



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

Honorable Thomas D. Watkins, Jr.
Superintendent of Public Instruction
Michigan Department of Education
P.O. Box 30008
Lansing, Michigan 48909

MAR 10 2005

Dear Superintendent Watkins:

The purpose of this letter is to respond to Michigan's April 6, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003, and to Michigan's June 14, 2004 Improvement Plan (IP). 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 the States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APR directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System, Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition. 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).

Background

OSEP's March 5, 2004 response to the Michigan Department of Education's (MDE's) Federal Fiscal Year (FFY) 2001 APR requested MDE to provide information in the FFY 2002 APR to ensure that data provided by Intermediate School Districts (ISDs) were valid and timely. In addition, OSEP conducted a visit to Michigan during the week of November 17, 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA. OSEP's April 15, 2004 verification letter concluded that MDE did not have monitoring procedures to ensure the identification and timely correction of noncompliance, as is discussed in further detail

under the General Supervision cluster area below. In response to the noncompliance identified in the 2004 verification letter, Michigan submitted an IP in June 2004. OSEP's comments on the State's FFY 2004 APR and June 2004 Improvement Plan are listed by cluster area.

General Supervision

Monitoring System

OSEP's April 15, 2004 letter identified the following area of noncompliance: MDE did not have proper methods to ensure identification and timely correction of noncompliance as required by 34 CFR §303.501. OSEP noted four concerns about MDE's monitoring system:

1. Failure to monitor for all Part C requirements including: (a) provision of early intervention services on the IFSP in a timely manner, and (b) sufficient qualified personnel to provide early identification services;
2. Establishing a standard for compliance that was less than full compliance;
3. Failure to include timelines for correction of noncompliance in Service Area Improvement Plans; and
4. Failure to establish formal sanctions.

Each of these areas is discussed below.

Failure to Monitor for All Part C Requirements

On page 3 of OSEP's April 15, 2004 letter, OSEP found that the State did not have monitoring elements to determine if all children were receiving timely and appropriate services, and that MDE did not have an indicator to determine if the local ISDs had enough personnel to provide appropriate and timely services. MDE's June 14, 2004 letter and the FFY 2002 APR included strategies to ensure that MDE monitors for all Part C requirements, including provision of early intervention services and sufficiency of personnel. Some examples of activities to address this issue in the FFY 2002 APR and June 2004 Improvement Plan included: (1) adding an element in the EOSR Data Report to report back to the ISD whether Part C services were provided to families; (2) amending orientation materials for local systems/ISDs selected for monitoring to include the requirement that noncompliance be corrected within a year of identification; and (3) developing a survey to determine if services were provided to families.

OSEP accepts the activities, timelines, and targets to address this area of noncompliance, but notes that MDE has not proposed providing OSEP with any evidence of change. MDE must provide two progress reports, one by August 31, 2005 and a final progress report demonstrating correction of this noncompliance thirty days following one year from the date of this letter. Each progress report must include the EOSR data reported to MDE through the reporting date on indicators 15 and 45 regarding service provision, and also must include MDE's response to that data, including any findings of noncompliance

made, corrective actions required, or other response. Michigan must demonstrate compliance with 34 CFR §303.501 within a reasonable period of time, not to exceed one year from the date of this letter.

Standard for Compliance

On page 3 of OSEP's April 15, 2004 letter, OSEP found that MDE's monitoring report to the ISDs assigns a "score" – category 1, 2, or 3 – for each finding. Categories 1 and 2 are assigned to areas that meet compliance at a 75% or greater level. However, ISDs are only required to take corrective action when the finding is a category 3 -- less than a 75% level of compliance with MDE indicators. OSEP reviewed two ISD Data Review Reports and found many category 2 findings in areas where the ISD was not meeting a Part C requirement. Thus, MDE is identifying noncompliance, but not requiring the ISD to take any corrective action. On page 2 of the FFY 2002 APR, MDE reported that Service Areas are now required to address category 2 and category 3 levels, meaning that corrective action must be taken when noncompliance below 90% is identified. Furthermore, MDE set a target of 100% compliance by Spring 2005 (page 3 of the FFY 2002 APR). OSEP accepts MDE's strategies for correcting this finding of noncompliance, and MDE must provide in its August 31, 2005 Progress Report confirmation that the revised standard has been implemented.

