



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

MAR - 4 2005

Commissioner Susan A. Gendron  
Commissioner of Education  
Maine Department of Education  
23 State House Station  
Augusta, Maine 04333-0023

Dear Commissioner Gendron:

The purpose of this letter is to respond to Maine's April 15, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Reports (APR) for the Individuals with Disabilities Education Act (IDEA) Parts C and B<sup>1</sup> 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 Parts C and B APRs directed States to address five cluster areas for Part B: General Supervision; Early Childhood Transition, Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition; and five cluster areas for Part C: General Supervision; Comprehensive Public Awareness and Child Find System, Family Centered Services, Early Intervention Services in the Natural Environment, and Early Childhood Transition.

---

<sup>1</sup> The Maine Department of Education (MDOE) is both the State education agency (SEA), responsible for the administration of the State's special education system, and the State's Lead Agency for Part C. In Maine, 16 Child Development Services (CDS) Regional Site Boards provide both Part C early intervention services to infants and toddlers aged birth to three, and preschool special education services to children aged three through five (children who are not yet five years old by October 15 of a given school year), pursuant to the State's Chapter 180 regulations. 284 School Administrative Units (SAUs) provide "school-aged" special education and related services to children aged five (children who have turned age five by October 15 of a given school year) to age 20 (the school year in which the student turns 20), pursuant to the State's Chapter 101 regulations.

### ***Background***

OSEP's 1997 Monitoring Report identified numerous findings of noncompliance, several of which continue to be areas of noncompliance, as further detailed below. On October 18, 2002, the Maine Department of Education (MDOE) submitted a Self-Assessment, addressing both Part B and Part C. OSEP's April 25, 2003 response to the Self-Assessment informed the State that data indicated continuing noncompliance in some areas from the 1997 monitoring report, new areas of noncompliance, and other areas of potential noncompliance. OSEP's letter directed the State to submit, by July 1, 2003, an Improvement Plan to address the areas of noncompliance for Parts B and C. The combined Improvement Plan (for both Part C and Part B) that MDOE submitted on June 26, 2003, included baseline and current data that demonstrated continuing noncompliance in a number of areas.

OSEP's December 30, 2003 response to the Improvement Plan directed MDOE to submit a revised Improvement Plan, within 60 days from the date of that letter that included a plan to achieve compliance in seven areas of *Part B* noncompliance and four areas of *Part C* noncompliance.

The seven areas of Part B noncompliance were:

1. Completing initial evaluations for preschool-aged children with disabilities, within State timelines (34 CFR §§300.600(a)(2)(ii) and 300.121(c));
2. Providing a free appropriate public education (FAPE) to eligible youth with disabilities in adult correctional facilities (34 CFR §§300.2, 300.121, 300.122(a)(2), 300.311 and 300.517);
3. Providing FAPE to youth with disabilities in juvenile correctional facilities (34 CFR §§300.2 and 300.121);
4. Ensuring that services to preschool-aged children with disabilities were not delayed or interrupted (34 CFR §§300.300(a) and 300.350(a)(1));
5. Ensuring that children with disabilities placed by public agencies into private special purpose schools have available a free appropriate public education (34 CFR §§300.600 and 300.401);
6. Ensuring the correction of previously identified noncompliance (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)); and
7. Compliance with secondary transition requirements related to: (a) a statement of needed transition services in the individualized education program (IEP), beginning by age 16 (34 CFR §§300.347(b)(2) and 300.29); (b) inviting the student, and a representative of any other agency, likely to be responsible for providing or paying for transition services, to the IEP meeting (34 CFR §300.344(b)); and (c) the transition-related content in IEP meeting notifications to parents (34 CFR §300.345(b)(2)).

The four areas of Part C noncompliance were:

1. Ensuring the correction of noncompliance that MDOE had identified as part of its general supervision responsibilities (34 CFR §303.501(b)(4));
2. Convening an initial individualized family service plan (IFSP) meeting within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a));
3. Ensuring that children and their families receive all the early intervention services identified on their IFSPs (34 CFR §§303.340(c), 303.342(e), and 303.344); and
4. Ensuring that families have access to culturally relevant materials (34 CFR §303.321(c)).

This letter responds to and accepts the strategies in MDOE's April 15, 2004 Parts B and C APR submissions regarding the final four areas of noncompliance for Part B and the final three areas of noncompliance for Part C.

In October 2003, OSEP conducted an on-site visit to the State, to verify the effectiveness of the State's Part B and Part C systems for general supervision, collection of data under section 618 of the IDEA, and, for Part B only, State-wide assessment. In its February 19, 2004 letter reporting on the verification visit, OSEP identified four additional noncompliance areas under Part B, including two areas of noncompliance related to due process hearing practices<sup>2</sup> that also constitute noncompliance with Part C. The four areas were: (1) correction of all noncompliance, including noncompliance found in less than ten percent of the files that MDOE reviewed (34 CFR §300.600, 20 U.S.C. 1232d); (2) ensuring that public agencies correct noncompliance within a reasonable period of time, not to exceed one year from identification (34 CFR §300.600, 20 U.S.C. 1232d); (3) timeliness of due process hearing decisions (34 CFR §§303.420 and 300.511(a) and (c)); and (4) the right of a party to request an impartial due process hearing, regardless of whether the issue was addressed through resolution of a State complaint (34 CFR §§300.507 and 303.420). In that letter, OSEP extended the timeline for MDOE to submit its revised Improvement Plan to April 15, 2004, to permit the State to combine all of the information required for the FFY 2002 Part C and Part B APRs as well as the data, documentation and information that OSEP's December 2003 and February 2004 letters had directed the State to include.

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). This letter responds to the State's Part B and Part C FFY 2002 APR (submitted April 2004), that includes MDOE's revised Improvement Plan submission. OSEP's comments are listed by cluster area in three sections. This letter first addresses three cluster areas that present overlapping concerns under Parts B and C (primarily due to the fact that Maine's system for

---

<sup>2</sup> Consistent with 34 CFR §303.420, Maine has chosen to utilize its due process system under Part B to address the due process requirements of Part C. Therefore, this noncompliance with Part B requirements also constitutes noncompliance with Part C.

services to children with disabilities ages birth to five is under both Part C (for birth to three) and Part B (three to five)): (1) Provision of Services under the IDEA; (2) General Supervision; and (3) Early Childhood Transition. The remaining two sections set out issues solely under Part B and solely under Part C, respectively.

## **I. RELATED ISSUES UNDER PART B AND PART C**

### **A. *Provision of Services under IDEA: Free Appropriate Public Education in the Least Restrictive Environment (FAPE in the LRE) and Early Intervention Services in the Natural Environment (EIS in the NE)***

OSEP is concerned about the longstanding and systemic nature of the problems in the State's CDS system under Parts B and C. As set out in further detail below, MDOE has failed to ensure the provision of services to children with disabilities, aged birth through five, in two ways: (1) delays in initial evaluations, and (2) the failure to provide services as set forth in children's IEPs/IFSPs.<sup>3</sup> This failure has resulted in children with disabilities being placed on waiting lists for services. Further, MDOE's submissions have demonstrated very little improvement in these waiting lists under Parts B and C. The CDS system, which serves children aged birth through five, shares the same monitoring system, State regulations (Chapter 180), and 16 site boards that provide both early intervention services to children birth to three under Part C and special education and related services to children three to five under Part B. Based upon the findings set out below, OSEP is requiring that by no later than six months from this letter, the State must submit data demonstrating substantial improvement in these two longstanding noncompliance areas that have resulted in waiting lists for evaluations and services for children birth to five. Other issues for EIS in the NE and FAPE in the LRE are discussed in the Part C and Part B sections, respectively.

