



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

Honorable Stephen E. DeMougin  
Director  
Division of Family and Children  
Family and Social Services Administration  
402 W. Washington Street, Room 92  
Indianapolis, Indiana 46204

SEP 24 2004

Dear Director DeMougin:

The purpose of this letter is to respond to Indiana's April 28, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

### ***Background***

In its 2001 Self-Assessment and 2002 Improvement Plan, the State identified noncompliance with the requirement that public agencies complete the initial evaluation and assessment, and convene an initial Individualized Family Service Plan (IFSP) meeting, within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)). In its September 3, 2003 response to the Improvement Plan, OSEP directed the State to ensure correction of this noncompliance within one year from the date of OSEP's letter.

The Improvement Plan also included baseline data indicating noncompliance with the transition conference requirements of 34 CFR §303.148(b)(2)(i), and provided that, by June 30, 2003, 90 percent of required transition conferences would be held at least 90 days before the child's third birthday. In its September 2003 letter, OSEP directed the State to revise the Improvement Plan to provide for compliance with the requirements of 34 CFR §303.148(b)(2)(i) for all infants and toddlers with disabilities who may be eligible for preschool services under Part B. The State submitted a revised Improvement Plan on September 10, 2003, providing that, "By June 30, 2004, 100% of transition conferences for all children, who may be eligible for services under

Part B, are held, with the approval of the family, at least 90 days before the child's 3rd birthday.” In its February 27, 2004 response to the State’s FFY 2001 APR, OSEP informed the State that this revised goal was acceptable, and that it must submit a final Progress Report documenting correction of Part C’s 45-day timeline and transition conference requirement by September 3, 2004. As further discussed below, the State’s FFY 2002 APR provided documentation of the State’s progress in addressing the noncompliance regarding the 45-day timeline and early childhood transition conference, but the data that the State provided showed that the State has not yet fully corrected these two areas of noncompliance. The State has not submitted any further Progress Report since its April 28, 2004 submission of the FFY 2002 APR. In a telephone conversation of September 22, 2004, the State explained that it was awaiting OSEP’s written response to the State’s FFY 2002 APR for direction as to what, if any, additional documentation of correction was required.

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 area identified by the State to ensure improvement). OSEP’s comments are listed by cluster area.

### ***General Supervision***

In Attachment 1 of the APR, the State reported data showing that it: (1) received five Part C complaints during the reporting period, and resolved all of them within the required timelines; and (2) received no requests for mediation or due process hearings.

On pages 1-7 of this cluster, the State described its efforts to ensure the effectiveness of its general supervision procedures in identifying and correcting noncompliance and addressing systemic issues. On pages 11-12, the State addressed its efforts to ensure the collection and reporting of accurate and timely data. The State included targets, explanation of progress or slippage, activities, timelines and resources to address all of these areas. OSEP looks forward to reviewing the impact of the State’s strategies in the next APR.

On pages 8-11, the State addressed issues related to the supply of early intervention service providers. The State reported data showing that some counties do not have providers in all disciplines, and included strategies for addressing this concern. (In the Early Intervention Services in Natural Environments section of this letter, OSEP has addressed the statement, on page 8 of the General Supervision cluster of the APR, that “If a provider is not available to provide services in the child’s home county, the family may choose a provider in another area if they are willing to travel to an on-site location.”)

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

On page 4 in this cluster of the APR, the State reported that there were strong local partnerships supporting early identification and referral, due in part to performance indicators and financial incentives in the State’s contracts with Local Planning Coordinating Councils (LPCCs). On pages 6, 8, 9, and 10, the State reported trend data regarding referral sources, reasons for eligibility, child count, and average age of referral. Those data showed that the State had maintained the average age of identification at 13.8 months, and that there had been an increase

in: (1) referrals from health providers; (2) identified children with a delay in one developmental area; and (3) the percentage of children identified and served.

On page 3 of the FFY 2002 APR, the State included a numerical goal for increasing the number of children identified under Part C. While it is not inconsistent with Part C to include a numerical goal to increase the number or percentage of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C (at 34 CFR §§303.320-.323) and not based upon a numerical goal.

OSEP looks forward to receiving data and analysis in the FFY 2003 APR, due March 31, 2005, demonstrating continued implementation of strategies to ensure performance and compliance in public awareness and child find.

