



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

Honorable Suellen K. Reed
Superintendent of Public Instruction
Indiana Department of Education
State House, Room 229
200 West Washington Street
Indianapolis, IN 46204-2798

OCT 14 2005

Dear Dr. Reed:

The purpose of this letter is to respond to the Indiana Department of Education's (IDE's) March 30, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR, Progress Report submitted on September 3, 2004 and a revised Attachment 3 to the FFY 2003 APR, submitted on June 20, 2005. OSEP has set out its comments, analysis and determination by cluster area.

Background

The conclusion of OSEP's August 30, 2004 letter responding to IDE's FFY 2002 APR required the State to:

1. Provide documentation by September 3, 2004, that it completed correction of the noncompliance related to ensuring that an individualized education program (IEP) is in effect for eligible children with disabilities by their third birthdays, as required by 34 CFR §300.121(c)(1);
2. Continue to report on its progress in ensuring full compliance with the requirement, at 34 CFR §300.132(c), that public agencies participate in transition planning conferences arranged by the lead agency;
3. Include an analysis of compliance data related to the statewide assessment requirements of 34 CFR §§300.347(a)(5) and 300.138; and

4. Provide either: (a) documentation of data (whether collected through sampling, monitoring, 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; or (b) a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

Indiana submitted a Progress Report to OSEP in September 3, 2004. Further comments on this submission will be included in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

On pages 2-3 of its FFY 2003 APR, the State described the steps it will take so it can review data from its monitoring system, but the APR included no data or analysis regarding the effectiveness of the State's monitoring system in identifying and correcting noncompliance. This is an indicator in the State Performance Plan (SPP) under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

Formal written complaints and mediation

Data in Attachment 1 of the APR showed that IDE: (1) received 108 complaints during the reporting period; (2) did not investigate nine of those complaints because the complaint was withdrawn or IDE did not have jurisdiction; (3) issued the decision for the other 99 complaints within required timelines; and (4) made findings of noncompliance in 80 of those complaints. The State reported that: (1) of the mediation requests related to hearing requests, 74 percent resulted in mediation agreements compared to 42 percent from the prior year; and (2) of the mediation requests not related to hearing requests, 84 percent resulted in mediation agreements compared to 53 percent from the prior year. OSEP looks forward to reviewing updated information in the SPP.

Due process hearings and reviews

Regulations at 34 CFR §300.511(a)(1) and (2) require that a public agency ensure that a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties within 45 days of the receipt of a request for a hearing. A hearing officer may grant specific extensions of time beyond 45 days at the request of either party. See 34 CFR §300.511(c).

In Attachment 1 and on page 3 of the FFY 2003 APR, the State included the following data that indicated noncompliance with those requirements: (1) 18 hearings were held; (2) no decisions were issued within 45 days; and (3) 14 decisions were issued within an extended timeline. The State explained that one hearing was withdrawn two days after the deadline, and the other three decisions were issued three, 16, and 18 days after the expiration of the timeline. The State

included a target that 100% of hearing decisions would meet required timelines, and a future activity to “conduct all hearings in a timely manner.” OSEP accepts the State’s plan. The State must ensure correction of the noncompliance as soon as possible, but no later than one year from the date of this letter. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter.

Personnel

The State reported an increase of approximately two percent in the number of teaching personnel during this reporting period. The State further reported that there was a one percent increase in the special education population for the last school year. On page 11 of the FFY 2003 APR, data showed slippage in the number of emergency permits for the 2003-2004 school year. The most significant slippage was noted in the subject area of mild disabilities. During the 2002-2003 school year, a total of 390 teachers held emergency certifications compared to 452 for the 2003-2004 school year. The data showed progress in the number of teachers with emergency certification in the subject area of learning disabilities. During the 2002-2003 school year, a total of 273 teachers held emergency certification compared to 202 for the 2003-2004 reporting period. The State indicated that it would continue to monitor the number of emergency licenses and review local efforts through Continuous Improvement Focused Monitoring. OSEP encourages the State to continue its participation in this effort and appreciates its efforts to improve performance in this area.