**1. Delay in the provision of FAPE to preschool-aged children with disabilities.** MDOE was not effective in ensuring the completion of initial evaluations for preschool-aged children with disabilities, consistent with State timelines, as required by 34 CFR §§300.600(a)(2)(ii) and 300.121(c).<sup>4</sup> In its 1997 Monitoring Report, OSEP found that public agencies were failing to ensure that, for preschool-aged children with disabilities, an evaluation was completed and an IEP/IFSP meeting conducted within 60 days from referral, and were, therefore, delaying the provision of FAPE to these children, in violation of 34 CFR §300.600(a)(2)(ii). OSEP's 1994 report included a similar finding that the State was not meeting its former timeline of 45 days from referral to placement for preschool-aged children with disabilities. The corrective action plan (CAP) materials that MDOE submitted in September 2000 indicated that MDOE had completed each of the actions specified in the CAP that OSEP accepted in 1999. However,

---

<sup>3</sup> Maine allows local education agencies (LEAs) and families to use an IFSP, in lieu of an IEP, for children aged three through five, under the circumstances specified by 34 CFR §300.342(c). During OSEP's October 2003 verification visit, MDOE informed OSEP that, to date, all parents chose to use an IFSP. Therefore, in addressing services for children with disabilities, ages three through five, OSEP has used the term "IEP/IFSP."

<sup>4</sup> Maine's Chapter 180, Section VI.3.D, requires that public agencies complete an initial evaluation and hold an initial IEP/IFSP meeting within 60 days after referral for initial evaluation of preschool-aged children with disabilities.

monthly reports from CDS sites that MDOE submitted to OSEP in September 2000 included data showing continuing delays in conducting timely evaluations (attributed by the State to staff shortages) ranging from 18 to 183 days over the 60-day timeline. A compliance report, from a CDS site that the State submitted to OSEP as an example in November 2002, showed that delays persisted.

On page four of the FAPE in the LRE section of the State's 2002 Self-Assessment, the State concluded that, due to shortages of evaluator personnel, initial evaluations of preschool-aged children "may" exceed the State's 60-day timeline. In its April 2003 response to the State's Self-Assessment, OSEP directed the State to include in its Improvement Plan, strategies and timelines for ensuring, within one year of OSEP's acceptance of the Improvement Plan, correction of the noncompliance (i.e., that delays in the completion of initial evaluations do not result in a failure to make FAPE available to eligible children with disabilities no later than their third birthday, as required by §300.121(c)). In the July 2003 Improvement Plan, the State included data showing the following percentages of children with disabilities aged three through five for whom public agencies completed the evaluation and initial IFSP/IEP within the State's 60-day timeline: (1) 2000-2001, 49 percent (523 of 1057 children); and (2) 2002-2003, 84 percent (4450 of 5322 children). These data showed improvement, but also showed continuing noncompliance in an area with a longstanding history of noncompliance. The State included data, on pages 62 and 63 of the APR, indicating that, for 2003-2004 (up to April 15, 2004, when MDOE submitted its APR), 70 percent of three through five-year-old children with disabilities received initial evaluations within 60 days of referral for evaluation. These data indicate a decline in compliance from the State's 2002-2003 data that MDOE included in its Improvement Plan; while public agencies completed the initial evaluation *and* IEP/IFSP for 84 percent of preschool-aged children in 2002-2003, they completed an *initial evaluation* for only 70 percent in 2003-2004.

The Improvement Plan included strategies to increase the supply of personnel, but did not include other strategies, such as monitoring, to ensure that CDS regional sites completed initial evaluations and developed IEPs/IFSPs for preschool-aged children with disabilities within the State's 60-day timeline. Further, the Improvement Plan did not include evidence of change and timelines for documenting correction within one year of OSEP's acceptance of the plan. OSEP's December 2003 letter directed MDOE to revise its Improvement Plan to include strategies, evidence of change, and timelines that were designed to bring MDOE into compliance within one year of OSEP's acceptance of MDOE's revised Improvement Plan. The FFY 2002 APR submission included strategies to increase the supply of personnel, and the State's plans to conduct onsite monitoring for four to six of the 16 CDS regional sites during FY 2005, but did not include a description of how it would be documenting correction within one year, i.e., activities, timelines, and resources. Based upon this, OSEP is imposing specific reporting and timeline requirements, as set out on page 8 of this letter.

**2. Failure to provide services to preschool-aged children as set forth in IEP/IFSP due to shortages in personnel.** MDOE has not been effective in ensuring that services to preschool-aged children with disabilities are not delayed or interrupted, as required by 34 CFR §§300.300(a) and 300.350(a)(1). In its 1997 Monitoring Report, OSEP found that public agencies were, due to personnel shortages, failing to provide required services as set forth in the IEP/IFSP for preschool-aged children with disabilities. Neither the Self-Assessment, nor the

documentation the State submitted to OSEP under the CAP, showed that the State corrected this noncompliance. The CAP materials that MDOE submitted in September 2000 indicated that MDOE had completed each of the actions specified in the CAP that OSEP accepted in 1999. However, monthly “unmet needs” reports that were part of that submission included data that showed there were still instances of denials of FAPE with regard to the provision of special education and related services due to staff shortages. Specifically, the data showed that there were preschool-aged children waiting for therapy services as set forth in their IEPs/IFSPs for up to six months. In November 2002, the State submitted, as an example, a compliance report from one CDS site that showed delays in FAPE of up to 133 days.

The State reported, on page 19 of the general supervision section of its 2002 Self-Assessment, that it was experiencing a shortage of speech clinicians/speech pathologists, causing high caseloads, but the Self-Assessment included no data or analysis regarding whether the State was ensuring that preschool-aged children with disabilities received all of the services included in their IEPs/IFSPs. In its April 2003 letter, OSEP stated that it could not determine from the Self-Assessment the extent of personnel shortages or the impact of the shortages on the provision of timely and appropriate services, and directed the State to examine current relevant information related to this issue, including data from monitoring, and include in the Improvement Plan, due July 2003, its determination whether the information indicated noncompliance.

In the June 2003 Improvement Plan, Maine cited data for 2002-2003, indicating that 88 children aged three through five were waiting for speech therapy, 50 were waiting for occupational therapy, five were waiting for physical therapy, four for developmental therapy, and four for play therapy. The State attributed this noncompliance to a shortage of personnel and the rural geography of Maine, and included, in the Improvement Plan, proposed activities that were intended to address the personnel shortages. The Improvement Plan did not include other strategies, such as monitoring, for ensuring that preschool-aged children with disabilities received all of the services specified in their IEPs/IFSPs. Further, the Improvement Plan did not include evidence of change and timelines for documenting correction within one year. OSEP’s December 2003 letter directed MDOE to submit a revised Improvement Plan that included strategies, evidence of change, and timelines designed to bring MDOE into compliance within one year of OSEP’s acceptance of the revised Plan.

On page 26 of the APR, the State included data indicating that MDOE continued to experience shortages of speech pathologists, occupational therapists, and physical therapists to work with preschool-aged children with disabilities. The State did not report on the status of waiting lists of preschool-aged children with disabilities for services. Further, the APR included strategies to increase the supply of personnel, and plans to conduct onsite monitoring at four to six of the 16 CDS sites during FFY 2005, but did not include a description of how it would be documenting correction within one year, i.e., data, or activities, timelines, and resources. Based upon this, OSEP is imposing specific reporting and timeline requirements, as set out on page 8 of this letter.