### *Family Centered Services*

On pages 2 and 3 in this cluster of the APR, the State reported family survey data showing that the State exceeded its target in this area. On page 5, the State indicated that, by the end of the next reporting period, there would be two reports from the State's Outcome Evaluation Project that collects information from families when they enter and exit the Part C program. OSEP looks forward to receiving in the FFY 2003 APR, due on March 31, 2005, the State's data and analysis from those reports related to families' capacity to enhance outcomes for their eligible infants and toddler with disabilities.

### *Early Intervention Services in Natural Environments*

As noted above, in its 2001 Self-Assessment and 2002 Improvement Plan, the State identified noncompliance with the requirement that public agencies complete the initial evaluation and assessment, and convene an initial IFSP meeting within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)). In its September 2003 response to the Improvement Plan, OSEP directed the State to ensure correction of this noncompliance within one year from the date of OSEP's letter. A table on page 16 in this cluster of the State's FFY 2002 APR showed that the average number of days from referral to initial IFSP meeting exceeded 45 days in six of the State's 92 counties in State fiscal year 2002 (an improvement from 29 counties in State fiscal year 2000, 25 in 2001, and 16 in 2002). An average of less than 45 days from referral to holding an initial IFSP meeting does not demonstrate compliance, if the timeline for some children exceeds 45 days. A table on page 20 showed that 11.1 percent of initial IFSP meetings exceeded the 45-day timeline in 2003 (an improvement from 17.2 percent in 2001 and 15.0 percent in 2002). While demonstrating progress, these data also showed continuing noncompliance. On page 6, the State indicated its intent to focus its monitoring on the counties with persistent issues.

Within 60 days from the date of this letter, the State must provide documentation that it has fully corrected the noncompliance in the six counties identified in the State's FFY 2002 APR. This documentation must include both State-wide numerical data showing that the State is meeting

the 45-day timeline requirement based on actual number of days not an average, and data specific to the six counties that the State identified as having persistent problems related to meeting the timeline. If any of these six counties are not in full compliance by that date, the State must include: (1) the status of correction on Part C's 45-day timeline requirement for each of the six counties (including copies of the corrective action or improvement plans the State accepted for each of these counties on this issue); (2) its analysis of the factors that have impeded correction of the noncompliance in those counties, and whether existing strategies are effective or need to be refined or targeted to ensure full compliance; (3) documentation of the specific steps, including any sanctions that it has taken to ensure correction, and the impact of those actions; and (4) if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data and timelines to ensure full compliance as soon as possible.

OSEP has not previously identified noncompliance in the State related to the requirement of 34 CFR §303.340(c), that the lead agency ensure that the IFSP for each infant or toddler with a disability is implemented, and that the early intervention services on the IFSP for which there is consent have been provided to child and family. On pages 7, 8, and 21 in this cluster of the APR, the State reported data showing that, in State fiscal year 2003, the State paid claims that amounted to 77.5 percent of the authorized early intervention services (the percentages for 2001 and 2002 were 79.9 and 80.9, respectively). The State further reported that the percentages in 2003 for four rural counties were between 50 and 59 percent. OSEP could not determine from the FFY 2002 APR whether there had been a failure to provide early intervention services as set forth in children's IFSPs, or simply a failure to bill for services. The State must include in the FFY 2003 APR, due March 31, 2005, updated data and its analysis along with a determination of compliance or noncompliance related to ensuring the implementation of the services in IFSPs, as required by 34 CFR §§303.340(c) and 303.342(e). If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State must submit, within 60 days of the date of this letter, its plan for collecting the data to determine and report to OSEP compliance or noncompliance by the FFY 2003 APR.

In addition, the State reported on page 8 of the General Supervision cluster that, "If a provider is not available to provide services in the child's home county, the family may choose a provider in another area if they are willing to travel to an on-site location." At 34 CFR §303.12(b), the Part C regulations, require that, to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. The IFSP must include a statement of the natural environments in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment; provider unavailability is not an appropriate justification (34 CFR §303.344(d)(1)(ii)). OSEP could not determine, from the statement on page 8 of the General Supervision cluster, whether there were circumstances in which the State violated Part C's natural environment requirements by failing to provide early intervention services specified in the IFSP because no provider was available in the family's county. Please provide, within 60 days from the date of this letter, clarification of the statement on page 8 and confirmation that

either family choice and provider unavailability alone are not authorized circumstances for not providing early intervention services in natural environments as listed on the IFSP. If the data demonstrate noncompliance, the State must provide, within 60 days from the date of this letter, its plan, with strategies, proposed evidence of change, targets and timelines designed to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State should submit, within 60 days from the date of this letter, its plan for collecting the data and reporting them by the FFY 2003 APR (due March 31, 2005).

