



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

Honorable Francis Barnes  
Secretary of Education  
Pennsylvania Department of Education  
333 Market Street  
Harrisburg, PA 17126-0333

NOV 16 2004

Dear Secretary Barnes:

The purpose of this letter is to respond to Pennsylvania's March 31, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B 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 B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

### ***Background***

The February 1, 2002 OSEP Monitoring Report to the Commonwealth of Pennsylvania, identified the following areas of noncompliance: (1) charter schools did not have their policies and procedures related to special education on file with the Pennsylvania Department of Education (PDE) (34 CFR §300.220); (2) PDE did not ensure that the requirements for consent did not result in a failure to provide a child with a free appropriate public education (34 CFR §300.300(a)); (3) PDE did not ensure the availability of an adequate supply of qualified special education and related services personnel, necessary to carry out the purposes of IDEA (34 CFR §300.381); (4) PDE did not ensure that placements were based on the individual needs of the children (34 CFR §300.550(b)); (5) PDE did not ensure that all children with disabilities who require extended school year services as part of a free appropriate public education were provided these services in accordance with an appropriate individualized education program (IEP) (34 CFR §§300.309(a)(3) and 300.309(b)(1)); (6) PDE did not ensure that

the requirement that all children with disabilities who required psychological counseling services to benefit from special education were provided with this service, in accordance with an appropriate IEP (34 CFR §§300.347(a)(3), 300.300, 300.24(a), and 300.24(b)(9)(v)); (7) PDE did not ensure that all children with disabilities who did not participate in all, or part of Pennsylvania's State-wide assessment of student achievement were assessed, using an alternate assessment (34 CFR §§300.347(a)(5)(ii) and 300.138(b)); (8) PDE did not ensure that IEPs for children with disabilities identified the initiation, duration, frequency, and location of services and modifications provided to, or on behalf, of children with disabilities (34 CFR §300.347(a)(6)); (9) PDE did not ensure that, beginning at age 14, IEPs included a statement of transition services needs, and that IEPs of students aged 16 and older included a statement of needed transition services that addressed the student's needs, interests, and abilities, and represented a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into post-secondary activities (34 CFR §§300.347(b)(1)-(2) and 300.29); (10) PDE did not ensure that other agency representatives were invited to transition meetings and if they did not attend other steps were taken to obtain their participation in transition planning (34 CFR §300.344(b)(3)(i)-(ii)).

The PDE Improvement Plan, approved by OSEP April 9, 2003, responded to the identified areas of noncompliance. The State was required to demonstrate compliance for each of these areas within one year from the date of the April 9, 2003 letter. The FFY 2002 APR and the final Improvement Plan Status Report, submitted to OSEP on April 15, 2004, addressed all areas of noncompliance.

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 PDE's final Improvement Plan Status Report and the APR are listed by cluster area.

### ***General Supervision***

In the final Improvement Plan Status Report, the State reported correction of previously identified noncompliance in the following areas of the General Supervision cluster: charter school policies and procedures; the requirement for parent consent to transfer records; and adequate supply of personnel to meet the identified needs of all children with disabilities in the State.

Charter School Policies and Procedures. In the February 2002 Monitoring Report, OSEP reported that while charter schools in Pennsylvania were considered to be local education agencies (LEAs), they did not have their policies and procedures related to special education, on file with PDE (34 CFR §300.220). The Improvement Plan indicated that in July 2001, OSEP approved PDE's policies and procedures related to the maintenance of charter school records. LEAs, including charter schools, submitted annual reports regarding policies and procedures to the Intermediate Unit (IU). The policies, procedures and use of funds documents were based on a format provided by PDE. If the district submitted policies and procedures that varied from the State format, the document was: reviewed by the IU, sent to PDE for review, and filed upon PDE approval. The IUs

submitted annually to PDE, a document entitled "Attachment B – Notice of Adoption of Policies, Procedures and Use of Funds by Charter Schools." These were assurances of the adoption of the PDE formatted policies and procedures, and were maintained at PDE. The same process was used for all LEAs in the State, including charter schools. The IUs verified the policies, procedures, and use of funds annually. The State continues to monitor the implementation of the policies and procedures as part of its routine monitoring.