Collection and timely reporting of accurate data

On page 13 of the FFY 2003 APR, the State included a statement that, “All planning districts are required to participate in the Computerized Data Project (CODA) assuring current and accurate child count data,” but did not include any data to support a conclusion as to whether the State’s procedures and practices ensured collection and reporting of accurate and timely data. This is an indicator in the SPP under §616 that is due December 2, 2005. In preparation for that submission, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The absence of baseline data in this area will be considered in OSEP’s decision about approval of the State’s SPP.

Early Childhood Transition

OSEP’s August 2004 letter required the State to provide documentation by September 3, 2004 that it had completed correction of the noncompliance related to ensuring that an IEP was in effect for eligible children with disabilities by their third birthdays, as required by 34 CFR §300.121(c)(1), and to continue to report on its progress in ensuring full compliance with the requirement at 34 CFR §300.132(c) that public agencies participate in transition planning conferences arranged by the lead agency.

On page 14 of the FFY 2003 APR, data showed a slight improvement but continuing noncompliance with the requirements in 34 CFR §300.121(c)(1). On page 14, the State reported that, for the 2002-2003 school year, 72 percent of eligible children transitioning from Part C to B had timely implementation of services by their third birthdays and 28 percent had late implementation. The data further showed that, of the cases in which services were not implemented by children's third birthdays: (1) 45 percent were due to parent delay or missed appointments; (2) 14 percent were due to the school's failure to implement services; (3) 24 percent were the result of late Part C referral; (4) seven percent were the result of the child's enrollment in Part C less than two months before the child's third birthday; (5) three percent were the result of child illness; and (6) seven percent were the result of the child moving. The data for the current reporting period (2003-2004) showed a slight improvement; 78 percent of eligible children transitioning from Part C to B had timely implementation of services by their third birthdays and 22 percent had late implementations. Specifically, the data showed that: (1) 41 percent were due to parent delay or missed appointments; (2) 26 percent were due to the school's failure to implement services; (3) 15 percent were the result of late Part C referral; (4) 15 percent were the result of the child's enrollment in Part C less than two months before the child's third birthday; (5) one percent was the result of child illness; and (6) one percent was the result of the child moving. With the SPP, the State must submit data showing that the State has corrected the noncompliance with the requirements of 34 CFR §300.121(c)(1).

On page 14 of the FFY 2003 APR, the State reported that in both the 2002-2003 and 2003-2004 school years, a representative from the school attended 98% of the First Steps transition planning conferences for children transitioning from Part C who were determined eligible for Early Childhood Special Education. However, on page 15, the State reported that "coding errors existed in schools reporting attendance at transition conferences, resulting in a lower percentage of failure to attend when invited." With the SPP, the State must report accurate data regarding its progress in ensuring full compliance with the requirement at 34 CFR §300.132(c) that public agencies participate in transition planning conferences arranged by the lead agency.

Parent Involvement

On page 17 of the FFY 2003 APR, the State reported progress in parent participation in case conferences (IEP meetings) during the 2003-2004 school year. The data showed that 97 percent of parents participated in case conferences during this reporting period compared to 95 percent the prior year. The State reported that any special education planning districts that had one or more participating corporations whose data fell below the 90 percent target performance level were required to meet with the individual corporation to review the data, determine probable causes and complete a strategic plan with measurable goals and timelines for correcting the problem. The State further reported that planning districts with participating corporations that fell below 80 percent were required to do more extensive research on student files to determine the reason for non-participation of parents, whether systemic issues existed and that strategic plans, with measurable goals and timelines, were required.

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the

instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

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

Disproportionality

On page 20 of the FFY 2003 APR, the State indicated that no significant disproportionality existed in any category. The State provided baseline data in Attachment 2, but did not include the method it used for determining disproportionality. The SPP instructions establish new indicators in this area, for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Graduation and drop-out rates

On page 23 of the FFY 2003 APR, the State reported data that showed progress in both its graduation rate and drop-out rates. Specifically, the data showed that: (1) the graduation rate for students with disabilities increased from 51.4 percent in 2002-2003 to 56 percent in 2003-2004; and (2) the drop-out rate decreased from 32.63 percent to 27.16 percent during those same periods. The State indicated that there were continuing concerns related to students who could not, even with accommodations, pass the Indiana Statewide Testing of Educational Progress (ISTEP). On page 23, the State further reported that the ISTEP procedures include a waiver process for students meeting specified criteria and that one of its future activities was to provide multiple remediation activities aligned with requirements for seeking a waiver for diploma in lieu of passing the ISTEP. The State did not include comparable data for children with and without disabilities for graduation and drop-out rates. Graduation and drop-out rates are indicators in the SPP due December 2, 2005, and the State must provide data in its SPP that are responsive to these indicators. In preparation for the SPP submission, the State should carefully consider its current data collection against requirements related to these indicators in the SPP packet to ensure that data will be responsive to those requirements.