Timelines for Correcting Noncompliance

On page 3 of OSEP's April 15, 2004 letter, OSEP found that MDE had no timelines in place for correction of noncompliance. On page 2 of MDE's June 14, 2004 IP, MDE reported that it had established a one year timeline for the correction of noncompliance. MDE must provide in its August 31, 2005 Progress Report confirmation that the one-year timeline has been implemented.

Lack of Formal Sanctions

On page 3 of OSEP's April 15, 2004 letter, OSEP found that MDE had not established formal sanctions if an ISD failed to take any corrective actions specified in MDE's monitoring reports. On page 3 of MDE's FFY 2002 APR, the State proposed to develop a Continuous Improvement Focused Monitoring process. However, this process does not contain specific sanctions or other methods designed to correct deficiencies. Rather, the APR reports that it will "assist the IDS/SAs with improvement planning . . . and what are the sanctions and/or incentives to be applied . . ." These strategies do not address this finding of noncompliance. Within 60 days of the date of this letter, MDE must provide a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure compliance with 34 CFR §303.501(b), including any sanctions or enforcement procedures to ensure correction.

Personnel

OSEP's 2004 verification letter found that MDE does not have monitoring elements to determine if local ISDs have enough personnel to provide appropriate and timely services to infants and toddlers with disabilities (page 3). On page 5 of the FFY 2002 APR, Michigan reported that professionals in all ten service areas reported a need for additional providers and service coordinators; providers reported "overwhelming" caseloads and the need to travel extensively to provide services. On page 12 of the FFY 2002 APR, Michigan provided data on personnel, but the data was for Part B Personnel, not Part C, and did not provide information as to whether MDE has sufficient personnel. Furthermore, in its IP, Michigan acknowledged that the Comprehensive System of Personnel Development section in the *Early On* Summary Report lacked information reporting back to the ISD as to its status on sufficient personnel (page 1).

Michigan plans on collecting data with respect to adequate personnel by using the *Early On* Michigan Self-Assessment Manual developed in April 2004 to collect data on the numbers of each service provider classification listed through the Michigan Electronic Grants System (MEGS) application process (page 1 of the IP). OSEP accepts the activities in the Improvement Plan with respect to the collection of data. In the August 31, 2005 Progress Report, the State must include data and analysis demonstrating progress toward compliance and submit a report to OSEP, demonstrating compliance, as soon as possible but not later than 30 days following the end of the one-year timeline.

Data

Under Part C, the lead agency must have mechanisms in place to collect, compile and submit data (e.g., 618 State reported data, due process hearings, complaints, mediations, etc.), and to identify systemic issues and problems with data. 34 CFR §303.540. On page 5 of the 2004 verification letter, OSEP informed the State that MDE's system for collecting and reporting data failed to ensure accurate data because service coordinators were not documenting needed information on the IFSP or entering the corresponding required data in the Part C data collection system. In the 2004 Improvement Plan, Michigan acknowledged that the transfer of data from the child's record into the data collection system needed improvement, and indicated that analysis would be conducted to determine areas needing improvement. However, MDE did not include strategies and timelines for improving performance related to the data submitted by service coordinators. Within 60 days of the date of this letter, the State must provide to OSEP strategies, timelines, and evidence of change for ensuring the collection of accurate data.

Complaints, Due Process, and Prior Written Notice

MDE must ensure that it has a dispute resolution system that ensures the timely resolution of complaints and due process hearings. On page 10 of the FFY 2002 APR, MDE provided data and analysis indicating one formal complaint that was not upheld. There were no mediations or due process hearings requested during the FFY 2002 APR period. OSEP cannot determine whether the lack of administrative complaints and/or due

process hearing requests is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures. MDE must continue to report on its dispute resolution system in the next APR.

