



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Terrill I. Murphy, Commissioner  
Texas Department of Assistive  
and Rehabilitative Services  
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PO Box 12866  
Austin, Texas 78711

AUG -3 2004

Dear Commissioner Murphy:

The purpose of this letter is to respond to the Texas' March 31, 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 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.

### ***Background***

OSEP's March 10, 2003 Monitoring Report and OSEP's February 27, 2004 response to Texas' FFY 2001 Annual Performance Report identified one area of noncompliance: Failure to include, under 34 CFR §303.344, outcomes for the family, specific early intervention services for the family, medical and other services, and transition steps on the Individualized Family Service Plan (IFSP). The State's Part C Improvement Plan, with additions included in its FFY 2001 APR, was accepted in OSEP's February 27, 2004 APR letter and the State was directed to submit by February 27, 2005 its evidence of change that noncompliance regarding the Part C IFSP content requirements was corrected. The February 27, 2004 letter also requested data the State has collected regarding the potential noncompliance identified in the State's Self-Assessment and Improvement Plan in the area of ensuring compliance with timelines for conducting Part C evaluations, assessments and IFSP meetings.

In response to the noncompliance identified in the March 10, 2003 Monitoring Report, Texas submitted two progress reports delineating a variety of activities, including training, to address the noncompliance. Data and the results of those activities are included in the FFY 2002 APR submitted to OSEP on March 31, 2004.

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). OSEP's comments regarding the FFY 2002 APR are listed by cluster area.

### *General Supervision*

OSEP's February 27, 2004 letter requested the State to provide data to determine the status of the State's compliance in this area, including trend data. The State included data, data analysis and strategies designed to maintain compliance in this area.

On pages 4 and 5 of the FFY 2002 APR, Texas states that 17 of 20 sites monitored during this fiscal year were found to be out of compliance. The Texas Interagency Council on Early Intervention (ECI) provided technical assistance, issued monitoring reports containing corrective actions needed, and required that corrections be completed within six months to resolve all State-identified noncompliance. The State reported that corrective actions and technical assistance resulted in resolution of findings identified at 17 of the 20 programs (85 percent) through the monitoring process; and that identification of persistent or severe deficiencies results in ECI programs being identified as high-risk. On page 5 of the FFY 2002 APR, ECI reported that in State Fiscal Year 02 (SFY), two programs were identified as high-risk. One of the programs was removed from this status during SFY 03 after corrective actions were implemented. The other program was issued a time-limited contract to ensure resolution of noncompliance. Continuing performance issues and staff turnover resulted in termination of this provider's contract. ECI provided information on other sanctions and actions that may be imposed on programs to ensure compliance.

Data on pages 6 and 7 of the FFY 2002 APR demonstrated that ECI identified systemic issues through a review of client services data and the results of in-house reviews and on-site monitoring. ECI's data indicated improvement after training and other activities to address noncompliance.

According to Attachment 1 and on page 10 of the FFY 2002 APR, ECI reported it received two formal complaints - both were resolved within the 60-day time frame, as required by 34 CFR §303.513(a). The State monitors the provision of family rights and families' understanding of those rights as required by 34 CFR §303.400. The State reported its results of monitoring 20 sites during this reporting period indicated that families received and understood their rights.

On pages 14-16 of the FFY 2002 APR, ECI reported that data collection activities demonstrated that personnel increases had kept pace with increases in their child count. The State reported that the ECI data system was programmed to ensure that required data was entered. The system had built-in edits and security to ensure accuracy and confidentiality.

Texas' ECI includes a variety of activities, resources and timelines in its APR to ensure continued compliance in general supervision. Please provide in the next APR (for FFY 2003) updated information on the implementation of these strategies and any resulting data and analysis.

### ***Comprehensive Public Awareness and Child Find System***

OSEP's February 27, 2004 letter requested that the State provide data to allow OSEP to determine the State's compliance in this cluster, as required at 34 CFR §§303.320 (Public Awareness), and 303.321 (Child Find). ECI provided trend data that indicated an increase both in the number and percent of children served. ECI reported that the number of children served increased by 11 percent during the reporting year. On pages 21-23, ECI credits a number of activities for the increases in the number of children served over the last three years.

On pages 21-26 of the APR, ECI listed and described numerous strategies, benchmarks and activities to ensure compliance in this area. For example, the State implemented a 1-800 Information and Referral line and provided data to demonstrate that referrals came from a variety of referral sources such as families, the medical community, social service agencies, education, and other programs. The State also targeted public awareness activities to physician and medical referral sources; social service agencies; child care providers; school district personnel; Head Start and Early Head Start providers; parent educators; the Texas Department of Health; and the 20 Texas Area Information Centers (AICs) which are information and referral agencies. Page 18 of the APR indicated that referrals in most of the major referral source categories had increased over time.

### ***Family Centered Services***

In its February 27, 2004 letter, OSEP requested that the State provide data to allow OSEP to determine the State's compliance with 34 CFR §303.344 (content of an IFSP). OSEP also requested that ECI provide baseline or trend data to substantiate that the majority of programs provide family centered services. ECI provided information on pages 30-32 to explain how monitoring ensured family centered services. The State also included strategies and benchmarks to ensure compliance in this area.

### ***Early Intervention Services in Natural Environments***

The March 2003 OSEP Monitoring Report identified the following areas of noncompliance: (1) steps to implement transition of the child were not included on the IFSP; and (2) outcomes for the family, specific early intervention services for the family, and medical and other services were not included on the IFSP, as required by 34 CFR §303.344(c)-(d), and §303.344(h)-(i).