Suspension and expulsion

On page 25 of the FFY 2003 APR, data showed a higher percentage of suspension for children without disabilities than for children with disabilities for both the 2002-2003 and 2003-2004 school years. Specifically, the data showed that 30 percent of students without disabilities and 13 percent of students with disabilities were suspended in SY 2002-2003 and in SY 2003-2004, 30 percent of students without disabilities and 14 percent of students with disabilities were suspended. The State reported data showing that in SY 2002-2003, 0.6 percent of students without disabilities and 0.5 percent of students with disabilities were expelled, and in school year 2003-2004, 0.6% of students without disabilities and 0.6% percent of students with disabilities were expelled. The State reported that, although there was a one percent slippage in the area of suspension and expulsion for children with disabilities, the standard was still met because the rate was below or equal to the general education rate. The State reported that a review of the

suspension database occurred and the methodology of collecting suspension data would be altered during the next school year.

Although the State provided information and data on the suspension/expulsion rates of children with disabilities, the State did not determine if there was a significant discrepancy among the rates from different LEAs. The regulation at 34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rates of long-term suspensions of children with disabilities either: (1) among LEAs in the State; or (2) 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 LEA to revise) its policies, procedures, and practices related to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that policies, procedures and practices comply with Part B of the IDEA. Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant discrepancies among LEAs or compared to children without disabilities in the agencies; (2) a description of the procedures used to conduct a review of policies, procedures and practices; (3) a description of the decision-making process used for determining whether existing policies, procedures and practices in the areas mentioned above contributed to, or were the cause of, the identified discrepancies; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the discrepancies; (5) a description of other steps taken to identify the causes if it is determined that policies, procedures or practices did not cause, or contribute to, the identified discrepancies; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing discrepancies.

The State did not include evidence that it made the determination required by 34 CFR §300.146, or of a review (and, if appropriate, a revision) of the districts' policies, procedures, and practices related to suspension of children with disabilities. Within 60 days of the date of this letter, the State must provide either:

1. Data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that the State examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (a) among LEAs in the State; or (b) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, IDE 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 IEPs, and the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or
2. A plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Statewide and districtwide assessment

OSEP's August 2004 letter required the State to provide an analysis of compliance data related to the statewide assessment requirements of 34 CFR §§300.347(a)(5) and 300.138. On page 27 of the FFY 2003 APR, the data¹ indicated that the performance gap between children with and without disabilities increased in four areas: grade 3 English/language arts, grade 6 English/language arts, grade 6 mathematics, and grade 8 mathematics. The data also showed a decrease in the performance of children with disabilities in four areas: grade 3 mathematics, grade 8 English/language arts, grade 10 English/language arts, and grade 10 mathematics. Across all grades, tests, and subject matters, the average increase in the performance gap was 1.5 percent. The majority of the special education planning districts reported that IEP goals were being aligned with the State standards. The State's resubmitted Attachment 3 showed that the following numbers of children with disabilities failed the general assessments:

1. Mathematics: grade 3 - 6,033; grade 6 - 7,293; grade 8 - 7,538; grade 10 - 6,336.
2. Reading: grade 3 - 6,243; grade 6 - 8,100; grade 8 - 8,446; grade 10 - 6,727.

On page 6 of Attachment 3 (revised), data further indicated that 2,502 third, 813 sixth, 583 eighth, and 608 tenth grade children with disabilities were absent, and thus did not participate in any assessment. These data suggest that a relatively high percentage of children with disabilities in some grades did not participate in the State assessments and the State may need to examine how to increase those participation rates.² The State did not provide analysis of its compliance data to determine whether any students with disabilities did not participate in the statewide assessment due to a failure by a public agency to meet the requirements of 34 CFR §300.347(a)(5) or §300.138. Within 60 days of the date of this letter, the State must provide analysis of the data related to these requirements.

