



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable June St. Clair Atkinson
Interim Superintendent of Public Instruction
North Carolina Department of Public Instruction
301 North Wilmington Street
Raleigh, North Carolina 27601-2825

OCT 24 2005

Dear Dr. Atkinson:

The purpose of this letter is to respond to North Carolina'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 databased determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR and Progress Report submitted on July 29, 2005. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's October 15, 2004 FFY 2002 APR response letter required the State to provide: (1) in the FFY 2003 APR, an update regarding its progress in correcting the areas of noncompliance listed below; and (2) by July 9, 2005, documentation showing that the State corrected those areas of noncompliance: (a) timeliness of due process hearing decisions (34 CFR §300.511(a) and (c)); (b) the provision of a free appropriate public education (FAPE) to youth with disabilities incarcerated in local adult correctional facilities (34 CFR §§300.121 and 300.133); (c) the provision of FAPE to children with disabilities with behavioral issues (34 CFR §300.300); (d) reporting regarding participation and performance on statewide assessments for children in out-of-district placements and State-operated programs (34 CFR §300.139); (e) inviting students to individualized education program (IEP) meetings where a purpose is the consideration of transition service needs or needed transition services (34 CFR §300.344(b)(1)); and (f) transition-related content of IEPs (34 CFR §300.347(b)).

OSEP's October 2004 letter further directed the State to include the following in the FFY 2003 APR: (1) continued reporting on the State's progress in ensuring full compliance with the timeline requirements for formal written complaints (34 CFR §300.661(a) and (b)(1)); (2) information regarding the extent to which the State's general supervision system corrected State-identified noncompliance; (3) the results of the review of policies, procedures and practices

completed when local educational agency (LEA) data show significant disproportionality (the letter further directed the State to ensure that all of the language in its FFY 2003 APR was consistent with Federal law); and (4) either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods) regarding preschool outcomes, targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

OSEP visited North Carolina during the week of July 11, 2005 for the purpose of verifying the effectiveness of the State's systems for general supervision, data collection under §618 of the IDEA, and statewide assessment. The results of that visit will be provided to the State in a separate letter, but are referenced in the appropriate sections below.

On July 29, 2005, OSEP received a Progress Report from the State. Details of that report are included in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

As noted in the 2005 verification visit letter, OSEP found that, although the North Carolina Department of Public Instruction (NCDPI) reported that it has ensured the correction of noncompliance identified through its Continuous Improvement Monitoring (CIM), it has not maintained documentation of such correction and of the State's compliance with the requirement of 20 U.S.C. §1232d(b)(3) and 34 CFR §300.600 to ensure that LEAs correct noncompliance. Therefore, OSEP's letter directed the State to submit, within 60 days from the date of the letter, either: (1) documentation that NCDPI was implementing effective procedures for ensuring the timely (i.e., no later than one year after NCDPI identifies the noncompliance) correction of noncompliance, including being able to demonstrate that each public agency has corrected identified noncompliance; or (2) the State's plan, including strategies, proposed evidence of change, targets and timelines designed to ensure that NCDPI is effectively ensuring correction of noncompliance as soon as possible, but no later than one year from identification. OSEP will review the plan and determine what further action, if any, is needed.

In the FFY 2003 APR, on pages 6 and 7, the State also described its plans to develop a system that would allow it to identify systemic issues and implement system-wide corrective activities when necessary. In the SPP, the State must report on its efforts to ensure correction of noncompliance, whether identified through monitoring, complaint investigation, due process or some other method.

Formal written complaints

The Part B regulations require that NCDPI issue its written decision, for each Part B formal written complaint, within 60 days of receipt of the complaint, unless the timeline is extended due to exceptional circumstances with regard to a particular complaint (34 CFR §300.661(a) and (b)(1)). In its 2001 Self-Assessment, the State reported that from 1998-2001, 50% of formal written complaints were resolved within the 60-day timeline. Data in the State's FFY 2002 APR

showed that, during the July 1, 2002-June 30, 2003 reporting period, the State issued 38 of 39 complaint decisions within the required timelines. OSEP's October 2003 response directed the State to continue to report, in its FFY 2003 APR, on the State's progress in ensuring full compliance with those requirements.