OSEP's March 2003 Monitoring Report stated that 71 percent of IFSPs reviewed did not have documentation of family supports, services and outcomes on the IFSP, as required by 34 CFR §303.344(b) and (c), and that 64 percent did not have steps in place for transition, as required by 34 CFR §303.344(h) and none were individualized. ECI indicated it began planning and conducting training immediately after the May 2002 monitoring visit. The State reported that the following year's monitoring activities found that 90 percent of IFSPs contained documentation

of family supports and services, and 82 percent had transition plans in place, with 68 percent of those individualized. Page 8 of the FFY 2002 APR indicated that follow-up to corrective action required the ECI program to submit documentation that transition plans were individualized in order to demonstrate that they had completed corrective action. The ECI program submitted 22 transition plans and 21 of the plans were individualized and in compliance.

Texas' ECI provided updated data on pages 6-7 of the FFY 2002 APR indicating that it was conducting monitoring, technical assistance and corrective actions to ensure compliance with the requirements to include family outcomes and specific early intervention services for the family on the IFSP. On page 39 of the APR, ECI provided data indicating the inclusion of family supports and services on the IFSP. On pages 44-45, ECI provided data from State monitoring demonstrating that transition plans increased from 36 percent identified by OSEP in the 2003 Monitoring Report to 86 percent after training and monitoring by ECI. Texas states that it will continue monitoring activities, training and requiring corrective action plans to ensure compliance in this area. ECI stated, on page 39, that medical and "other non-required services" were also being documented. In a telephone conversation with OSEP, ECI State staff verified that the data on pages 6, 7 and 39 pertained to all services, including medical and other services. The State's final progress report providing evidence of change that demonstrates correction of these IFSP content requirements is due by February 27, 2005.

In its February 27, 2004 APR letter, OSEP requested that the State provide data to allow OSEP to determine other compliance in this cluster. OSEP also requested data the State had collected regarding the potential noncompliance identified in the State's Self-Assessment and the Improvement Plan in the area of ensuring compliance with the 45-day-timeline for conducting Part C evaluations, assessments and initial IFSP meetings.

ECI provided the following data for this cluster: (1) service coordinators are assigned to 100 percent of children; (2) timely evaluation and assessments are conducted within 45 days (34 CFR §303.321(e)(2)); (3) the IFSP is individualized and includes all services (34 CFR §303.344); and, (4) exit data indicated that 15 percent of all children who left Part C services and were reported to have attained developmental proficiency. ECI listed its numerous strategies to ensure compliance in this cluster area.

On page 37 of the APR, ECI stated that evaluations were conducted in a timely manner. The average number of days between intake and initial determination of eligibility was 18 days. The average time between referral and the development of the IFSP was 38 days. The APR explained that where the 45-day timeline was not met, monitoring staff reviewed records and progress notes to ensure that the reason for the delay was family-driven rather than program-driven. An *average* of less than 45 days from referral to holding an initial meeting does not demonstrate compliance, if the timeline for some children exceeds that timeline. In the FFY 2003 APR, OSEP requests that ECI provide data, based on the actual number of days from referral to initial IFSP meeting.

The Part C FFY 2001 and FFY 2002 APRs requested 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)). The State reported at page 43 of the FFY 2002 APR data for the 2,467 children who exited the Part C program, 15 percent of the

children exiting Part C “were reported to have attained developmental proficiency.” The State also reported that because the developmental proficiency is a higher standard than the reporting standard, “the percent of children who attained developmental proficiency is most likely an underestimate of the number of children who demonstrate improved and sustained functional abilities.” Please revise the data collection standard to measure the number of children who demonstrated improved and sustained functional abilities. Because Federal law requires OSEP to demonstrate that the Part C program is improving the skills and abilities of infants and toddlers with disabilities, OSEP is required to collect data on whether and how children are improving as a result of receiving early intervention services. If the State wishes to collect this data from a sample of children, it may do so provided that the information is collected using statistically sound methods. Please continue to provide, in the next APR (for FFY 2003), responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

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

In its February 27, 2004 letter, OSEP requested sufficient data to allow OSEP and the State to determine the status of the State’s compliance in this area. ECI provided data concerning the lack of steps on the IFSP for transition. However, the APR did not provide the requested data related to notification to school districts that a child is about to turn three years of age, and data related to the transition conference that is to be held 90 to 120 days prior to the child’s third birthday. See 34 CFR §303.148 and 34 CFR §303.344(h). In the final Progress Report and next APR (for FFY 2003), Texas must provide data or information demonstrating that all noncompliance in this cluster has been corrected.

### ***Conclusion***

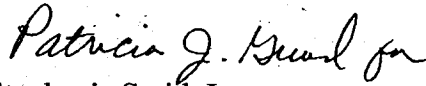
By February 27, 2005, the State must provide its final Progress Report containing its evidence of change on data and any other strategy implementation information demonstrating that the noncompliance identified in OSEP’s March 10, 2003 Monitoring Report related to the inclusion of transition steps, family supports, family services, other services and outcomes on the IFSP has been corrected.

In addition, as noted above, in the next APR (for FFY 2003), The State must provide: (1) data based on the actual number of days from referral to initial IFSP meeting; (2) responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities; (3) its monitoring strategies and any data related to notification to school districts that a child is about to turn three years of age; and data related to holding the transition conference 90 to 120 days prior to the child’s third birthday.

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 Virginia Johnson at 220-245-7353.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

Cc: Mary Beth O'Hanlon  
Part C Coordinator