**3. Timeline for evaluation, assessment, and holding initial IFSP Meeting.** Part C requires, at 34 CFR §§303.321(e), 303.322(e), and 303.342(a), that, within 45 days after initial referral, the public agency must complete an initial evaluation and assessment of the child and convene an initial IFSP meeting. Maine’s 2002 Self-Assessment included data indicating that the State

complied with the 45-day timeline for only 201 of 735<sup>5</sup> referrals. OSEP's April 2003 letter directed MDOE to include in the Improvement Plan, steps to correct the noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepted the Plan.

As stated in OSEP's December 2003 letter, the State's Improvement Plan reported data for 2002-2003, indicating that the State had met the 45-day timeline for 1047 of 1724 referrals. OSEP noted that these data showed both improvement and continued noncompliance. The Plan included strategies to increase the supply of personnel, but did not include strategies, such as monitoring, for ensuring that CDS regional sites completed an initial evaluation and assessment and convened an initial IFSP meeting within 45 days from referral. OSEP directed the State to revise the Improvement Plan to include strategies, evidence of change, and timelines designed to bring MDOE into compliance with these requirements within one year of OSEP's acceptance of the revised Plan.

On pages 28 through 31 of the FFY 2002 APR, the State included the same 45-day timeline data for 2002-2003 that it included in its Improvement Plan, but did not include any new data regarding this issue, as requested in OSEP's December 2003 letter. The Part C FFY 2002 APR included no plans to monitor for compliance with the 45-day timeline applicable to infants and toddlers. On page 13, MDOE included strategies to increase the supply of personnel, but again did not include other strategies, such as monitoring, for ensuring that CDS regional sites completed an initial evaluation and assessment and convened an initial IFSP meeting within 45 days from referral. Further, the APR did not include activities, timelines, and resources for documenting correction of this noncompliance within one year. Based upon this, OSEP is imposing specific reporting and timeline requirements, as set out on page 8, below.

**4. Infants and toddlers and their families receive all the services identified in their IFSPs.** MDOE reported data in its 2002 Self-Assessment indicating that it was not ensuring that infants and toddlers were receiving all of the early intervention services that the IFSP team determined they needed on their IFSPs, inconsistent with 34 CFR §§303.340(c), 303.342(e), and 303.344. The Self-Assessment included statements that there were insufficient numbers of certain types of providers (such as occupational or physical therapists), resulting in children sometimes not receiving all of their IFSP services on a continuous basis.<sup>6</sup> OSEP's April 25, 2003 response to the Self-Assessment directed MDOE to: (1) examine, as part of the Improvement Plan, all relevant information related to this issue, including data from monitoring; (2) determine whether

---

<sup>5</sup> The State had submitted data on September 29, 2000 showing this noncompliance. MDOE submitted samples of CDS monthly reports that included Part C data demonstrating delays in evaluations ranging from eight to 197 days over the 45-day timeline. A compliance report from one CDS site, which the State submitted to OSEP as an example in November 2002, showed that such delays, up to 77 days, persisted in at least one CDS Intermediate Educational Unit. MDOE submitted these data as part of its documentation of implementation of the State's Part B Corrective Action Plan (CAP), based on OSEP's July 25, 1997 Monitoring Report.

<sup>6</sup> The State had submitted data on September 29, 2000 indicating a problem in this same area. MDOE submitted samples of CDS monthly compliance reports that included Part C data demonstrating delays in provision of services, up to six months. A compliance report from one CDS site that the State submitted to OSEP as an example in November 2002 showed that delays in the provision of early intervention services, up to 60 days, persisted in at least one CDS Intermediate Educational Unit. MDOE submitted these data as part of its documentation of implementation of the State's Part B Corrective Action Plan (CAP), based on OSEP's July 25, 1997 Monitoring Report.

the information indicated noncompliance; and (3) if the State determined that the information in fact indicated noncompliance, include in its Improvement Plan, steps to correct the noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepted the Improvement Plan.

In the 2003 Improvement Plan, MDOE indicated that 37 infants and toddlers with disabilities were waiting for speech therapy, 13 were waiting for occupational therapy, and ten were waiting for physical therapy, and attributed this noncompliance to a shortage of personnel. The State included activities to address personnel shortages, but the Improvement Plan did not include other strategies such as monitoring to ensure that infants and toddlers received all of the services specified in their IFSPs or to document correction within one year. OSEP's December 2003 response letter directed MDOE to revise its Improvement Plan to include strategies, evidence of change, benchmarks, and timelines designed to bring MDOE into compliance within one year of OSEP's acceptance of the revised Plan. The State indicated, on page nine of the FFY 2002 Part C APR (the revised Improvement Plan), that MDOE continued to experience a shortage of speech pathologists, occupational therapists, and physical therapists to work with young children with disabilities, and included strategies. OSEP accepts the strategies in the April 15, 2004 submission, which is also MDOE's revised Part C Improvement Plan, and imposes specific timeline and reporting requirements in this letter. Maine must demonstrate that, within one year from the date of this letter, it is in compliance with the requirements at 34 CFR §§303.340(c), 303.342(e), and 303.344 that the lead agency ensure an IFSP is developed and implemented for each eligible child.

OSEP accepts the strategies in the State's FFY 2002 Part B and Part C APRs for the preceding four areas of noncompliance, and imposes the following specific reporting and timeline requirements. The State must ensure that it corrects identified noncompliance in a timely manner, within a reasonable period of time not to exceed one year from the date of this letter, and provide evidence of such correction to OSEP no later 30 days following the end of that one-year period. MDOE must submit: (1) an interim progress report, no later than six months from the date of this letter, including evidence of change data demonstrating substantial improvement; and (2) thirty days following one year from the date of this letter, a final report that includes data demonstrating full compliance. The reports must include:

1. A summary (by CDS regional site, the relevant Part C or Part B regulatory requirement, and date of the finding) of any noncompliance indicating that: (a) evaluations and assessments are not conducted in a timely manner; and (b) services under Part B or Part C for children birth to five are not provided in a timely manner (as collected by MDOE in its monthly compliance reports, unmet needs reports, and dispute resolution records and any other means including data and other monitoring activities) disaggregated by type of service consistent with how MDOE/CDS already collects this data (e.g., developmental therapy, specialized instruction, speech therapy, occupational therapy) for the most recent three months prior to the progress report, due no later than six months from the date of this letter; and three months prior to the final progress report, due 30 days after one year from the date of this letter;



2. The corrective actions that MDOE has taken or required of CDS sites to ensure correction of findings; and
3. The status of the correction.

**B. General Supervision**

In the General Supervision cluster area, there are four areas that are cross-cutting under Parts B and C. These four areas are: (1) longstanding failure to correct noncompliance for Part C and for Part B programs; (2) ensuring the right of a party to request due process hearings for Part C and Part B preschool and school-aged; (3) timely issuance of due process hearing decisions; and (4) the content of the procedural safeguards notice used by CDS for Part C and Part B preschool-aged children. There are three other areas of Part B noncompliance in this cluster that are set out in the Part B section below.

**1. Longstanding failure to correct noncompliance under Parts B and C.** OSEP's December 2003 Improvement Plan response letter indicated that the State had not been effective in ensuring correction of noncompliance (including noncompliance that OSEP identified in its 1997 Part B Monitoring Report), as required by 34 CFR §300.600 and §303.501(b)(4) and directed the State to revise its Improvement Plan to include strategies, evidence of change, and timelines to ensure that, within one year of OSEP's acceptance of MDOE's revised Improvement Plan, it would demonstrate effective and timely correction of noncompliance.