On pages 10 and 18 of its FFY 2003 APR, the State reported data showing that, of 86 complaints filed during July 1, 2003-June 30, 2004: (1) 54 were investigated; (2) 42 contained findings of noncompliance; (3) 12 contained no findings of noncompliance; (4) 30 were not investigated because of lack of jurisdiction or the issues were resolved; (5) two were set aside and closed within 60 days; (6) 3 were resolved beyond 60 days with documented extensions. No complaints were pending as of August 30, 2004. More current data regarding timely issuance of complaint decisions was collected in OSEP's verification visit in July 2005, and are reported in OSEP's letter regarding that visit.

In the SPP, due December 2, 2005, the State must continue to report on its efforts to ensure full compliance with the complaint timelines.

Mediation

On page 18 and in Attachment 1 of the FFY 2003 APR, the State included data and information regarding mediation, indicating that 35 requests were received for mediation during the reporting period of July 1, 2003 through June 30, 2004, and mediation agreements were reached in all 35 cases. No mediations were reported to be pending as of June 30, 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information regarding the percent of mediations held that result in mediation agreements, in the SPP.

Due process hearings and reviews

The Part B regulations require that the final decision in a due process hearing be reached and mailed to the parties not later than 45 days after the receipt of a request for a hearing, and that a hearing officer may grant specific extensions of time beyond that period at the request of either party (34 CFR §300.511(a) and (c)). Pursuant to these requirements, a hearing officer may only extend the timeline for a hearing decision at the request of a party, and, in extending the timeline, must specify the new date by which the decision will be reached and mailed to the parties. As further explained below, the State has not corrected the noncompliance with those requirements that it identified in its 2001 Self-Assessment.

In its June 2004 letter, OSEP accepted the State's plan to correct noncompliance with the hearing timeline requirements of 34 CFR §300.511(a) and (c), and directed the State to submit, no later than 30 days following one year from the date of the letter, documentation that it had corrected the noncompliance. In its FFY 2002 Part B APR, the State reported data showing continuing noncompliance. OSEP's October 15, 2004 response to the State's FFY 2002 APR directed the State to: (1) provide data and analysis demonstrating progress in correcting the noncompliance, in the FFY 2003 APR; and (2) as required by OSEP's June 2004 letter, submit by July 9, 2005, data and analysis demonstrating full correction of the noncompliance.

On page 18 of its FFY 2003 APR, the State provided data showing that decisions were reached in four hearings during the July 1, 2003-June 30, 2004 reporting period, all of which exceeded the 45-day timeline and none of which had a properly extended timeline. The State further reported that 27 due process cases filed during the reporting period remained open for more than 100 days. During OSEP's July 2005 visit, the State acknowledged that none of the hearing officers documented specific extensions when they exceeded the 45-day timeline, and, therefore, the State was not in compliance. The State provided a log showing that, for the period from January 2, 2004 to April 29, 2005, the State received 88 hearing requests, with only 21 resolved within 45 days.¹

On pages 8 and 9 of the FFY 2003 APR, the State reported that, throughout the 2003-2004 school year, it took action to address due process hearing timelines, including: (1) meetings between NCDPI staff and the Office of Administrative Hearings' (OAH's) Chief Administrative Law Judge (ALJ) and Senior Administrator to explore ways to improve timelines; (2) and the establishment of "... new procedures to ensure the regular, routine exchange of relevant information and data regarding due process petitions and decisions, including copies of all correspondence regarding extensions for hearings, between the OAH and [NCDPI] in a timely manner. The OAH agreed to fax copies of petitions for hearings to the SEA immediately upon their receipt." The State also indicated that, although the OAH had agreed to submit documentation of extensions of the 45-day timelines, the information has not been consistently provided. In addition, the FFY 2003 APR included future activities, timelines and resources to achieve projected targets and results.

OSEP is concerned that, notwithstanding the requirement in OSEP's June 2004 letter, the State was not able to demonstrate correction of the noncompliance by July 9, 2005, and remains in noncompliance. Not later than 60 days from the date of this letter, the State must submit: (1) updated data on its compliance with the requirements of 34 CFR §300.511(a) and (c); and (2) to the extent that the State cannot demonstrate compliance with those requirements, specific strategies that the State will implement to ensure such compliance as soon as possible, including strategies to ensure that any extension of the timeline for the decision in a special education due process hearing is made at the request of a party and the new due date for the decision is documented in writing. The State must submit an additional progress by April 14, 2006. If the State does not demonstrate correction of the noncompliance by June 30, 2006, OSEP will consider designating the State as a high-risk grantee and including Special Conditions on the State's FFY 2006 Part B Grant Award.