Least restrictive environment (LRE)

On page 47 of the FFY 2003 APR, the State reported that progress was noted in placing children in early childhood settings designed for children without disabilities. Further, the State reported slippage for the part-time early childhood category; however, the combined categories of early childhood and early childhood part-time indicated a percentage that exceeded the national average for early childhood placement. Specifically, the data showed that, for the 2002-2003 school year, 58.11 percent of children were in LRE Category 50, 22 percent in Early Childhood Category 20 and 19 percent in Early Childhood Category 23³. For the 2003-2004 school year, the data indicated that 58.35 percent of the children were in LRE Category 50, 30.19 percent in Early Childhood Category 20 and 12.87 percent in Early Childhood Category 23. OSEP looks

¹ On page 27 of the FFY 2003 APR, the State submitted the same data that it submitted as part of its FFY 2002 APR, because the State inadvertently submitted the wrong year's data as part of its FFY 2002 APR.

² The regulations under the No Child Left Behind Act (NCLB) provide, at 34 CFR §200.20(c), that, in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its children with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

³ The State explained that LRE category 20 means a setting designed for children without disabilities; and that placement code 23 means part-time. Further, the State indicated that category 50 means general education.

forward to reviewing updated information in the SPP, including the implementation of strategies to improve performance and resulting data and analysis.

Preschool performance outcomes

OSEP's August 2004 letter required the State to provide either 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, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan. The State reported that all children represented on the December 1 annual count and those entering the system after the December 1 count would be assessed utilizing the Indiana Standard Tool for Alternate Reporting (ISTAR) system. The State further reported that, by February 15, 2005, 95 percent of the first cohort group were assessed, with the remaining percentage expected to complete assessments within one year. The APR indicated that ISTAR, a web-based system that utilized teacher ratings to measure progress, would be used to measure progress of preschool children with disabilities. Further, the State described this system as one that measured children's performance in authentic situations and indicated that the 2004 baseline data for the first cohort group would be available by the next reporting period.

The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements. OSEP looks forward to reviewing the State's plan for collecting these data, in the SPP.

Secondary Transition

On page 51 of the FFY 2003 APR, the State reported that, for 2003-2004: (1) at graduation/certificate, 76% of students "expect paying job or pursuing formal education"; and (2) as reflected in a "Survey at Four-year Follow-up Study," 77.2% had "paying job or continuing formal education." However, the State further reported that, "After a thorough review of the data collection methodology for post-school activities, it was determined that a clear disaggregation of the statistics generated was not possible" and that "students who were both working and pursuing post-secondary education were included in the original count and therefore a duplicated count was produced for the last APR reporting year." The State noted that the methodology has been changed and will be reported with an unduplicated count in the next reporting year. On page 52 of the FFY 2003 APR, the State reported that it is the recipient of a State Improvement Grant to address transition issues and that the focus of the project is to improve and enhance post-secondary education and employment outcomes for students with disabilities. The State reported some progress and accomplishments to date, including that the collaborative work group meets bi-monthly to develop cooperative training opportunities and to discuss transition policy issues; that the vocational rehabilitation transition policy has been rewritten and five collaborative trainings have been held across the State; and that local surveys of vocational rehabilitation offices and schools regarding transition knowledge have been completed.

The SPP instructions establish two new indicators in this area (#13 and #14), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007 (#13) and the FFY 2006 APR due February 1, 2008 (#14). The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Conclusion

With the SPP, the State must submit: (1) data showing that the State has corrected the noncompliance with the requirements of 34 CFR 300.121(c)(1); and (2) accurate information on its progress in ensuring full compliance with the requirement at 34 CFR §300.132(c) that public agencies participate in transition planning conferences arranged by the lead agency.

Within 60 days of the date of this letter, the State must provide either:

1. Data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that the State examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (a) among LEAs in the State; or (b) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, IDE 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 IEPs and the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or
2. A plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

The State must also provide its analysis of the data related to the requirements of 34 CFR §300.347(a)(5) and 300.138 within 60 days from the date of this letter.

No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance with the requirements of 34 CFR §300.511(a) and (c) relating to due process hearing decision timelines, and provide a report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, the same as clusters and probes in the APR.

OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks 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 Angela McCaskill at (202) 245-7435.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Robert Marra