On page 11 of the FFY 2002 Part B APR, the State indicated that: (1) between March 2004 and March 2005, it would develop initiatives in the Child Development Services (CDS) monitoring system to ensure correction of noncompliance; and (2) by the end of FFY 2005, the CDS State Office would conduct an on-site monitoring review in at least 50 percent of the CDS sites. On page ten, MDOE included a target for 2003-2004 to identify and correct IDEA noncompliance within one year, and indicated that it had taken enforcement action with one of the CDS sites. On page 15, MDOE stated "Upon review of monthly compliance reports the CDS State Director will notify, in writing, the regional CDS site that is out of compliance, and will indicate that a corrective action plan will be developed within 30 days to address and ensure compliance within one year, which will include the types of documentation of efforts to meet each child's service needs."

The State's FFY 2002 Part C APR did not include documentation that the State was ensuring the timely correction of noncompliance. Rather, the APR provided further evidence that the State was not effective in ensuring correction of identified noncompliance. On pages four through six, the State described the strategies that it would implement to ensure the correction of noncompliance, together with projected targets, activities, timelines, and resources.

OSEP accepts the strategies in the State's FFY 2002 Part B and Part C APRs, and imposes the following specific reporting and timeline requirements in this letter. Within a reasonable period of time not to exceed one year from the date of this letter, the State must ensure correction of previously identified noncompliance in a timely manner. To that end, the State must provide evidence of such correction to OSEP in an interim progress report due six months from the date

of this letter and a final report due no later than 30 days following one-year from the date of this letter. The reports must include:

1. A summary (by CDS regional site or school administrative unit (SAU)), the relevant Part C or Part B regulatory requirement, and date of the finding) of any findings of noncompliance that MDOE identified from July 1, 2003 through the date of the report (through any means, including review of compliance reports, unmet needs reports and other data, other monitoring activities, complaint resolution, and due process hearings);
2. The corrective actions that MDOE has taken or required of CDS sites or SAUs to ensure correction of the findings; and
3. The status of the correction.

**2. Ensuring the right of a party to request an impartial due process hearing regardless of whether the issue was addressed through a complaint.** Under 34 CFR §300.507(a)(1), a parent has the right to initiate an impartial due process hearing "...on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child)," whether or not the parent has previously raised the same issue in a State complaint under 34 CFR §§300.660-300.662. In its February 2004 letter reporting on the verification visit, OSEP found that Maine's Statute MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206, paragraph 4, was inconsistent with 34 CFR §300.507(a)(1), because it limited the right of a party to initiate a due process hearing in situations where the party filed a complaint. OSEP's letter directed the State to submit to OSEP, within 60 days from the date of that letter, or as part of the FFY 2002 APR submission, either: (1) documentation that it corrected the noncompliance noted in that letter relating to the right of a party to request an impartial due process hearing under 34 CFR §300.507, regardless of whether the issue was addressed through resolution of a State complaint under 34 CFR §§300.660-300.662; or (2) its plan for correcting the noncompliance, as soon as possible, but no later than one year from the date of that letter. On page 22 of the FFY 2002 Part B APR, MDOE stated that it intended to make the necessary changes in the next regular Legislative session. In order to receive its Part B grant awards for FFY 2004, MDOE provided a signed assurance on May 26, 2004, that it would: (1) submit documentation to OSEP no later than May 31, 2005 that it had amended MRSA 20-A, Part 4, chapter 303, Subchapter 1, §7206 to ensure that this provision would not be used to deny or otherwise limit a party's right to initiate a hearing under 34 CFR §300.507(a)(1) because the party raised the same issue in a State complaint or declined to appeal within a particular time period the State's decision on the complaint; and (2) ensure compliance in the interim (throughout the FFY 2004 year) with the Part B regulations including 34 CFR §300.507(a)(1). OSEP looks forward to receiving this documentation.

**3. Timeliness of due process hearing decisions.<sup>7</sup>** In its February 19, 2004 letter reporting on the verification visit, OSEP found the State was not ensuring that a final decision was reached in

---

<sup>7</sup> Although the data and IDEA requirement cited here relate only to Part B, this letter addresses timeliness of due process hearing decisions as a "related issue under Part B and Part C," because MDOE uses the same entity and procedures for Part B and Part C due process hearings.

each due process hearing and a copy of the decision mailed to each of the parties no later than 45 days after the receipt of a request for a hearing, unless the hearing officer granted specific extensions of time beyond the 45-day timeline at the request of a party, as required by 34 CFR §300.511(a) and (c). OSEP's letter directed the State to submit to OSEP, within 60 days from the date of that letter, or as part of the FFY 2002 APR submission, either: (1) documentation that it corrected the noncompliance noted in that letter relating to the timeliness of due process hearing decisions; or (2) its plan for correcting the noncompliance, as soon as possible, but no later than one year from the date of that letter. In Attachment 1 of the FFY 2002 Part B APR, MDOE indicated that for 14 of the 16 hearings held in 2002, the decisions were issued after the timeline or extension had expired and for all five of the hearings held in 2003, the decisions were issued after the timeline or extension had expired. On page 22 of the FFY 2002 Part B APR, MDOE stated that, "a memo of instruction on the documentation has been sent to the contractor for hearings." That memorandum, included as Appendix 4 in the Part B APR, stated that if a hearing officer exceeded the 45-day timeline, there must be documentation that the hearing officer extended the timeline at the request of a party *and for a specific period of time*. OSEP accepts the strategies in the State's FFY 2002 Part B APR. The State must provide evidence of correction to OSEP in an interim progress report due six months from the date of this letter and a final report due no later than 30 days following one-year from the date of this letter.

**4. Content of procedural safeguards notice for CDS.** As stated in its February 2004 letter reporting on the results of the verification visit, MDOE had informed OSEP during the visit that CDS sites addressed the procedural safeguards notice requirements of 34 CFR §303.403(b)(3) and (4), and 34 CFR §§300.503 and 300.504 by providing parents with a copy of Section XII ("Procedural Safeguards") of Chapter 180 (the State's rule for early intervention and preschool special education). As stated in OSEP's February 2004 verification letter, Section XII does not include all of the content required for notice under 34 CFR §303.403(b)(3) and (4), and §§300.503 and 300.504.

In a June 3, 2004 telephone conversation between MDOE's Laurie Bertulli and OSEP's Samara Goodman, MDOE informed OSEP that, by September 30, 2004, it was developing a procedural safeguards document for CDS regional sites to use to meet the requirements of 34 CFR §303.403(b)(3) and (4), and §§300.503 and 300.504. Within 60 days of this letter, MDOE must submit to OSEP: (1) proposed revisions to Section XII of Chapter 180, to make it consistent with 34 CFR §303.403(b)(3) and (4) and §§300.503 and 300.504<sup>8</sup>; (2) the steps that MDOE will take to ensure that public agencies provide prior written notice that meets the requirements of 34 CFR §§303.403, 300.503 and 300.504 pending completion of revisions to Section XII and dissemination of the final notice document; and (3) an assurance that MDOE will submit final revisions to Section XII no later than June 30, 2005 and ensure compliance with 34 CFR 303.403(b)(3) and (4) and §§300.503 and 300.504 until that date. As part of its application for FFY 2005 funds under Part C and Part B, Maine will need to provide written assurances that the State has procedural safeguards with respect to programs under Part C, as required by 20 U.S.C. 1439, and Part B, as required by 20 U.S.C. 1412(a)(6). In order to make those assurances, the

---

<sup>8</sup> Because the Individuals with Disabilities Education Improvement Act of 2004 includes changes to the procedural safeguard notice content requirements that take effect July 1, 2005, the State may elect to submit a revised Section XII that addresses current requirements or that addresses the requirements that will take effect July 1, 2005.