Requirement for Parent Consent to Transfer Records. In the Monitoring Report, OSEP reported that: PDE did not ensure that the requirements for consent did not result in a failure to provide a child with a free appropriate public education (34 CFR §300.300(a)). OSEP found that the requirement for consent may result in a failure to identify, locate, and evaluate some children with disabilities who were in need of special education and related services (34 CFR §300.505(d)). In response to PDE's Improvement Plan, OSEP advised PDE that this issue was successfully resolved through promulgation of the July 3, 2002 memorandum regarding clarification of PDE's policy on transfer of records from MAWAs<sup>1</sup> to school districts.

Adequate Supply of Personnel to Meet the Identified Needs of All Children with Disabilities in the State. In the monitoring report, OSEP found that PDE's procedures and activities did not ensure that an adequate supply of qualified special education and related services personnel were available to ensure that children with disabilities received a free appropriate public education (34 CFR §§300.300 and 300.381). In the Improvement Plan, the State identified steps to ensure timely provision of services, including personnel training programs and monitoring of evaluation and IEP implementation timelines.

On page six of the APR, the State included data and analysis demonstrating that its recruitment and retention plan would maintain a sufficient number of administrators, teachers, related services providers, paraprofessionals, and other providers to meet the identified educational needs of all children with disabilities in the State. Beginning with the 2001-2002 school year, PDE began monitoring the number of vacant special education positions. PDE stated that its monitoring demonstrated that Pennsylvania did not have a State-wide shortage of qualified special education teachers for the reporting period. Regional shortages were identified in some of the Intermediate Units, including positions related to supporting children with emotional, visual, autistic, hearing, and speech and language disabilities. The State indicated that it would address maintaining adequate numbers of qualified special education personnel through its State Improvement Grant (SIG). OSEP looks forward to reviewing the results of the implementation of these strategies in the next APR.

Timely Identification and Correction of Noncompliance. On pages one through three of the APR, the State included data indicating that it completed timely correction of

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<sup>1</sup> The State law uses the Mutually Agreed Upon Written Arrangement (MAWA) to provide services locally. The MAWA is a contract between PDE and Intermediate Units, school districts or other public or private agencies to provide early intervention services to eligible young children on behalf of PDE.

identified special education compliance issues. On pages two and three of the APR, the State discussed how it identified systemic issues and addressed them through the monitoring process and included strategies for the maintenance of performance in this area with specific activities to maintain the targeted results. OSEP looks forward to reviewing the results of the implementation of these strategies in the next APR.

On pages seven and eight of the APR, the State included data that indicated the State issued its monitoring reports an average of 32 days following the on-site visit. The average time for closure of all required corrective action was 185 days for the time period reported. Weekly reviews by the State Special Education Director and the Bureau Chiefs resulted in demonstrated increases in the timeliness of the reporting processes. OSEP suggests that in the FFY 2003 APR, Pennsylvania continue to include strategies to ensure compliance and performance in this area.

Complaint Investigation, Mediations and Due Process Hearings and Reviews were Completed in a Timely Manner. On pages one through five of the APR, and Attachment 1 to the APR, the State reported that: 97 percent of the complaint investigations were completed within 60 days; over 93 percent of the due process hearings were completed within timelines; and that the 21 mediations listed as pending were within the timeframe set by PDE to schedule mediations. Strategies to improve the dispute resolution system, including the use of the State designated personnel, single points of contacts (SPOCs), to resolve issues, were being implemented by the State. 34 CFR §300.511 requires that due process hearing decisions are issued no later than 45 days after the receipt of request for a hearing, and 34 CFR §300.661(a) requires that complaint decisions be issued 60 days after the complaint is filed. In the next APR, the State must continue to report on its progress in ensuring compliance with the requirements of these regulations.

Probe GS.II in the APR asks States to determine whether systemic issues are identified through analysis of findings from information and data collected from all available sources, including monitoring, complaint investigations, and hearing resolutions. The GAO Report "Numbers of Formal Disputes are Generally Low and States are Using Mediation and Other Strategies to Resolve Conflicts," September 2003<sup>2</sup>, identifies Pennsylvania as having high numbers of requests for due process hearings, based on data from 2000. While the State reported that it was integrating hearing resolutions data into its monitoring profiles for particular districts, the FFY 2002 APR does not indicate whether the State analyzes hearing requests by issue. In the FFY 2003 APR, the State should examine whether there are certain issues for which hearings are most frequently requested and identify appropriate strategies to address the results of that analysis.