Personnel

On pages 13 through 16 of the FFY 2003 APR, the State included data and information regarding "highly qualified" administrators, teachers, related services providers, paraprofessionals, and other providers, indicating that, from 2002-2003 to 2003-2004: (1) there was a 9 percent increase in fully certified and a 1.3 percent decrease in not fully certified special education teachers who provided educational services to children with disabilities, aged 3-5; (2) a 10 percent increase in fully certified and a 1.1 percent decrease in not fully certified special

¹ The State also provided documentation that it was in compliance with the timeline requirements, at 34 CFR §300.511(b) and (c), for review decisions.

education teachers who provided educational services to children with disabilities, aged 6-21; and (3) a 9 percent increase in fully certified and a 9 percent increase in not fully certified administrators, related service providers, paraprofessionals, and other providers who provided educational services to children with disabilities, aged 3–21. The APR provided projected targets for 2004-06, including statewide training using the train-the-trainer model, and resources to achieve the projected targets and results. OSEP appreciates the State's efforts to improve performance in this area.

Collection and timely reporting of accurate data

As part of its July 2005 visit, OSEP collected information regarding the State's system for collecting and reporting data under §618 of the IDEA. As reported on pages 16 through 17 of the FFY 2003 APR, and confirmed during the July 2005 visit, the State now uses a web-based system called the Comprehensive Exceptional Children Accountability System (CECAS) to collect its child count, environment, and exiting data. The State reported that CECAS was designed with numerous compliance checks and built-in error checks to avoid duplication and reduce data-entry errors. The State further reported that it collected discipline data from its Safe Schools Division, utilizing an aggregated form of collection via a spreadsheet, and collected personnel data directly from agencies via a spreadsheet, and that it has a high level of confidence in the accuracy and timeliness of these data. OSEP appreciates the State's efforts in this area, and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Other: Provision of FAPE in local adult correctional facilities

On page 12 of the FFY 2003 APR, the State included data and information indicating continued noncompliance related to the provision of FAPE to youth with disabilities incarcerated in local adult correctional facilities (34 CFR §§300.121 and 300.311). OSEP's October 2004 letter directed the State to submit: (1) as part of its FFY 2003 APR, an update, including current supporting data and analysis, regarding its progress in correcting the noncompliance; and (2) by July 9, 2005, documentation showing that the State corrected the noncompliance. While the State's July 2005 Progress Report showed progress, it also demonstrated that noncompliance persisted in this area.

In the Progress Report, the State reported that: (1) 22 school districts submitted self-assessments in February 2005; (2) of those 22, 18 reported having procedures in place for providing services to students incarcerated in the local jails; and (3) two of those 18 indicated that they had made attempts to provide services but school personnel were denied access because of safety issues.

Not later than 60 days from the date of this letter, the State must provide documentation that it has ensured correction of the noncompliance, including documentation that the school districts that did not have procedures in place for provision of services to students incarcerated in local jails, are complying with the requirements of 34 CFR §§300.121 and 300.311.

Early Childhood Transition

On page 20 of the APR, the State reported that, “Ninety-eight percent of children who transition from Part C and are eligible for Part B services have an IEP and appropriate services in place by their third birthday.” The State included future activities, timelines and resources to improve performance and compliance. OSEP looks forward to reviewing data and analysis in the SPP showing full compliance.

Parent Involvement

On page 24 of the FFY 2003 APR, the State included data and analysis demonstrating continued performance. For example, the State reported on page 25 that: “The data supports what each LEA and charter school has reported in their Self-Assessments that there is a high level of satisfaction among parents in their systems.” The APR included future activities with timelines and resources to meet projected targets in maintaining performance in this area. 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.

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

Disproportionality

Regulations at 34 CFR §300.755(b) require that when a State determines that there is significant disproportionality regarding the identification or educational placement of children with disabilities, the State must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B.

OSEP’s October 2004 letter instructed NCDPI to report, in the FFY 2003 APR, the results of the review of policies, procedures and practices related to disproportionality. On page 33 of the FFY 2003, the State reported that, through a review of identification data in six regions, it determined that some regions were more at risk of identifying African-American children in the area of mental disabilities (MD). The State further reported that some LEAs in all regions were more likely to identify African-American children as having behavioral-emotional disabilities (BED).

