts for FM based on the performance results of students with disabilities on statewide assessments during the 2004-2005 school year. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP due December 2, 2005.

Least restrictive environment (LRE)

OSEP's December 2004 letter directed ODE to continue to report on compliance with the requirements at 34 CFR §§300.550-300.553 regarding LRE; and 34 CFR §300.347(a)(3) regarding the provision of supports and services to children with disabilities in the regular class setting. As noted in the general supervision section of this letter, ODE's 2003-2004 FM year-end data were not available for this report. Ohio must submit data and analysis demonstrating continued progress in ensuring full compliance with these requirements to OSEP, not later than the SPP, due December 2, 2005.

On pages 88 through 97 of the FFY 2003 APR, ODE reported data and analysis on LRE, with a focus on Preschool LRE. On pages 89 and 90, ODE stated, "The reporting for preschool special education settings provides little, if any, indication of integrated settings where children are involved with typically developing peers and indicates isolated classrooms and activities." ODE reported that there was permissive language for State-funded preschool special education classrooms to enroll up to six typically developing peers in a class. On page 90 of the FFY 2003 APR, ODE reported the following data: 35% of the preschool special education classrooms had no typically developing peers enrolled; 28% of the preschool special education classrooms had one to three typically developing peers enrolled; and 38% of the preschool special education classrooms had four or more typically developing peers enrolled. On pages 92 through 96, ODE described targets and activities to address performance in this area. On pages 96 and 97, ODE reported future activities to include the continued examination of funding mechanisms; aligning the County Boards of Mental Retardation and Developmental Disabilities (CBMRDD) reporting with ODE's Educational Management Information System (EMIS); providing professional development to special education staff and potential partners; and conducting focused monitoring reviews during the 2004-2005 school year. In preparation for submission of the SPP

on December 2, 2005, the State should carefully consider the data and information collected for the APRs, along with the requirements related to this indicator in the SPP packet. OSEP looks forward to reviewing the State's data in the SPP.

Preschool performance outcomes

On pages 97 through 106 of the FFY 2003 APR, ODE discussed the goal of increasing the percent of children in early learning programs that have demonstrated "kindergarten readiness" in literacy development. On page 99, ODE included data and analysis of preliminary indicators of child progress and literacy readiness for kindergarten. On pages 101 through 104, ODE reported targets and activities including the development and dissemination of Early Learning Content Standards and the provision of professional development with regard to Early Learning Content Standards-focus on literacy. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether data collected related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Other: Psychological counseling and positive behavioral intervention and supports

OSEP's December 2004 letter directed ODE to include in its FFY 2003 APR, documentation that the State ensures full compliance with the requirements to provide psychological counseling, positive behavioral interventions, strategies, and supports to benefit from special education at 34 CFR §§300.121, and 300.300. On page 87 of the FFY 2003 APR, ODE stated that its FM activities and complaint management procedures continued to address these requirements. End-of-year FM data were not available for this report. Therefore, Ohio must submit data and analysis to OSEP, demonstrating that it ensured the correction of identified noncompliance within a reasonable period of time not to exceed one year from identification, not later than the SPP, due December, 2, 2005.

Secondary Transition

OSEP's December 2004 letter directed ODE to continue to report on compliance with the transition requirements at 34 CFR §§300.29 and 300.344 in the FFY 2003 APR. ODE's 2003-2004 FM year-end data were not available for this report. Ohio must submit to OSEP, data and analysis demonstrating continued progress in ensuring full compliance with these requirements not later than the SPP, due December 2, 2005.

On pages 108 through 112 of the FFY 2003 APR, ODE reported data and analysis along with targets, activities and timelines designed to improve performance and ensure compliance in this area. On page 112, ODE reported 2003 post-school completion data for students with disabilities reported by the Office of Career-Technical and Adult Education, indicating that the post-program placement rate for students with disabilities (83.95%) was comparable to findings for all students (92.22%), and the continuing education rate for students with disabilities (29.53%) was significantly lower than that of the total population (49.07%). OSEP looks forward to reviewing

updated information in the SPP, including the implementation of strategies to improve performance and resulting data and analysis.

Conclusion

On or before October 31, 2005 the State must submit an interim report, as required by the Special Conditions, on the State's progress in ensuring compliance with 34 CFR §300.121(c) regarding children with disabilities transitioning from Part C to Part B.

As noted above, not later than the SPP, due December 2, 2005, ODE must submit to OSEP data and analysis demonstrating the correction in the following areas:

- (1) Timely correction of identified noncompliance 34 CFR §300.600;
- (2) Provision of services in the LRE: 34 CFR §§300.550-553 and 300.347(a)(3);
- (3) Provision of psychological counseling and positive behavioral interventions and supports: 34 CFR §§300.121 and 300.300; and
- (4) Secondary Transition: 34 CFR §§300.29 and 300.344.

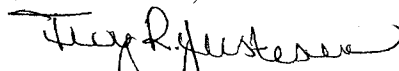
In addition, ODE must submit, not later than the SPP, due December 2, 2005, a description of how the State will ensure compliance with 34 CFR §§300.138 and 300.139, including through monitoring.

Ohio must submit data and analysis to OSEP, demonstrating that children received the related services indicated on their IEPs, in the absence of qualified personnel, not later than the SPP, due December 2, 2005. Ohio may submit this data and analysis with the interim report that it will submit under the FFY 2005 Grant Award Special Conditions.

IDEA 2004 §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 of 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 Margaret Romer at (202) 245-7501.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Mike Armstrong