State will need to ensure that, among other procedural safeguards requirements, it is meeting the requirements of Part C and Part B related to the provision of procedural safeguards notice.

### ***C. Early Childhood Transition***

On page 39 of the State's Part C APR for FFY 2002, the State included a numerical goal for increasing, to 100 percent, the number of children who maintain eligibility for services when transitioning from the Part C program to Part B program. OSEP understands that this goal was developed because the eligibility criteria do not change at age three and are the same for all children with disabilities birth to five served within the CDS. However OSEP notes that at age three, students with disabilities are entitled to a FAPE in the LRE, including special education and related services at no cost to the parents. This is different from early intervention services in the natural environment under the Part C program. In addition, the use of an IFSP instead of an IEP must be agreed to by both the agency and the parents, consistent with 34 CFR §300.342(c).

On page 36 of the FFY 2002 Part B APR, MDOE acknowledged that, "CDS needs to begin to define the differences between Part C eligibility and Part B, Section 619 eligibility, as well as service provision to each," and referenced its plan to evaluate the need to "pull apart" Chapter 180 and to begin training with the CDS site staff on these differences, in FFY 2005. The need for these efforts to clarify the requirements of Part C as they apply for children under the age of three and of Part B as they apply to children aged three through five was evident from OSEP's review of CDS forms and interviews with MDOE staff during the October 2003 verification visit. As noted above, OSEP is concerned that the confusion over Part C and Part B services is compounded by the lack of adequate notice to parents regarding their rights under Part C and Part B, respectively. OSEP looks forward to the State's continuing efforts in this area.

## **II. ADDITIONAL ISSUES THAT PERTAIN TO PART B ONLY**

### ***A. General Supervision***

The three areas of Part B-specific noncompliance in this cluster are: (1) provision of services in adult and juvenile correction facilities; (2) monitoring programs for preschool and school-aged children with disabilities placed by public agencies in private special purpose schools; and (3) the standard for, and the timeliness of, correction of noncompliance, including longstanding failure to correct noncompliance under Part B.

**1. Provision of services in adult and juvenile correctional facilities.** In its 1997 Monitoring Report, OSEP found that MDOE was not ensuring the provision of FAPE to: (1) eligible individuals with disabilities in adult correctional facilities, as required by 34 CFR §§300.2, 300.121, 300.122(a)(2), 300.311 and 300.517; and (2) youth with disabilities served in juvenile correctional facilities, as required by 34 CFR §§300.2 and 300.121. On pages 13 and 14 of the APR, the State included data and analysis that demonstrated correction of both findings of noncompliance. MDOE reported that it required the submission of special education child count data from the correctional facilities, completed monitoring of the facilities, and conducted follow-up activities to ensure compliance. OSEP appreciates the work of the State in ensuring

compliance with this requirement and ensuring that youth with disabilities in adult and juvenile correctional facilities receive appropriate special education and related services.

**2. Ensuring FAPE for children with disabilities placed by public agencies in private special purpose schools.** In its 2002 Self-Assessment, the State indicated that, “Deficiencies in private special purpose schools may exist, but they are not currently identified due to a current lack of an applicable monitoring system by the MDOE Office of Special Services.” IDEA applies to public schools and does not place requirements on private schools. IDEA imposes requirements on States and public agencies that refer to or place students with disabilities in private schools. Each public agency in the State is responsible for ensuring that the rights and protections of Part B of IDEA are afforded to children with disabilities “[r]eferred to or placed in private schools and facilities by that public agency.” 34 CFR §300.2(c)(1). If students with disabilities attend a private special purpose school in Maine because the State or public agency has placed the child in the school or offered that placement for the child, then MDOE and the school district must ensure that these students receive required special education and related services at public expense, at no cost to the parents, in accordance with an individualized education program (IEP). 34 CFR §300.401(a). These students retain all the rights under the IDEA they would have if served directly by a public agency, and MDOE and its public agencies must ensure that this occurs. 34 CFR §300.401(c).

MDOE and/or the SAU may provide the needed special education and related services at the private school through direct arrangements with the private school or through alternative means (e.g., a third party contract). This Department does not encourage one option over the other. Either is acceptable. The question of whether the State or public agency contracts with a particular private school to meet IDEA requirements is an issue between the State or public agency and the private school. Further, the IDEA gives the State and other public agencies no regulatory authority over private schools. The State’s authority to regulate private schools is purely a State law issue. However, the SEA must provide an opportunity for those private schools and facilities to participate in the development of State standards that apply to them.

With regard to special purpose private schools, it is OSEP’s understanding that these are schools that primarily educate only students with disabilities. On page eight of the APR, MDOE reported that it is “monitoring private special purpose schools” for school-aged children. While this appears to address the requirement at 34 CFR §300.402(a) that the SEA “shall monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires” for school-aged children, the State did not indicate that it was doing so for similarly-situated preschool-aged students with disabilities or clarify the basis for such monitoring or the standards that applied. In its FFY 2003 APR, to the extent that the State and/or public agencies are placing children with disabilities, including preschool-aged children with disabilities, into private special purpose schools, the State must identify and report on the measures that it is taking to ensure that the requirements of 34 CFR §300.401 are met. This would include clarification on whether the State and public agencies are utilizing contracts or other methods to ensure the availability of FAPE. Also, to the extent that the preschool students with disabilities are being placed into special purpose private schools through contractual arrangements in order to provide a free appropriate public education, the State must also report on how it is meeting the requirements of 34 CFR §300.402(a) for these students.

**3. Standard for, and timeliness of, correction of noncompliance, including longstanding noncompliance, in school-aged programs.** OSEP's December 2003 Improvement Plan response letter indicated that the State had not been effective in ensuring correction of longstanding noncompliance (including noncompliance in the area of secondary transition, as described on pages 16 and 17 of this letter, that OSEP identified in its 1997 Part B Monitoring Report), as required by 34 CFR §300.600 and directed the State to revise its Improvement Plan to include strategies, evidence of change, and timelines to ensure that, within one year of OSEP's acceptance of MDOE's revised Improvement Plan, it would implement procedures that are effective in ensuring the timely correction of noncompliance.

In its February 2004 verification letter, OSEP identified two additional areas of noncompliance related to correction of noncompliance. MDOE was not ensuring that SAUs corrected noncompliance: (1) within a reasonable period of time, not to exceed one year; and (2) for all instances of noncompliance, including those where noncompliance was identified in less than ten percent of the files reviewed. 34 CFR §300.600 and 20 U.S.C. §1232d.

OSEP's February 2004 letter directed the State to submit, within 60 days from the date of that letter (or as part of the FFY 2002 APR), its plan for correcting such noncompliance, as soon as possible, but no later than one year from the date of that letter. On page seven of the FFY 2002 APR, MDOE indicated that the new integrated program review was intended to ensure correction within one year of the on-site monitoring, but provided no timeline for implementation of the revised monitoring procedures or for providing documentation that those procedures were effective in ensuring timely correction of noncompliance. By its FFY 2003 APR, the State must provide documentation that it is ensuring the correction of noncompliance within a reasonable period of time not to exceed one year. Such documentation is to include a description of the actions taken by the State to verify that previously identified noncompliance was corrected in a timely manner and the State's analysis and conclusions regarding timely correction.