On page 34 of the FFY 2003 APR, the State included a target that: “North Carolina will continue to review data at the LEA level to determine if significant disproportionality in identification and placement is occurring. If so, a review and, as appropriate, a revision of policies, procedures and practices will be conducted.” However, the State did not provide the results of the review of policies, procedures and practices used in the identification and placement of children with disabilities to ensure that they were consistent with the requirements of Part B and were race neutral, for those districts with data that illustrated significant disproportionality in the identification of children in specific disability categories in particular educational settings.

Not later than 60 days from the date of this letter, the State must either: (1) provide: (a) documentation that it ensured the review of policies, procedures, and practices used in the identification and placement of children with disabilities to ensure consistency with the requirements of Part B and are race-neutral, for those districts with data showing significant disproportionality in the identification of children as disabled and in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; and (b) the results of such review; or (2) specify what steps the State will take to implement its plan to report on the results of its review of policies, procedures, and practices, as outlined above, and to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date of this letter.

The SPP instructions establish two new indicators in this area (#9 and #10), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under §616(d) of the IDEA. 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 collection of this data, in the SPP.

Graduation and drop-out rates

On page 42 of the FFY 2003 APR, the State included information indicating that North Carolina's high school graduation rates for children with disabilities were comparable among LEAs to graduation rates for students without disabilities. For the 2002-2003 school year, 91 percent of high school graduates were nondisabled and eight percent were students with disabilities. The State further reported that for 2003-2004 school year, 91 percent of students who graduated were nondisabled and 9 percent were students with disabilities. The State's data represented an increase in the number of students who graduated with a regular high school diploma during the 2003-2004 school year, and a decrease in the number of students who received certificates in the 2002-2003 and 2003-2004 school year. The FFY 2003 APR included future activities, timelines and resources to achieve projected targets and results. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

On page 46 of the FFY 2003 APR, the State reported that 3.23 percent of all students in grades 7-12 dropped out during the 2002-2003 school year. Of those students, the State reported that 84 percent were nondisabled students and 16 percent were student with disabilities. During the 2003-2004 school year, the percentage of students with disabilities dropping out of school increased to 19 percent. The FFY 2003 APR included future activities, timelines and resources to achieve projected targets and results. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Suspension and expulsion

On pages 48 through 50 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the area of suspension and expulsion rates of children with disabilities. On page 48 of the FFY 2003 APR, the State reported that: “The total number of acts reported increased to 9,800 in 2003-04 from 8,548 in 2002-03...Of the 9,800 acts reported, there were 2,341 children identified as having a disability. In the 2003-04 school year, the number of acts for children with disabilities increased from the 2002-03 school year by 329 acts (9 percent).” On page 49, the State reported the results of the 2002-2003 annual study of short and long-term suspensions and expulsions for all public school children. Results of the study showed an increase of 7 percent for short-term suspensions, and an increase of 14 percent for long-term suspensions over the 2001-2002 school year. The results of the study further showed that male children (particularly African-American males), Native-American children, and children with disabilities in grades 6-9 continue to be disproportionately represented among short-term and long-term suspended children.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rates 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 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 practices comply with Part B. The instructions to the 2003 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 FFY 2003 APR, however, did not include any information indicating that the State 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 the comparisons described above, as directed by the FFY 2003 APR instructions. Not later than 60 days from the date of this letter, the State must submit to OSEP either: (1) evidence that it is complying with the requirements of 34 CFR §300.146, as described above; 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. If the State submits a 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 assessments

As part of its July 2005 visit, OSEP reviewed the State’s procedures for statewide and districtwide assessments. As reported in OSEP’s letter on the 2005 verification visit, OSEP determined, through its review of the State’s written procedures for statewide assessments and

the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments, that those procedures, as written, and those reports were consistent with Part B requirements.

On pages 53-56 and 60-64 of the FFY 2003 APR, NCDPI reported participation and performance results for children with disabilities in statewide assessments. NCDPI required all children, with and without disabilities, to participate in the assessment program in grades 3-8 and 10 for reading and math, and in high school courses where an end-of-course test is required. Other than some children who were absent (the largest number in the 10th grade), it appeared that all children with disabilities took the regular assessment, with or without accommodations, or the alternate assessment.