Comprehensive Public Awareness and Child Find System

No prior noncompliance issues were identified by OSEP in this cluster area. On page 16 of the FFY 2002 APR, MDE reported that, as of December 1, 2002, 1.88% of infants and toddlers were served. By June 1, 2003 the percentage had increased to 1.96. Data submitted to OSEP pursuant to section 618 of IDEA indicates that as of December 1, 2003, 2.13% of infants and toddlers were receiving early intervention services. Nevertheless, the State acknowledged on page 18 of the FFY 2002 APR that there are some service areas within the State that are below the State's target. The State included strategies, proposed evidence of change, targets and timelines designed to improve performance in this area. Some examples of activities to address this issue in the FFY 2002 APR included: (1) distributing public awareness materials such as the *Early On* System video, family rights booklets, brochures on the *Early On* System and procedural safeguards, and child development information; and (2) facilitating coordination in the community to identify children as early as possible for early intervention services. OSEP looks forward to reviewing data and analysis in the next APR demonstrating continued implementation of strategies to improve performance in this area.

On page 20 of the FFY 2002 APR, MDE reported that, as of December 1, 2002, approximately one percent of infants under the age of one were receiving Part C services. The State included strategies, proposed evidence of change, targets and timelines designed to improve performance in this area. OSEP looks forward to reviewing data and analysis in the next APR demonstrating continued implementation of strategies to improve performance in this area.

Family Centered Services

No prior noncompliance issues were identified by OSEP in this cluster area. On page 22 of the FFY 2002 APR, the State included data and analysis on a family's capacity to enhance outcomes for infants and toddlers and their families, along with strategies and timelines for improving performance. The State reported data from 2,359 family surveys with a response rate of 43.1 percent and from 316 transition services surveys with a response rate of 25.7 percent. The combined survey data from parents receiving current services and transition services indicated that in 2003 an average of 77.8 percent of families received the services and supports they needed; an average of 68 percent better understood their child's needs; and an average of 62.4 percent were supported in caring for their child. The FFY 2002 APR reported improvement in each of these areas, as measured from 2000 through 2003.

The State initiated the following strategies to increase parent support: (1) creation of an "Early On 101" video shared with families to help increase their knowledge about

supports, services, and resources available; (2) a local interagency coordinating council conference held in October 2002; and (3) State/Parent leadership initiatives. OSEP looks forward to reviewing data and analysis in the next APR demonstrating continued implementation of strategies to improve performance in this area.

Early Intervention Services in Natural Environments

The FFY 2002 APR provided data and information in the following areas: (1) service coordination, (2) evaluations and assessments, (3) 45-day timeline, (4) natural environments, and (5) early childhood outcome data. Each of these areas is discussed below.

Service Coordination

On page 25 of the FFY 2002 APR, the State provided monitoring data and analysis that indicated families had access to a service coordinator who facilitated ongoing, timely early intervention services in natural environments. EOSR monitoring data indicated that, 92.6 percent of the time, the IFSP included the name of a service coordinator, and 93.4 percent of the time, the service coordinator participated in the initial IFSP meeting. The State included strategies, proposed evidence of change, targets and timelines designed to ensure compliance and performance in this area. OSEP looks forward to reviewing data and analysis in the next APR demonstrating continued implementation of strategies to ensure full compliance and performance in this area and data demonstrating improvement.

Evaluations and Assessments

The State must provide a timely, comprehensive, multidisciplinary evaluation of each child and identify on the IFSP the child's present level of functioning in each of the five developmental areas (including vision and hearing), as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a). On page 29 of the FFY 2002 APR, the State acknowledged noncompliance in this area and provided data indicating that only 87.5% of IFSPs reviewed indicated that the child was evaluated for communication; 85.5% evaluated for gross motor skills; 84.9% fine motor skills; 63.6% cognitive development, 78.9% social/emotional development; 82.2% adaptive/self help; 27.6% vision and 45.4% hearing. The FFY 2002 APR failed to include strategies, proposed evidence of change, targets and timelines in the FFY 2002 APR to correct the identified noncompliance. Therefore, the State must submit a plan to OSEP within 60 days from the date of this letter, 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.