Procedures and Practices Ensure Collection and Reporting of Accurate and Timely Data. On pages seven and eight of the APR, in response to this probe the State provided information on the timeliness of its resolution of monitoring findings. While that is valuable information specifically responsive to probes GS I and III, the purpose of this probe is to elicit information about the State's collection and reporting of other data, such

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<sup>2</sup> The report is available at <http://www.gao.gov/cgi-bin/getrpt?GAO-03-897>.

as data collected pursuant to section 618 of the IDEA, and personnel, graduation, and drop-out data. In the next APR the State should focus on these other data collection activities in responding to this probe.

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

On pages nine and ten of the APR, the State included the number of children ages three through five, served in the Part B system. Pennsylvania has two lead agencies serving children birth through five. The Department of Public Welfare (DPW) serves children from birth to age three. PDE provides programs and services for children ages three through five. There is no universal public preschool in Pennsylvania and LEAs are not required to provide special education to children below kindergarten age. The State indicated, on page ten of the APR, that Section 304 of Act 212 of 1990, the Early Intervention Services Systems Act, designated PDE as the responsible entity for providing services to eligible preschool children. The State law uses the Mutually Agreed Upon Written Arrangement (MAWA) to provide services locally. The MAWA is a contract between PDE and IUs, LEAs, or other public or private agencies to provide early intervention services to eligible young children on behalf of PDE.

On page ten of the APR, the following systemic factors were identified as causing delays in the completion of IEPs and the provision of services by the child's third birthday: the parents may not have given consent to the County Mental Health/Mental Retardation (MH/MR) program administrator to invite the MAWA agency representative to the meeting or to provide necessary transition information to the MAWA personnel, which resulted in delays in filing paperwork and the ability to meet mandated timelines; and parents may have delayed the transition through due process hearings.

Subsequent data submitted to OSEP on July 26, 2004 specified that, parent interview responses indicated that the transition meetings were held in a timely manner, but the data did not address whether the Part B provider was attending the meeting or that services were provided in timely manner. OSEP cannot determine whether PDE ensures that all children participating in the Part B preschool program have an IEP or an IFSP developed and implemented by their third birthdays in accordance with 34 CFR §§300.121(c) and 300.132(b) of the Part B regulations and whether evaluations and eligibility determinations for children not previously served under Part C are conducted in a timely manner. Therefore in the FFY 2003 APR, PDE must include data and analysis to demonstrate that all Part B eligible children, including those who participated in the Part C program, have an IEP or IFSP developed and implemented by their third birthdays in accordance with 34 CFR §§300.121(c) and 300.132(b) of the Part B regulations. If deficiencies are identified, PDE must include strategies, proposed evidence of change, targets, and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

***Parent Involvement***

On pages 12 through 14 of the APR, the State reported data and information indicating parent involvement in the special education process including: participation in parent surveys as part of the special monitoring process, participation in training opportunities, and participation on local and State-level committees, councils, and agencies. The State included strategies and targets designed to maintain compliance. OSEP looks forward to reviewing the results of the implementation of these strategies in the next APR.

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

In the APR, the State reported correction of noncompliance with the requirement to ensure an adequate supply of personnel to meet the identified educational needs of all children with disabilities in the State (Section GS.IV pages five and six), (see comments in the General Supervision cluster of this letter). In the APR and the final Improvement Plan Status Report, the State indicated correction of noncompliance with the requirements to ensure: participation of children with disabilities on State-wide assessments (APR, Section BF.IV, pages 22 and 23 and the final Improvement Plan Status Report, pages one and two); participation of children with disabilities in alternate assessments (APR, Section BF.IV, pages 22 and 23 and the final Improvement Plan Status Report, pages two through four); and children with disabilities are not excluded from the regular educational environment for reasons other than their individual needs (APR, Section BF.V, pages 23 through 25 and the final Improvement Plan Status Report, pages eight through 13). In addition, the final Improvement Plan Status Report indicated correction of noncompliance in the following areas: availability and provision of extended school year (ESY) services (pages 15 through 18); and the provision of psychological counseling services (pages 18 through 22).

