



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

OCT 7 2004

Honorable Carmen Hooker Odom  
Secretary  
North Carolina Department of Health and Human Services  
2001 Mail Service Center  
Raleigh, North Carolina 27699-2001

Dear Secretary Odom:

The purpose of this letter is to respond to the North Carolina Department of Health and Human Services' (DHHS's) April 5, 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. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

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

### ***Background***

In an October 30, 2003 letter, OSEP identified five areas in which data submitted in the State's December 2001 Self-Assessment (SA) and June 28, 2002 Improvement Plan (IP) indicated noncompliance with the requirements of Part C: (1) a lack of public awareness materials or print translations into other languages spoken by significant portions of the population (34 CFR §303.320; SA page 35); (2) waiting lists for evaluations and assessments resulting from inadequate funding and personnel shortages, causing systemic violations of the 45-day timeline from a child's referral to complete the evaluation process and convene an initial individualized family service plan (IFSP) meeting (34 CFR §§303.321(e), 303.322(e), and §303.342(a)); SA page 26 and IP pages 11, 28 and 33); (3) not all Part C services were provided by qualified personnel (34 CFR §303.12(a)(3)(ii); SA pages 22 and 29); (4) only 22 of the State's 100 counties had some type of family support-related organization that could provide family training and support, as needed (34 CFR §303.12(d)(1)(v) and (d)(3); IP page 5); and (5) monitoring data indicated that 48% of the counties monitored had difficulty meeting transition timelines and

conducting transition meetings in a timely fashion (34 CFR §303.148(b)(2)(i) and §303.344(h); SA Early Childhood Transition Cluster worksheet, page 12). In the October 2003 letter, OSEP directed the State to submit: (1) within 60 days, a revised IP addressing the areas of identified noncompliance; (2) by April 30, 2004, an interim Progress Report concerning progress made in correcting the identified noncompliance; and (3) by October 30, 2004, a final Progress Report demonstrating that the State corrected the noncompliance.

In response to OSEP's October 30, 2003 letter, the State submitted an addendum to its IP on December 30, 2003, in which it set forth its proposed improvement strategies, evidence of change, and timeframes to address the five identified areas of Part C noncompliance. In its April 7, 2004 response to the State's FFY 2001 APR and December 2003 IP, OSEP accepted the IP, subject to the State also submitting evidence of change data (such as monitoring or IFSP review data) for the following two areas of noncompliance: (1) the 45-day timeline requirements in 34 CFR §§303.321(e), 303.322(e), 303.342(a); and (2) the transition requirements in 34 CFR §303.148(b)(2)(i). In its April 7, 2004 letter, OSEP also indicated that the State must submit: (1) by April 30, 2004, its Progress report on the IP (as required by OSEP's October 30, 2003 letter); and (2) by October 30, 2004, a final Progress Report that demonstrates correction of all areas of noncompliance.

In its July 8, 2004 interim Progress Report (which had been due on April 30, 2004), the State described its implementation of a Part C reorganization plan, which includes a number of initiatives to address the five areas of noncompliance. The State reported that: (1) under the direct supervision of DHHS's Division of Public Health, a network of 18 Children's Developmental Services Agencies (CDSAs) were now responsible for implementing the Part C program at the local level; and (2) this reorganization would ensure better targeting of resources and increase consistency and accountability.

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. OSEP's comments regarding the State's FFY 2002 APR, July 2004 interim Progress Report, and July 15, 2004 memorandum are listed below by cluster area.

### ***General Supervision***

Based on data in the SA, OSEP's October 2003 letter identified one area of noncompliance in this cluster. At 34 CFR §303.12(a)(3)(ii) and (d)(1)(vi), the Part C regulations state that early intervention services means, in part, services that are provided by qualified personnel, and that the Lead Agency is to provide training and technical assistance, as needed, to professionals providing early intervention services. On pages 22 and 29 of the SA, the State reported that there were variations in service delivery, creating gaps in training for early intervention professionals and that not all Part C providers met State credentialing requirements. The State's FFY 2002 APR and its July 2004 Progress Report provided information regarding this area of noncompliance. The APR (pages 15, 20-23, and 31-42) described a number of steps that the State took to ensure that early intervention providers met credentialing requirements and received needed training. The July 2004 Progress Report stated that, starting last year, all CDSA staff across all disciplines and all contracted special instruction providers, were subject to the

Infant, Toddler Family Specialist and Associate certification procedures. The Progress Report also described how each CDSA has at least one person approved as a certified reviewer, who can review service providers' education and experience and award certification to service providers. The State also explained in its Progress Report how it has established a sixth Regional Early Intervention Consultant position, which includes identifying and accessing professional development resources. OSEP appreciates the State's reporting on its strategies. The Progress Report did not, however, confirm the impact of those efforts in ensuring that early intervention services are provided by qualified personnel. The final Progress Report, due by October 30, 2004, must include monitoring data or other information to show that the State ensures that early intervention services are provided by qualified personnel.