OSEP's February 19, 2004 letter directed the State to submit, within 60 days from the date of that letter (or as part of the FFY 2002 APR), either: (1) documentation demonstrating that it is ensuring the correction of all previously identified noncompliance, including where the SAU or MDOE found noncompliance in less than ten percent of the reviewed files; or (2) its plan for ensuring such correction within an appropriate timeframe. On page seven of the FFY 2002 APR, MDOE responded that Maine's SAUs would "complete at least 90 percent compliance in all areas by the end of the third year of the monitoring process." The APR did not include a plan to correct all previously identified noncompliance, including noncompliance that represented less than ten percent of the files reviewed. The State must submit an interim progress report, due six months from the date of this letter, and a final report, 30 days after one year from the date of this letter. These reports are to include a description of revisions to State policies, procedures and practices, including a description of the State's revised monitoring and verification activities and an analysis of its effectiveness in ensuring the timely correction of previously identified noncompliance, including noncompliance that represented less than ten percent of the files reviewed.

***B. Data Issues***

On page 33 of the APR, the State provided the required content regarding CDS' collection and reporting of accurate and timely data for preschool-aged children. Although the State provided a description of its system for collecting and reporting data for school-aged programs on page 31, the State simply restated the probe ("Do State procedures and practices ensure collection and reporting of accurate and timely data?"), and did not include any explanation of progress or slippage, or timelines and resources for maintaining and/or improving performance in this area for school-aged programs. MDOE must fully address this probe in the FFY 2003 APR.

***C. Parent Involvement***

No areas of noncompliance were identified previously in this section.

On page 38 of the APR, the State included monitoring data and analysis that demonstrated its progress in ensuring compliance with Part B requirements related to parent involvement for school-aged children with disabilities. Those data showed the following levels of compliance: (1) including the parent in placement decisions (34 CFR §300.552(a)(1)), 93 percent; (2) parent participation in IEP meetings (34 CFR §300.345), 95 percent; (3) prior notice/content of notice (34 CFR §300.503), 91 percent; (4) parental consent (34 CFR §300.505(a)), 98 percent; (5) determination of needed evaluation data; input from the parents (34 CFR §300.533(a)(2)), 96 percent; and (6) conducting an IEP meeting without a parent in attendance (34 CFR §300.345(d)), 96 percent. In its FFY 2003 APR, MDOE must continue to report its progress in this area.

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

On pages 56 through 58 of the APR, MDOE noted that it did not currently collect data on the improvement of early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services and indicated that they would develop a plan to collect the data by June 2004. Under 20 U.S.C. 1418(a)(2), States are required to provide information that the Secretary requires. Moreover, under 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by or for the Secretary. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, MDOE must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

On pages 47 through 54 and in attachment 3 of the FFY 2002 APR, MDOE provided data regarding the participation and performance of children with disabilities on State-wide assessments. On page 54, MDOE addressed its efforts to decrease the gap between the performance of children with disabilities and nondisabled children, and included targets, explanation of progress or slippage, activities, timelines and resources. OSEP looks forward to reviewing the impact of MDOE's strategies in the FFY 2003 APR. On pages 58 through 61, MDOE provided data regarding performance and participation on the alternate assessments. MDOE's July 1, 2004 grant award under Part B of the IDEA lifted the Special Conditions regarding the requirement that the State report publicly and to the Secretary on the performance of children with disabilities on alternate assessments. OSEP appreciates the submission of information demonstrating continuing compliance with these important requirements.

**E. Secondary Transition**

OSEP is concerned about the longstanding and systemic nature of the problems in the area of secondary transition in Maine. OSEP's 1997 monitoring report included findings that MDOE had not ensured that: (1) the IEPs of students beginning no later than age 16, included a statement of needed transition services, designed within an outcome oriented process that promotes movement from school to post-school activities; (2) the student and the representative of any other agency that was likely to be responsible for providing or paying for services were invited, and if the student did not attend, other steps were taken to ensure that the student's preferences and interests were considered; and (3) notification of IEP meetings at which needed transition services would be considered indicated that a purpose of the meeting was the consideration of transition services, that the student was invited to the meeting, and any other agency that was invited to participate was identified in the notice.<sup>9</sup> Although Maine completed the activities for the CAP, the 2002 Self-Assessment raised additional concern about potential noncompliance in the area of secondary transition. In the State's June 2003 Improvement Plan the area of secondary transition continued to be an area of noncompliance and potential noncompliance. OSEP's December 2003 letter directed MDOE to submit a revised Improvement Plan that included strategies, evidence of change, and appropriate timelines for the following areas: (1) IEPs for all students with disabilities aged 16 or older (or younger if appropriate) includes a statement of needed transition services; (2) inviting the student and any other agency that is likely to be responsible for providing or paying for transition services, to participate in an IEP meeting where transition services will be considered, and if the student does not attend, taking other steps to ensure that the student's preferences and interests are considered; and (3) ensuring that notification of IEP meetings at which needed transition services will be considered include the appropriate content. The letter also included a request that the State report on compliance with the transition requirements that apply to students with disabilities beginning at age 14, or younger if appropriate. The summary of compliance data in these areas is set out below along with specific reporting requirements.

**1. Statement of needed transition services, age 16.** On pages 64 through 68 of the FFY 2002 APR, and as further clarified in a November 2, 2004 e-mail message and November 3, 2004

---

<sup>9</sup> These findings were based upon the Part B regulations prior to the IDEA '97 Amendments. IDEA '97 and its implementing regulations revised transition requirements including new requirements for students with disabilities beginning at age 14, or younger if appropriate. See 20 U.S.C. 1414(d)(1)(A)(vii) (1997).



telephone conversation between MDOE staff and OSEP, the State reported data and analysis that demonstrated both some progress and continuing noncompliance with the requirement at 34 CFR §300.347(b)(2). MDOE included data in Graph B on page 64 of the FFY 2002 APR that indicated 45 percent initial compliance for 2001-2002, with an increase to 87 percent in 2002-2003 and 96 percent in 2003-2004 for the 45 SAUs initially monitored. In the e-mail message and phone conversation, the State provided data indicating 53 percent compliance for the 17 SAUs initially monitored in 2002-2003 for this requirement. While this demonstrates positive progress for those SAUs where noncompliance was identified, OSEP is concerned that the high rate of noncompliance identified initially in 2002-2003 may indicate a need for more State-wide or systemic corrective actions.

**2. Inviting the student and a representative of another agency to the IEP meeting.** In its June 2003 Improvement Plan submission, MDOE reported that for 2002-2003, 28 out of the 41 schools monitored were in compliance with these requirements. These data indicated improvement from the baseline data for 2000-2001, in which 8 out of 46 schools monitored met compliance. MDOE did not, as directed in OSEP's letter of December 2003, include data demonstrating compliance with the requirement that all public agencies invite the student and a representative of any other agency that was likely to be responsible for providing or paying for transition services to IEP meetings at which transition services were to be considered, and that if the student did not attend, that other steps were taken to ensure that the student's preferences and interests were considered, as required by 34 CFR §300.344(b). In its July 2004 State Improvement Grant (SIG) Report the State provided data under the category of "student/agency participation" indicating an increase from 39 percent to 71 percent on the *Transition Requirements Checklist* (O'Leary, Lehman, & DOTY, 2001). Without further clarification and/or data, OSEP is unable to determine the status of compliance with the requirement at 34 CFR §300.344(b).