45-Day Timeline

Part C regulations – at 34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a) -- require that an evaluation and assessment of a child and an initial IFSP meeting be held within 45

days of referral to Part C. The State did not provide any data indicating the percentage of initial IFSP meetings conducted within the 45-day timeline. Rather, on page 25 of the FFY 2002 APR, the State reported that “the initial IFSP was completed within 45 calendar days of the referral,” 63.8 percent of the time. Because the State did not provide data specifically identifying the percentage of time that a meeting to develop the initial IFSP was conducted within the 45-day time period, OSEP is unable to determine whether MDE is in compliance with 34 CFR § 303.342(a). Within 60 days from the date of this letter, MDE must clarify whether, under Michigan law, the initial IFSP must be completed at the initial IFSP meeting. If it does, then MDE must, in the next APR, provide data on whether the initial IFSP meeting is held within the 45-day timeline. If MDE does not require that the initial IFSP be completed at the initial IFSP meeting, within 60 days from the date of this letter, MDE must provide data on whether initial IFSP meetings are held within the 45-day timeline. If the data demonstrate noncompliance with 34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a), MDE must submit a plan to OSEP within 60 days from the date of this letter, that includes 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.

Natural Environments

The Part C regulations require that, to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments. 34 CFR §§303.12 (b), and 303.18. On page 34 of the FFY 2002 APR, the State reported that: (1) 50.3 percent of the time IFSP outcomes are delivered in the natural environment. On page 35 of the FFY 2002 APR, the State included the following activities to improve performance in this area: (1) a review of data contained in the local self-assessments completed by ISDs and a review of monitoring records to determine whether services were delivered in the natural environment; and (2) analysis of section 618 settings data to follow trends for all settings and determine the extent to which services were delivered in the natural environment. In the next APR, Michigan must report on the implementation of its strategies to ensure that services for all infants and toddlers with disabilities are provided in natural environments to the maximum extent appropriate to the need of the child.

The Part C regulations also require that the IFSP contain a justification of the extent, if any, to which the early intervention services will not be provided in a natural environment. 34 CFR §303.344(d)(1)(ii). On page 35 of the 2002 FFY APR, the State included data indicating noncompliance in this area – the State reported that only 6.1% of the IFSPs have justifications explaining why early intervention services were not provided in the natural environment. The State indicated that it would address this noncompliance through training. However, the FFY 2002 APR failed to include strategies, proposed evidence of change, targets and timelines to correct the identified noncompliance. Therefore, the State must submit a plan to OSEP within 60 days from the date of this letter, 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.

Early Childhood Outcome Data

The Part C FFY 2001 and FFY 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrated improved and sustained functional abilities in the developmental areas listed at 34 CFR §303.322(c)(3)(ii). The State provided monitoring data and information from the *Early On* System, and reported that: (1) progress toward outcomes was assessed 47.3 percent of the time; and (2) the child made progress toward outcomes 75 percent of the time. On page 37 of the FFY 2002 APR, Michigan provided targets, projected timelines and resources to improve documentation of whether children demonstrated improved and sustained functional abilities. In the next APR, the State must submit its plan to collect and submit such data by the FFY 2004 APR or, if available, data (whether collected through sampling, monitoring, or other methods), targets for improved performance and strategies to achieve those targets for this area.

Early Childhood Transition

The FFY 2002 APR included data and information that indicated the following areas of noncompliance: (1) failure to notify the local educational agency in the area in which the child resides that the child would shortly reach the age of eligibility for preschool services under Part B, 34 CFR §303.148(b)(1); and (2) failure to ensure that, in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, a conference was convened among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to six months, before the child was eligible for preschool services, to discuss any services that the child might receive, as required by 34 CFR §303.148(b)(2)(i). On page 39 of the FFY 2002 APR, the State reported: (1) transition planning began at least 90 days, and no more than six months prior to the child's third birthday only 43.9 percent of the time; and (2) the local education agency was notified that the child was turning three and potentially eligible for special education services only 88 percent of the time.