In addition to addressing the area of noncompliance, DHHS also provided further information regarding general supervision in its FFY 2002 APR. On pages 8-12 of the APR, DHHS provided a narrative summary regarding its Community Review monitoring process. The State reported that it completed its monitoring in all counties, and then, based on three years of experience, it evaluated the Community Review process and made recommendations for changes to the procedures used by the State and local lead agencies. DHHS reported that the Revised Community Review Process will be used, beginning in the 2004-2005 fiscal year. The State should continue to report in the next APR (for FFY 2003) on its strategies to ensure compliance and performance in this cluster area.

The State included the following target on page 12 of its APR: "Achieve 90% compliance in 80% of counties." The State may not set a target of less than full compliance throughout the State. As the State implements the 2002 APR, it must work to ensure full compliance, and the general supervision target in the State's next APR must be 100% compliance.

### ***Comprehensive Child Find System***

Based on data in the SA, OSEP's October 2003 letter identified one area of noncompliance in this cluster. At 34 CFR §303.320, the Part C regulations require that the Lead Agency ensure the development and dissemination of public awareness materials to primary referral sources, including translation of materials into other languages to be accessible by non-English-speaking individuals and referral sources. On page 35 of the SA, the State reported that there was a "lack of print translation at both the State and local levels into other languages spoken by significant portions of the population." DHHS's December 2003 Addendum to its IP included strategies that the State would implement to correct the noncompliance. In its July 2004 Progress Report, the State: (1) reported that all early intervention materials, including child find and child and family rights documents, were available in Spanish; and (2) described its other efforts to increase the numbers of Spanish language interpreters/translators and provide other interpretative services and translations of key early intervention materials into Vietnamese and Arabic to meet the needs of the next fastest-growing, non-English-speaking groups in the State. In the final Progress Report, due by October 30, 2004, the State must provide a further update regarding the implementation of its strategies to ensure correction of the noncompliance.

In its October 2003 letter, OSEP addressed the following two issues regarding numerical goals that were set by the State in its original July 2002 submission of its Improvement Plan: (1) the

IP included goals for the percentage of children that counties would serve; and (2) the IP included percentage goals for increases in the number of children from minority and ethnic groups who would be determined eligible. Consistent with the direction in OSEP's letter, the State did not include race-specific numerical goals in the FFY 2002 APR. On pages 77 and 81, the APR did include goals and targets (that were not race-specific) for the percentage of children it would identify and serve. While it is not inconsistent with Part C to include a numerical goal to increase the percentage of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal. In its July 15, 2004 Addendum to the APR, the State confirmed that: (1) its Community Review monitoring process included procedures to ensure that all eligible children were identified and evaluated; (2) eligibility determinations and IFSP development were made on an individual basis; and (3) Part C funds were not used to serve children who were not eligible for Part C.

The State provided the following performance information regarding this cluster area. The State's 618 data submissions showed that: (1) on December 1, 2001, the State was serving 5,652 children (1.62% of its birth-through-two population) and 711 infants under the age of one; and (2) on December 1, 2002, these numbers increased to 5,895 children (no percentage provided) and 822 children under the age of one. On pages 50-55 of the APR, the State included tables showing the total number of infants and toddlers that the Part C system served on an annual basis (rather than the December 1 child count required for reports under section 618). These tables showed growth in the percentage of the State's birth-to-three population receiving Part C services: (1) fiscal year 2001, 2.4% (8,289); (2) fiscal year 2002, 2.9% (9,841); and (3) fiscal year 2003, 3.0% (10,504). OSEP looks forward to reviewing, in the next APR, the results of the State's strategies for maintaining its performance in this area.