Placements Based on Other than Individual Student Needs. In the Monitoring Report, OSEP reported that PDE did not ensure that placements were based on the individual needs of the child (34 CFR §300.550(b)). The Improvement Plan addressed this issue, including the development of monitoring standards, training provided to districts, and implementation of district monitoring along with corrective action procedures.

On pages eight through 13 of the final Improvement Plan Status Report, the State included information that demonstrated implementation of the Improvement Plan activities and correction of noncompliance as follows: of 105 LEAs monitored in school year 2003-2004 in the areas of accommodations and modifications, provision of related services including psychological counseling, and support for school personnel, 94 percent of the IEPs addressed the recommended modifications and accommodations specified by the Evaluation Reports; 90 percent of the IEPs addressed the recommendations for provision of related services, including psychological counseling specified by the Evaluation Reports; 97 percent of the IEPs addressed the recommendations for program modification or support for school personnel specified by the Evaluation Reports; 98 percent of the parents interviewed indicated that the IEP teams considered the

recommendations for special education, related services and supports for school personnel that were made in the most recent Evaluation Report; 98 percent of the IEP teams accepted or rejected the evaluation team's recommendations for special education, related services and supports for school personnel for appropriate educational reasons; 100 percent of the IEP teams accepted or rejected the evaluation teams' recommendations for modification and accommodations for appropriate educational reasons; 100 percent of the IEP teams accepted or rejected the evaluations team's recommendations for related services, including psychological counseling, for appropriate educational reasons; and 100 percent of the teacher interviews indicated that IEP teams addressed the evaluation team's recommendations for program modifications or supports for school personnel that were provided to children. PDE reported 98 percent of the corrective actions for this monitoring data were within timelines for closure, with 24 percent closed.

In the FFY 2003 APR, PDE must continue to report on its progress in ensuring compliance, along with data and information regarding whether identified deficiencies were corrected in a timely manner.

Availability and Provision of Extended School Year (ESY) Services. In the Monitoring Report, OSEP reported that PDE did not ensure that all children with disabilities who required ESY services as part of a free appropriate public education were provided these services in accordance with an IEP (34 CFR §§300.300, 300.309). The Improvement Plan indicated that PDE: would disseminate a manual on extended school year, provide district trainings conducted through the Pennsylvania Training and Technical Assistance Network (PaTTAN) and IUs, and add probes to the special education monitoring system.

On pages 15 through 18 of the final Improvement Plan Status Report, the State included implementation of activities and monitoring data that indicated: (1) for the 2002-2003 school year, over 90 percent of IEPs reviewed contained statements of specific ESY services to be provided to children with disabilities and/or documentation that ESY services were considered by the IEP team; (2) for the 2003-2004 school year, the number rose to 96 percent; when ESY services were determined necessary for the child, 92 percent of the IEPs included the type, amount, location, frequency, initiation, and duration of the services; and 95 percent of the children were receiving the services as required by the IEP. In the next APR, PDE must continue to report on its progress in ensuring compliance regarding ESY services, along with data and information regarding whether identified deficiencies were corrected in a timely manner.

Provision of Psychological Counseling Services. In the Monitoring Report, OSEP reported that PDE did not ensure that all children with disabilities who required psychological counseling services to benefit from special education were provided with those services, in accordance with an IEP (34 CFR §§300.347(a)(3), 300.300, 300.24(a), and 300.24(b)(9)(v)). The Improvement Plan stated that PDE would develop a monitoring guide, provide training, and monitor for the provision of the services. OSEP reviewed the Guide for Psychological Counseling, and approved the Guide in a December 16, 2003 letter to PDE.