On page 53 of the FFY 2003 APR, NCDPI reported that, "during the 1998-99 through 2002-03, North Carolina schools made great progress in closing the achievement gap." On page 54, NCDPI reported that the following: (1) the percent of children, at or above achievement level III (there are four achievement levels) in reading and math in 2002-2003 ranged from 16 percent in grade 10 to 57 percent in grade five for children with disabilities and from 62 percent in grade 10 to 90 percent in grade 5 for children without disabilities; (2) in 2003-2004, ranged from 18 percent in grade 10 to 48 percent in grade 5 for children with disabilities and from 64 percent in grade 10 to 91 percent in grade 5 for children without disabilities; (3) for children in alternate assessments, in 2002-2003, the percent was "greater than 5," and in 2003-2004, ranged from 13 percent in grade 3 to 33 percent in grade 8; and (4) for children in portfolio assessments, in 2002-2003, ranged from 36 percent in grade 10 to 41 percent in grade 4 and, for 2003-2004, ranged from 48 percent in grade 10 to 66 percent in grade 5. The data showed that the percent of children scoring at level III or above was at its highest, for most children with and without disabilities, in grade 5 and the lowest, for most children with and without disabilities, in grade 10. The average percents of children, scoring at or above level III, on the regular assessment were: (1) for 2002-2003, 42.7 percent for children with disabilities and 82.3 percent for children without disabilities; and (2) for 2003-2004, 42.1 percent for children with disabilities and 83.1 percent for children without disabilities.

As also noted in OSEP's October 2005 verification letter, OSEP found that NCDPI did not ensure compliance with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to **districtwide** assessments. The basis for that finding, and the actions that the State to correct the noncompliance, are set forth in that letter.

Least restrictive environment (LRE)

On page 51 of the FFY 2003 APR, NDCPI reported that, in the 2002-2003 school year: (1) 100,484 of 170,568 children with disabilities were educated with their nondisabled peers more than 80 percent of the day; (2) 36,290 were educated with nondisabled peers 40-80 percent of the day; and (3) 30,190 were educated with nondisabled peers less than 40 percent of the day. In 2003-2004: (1) 103,097 of 172,950 were educated with their nondisabled peers more than 80 percent of the school day; (2) 35,466 were educated with nondisabled peers 40-80 percent of the day; and (3) 30,304 were educated with nondisabled peers less than 40 percent of the school day. These data show progress from 2002-2003 to 2003-2004.

On page 51 of the FFY 2003 APR, NDCPI reported that, in the 2002-2003 school year, 13,018 of 19,921 preschool children with disabilities were educated with their nondisabled peers in an early childhood setting, and 3,062 were educated with nondisabled peers in an early childhood special education setting. In 2003-2004, 13,409 of 21,018 were educated with their nondisabled peers in an early childhood setting; and 3,009 were educated with nondisabled peers in an early childhood special education setting.

Regulations at 34 CFR §300.550(b) require that each public agency ensure: (1) that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. On page 51 of the FFY 2003 APR, the State reported that, as determined through LEAs' self-assessments in 2002-2003 and 2003-2004, "several LEAs were involved in non-compliance with LRE in the 6-21 age group" for both of those school years. The State did not include any data regarding its effectiveness in ensuring that this noncompliance was corrected within one year from identification. Not later than 60 days from the date of this letter, the State must provide data and analysis regarding the extent to which it has been effective in ensuring that LEAs correct noncompliance with Part B's LRE requirements within one year from identification.

Preschool performance outcomes

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. On page 56 of the FFY 2003 APR, the State included, as its target for the 2005-2006 school year, that, "There will be a plan to obtain outcome data that will reflect the improvement of early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services." 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. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. 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.

