

**Table B – South Dakota Part B
Previously Identified Issues**

Issue	State Submission	OSEP Analysis	Required Action
<p>SPP Indicator 15 – OSEP’s October 18, 2005 FFY 2003 Annual Performance Report (APR) response letter required South Dakota to report, within 60 days of the date of the letter, whether the State monitoring system examined the extent to which ESY requirements of 34 CFR §300.309 were met, whether any noncompliance regarding the ESY requirements was identified through monitoring, complaint investigation, or hearings, and whether correction occurred for any noncompliance identified.</p>	<p>In the December 8, 2005 letter to OSEP, South Dakota reported that the State Educational Agency made one finding of noncompliance in the area of ESY out of a total of 306 findings of noncompliance for the 2003-2004 monitoring year. The State reported that the one finding of noncompliance with ESY requirements was corrected “within 6 months of notification of the approved Improvement Plan Progress Report.”</p>	<p>The State reported data and information demonstrating that it monitors in the area of ESY and that the one finding of noncompliance with 34 CFR §300.309 was corrected. However, OSEP could not determine the timeliness of the correction. As noted in Table A, timely correction of noncompliance is an area of newly identified noncompliance on which the State will continue to report.</p>	<p>As noted in Table A, the timeliness of correction of noncompliance is addressed in the State’s reporting under Indicator 15. Because the State reported correction of identified noncompliance in the area of ESY, no further action is required that is specifically related to ESY. OSEP appreciates the State’s efforts in ensuring compliance with this requirement. OSEP looks forward to reviewing data in the APR, due February 1, 2007, demonstrating compliance in the area of timely correction of all findings of noncompliance.</p>
<p>SPP Indicator 15 - OSEP’s October 18, 2005 FFY 2003 Annual Performance Report (APR) response letter required South Dakota to report, within 60 days of the date of the letter, data and information demonstrating correction of the identified noncompliance regarding 34 CFR §§300.505 and 300.532(b) concerning parent consent and input in the evaluation process.</p>	<p>In the December 8, 2005 letter to OSEP, South Dakota submitted an examination of data and information demonstrating correction of the identified noncompliance regarding 34 CFR §§300.505 and 300.523(b) concerning parent consent and input in the evaluation process.</p>	<p>In its December 8, 2005 letter, South Dakota reported 21 findings of noncompliance for FFY 2003-2004 in the area of parent input into the evaluation progress and nine findings of noncompliance for FFY 2003-2004 in the area of parent consent to evaluate. The State reported that all of the findings of noncompliance were corrected. However, the timelines for correction were not based upon the date of identification of the noncompliance. As noted in Table A, timely correction of noncompliance is an area of newly</p>	<p>As noted in Table A, the timeliness of correction of noncompliance is addressed in the State’s reporting under Indicator 15. The State reported data showing full correction of the previously-identified noncompliance with the requirements regarding parent input into the evaluation process (34 CFR §300.505) and parent consent to evaluate (34 CFR §300.523(b)). Based upon this report of correction, no further action is required related</p>

<p>to parent input into the evaluation process (34 CFR §300.505) and parent consent to evaluate (34 CFR §300.523(b)). OSEP appreciates the State's efforts in ensuring compliance with these requirements. OSEP looks forward to reviewing data in the APR, due February 1, 2007, demonstrating compliance in the area of timely correction of all findings of noncompliance.</p>	<p>identified noncompliance on which the State will continue to report.</p>		
<p>The State must ensure that this noncompliance is corrected and include documentation in the APR, due February 1, 2007, that demonstrates compliance with this requirement.</p>	<p>On page 23, South Dakota reported that 1.80% of the districts had a suspension rate of greater than 5% of their population of special education students for FFY 2004. On page 22, OSEP acknowledges the State's new definition of significant discrepancy as consistent with the federal requirement that rates, not total number of incidences, be compared. However, OSEP concludes that the State's failure to conduct reviews constitutes noncompliance. The requirement at Section 612(a)(22) that States review policies, procedures and practices in agencies with significant discrepancies was enacted in 1997 and retained in the 2004 IDEA. Therefore this is not a new requirement for States. In establishing its eligibility under Part B, South Dakota has provided the Department with assurances for FFY 2004 and FFY 2005, that it would implement the requirements of Part B. Therefore, it is not appropriate for</p>	<p>In its November 19, 2005 letter to OSEP, the State set out a definition of significant discrepancy that was based on a comparison of total numbers of long-term suspensions and expulsions. On pages 22-24 of its SPP submission, South Dakota reported that, for federal fiscal year (FFY) 2004, it had established a new definition of significant discrepancy that compares rates of students with disabilities with long-term suspensions or expulsions. The State also reported that the "Special Education Programs will be reviewing and, if appropriate revising its policies, procedures and practices to comply with the final regulations of IDEA 2004."</p>	<p>SPP Indicator #4 – OSEP's October 18, 2005 FFY 2003 Annual Performance Report (APR) response letter required South Dakota to report in the SPP data and analysis demonstrating that it has been meeting the requirements at 34 CFR §300.146(b) that SDDOE examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, that SDDOE reviews and, if appropriate, revises (or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and</p>

<p>procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or, in the alternative a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with 34 CFR §300.146(b) as soon as possible and not more than one year after OSEP accepts the plan.</p>		<p>South Dakota to await final regulations in order to meet the requirements of section 612(a)(22) for either FFY 2004 or FFY 2005. Based upon this, OSEP finds that South Dakota is not in compliance with section 612(a)(22) and directs the State to conduct the required reviews when it identifies significant discrepancies.</p>
--	--	--