On pages 18 through 22 of the final Improvement Plan Status Report, the State included information that demonstrated implementation of the strategies, along with monitoring data and stakeholder feedback indicating these efforts were effective. PDE continues to monitor implementation of requirements for provision of psychological counseling as a related service to determine if the child's most recent evaluation report contained recommendations for provision of psychological counseling, and if the IEP team addressed those recommendations in development of the current IEP. The State reported high levels of compliance in this area: 90 percent of the IEPs addressed the recommendations for provision of psychological counseling services specified by the evaluation teams; 100 percent of the IEP teams considered the evaluations teams' recommendations for psychological counseling services; 100 percent of the IEPs reviewed indicated that psychological counseling services were provided to the child when required as a related service; and 93 percent of parents interviewed indicated that their child was receiving the psychological services as indicated in the IEP, and that transportation, if needed, was provided at no cost. In the next APR, PDE must continue to report on its progress in ensuring compliance regarding provision of psychological services, along with data and information regarding whether identified deficiencies were corrected in a timely manner.

Provision of Alternate Assessments of Students with IEPs. In the Monitoring Report, OSEP reported that PDE did not ensure that all children with disabilities who did not participate in all, or part of, Pennsylvania's State-wide assessment of student achievement were assessed, using an alternate assessment when necessary (34 CFR §§300.347(a)(5)(ii) and 300.138(b)). The final Improvement Plan Status Report on pages one through four reported that PDE monitored participation of children with IEPs in the State-wide assessment, the Pennsylvania System of School Assessment (PSSA) (with or without accommodations), documentation of the IEP team's decision regarding participation, and explanation of why the child did not participate in all, or part of, the PSSA, when applicable. Additionally, the State monitored participation of children with disabilities in the Pennsylvania Alternate System of Assessment (PASA). The majority of children with disabilities participating in the State-wide alternate assessment, the PASA, were performing at the proficient or advanced levels. The State required that all children must participate in the PSSA with or without accommodations, or the PASA, and IEP teams may not exclude any child from the assessment process.<sup>3</sup> The State required corrective actions, provided training, and monitored LEA data to ensure compliance for the requirements related to State-wide assessment.

On pages 22 and 23 and Attachment 3 of the APR, and on pages one through four of the final Improvement Plan Status Report, the State included information that demonstrated implementation of activities and indicated that participation in the PASA at each grade level increased slightly. Beginning with the 2004 administration of the PASA, test administrators were required to provide an explanation regarding children with IEPs who did not participate in the alternate assessment, for reasons such as parent exception due to religious beliefs. The APR included strategies for improving performance of children

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<sup>3</sup> The LEA may waive the participation requirement upon parent request, based on the parent's religious beliefs.



with disabilities on the State-wide assessments. OSEP looks forward to reviewing the results of the implementation of these strategies in the next APR.

Categorical Exemptions from State-wide Assessments. In the Monitoring Report, OSEP reported that PDE did not ensure that decisions regarding participation in State- or district-wide assessments were based on the child's unique needs and not on the child's disability (34 CFR §§300.300(a)(3)(i) and 300.347(a)(5)). The Improvement Plan stated that all children must participate in the PSSA (with or without accommodations) or the PASA; decisions were made on an individual child basis by the IEP team; monitoring was conducted regarding participation in State-wide assessments; training was conducted for districts regarding participation in the PSSA with accommodations, and in the PASA; and the State continued to monitor participation of children with disabilities in State-wide assessments.

On pages 22 and 23 of the APR, and on pages two through four of the final Improvement Plan Status Report, the State included information that demonstrated implementation of activities and data indicating the number of children with IEPs that participated in the PSSA, with or without accommodations, had more than doubled from 1998-1999 to 2002-2003, in grades five and eight; and had tripled for grade 11. Data on all children not participating in the PSSA were collected and disaggregated; the State monitored the IEP team's documented decision regarding participation in State- and district-wide assessments, with or without accommodations, and the documented reason if the child participated in an alternate assessment (the PASA for State-wide assessments). The State continued to monitor the implementation of Part B IDEA requirements related to participation of children with disabilities in State and district-wide assessments. Data indicated that children with disabilities were not exempted from State-wide assessments based on disability category. Participation rates in the PASA remained at approximately 0.5 percent through 2002-2003. The State also provided data demonstrating that participation in the PASA was not limited by disability category.