Other: FAPE for children with behavioral issues

OSEP's October 2004 letter directed the State to submit: (1) as part of its FFY 2003 APR, an update, including current supporting data and analysis, regarding its progress in correcting the noncompliance related to the provision of FAPE to children with disabilities with behavioral issues (34 CFR §300.300); and (2) by July 9, 2005, documentation showing that the State corrected the noncompliance. Neither the FFY 2003 APR nor the State's July 2005 Progress

Report included documentation that the State corrected this area of noncompliance. To address this area of noncompliance, the Progress Report referenced the Personnel indicator in the State's FFY 2003 APR, in which the State included data regarding its progress in ensuring an adequate supply of fully certified personnel to serve all children with disabilities. The State did not include, in either the FFY 2003 APR or the Progress Report, any monitoring or other data regarding the extent to which the State is ensuring that eligible children with behavioral issues receive FAPE. Not later than 60 days from the date of this letter, the State must provide documentation that it ensured full correction of the noncompliance.

Secondary Transition

OSEP's October 2004 letter directed the State to submit: (1) as part of its FFY 2003 APR, an update, including current supporting data and analysis, regarding its progress in correcting the noncompliance related to inviting students to IEP meetings where a purpose is the consideration of transition service needs or needed transition services (34 CFR §300.344(b)(1)) and transition-related content of IEPs (34 CFR §300.347(b)); and (2) by July 9, 2005, documentation showing that the State corrected both areas of noncompliance.

On pages 65 through 68 of the FFY 2003 APR, the State included data and information regarding its monitoring findings related to those requirements. Those data showed that the State continued to find some LEAs in noncompliance in both areas.² Neither the APR nor the July 2005 Progress Report included documentation regarding the extent to which the State was effective in ensuring that these LEAs corrected that noncompliance within one year from identification.

Not later than 60 days from the date of this letter, the State must provide data and analysis regarding the extent to which it has been effective in ensuring that LEAs correct the noncompliance within one year from identification.

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). Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under §616(d) of the IDEA. 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.

² **Inviting students to IEP meetings where transition discussed.** According to baseline data and information on pages 65 and 66 of the APR: (1) the five LEAs and eleven charter schools that submitted self-assessments in 2003-2004 showed a 74% internal record review rate on this requirement; and (3) in its on-site record review in 11 agencies in 2003-2004, NCDPI found seven (71%) in compliance with this requirement.

Transition-Related Content of IEPs. Data on pages 65 through 68 showed that: (1) the five LEAs and 11 charter schools that submitted self-assessments in 2003-2004 showed a 79% internal record review rate on these requirements; and (3) in its on-site record review in 11 agencies in 2003-04, NCDPI found eight (73%) in compliance with these requirements.

Conclusion

As noted above, the State must, not later than 60 days from the date of this letter:

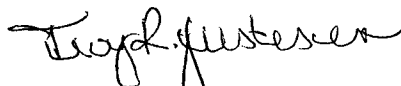
1. Submit updated data on its compliance with the requirements of 34 CFR §300.511(a) and (c), and, to the extent that the State cannot demonstrate compliance with those requirements, specific strategies that the State will implement to ensure such compliance as soon as possible, including strategies to ensure that any extension of the timeline for the decision in a special education due process hearing is made at the request of a party and the new due date for the decision is documented in writing.
2. Either: (1) provide: (a) documentation that it ensured the review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B and are race-neutral, for those districts with data showing significant disproportionality in the identification of children as disabled and in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; and (b) the results of such review; or (2) specify what steps the State will take to implement its plan to report on the results of its review of policies, procedures, and practices, as outlined above, and to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date of this letter.
3. Submit either: (1) evidence that it is complying with the requirements of 34 CFR §300.146, as described above, 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. If the State submits a 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.
4. Provide documentation that it has ensured correction of the noncompliance related to: (1) the provision of FAPE to youth with disabilities incarcerated in local adult correctional facilities (34 CFR §§300.121 and 300.311); and (2) the noncompliance related to the provision of FAPE to children with disabilities with behavioral issues, including documentation that the school districts that did not have procedures in place for provision of services to students incarcerated in local jails, are complying with the requirements of 34 CFR §§300.121 and 300.311.
5. Provide data and analysis regarding the extent to which it has been effective in ensuring that LEAs correct, within one year from identification, noncompliance with Part B's LRE requirements and secondary transition requirements.
6. Documentation that the State ensured full correction of the noncompliance regarding ensuring that eligible children with behavioral issues receive FAPE.

7. Data and analysis regarding the extent to which it has been effective in ensuring that LEAs correct noncompliance with the requirements of 34 CFR §300.344(b)(1)) and 34 CFR §300.347(b) within one year from identification.

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 Ms. Delores Barber at (202) 245-7263.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Mary N. Watson