### *Family Centered Services*

In its October 2003 letter, OSEP identified one area of noncompliance in this cluster, based upon the statement on page 5 of the IP, that only 22 of the State's 100 counties had some type of family support-related organization that could provide family training and support as needed. This is inconsistent with 34 CFR §303.12(d)(1)(v) and (3), that requires the Lead Agency to offer, as early intervention services, "training or technical assistance for a child with disabilities or, if appropriate, that child's family" and "family training, counseling and home visits ... to assist the family of a child eligible under [Part C] in understanding the special needs of the child and enhancing the child's development." DHHS's December 2003 IP Addendum included strategies that the State would implement to increase family support in the early intervention system, primarily at the local CDSA program level. The State's APR (page 89) and its July 2004 Progress Report provided information regarding this area of noncompliance. In the FFY 2002 APR, the State reported that it was planning to set aside early intervention funds at each CDSA to initiate or expand a family support program in each catchment area, and that each CDSA was to develop a plan for utilization of those funds. In the July 2004 Progress Report (page 5), the State indicated that it had set aside funds (\$630,000) specifically to expand family support, and that each CDSA developed and submitted a plan for how it would use its share of the budgeted amount for expanded family support services. The State also indicated that it had contracted

with the Family Support Network of North Carolina to help implement the initiative, and that the State obtained funding from the federal Administration on Developmental Disabilities to expand family support in rural, low-income areas. The State indicated that these developments were seen as only a first step, and that the expansion of the State's early intervention budget planning process would identify the need for resources to complete this facet of early intervention services. In its final Progress Report, due by October 30, 2004, the State must provide a further update regarding the implementation of its strategies to ensure correction of the noncompliance.

### *Early Intervention Services in Natural Environments*

In its October 2003 letter, OSEP identified one area of noncompliance in this cluster. In the SA (page 26) and IP (pages 11, 28 and 33), the State acknowledged that it had waiting lists for evaluations and assessments, resulting from inadequate funding and personnel shortages. At 34 CFR §§303.321(e), 303.322(e), and 303.342(a), the Part C regulations require that, within 45 days from referral, an evaluation and assessment is completed and the initial IFSP meeting held.

The July 2004 Progress Report described actions the State has taken to address the noncompliance. In addition to several other initiatives, the State indicated that it has modified the procedures so that referrals are now made directly to the CDSA, and the CDSA conducts the evaluations. The State also indicated that it has received legislative approval for 279 new positions for the CDSAs to enhance evaluation capacity.

However, the data provided in the State's APR may not be based on the Part C requirements, so OSEP cannot determine whether the data show progress toward correcting the noncompliance. On pages 28–30, the FFY 2002 APR includes charts that refer to data from "Referral to IFSP" that indicated that, for the last three years, only about 50% of the IFSPs were developed within 45 days from referral. OSEP cannot determine from the data reported whether, within 45 days after the lead agency receives a referral: (1) the initial evaluation and assessment is completed; and (2) an initial IFSP meeting is held (34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a)). While a State may require that development of the initial IFSP be completed within 45 days from referral, the Part C regulations require only that an initial IFSP meeting be held within that timeline. While it is clear from the data in the APR that the State is not meeting its own standard to develop the IFSP within 45 days, OSEP cannot determine from the data in the APR the extent to which the State is meeting the Part C requirement to convene an initial IFSP meeting within that timeline. In the final Progress Report, due by October 30, 2004, the State must provide data and analysis demonstrating compliance with the requirement of 34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a), to complete the evaluation and assessment and hold an initial IFSP meeting within 45 days. To the extent that the data do not demonstrate such compliance, the State must provide: (1) its analysis of the factors that have impeded correction of the noncompliance, and whether existing strategies are effective or need to be refined or targeted to ensure full compliance; (2) documentation of the specific steps, including any sanctions that it has taken to ensure correction, and the impact of those actions; and (3) if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data and timelines to ensure full compliance as soon as possible.

On page 99 of the APR, the State reported that one of its goals for 2002–2003 was that “90% of services will be provided in natural environments,” and its goal for 2003–2004 was that “100% of all children will secure services in natural environments by 7/01/06.” OSEP understands this to be a goal for all eligible children to receive early intervention services in natural environments. States may establish performance goals for providing early intervention services in natural environments, provided that they are specifically monitoring to ensure that the establishment of the goal does not override the Part C requirements that service setting decisions are individualized under the Part C regulations. In the next APR, the State must also report on the specific monitoring methods it has used to ensure that IFSP service setting decisions are made on an individualized basis, in accordance with the Part C regulations.

On pages 90-94 of the APR, the State: (1) reported data showing that average caseloads of service coordinators varied significantly; (2) indicated that these caseloads were significantly above recommended best practices; and (3) set a projected target that service coordinators’ caseload sizes would decrease in order to reach a service coordinator/child-family caseload of one to twenty.