Identification of Types and Amounts of Services. In the Monitoring Report, OSEP reported that PDE did not ensure that IEPs for children with disabilities identified the initiation, duration, frequency, and location of services and modifications provided to, or on behalf of, children with disabilities (34 CFR §300.347(a)(6)). The Improvement Plan stated that PDE would develop monitoring standards to ensure that initiation, duration, frequency, and location of services would be included for related services, special education services, and any supplemental aids and services, including modifications and accommodations to be provided to the child, or on behalf of the child.

On pages 13 and 14 of the final Improvement Plan Status Report the State included information that demonstrated implementation of activities, including: revisions to the State's IEP format, beginning with 2004-2005; training regarding the revised IEP format and on the monitoring standards; and posting of information related to this issue on the PDE web page. On page 16 of the final Improvement Plan Status Report, the State reported that of the IEPs that determined ESY services appropriately, 92 percent correctly addressed the type, amount, location, frequency, initiation, and duration of services in the

2003-2004 monitoring cycle. Subsequent to that report, PDE staff provided additional monitoring data, by email, to OSEP that indicated the type, amount, location, frequency, initiation, and duration of services were monitored beginning with the 2003-2004 school year, with 80 percent of the IEPs reviewed addressing all the requirements for related services. Districts where noncompliance was identified addressed this issue, and the required corrective actions are being monitored for timely completion by the SPOCs.

The State must submit to OSEP, within 60 days of the date of this letter, data demonstrating correction of the identified noncompliance in the districts monitored. PDE must continue to include data and analysis demonstrating compliance and performance in this area in the next APR.

The APR also included data and information regarding the following areas in this cluster: disproportionality; exiting, including graduation and drop-out rates; educational placement; suspension/expulsion; and early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services.

Disproportionality. On pages 15 through 18, of the APR, the State included data and analysis that: (1) Blacks were over-represented in the disability categories of mental retardation, emotional disturbance, and orthopedic impairments, and were over-represented in settings outside the regular class more than 60 percent of the time, and in public separate school, private separate school, and public residential facilities; and (2) Hispanics were over-represented in the disability areas of hearing impairments, orthopedic impairments, deaf-blindness, and multiple disabilities, and were over-represented in settings outside the regular class more than 60 percent of the time and in public residential facilities. To address the issue, the State has set targets for each particular disability category and each particular educational setting to address the issue of racial disproportionate representation. In the next APR, the State must also address significant disproportionality evidenced in underrepresentation.

In its targets for the 2002-2003 school year, and in its projected targets for the 2003-2004 school year, on page 17 of the APR, PDE states that, "The percentage of children with disabilities receiving special education will be proportionate to their non-disabled peers by race/ethnicity, for each particular disability category, and each particular educational setting." Page 17 of the APR contains a goal for the number of children with disabilities of certain racial or ethnic backgrounds who would be identified as eligible for services under Part B and who would be in each particular educational setting. The proposed use of numerical goals based upon race raises serious concerns under federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process and in the placement process to determine if they

are educationally appropriate, consistent with the requirements of Part B and race neutral. Such an examination generally would include a review, for identification issues, of the availability and use of pre-referral intervention services, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluations. For placement, this would generally include a review of policies, procedures, and practices related to: the continuum of placement options; the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. Pennsylvania must submit revised language, consistent with Federal law, in the next APR.

Exiting. On pages 18 through 20 of the APR, the State included data that indicated the graduation rate, with a regular diploma, for all children with IEPs is 81.8 percent, and for all children, with and without disabilities, is 86.4 percent. The graduation rate for children with disabilities is higher in Pennsylvania than the national average of 56.2 percent.

On pages 18 through 20 of the APR the State reported that the drop-out rate data included children with disabilities, ages of 14 through 21, in all settings, while the drop-out data for children with and without disabilities, was calculated for the number of children beginning and completing the 12<sup>th</sup> grade. These methods result in a disparity in the data collection procedures and results. The State established a Data Council that will address the data, and will standardize the data collection within PDE by: (1) aligning data collection within each program area in PDE and responding to data collection needs at the LEA level; (2) establishing a standardized data dictionary that meets PDE/Federal reporting requirements for LEAs and adheres to the new performance-based data requirements of NCLB while referring to the National Center for Education Statistics (NCES) Data Handbook; (3) streamlining data collection processes and eliminating reporting redundancies to reduce the burden at the LEA level; and (4) creating a consumer-friendly "Data Handbook" that can be used by the LEAs and PDE when collecting and analyzing data.