**3. Transition-related content of IEP meeting notification.** In its June 2003 Improvement Plan submission, MDOE reported that for 2000-2001, 9 out of 46 schools monitored and for 2002-2003, 38 out of the 41 schools monitored were in compliance with requirement that the notice for IEP meetings for students with disabilities beginning at age 16 indicate that the agency will invite the student and identify any other agency that will be invited to send a representative. 34 CFR §300.345(b)(3). MDOE did not, as directed in OSEP's letter of December 2003, include data demonstrating compliance with this requirement. Instead, the FFY 2002 APR reported compliance data for the requirement at 34 CFR §300.345(b)(2)<sup>10</sup>, regarding the transition-related content requirements for notice that apply to students with disabilities beginning at age 14. OSEP could not determine the extent to which this data included the requirements at 34 CFR §300.345(b)(3). In addition, the July 2004 SIG Report included data under the category of "parent notice" indicating an increase from 17 percent to 69 percent on the *Transition Requirements Checklist* (O'Leary, Lehman, & DOTY, 2001). Without further clarification and/or data, OSEP is unable to determine the status of compliance with the requirement at 34 CFR §300.345(b)(3).

The State submitted an Improvement Plan as part of its FFY 2002 APR that addresses the requirement at 34 CFR §300.347(b)(2), but fails to adequately address the requirements at 34

<sup>10</sup> The APR included a typographical error identifying the requirement as 34 CFR §300.347(2)(i) and (ii).

CFR §§300.344(b) and 300.345(b)(3). If the State has specific compliance data for these requirements, it must report such data in the FFY 2003 APR. In addition, OSEP is imposing the following requirements: MDOE must provide OSEP with an interim progress report no later than six months from the date of this letter and a final report no later 30 days following one-year from the date of this letter. The reports must include:

1. To the extent necessary, revised policies, procedures and practices related to monitoring that specifically address 34 CFR §§300.344(b) and 300.345(b)(3);
2. A summary (by SAU, the relevant Part B regulatory requirement, and date of the finding) of any and all findings of noncompliance that MDOE identified from July 1, 2003 through the date of the report (through any means, including review of compliance reports, unmet needs reports and other data, other monitoring activities, complaint resolution, and due process hearings) with the requirements of 34 CFR §§300.347(b)(2), 300.344(b) and 300.345(b)(3);
3. The corrective actions that MDOE has taken or required of SAUs to ensure timely correction of findings; and
4. The status of the correction.

**4. Agency responsibilities.** The State included data and analysis on pages 68 and 69 of the FFY 2002 APR, in a November 2, 2004 e-mail message, and in a November 3, 2004 telephone conversation between MDOE staff and OSEP that indicated noncompliance with 34 CFR §300.348(a), an area not previously identified by OSEP. MDOE included data in Graph B on page 64 of the FFY 2002 APR that indicated 18 percent initial compliance for 2001-2002, with an increase to 73 percent in 2002-2003 and 91 percent in 2003-2004 for the 45 SAUs initially monitored. In the e-mail message and phone conversation, the State provided data indicating 18 percent compliance for the 17 SAUs initially monitored in 2002-2003 for this requirement. Within 60 days of this letter, the State must submit a proposed Improvement Plan to address this newly reported area of noncompliance.

**5. Age of majority.** The State included data in Graph B on page 64 of the FFY 2002 APR, in a November 2, 2004 e-mail message, and in a November 3, 2004 telephone conversation between MDOE staff and OSEP that indicated noncompliance with 34 CFR §300.347(c)<sup>11</sup> not previously identified by OSEP, related to transfer of rights at the age of majority. These data indicated 33 percent initial compliance for 2001-2002, with an increase to 76 percent in 2002-2003 and 91 percent in 2003-2004 for the 45 SAUs initially monitored. In the e-mail message and phone conversation, the State provided data indicating 33 percent compliance for the 17 SAUs initially monitored in 2002-2003 for this requirement. Within 60 days of this letter, the State must submit a proposed Improvement Plan to address this newly reported area of noncompliance.

**6. Transition requirements at age 14.** The FFY 2002 APR, pages 64 through 68, included data indicating noncompliance with 34 CFR §§300.347(b)(1)<sup>12</sup> and 300.345(b)(2)(i) and (ii)<sup>13</sup>. These

<sup>11</sup> The APR included a typographical error identifying the requirement as 34 CFR §300.347(7)(c).

<sup>12</sup> The APR included a typographical error identifying the requirement as 34 CFR §300.347(7)(1).

areas of noncompliance, not previously identified by OSEP, are both related to the transition requirements for students with disabilities aged 14 (or younger if appropriate). These requirements are not included in Part B as amended by the Individuals with Disabilities Education Improvement Act of 2004, and will, therefore, no longer be in effect beginning on July 1, 2005. The State must ensure compliance with these federal requirements through June 30, 2005.

### **III. ADDITIONAL ISSUES THAT PERTAIN TO PART C ONLY**

#### ***A. Accuracy of Part C Data***

As documented in OSEP's February 2004 verification letter, MDOE reported that: (1) it was not fully confident in the accuracy of its Part C settings and exit data; (2) the error rate in the settings data could be as high as 20 percent; and (3) MDOE was concerned that the accuracy of the exit data was affected by the fact that many service coordinators did not understand that when children reach age three, and age out of Part C eligibility but continue to receive services from CDS under section 619, they are "exiting" Part C. In order to ensure that MDOE could meet its responsibility to submit accurate Part C settings and exit data under section 618, OSEP directed MDOE to submit, within 60 days from the date of OSEP's verification letter, its plan for ensuring that the Part C settings and exiting data provided as part of the next required submission of section 618 data are accurate. On page 15 of the APR, MDOE stated that, "The systems Administration and CDS Site Director will do data verifications between children's actual master paper file and the data system file to ensure validity and reliability," and included projected targets, activities, timelines, and resources to ensure compliance by June 2004. OSEP accepts these strategies and timelines, and requires that the State in its next report due under IDEA Section 618 include confirmation that MDOE has implemented the revised data collection procedures to ensure accurate data submissions under section 618 and has ensured that the 618 data report contains accurate setting and exit data.

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

As noted above, OSEP's December 30, 2003 Improvement Plan response letter identified one area of noncompliance in this cluster that is addressed below.

**1. Family access to culturally relevant materials.** As stated in OSEP's December 2003 response to the State's 2003 Improvement Plan, the Plan included baseline data for 2000-2001 indicating that there were no foreign language public awareness materials at the State level, and data for 2002-2003 indicated that Regional CDS directors had identified the CDS forms that need to be translated. On pages 22 through 24 of the FFY 2002 APR, the State included data and analysis demonstrating correction of the noncompliance by translating eight documents into Spanish, French, and Somali and, during Spring 2004, and disseminating those materials to all

---

<sup>13</sup> The APR included a typographical error identifying the requirement as 34 CFR §300.345(2)(i) and (ii). To the extent that the data reported under 34 CFR §300.345(b)(2) also indicate noncompliance with the requirements at 34 CFR §300.345(b)(3) for students with disabilities aged 16 (or younger if appropriate), this issue is addressed in the section related to that requirement, above.