The strategies reported by the State on page 42 of the FFY 2002 APR to address this issue include the distribution of a Transition Guide, the development of a preschool to kindergarten document, and the administration of a survey to families to ask specific questions on transition planning. These strategies do not ensure compliance in this area. Within 60 days of the date of this letter, Michigan must submit a plan to OSEP, that includes strategies, proposed evidence of change, targets and timelines designed to correct each of the two areas of noncompliance as soon as possible but no later than one year after OSEP accepts the plan. This plan must address both: (1) notification of the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B; and (2) in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, a conference was convened among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to six

months, before the child is eligible for preschool services, to discuss any services that the child might receive.

Conclusion

The following summarizes the actions that Michigan must take.

1. Within 60 days of the date of this letter, Michigan must:
 - a) With respect to the lack of formal sanctions, provide a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure compliance with 34 CFR § 303.501(b), including any sanctions or enforcement procedures to ensure correction;
 - b) Provide strategies, timelines, and evidence of change for ensuring the collection of accurate data;
 - c) With respect to evaluations and assessments, submit a plan, 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; and
 - d) With respect to early childhood transition, submit a plan that includes strategies, proposed evidence of change, targets and timelines designed to correct each of the two areas of noncompliance as soon as possible but no later than one year after OSEP accepts the plan. This plan must address both: (1) notification of the local educational agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B; and (2) in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, a conference was convened among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to six months, before the child is eligible for preschool services, to discuss any services that the child might receive.
 - e) With respect to including a written justification on the IFSP when early intervention services are not provided in a natural environment, the State must submit a plan to OSEP, 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.

2. Michigan must:
 - a) Clarify whether, under Michigan law, the initial IFSP must be completed at the initial IFSP meeting. If it does, then MDE must, in the next APR, provide data on whether the initial IFSP meeting is held within the 45-day timeline;
 - b) If MDE does not require that the initial IFSP be completed at the initial IFSP meeting, within 60 days from the date of this letter, MDE must provide data on whether initial IFSP meetings are held within the 45-day timeline; and

- c) If the data demonstrate noncompliance with 34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a), MDE must submit a plan to OSEP within 60 days from the date of this letter, that includes 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.
3. In the Progress Report due by August 31, 2005, Michigan must submit to OSEP:
 - a) Information demonstrating evidence of change with respect to the correction of the noncompliance with 34 CFR §303.501 – failure to monitor for all Part C requirements, including the EOSR data reported to MDE through the reporting date on indicators 15 and 45 regarding service provision, and MDE's response to that data, including any findings of noncompliance made, corrective actions required, or other response;
 - b) Confirmation that the revised standard for compliance adopted by MDE and referenced by MDE on page 3 of its FFY 2002 APR has been implemented;
 - c) Confirmation that the one year timeline for correcting noncompliance has been implemented; and
 - d) With respect to the collection of data regarding adequate personnel, data and analysis demonstrating progress toward compliance.
 4. With respect to the failure to monitor for all Part C requirements, MDE must provide a final Progress Report demonstrating correction of the noncompliance thirty days following one year from the date of this letter. In addition, Michigan must demonstrate compliance with 34 CFR §303.501 within a reasonable period of time, not to exceed one year from the date of this letter.
 5. With respect to the collection of data regarding adequate personnel, MDE must submit a report demonstrating compliance, as soon as possible, but no later than 30 days following one year from the date of this letter.
 6. In the next APR, Michigan must continue to report on its dispute resolution system.
 7. In the next APR, Michigan must report on the implementation of its strategies to ensure that services for all infants and toddlers with disabilities are provided in natural environments to the maximum extent appropriate to the needs of the child.
 8. Michigan must submit its plan to collect and submit early childhood outcome data by the FFY 2004 APR or, if available, data (whether collected through sampling, monitoring, or other methods), targets for improved performance and strategies to achieve those targets for this area.

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 infants and toddlers with disabilities and their families. If you have questions, please contact Dr. Al Jones at (202) 245-7394.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education Programs

cc: Dr. Jacqueline Thompson
Vanessa Winborne