This process will assist PDE in disaggregating data and will increase its ability to compare data for children with and without disabilities. OSEP looks forward to reviewing the results of the implementation of these strategies in the next APR.

Educational Settings. On pages 23 through 25 of the APR the State included percentages of children with disabilities educated in a continuum of educational settings, with 96 percent in the regular education setting with nondisabled peers. Additionally, it was reported that 71 percent of children with disabilities ages three through five were provided services in natural environments. A projected target was set to maintain current trends, but does not establish percentage targets. A goal related to percentage of children with disabilities appropriately served in the less restrictive environments can be one way for the State to measure whether it is providing for children with disabilities to be educated with their nondisabled peers to the maximum extent appropriate, and is

consistent with Part B requirements of IDEA. In meeting percentage goals to maintain the number of children served in the continuum of settings, however, the State must ensure that it will continue to meet the least restrictive environment requirements of Part B. The placement decision, including the decision about what is the least restrictive environment for each child, must be made consistent with the requirements of Part B. This means that the placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of evaluation data, and the placement options and must be based on the child's individual needs as identified in his or her IEP (34 CFR §300.552).

Thus, while it is not inconsistent with Part B of IDEA to include a numerical goal or to maintain trends based on percentages of children with disabilities appropriately placed in the less restrictive settings, the State must continue to monitor to ensure that placement decisions for all children are made in conformity with the LRE requirements of Part B and not based upon a numerical goal. The State indicated that the projected target for the next reporting period is that all children with disabilities will be educated with their nondisabled peers to the maximum extent appropriate, which is consistent with the Part B IDEA regulations.

Suspension/Expulsion. On pages 20 and 21 of the APR the State reported that there were 188 single suspensions/expulsions greater than ten days, and 2,920 multiple suspensions/expulsions summing to greater than ten days, with an unduplicated count of 3,079 children. It also reported 58,739 suspensions and 1,538 expulsions for regular education children, but there was insufficient data collected to determine the unduplicated count of regular education children. 34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of individualized education programs (IEPs), the use of behavioral interventions, and procedural safeguards to ensure that the policies procedures and practices comply with Part B. The instructions to the 2002 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. The State's 2002 APR, however, did not include any information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of comparisons described above. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to

revise) its policies, procedures, and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

Early Language/Communication, Pre-reading, and Social-emotional Skills of Preschool Children with Disabilities Receiving Special Education and Related Services. On pages 26 and 27 of the APR, the State reported that PDE was not currently collecting State-wide data on early language communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services and did not indicate that it would develop a plan to collect the data. During the reporting period, PDE instituted a pilot project on impact of research-based, effective practices in early literacy on the progress of young children with disabilities. A program called "Ladders to Literacy" was adopted and piloted in five MAWA agencies across the State. These agencies tracked the progress of individual children through the school year; and the State reported on the gains in print/book awareness, metalinguistic awareness, and oral language development reported by those MAWAs. 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, PDE 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.

### ***Secondary Transition***

In the final Improvement Plan Status Report, the State reported correction of previously identified noncompliance in two areas of the Secondary Transition cluster: coordinated set of activities within an outcome-oriented process, and inviting representatives of agencies likely to be responsible for providing or paying for transition services.

Coordinated Set of Activities within an Outcome-Oriented Process. In the Monitoring Report, OSEP reported that PDE did not ensure that IEPs included a statement of needed transition services that addresses the student's needs, interests, and abilities, and represents a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into an appropriate post-secondary situation (34 CFR §§300.347(b)(1)-(2) and 300.29). The Improvement Plan stated that PDE would issue portfolios to all LEAs during 2002-2003 and revised the PDE monitoring system to include this area.