CDS sites. Further, MDOE stated that it would continue to identify needed cultural services, documents, and materials. OSEP appreciates the work of the State in ensuring compliance with this requirement and requests that MDOE provide in the FFY 2003 APR updated information on the availability of alternative language, Part C materials, particularly the prior written notice documents required to be submitted to OSEP.

The data in Maine's Improvement Plan and FFY 2002 Part C APR indicated that Maine served 1.92 percent of the State's infants and toddlers in 2000-2001, and 4.3 percent in 2002-2003. Because of this steep increase and the concerns identified regarding its data system under General Supervision, OSEP's December 2003 letter requested that MDOE closely examine its data to ensure that there is an unduplicated and accurate child count. On page 20 of the FFY 2002 APR, MDOE explained that the data analyst sends a preliminary data report back to each CDS site for verification before MDOE submits the data to reporting the data to OSEP, and concluded that 4.3 percent was the accurate figure for 2002-2003.

On page 21 of the APR, the State included data showing that it identified 0.8 percent of infants with disabilities under age one on December 2002. The State noted that it was below the national average of 0.99 percent. The State may want to examine factors that may be inhibiting the referral and identification of infants with disabilities under the age of one (including its evaluation and assessment procedures as well as hospital and other primary referral source procedures), along with any strategies that would be appropriate to address those factors.

### *C. Family Centered Services*

On pages 24 through 26 of the APR, the State reported parent survey data indicating over 90 percent parent satisfaction with the following: involvement in decision-making; prompt and satisfactory attention to questions and/or concerns; and adequate contact with the case manager. In addition, parent survey data indicated 77 to 80 percent parent satisfaction with the following: therapist is professional and friendly; therapist kept family informed of child's progress; and therapy in a location that seemed best for his/her needs. The State included strategies to ensure the provision of family-centered services. OSEP encourages the State to continue its work to improve performance and compliance in this cluster.

### *D. Early Intervention Services in the Natural Environment*

The State included, on page 35 of the FFY 2002 APR, its performance goal that 50 percent (MDOE data currently reflect 30 percent) of families would receive services in the natural environment. The State did not include in the FFY 2002 APR compliance data on whether IFSPs confirm that early intervention services are provided in the child's natural environment, to the maximum extent appropriate to the needs of the child, or contain a justification to the extent, if any, the service will not be provided in a natural environment under 34 CFR §§303.13(b) and 303.344(d)(1)(ii). States may establish performance goals for providing early intervention services in natural environments provided that they are monitoring to ensure that the establishment of the general goal does not override the Part C requirements that service setting decisions are individualized and made by the IFSP meeting participants under the Part C regulations. In its FFY 2003 APR, the State must provide updated monitoring data on both Part

C's natural environments compliance requirements and the State's natural environment performance goals to ensure that services for all of its infants and toddlers with disabilities are provided to the maximum extent appropriate to the needs of the child in natural environments or are provided under IFSPs that contain an appropriate child-based justification for a setting that is not the natural environment (e.g., the child's outcomes cannot be met by providing services in a natural environment).

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 in 34 CFR §303.322(c)(3)(ii)). The State did not provide OSEP with any data in response to this performance indicator. In the FFY 2003 APR, MDOE must either submit documentation of data (whether collected through sampling, monitoring, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect and report the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

#### IV. CONCLUSION

The timeline for the State's submission of its FFY 2003 Part B and Part C APRs is extended to 60 days from the date of this letter. This letter directs the State to submit documentation regarding a number of issues within 60 days of this letter. OSEP encourages the State to submit that documentation as part of its FFY 2003 APRs.

##### A. Part B and Part C

To document its progress in ensuring the correction of these areas of noncompliance MDOE must submit an interim **progress report** due six months from the date of this letter including evidence of change data demonstrating substantial improvement, and thirty days following one year from the date of this letter a **final report** that includes data demonstrating full compliance for the following:

1. Delay in the provision of FAPE to preschool-aged children with disabilities (as detailed on pages 8-9);
2. Failure to provide services to preschool-aged children as set forth in IEP/IFSP due to shortages in personnel (as detailed on pages 8-9);
3. Timeline for evaluation, assessment, and holding initial IFSP Meeting (as detailed on pages 8-9);
4. Infants and toddlers and their families receive all the services identified in their IFSPs (as detailed on pages 8-9);
5. Longstanding failure to correct noncompliance under Parts B and C (as detailed on pages 9-10); and

6. Timeliness of due process hearing decisions (as detailed on pages 10-11).

Within 60 days of this letter, MDOE must submit the required documentation related to the procedural safeguards notice for CDS (as detailed on page 11). In addition, on or before **May 31, 2005**, MDOE must submit documentation related to the right of a party to request a due process hearing (as detailed on page 10).

**B. Part B**

To document its progress in ensuring the correction of these areas of noncompliance, as detailed above, MDOE must submit an interim **progress report** due six months from the date of this letter including, and thirty days following one year from the date of this letter a **final report** that includes data demonstrating full compliance for the following areas:

1. Standard for, and timeliness of, correction of noncompliance, including longstanding noncompliance, in school-aged programs (as detailed on page 14);
2. Statement of needed transition services, age 16 (as detailed on pages 16-18);
3. Inviting the student and a representative of any other agency that was likely to be responsible for providing or paying for transition services to the IEP meeting, and in case that the student does not attend, ensuring that steps are taken to consider the student's preferences and interests (as detailed on pages 17-18); and
4. Transition-related content of IEP meeting notification (as detailed on pages 17-18).

Within 60 days from the date of this letter, MDOE must submit a proposed Improvement Plan to address full compliance with the requirement at 34 CFR §300.348(a) related to agency participation in secondary transition, as detailed on page 18; and the requirement at 34 CFR §300.347(c) related to age of majority, as detailed on page 18.

In its **FFY 2003 APR**, MDOE must address the following areas, as detailed above: (1) ensuring the provision of FAPE for children with disabilities placed by public agencies in private special purpose schools (as detailed on page 13); (2) Part B data issues (as detailed on pages 14-15); (3) parent involvement (as detailed on page 15); and (4) preschool outcomes (as detailed on page 15).

**C. Part C**

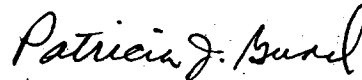
In its **FFY 2003 APR**, MDOE must submit data demonstrating improved performance and/or compliance for the following areas, as detailed in this letter: (1) natural environments monitoring data regarding compliance requirements and performance goals (as detailed on page 20); and (2) improved and sustained functional abilities (as detailed on page 21). The timeline for the State's submission of its FFY Part C APR is extended to 60 days from the date of this letter.

In the **next IDEA Section 618 report** MDOE must address Part C data accuracy (as detailed on page 19).

In addition, to the extent that the State can demonstrate correction, or progress towards correction, of any of the areas of noncompliance as part of its FFY 2003 APR, OSEP would be glad to review such documentation.

Much of the Part B and Part C noncompliance addressed in this letter has been longstanding and persistent. Therefore, continuing failure to demonstrate correction of such noncompliance in a timely manner could be a basis for the Department to consider designation of the State as a high-risk grantee. If the State determines that it cannot ensure correction of any of the noncompliance within the specified timelines, OSEP strongly recommends that, in order to ensure its continuing eligibility for funds under Parts B and C, the State consider requesting a compliance agreement pursuant to 20 U.S.C. 1234f. I request that you contact Samara Goodman at (202) 245-7356 so that we can schedule a conference call to discuss the serious issues of longstanding noncompliance detailed in this letter.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosure

cc: David Noble Stockford  
Laurie Bertulli