The Part C FFY 2001 and 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). On page 100 of the APR, DHHS stated that it did not have any baseline outcome data for the FFY 2002 reporting period. The State further reported that it developed a pilot study of child benefits focusing on approaches to learning, relationships, and functional abilities, in coordination with the Frank Porter Graham Child Development Institute, the State Interagency Coordinating Council (SICC), the Governor’s Smart Start child care program, and universities. The State’s target for the FFY 2003 reporting period (July 1, 2003 through June 30, 2004) was to “document empirically the impact of early intervention on functional abilities of children participating in North Carolina’s early intervention program for State legislators, policy makers, consumers, and advocacy organizations by 11/1/03.” On page 100, the State set forth a schedule of activities, including to: (1) implement and complete a pilot study, with at least 110 children in each of the CDSA catchment areas, by July 2003; (2) compile and disseminate results of this study by September 2003; (3) convene an interagency planning group, comprised of Early Intervention Branch staff, local early intervention providers, parents, university representatives, SICC members and representatives of the broader early childhood community to design a large scale State-wide replication of the pilot study by September 2004; and (4) complete replication and disseminate findings by September 2005. In the FFY 2003 APR, the State must submit an update regarding its plan to collect and report on responsive data and, if available, responsive data (whether collected through sampling, monitoring, IFSP review, or other methods), targets for improved performance, and strategies to achieve those targets for this area.

### ***Early Childhood Transition***

OSEP’s October 2003 letter identified one area of noncompliance in this cluster. Part C requires, at 34 CFR §303.148(b)(2)(i), that in the case of a child who may be eligible for preschool services under Part B, and with the approval of the family, the Lead Agency must convene a conference 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's third birthday, to discuss any services that the child may receive. Page 12 of the SA Early Childhood Transition Cluster worksheet included a summary of monitoring data stating that 48 percent of the counties it monitored had difficulty meeting transition timelines and conducting transition meetings in a timely fashion. The State's December 2003 IP Addendum included a number of strategies that the State would employ to meet the transition requirements and to coordinate more effectively with the Department of Public Instruction (DPI) around transition to preschool services, including implementing a joint integrated database system between Part C and Part B agencies.<sup>1</sup> In the July 2004 Progress Report, the State explained that, "one of the primary reasons for the early intervention reorganization plan was to ensure that transitions from Part C to Part B services reflected recommended best practices and compliance with State and Federal regulations." The State asserted that its reorganization of its Part C system, in which service coordinators are employees of the CDSAs under the direct supervision of DHHS's Division of Public Health, would help ensure consistency and accountability in regards to meeting transition requirements. However, the State did not include data regarding the timelines in which transition conferences are held. In its final Progress Report, due by October 30, 2004, the State must provide data (such as monitoring or IFSP review data) demonstrating compliance with the requirements of 34 CFR §303.148(b)(2)(i).

### ***Conclusion***

As noted above, in its October 30, 2004 final Progress Report, North Carolina must:

1. Provide monitoring data or other information to show that the State ensures that early intervention services are provided by qualified personnel;
2. Provide a further update regarding the implementation of its strategies to ensure correction of the noncompliance regarding public awareness;
3. Provide a further update regarding the implementation of its strategies to ensure correction of the noncompliance regarding family supports and services;
4. Provide data and analysis demonstrating compliance with the requirement of 34 CFR §§303.321(e)(2), 303.322(e) and 303.342(a), to complete the evaluation and assessment and hold an initial IFSP meeting within 45 days. To the extent that the data do not demonstrate such compliance, the State must provide: (a) its analysis of the factors that have impeded correction of the noncompliance, and whether existing strategies are effective or need to be refined or targeted to ensure full compliance; (b) documentation of the specific steps, including any sanctions, that it has taken to ensure correction, and the impact of those actions; and (c) if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data and timelines to ensure full compliance as soon as possible.

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<sup>1</sup> OSEP assumes that any joint Part C and Part B database system that the State develops will not involve the disclosure of personally identifiable information from student's education records or, if it will, that it is consistent with the IDEA and FERPA. OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Mary Elder which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

5. Provide data (such as monitoring or IFSP review data) demonstrating compliance with the requirements for transition conferences under 34 CFR §303.148(b)(2)(i).

In addition, in the next APR, due March 31, 2005, North Carolina must:

1. Report on the specific monitoring methods it has used to ensure that IFSP service setting decisions are made on an individualized basis, in accordance with the Part C regulations; and
2. Submit an update regarding its plan to collect and report on responsive data that shows the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas, and if available, responsive data (whether collected through sampling, monitoring, IFSP review, 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 North Carolina, 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 further questions, please contact your OSEP Part C State Contact, John Edwards, at (202) 245-7333.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

Enclosure

cc: Duncan Munn, Part C Coordinator