On pages 14 and 15 of the final Improvement Plan Status Report, the State reported that in 2003-2004, 83 percent of IEPs reviewed were in compliance with this requirement and appropriate corrective actions for noncompliance were implemented. The State must submit to OSEP, within 60 days of the date of this letter, data demonstrating correction of the identified noncompliance in the districts monitored. In addition, PDE must continue

to include data and analysis demonstrating compliance and performance in this area in the next APR.

On pages 28 through 31 of the APR, the State provided information on its plans to collect and report on student outcomes data for the FFY 2004 APR. In the next APR, PDE should continue to report on its progress in collecting and reporting on this information.

Inviting Representatives of Agencies Likely to be Responsible for Providing or Paying for Transition Services. In the Monitoring Report, OSEP reported that PDE did not ensure that, if a purpose of the meeting is the consideration of needed transition services for a student, the public agency invited a representative of any other agency that is likely to be responsible for providing, or paying for, transition services; or that if an agency invited to send a representative to a meeting did not do so, the public agency took other steps to obtain the participation of the other agency in the planning of any transition services (34 CFR §300.344(b)(3)). The Improvement Plan stated that PDE currently monitors whether community agency representatives attend IEP meetings (34 CFR §300.344(b)(3)(i)); and proposed to monitor what other steps were taken by public agencies to obtain participation if the agency representative did not attend (34 CFR §300.344(b)(3)(ii)).

On page five of the final Status Report, the State demonstrated implementation of Improvement Plan strategies, and indicated that 77 percent of the LEAs monitored demonstrated compliance with the requirement that other steps were taken to obtain the participation of outside agencies invited to an IEP meeting to plan transition services, if they did not attend. Corrective actions were being implemented and monitored in districts demonstrating noncompliance. The State must submit to OSEP, within 60 days of the date of this letter, data demonstrating correction of the identified noncompliance in the districts monitored. In addition, PDE must continue to include data and analysis demonstrating compliance and performance in this area in the next APR.

### ***Conclusions***

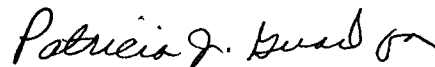
As noted above, the State must submit to OSEP, within 60 days of the date of this letter, data demonstrating correction of the identified noncompliance in the districts monitored and in the next APR continue to include data and analysis demonstrating compliance and performance demonstrating: (1) that IEPs for children with disabilities identified the initiation, duration, frequency, and location of services and modifications provided to, or on behalf of, children with disabilities (34 CFR §300.347(a)(6)); (2) that IEPs included a statement of needed transition services that addressed the student's needs, interests and abilities, and represented a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into an appropriate post-secondary situation (34 CFR §§300.347(b)(1)-(2) and 300.29); and (3) what other steps were taken to obtain the participation of outside agencies invited to an IEP meeting to plan transition services, if they did not attend (34 CFR §300.344(b)(3)(ii)).

In the next APR, as also noted above, PDE must include data and information regarding whether identified deficiencies were corrected in a timely manner in the following areas: (1) placements were based on the individual needs of children (34 CFR §300.550(b)); (2) psychological counseling services were provided in accordance with the IEP (34 CFR §§300.347(a)(3), 300.300, 300.24(a), and 300.24(b)(9)(v)); and (3) extended school year services, when required as part of a free appropriate public education, were provided in accordance with the IEP (34 CFR §§300.309(a)(3) and 300.309(b)(1)).

Additionally, as noted above, in the next APR, the State must: (1) continue to report on its progress in ensuring compliance with timelines for the requirements of issuing decisions for due process hearing decisions at 34 CFR §300.511 and for complaints at 34 CFR §300.661(a); (2) include data and analysis to demonstrate that all Part B eligible children, including those who participated in the Part C program, have an IEP or IFSP developed and implemented by their third birthdays in accordance with 34 CFR §§300.121(c) and 300.132(b) of the Part B regulations, and, if it identifies noncompliance, strategies, proposed evidence of change, targets, and timelines to correct the noncompliance within one year of when OSEP approves the plan; (3) address significant disproportionality evidenced in underrepresentation; (4) 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 early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan; and (5) include the information required to determine whether significant discrepancies were occurring regarding suspension/expulsion rates.

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 children and youth with disabilities and their families. If you have questions, please contact Hugh Reid (202) 245-7491.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special  
Education Programs

cc: Linda Rhen