The State reported on page 3 that its system ensures that all families have access to service coordination, from either the intake coordinator or an ongoing service coordinator. The State further reported that some of the five complaints it received focused on service coordination issues, and included, as future activities, changes to enrollment requirements, and more consistent and regular mentoring and support/training for service coordinators. On page 2, the State identified six rural counties that it will target for service coordination recruitment.

The Part C FFY 2002 APR requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). Indiana developed a State-wide Outcomes Evaluation Project to measure the impact of the early intervention program on nine outcomes that were identified by program stakeholders, including parents. On page 22 of the APR, the State reported data from this project showing that 11 of 12 children experienced some level of developmental gain in the five required developmental areas.<sup>1</sup> On page 12, the State reported that, while the initial data collection was slow, it continued to improve, and the State would eventually have data at both entry and exit on the majority of children participating in early intervention. OSEP looks forward to reviewing those data and the State's analysis as part of the State's FFY 2003 APR, due March 31, 2005.

### *Early Childhood Transition*

At 34 CFR §303.148(b)(2)(i), Part C requires that, "In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, [the Lead Agency must] convene a conference among the lead agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for the preschool services, to discuss any services that the child may receive." As noted above, the State's Improvement Plan included baseline data indicating noncompliance with those requirements, and provided that, by June 30, 2003, 90 percent of transition

---

<sup>1</sup> On page 12 of the FFY 2002 APR, Indiana also reported on data from FY 2000 indicating that: (1) of 7,940 children exiting Part C programs, 24% reached their IFSP goals; and (2) 19% of children who exited at age 3 and were found not eligible for Part B services, were either referred to other programs or received no referrals. The exit data reported do not clearly correlate to this probe in identifying whether children demonstrated improvement; while reaching IFSP goals demonstrates improvement, it may be a higher standard than the data project the State reported it is conducting on page 22 of the APR. In addition, not being eligible for Part B services does not specifically correlate to the probe without specific additional child record reviews. On page 13 of the APR, the State indicated that a February 2004 "Best Practices" document included information about the benefits of providing services within the context of children and family in every day routines and activities.

conferences would be held at least 90 days before the child's third birthday. In its September 2003 letter, OSEP directed the State to revise the Improvement Plan (or its APR) to provide for compliance with the requirements of 34 CFR §303.148(b)(2)(i) for all infants and toddlers who may be eligible for preschool services under Part B. The State submitted a revised Improvement Plan on September 10, 2003, providing that, "By June 30, 2004, 100% of transition conferences for all children, who may be eligible for services under Part B, are held, with the approval of the family, at least 90 days before the child's 3rd birthday." In its February 2004 response, OSEP informed the State that this revised goal was acceptable, and that it must submit a final Progress Report documenting correction by September 3, 2004. As noted above, OSEP has not received any further Progress Report since the State's April 28, 2004 submission of its FFY 2002 APR.

On page 4 of this cluster of its FFY 2002 APR, the State acknowledged that it had made progress, but not yet corrected this area of noncompliance. On page 3, the State included monitoring data showing that, of the records that the monitors reviewed for children who were likely to be eligible for Part B services, 55 percent included documentation of a timely transition planning conference, 35 percent had no such documentation, and the other ten percent were directly referred to the schools as the children were over 33 months of age at the time of referral. On page 4, the State indicated that it could not use its data system to determine the extent of progress in this area, because the current data system did not disaggregate children who were likely to be eligible for Part B services. On page 5, the State described the revised monitoring procedures it will use to examine compliance with this requirement.

Within 60 days from the date of this letter, the State must provide documentation that it has fully corrected the noncompliance. This documentation must include monitoring data showing compliance. If there are any counties that are not in compliance by that date, the State must include: (1) its analysis of the status of correction for those counties found to be out of compliance on this issue; (2) its analysis of the factors that have impeded correction of the noncompliance in those counties, and whether existing strategies are effective or need to be refined or targeted to ensure full compliance; (3) documentation of the specific steps, including any sanctions, that it has taken to ensure correction, and the impact of those actions; and (4) if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data, and timelines to ensure full compliance as soon as possible.

### ***Conclusion***

As noted above, 60 days from the date of this letter, the State must provide the documentation identified above regarding previously identified noncompliance related to the 45-day timeline and early childhood transition conference:

1. The initial evaluation and assessment are completed, and a meeting to develop the initial IFSP convened, within 45 days from referral (34 CFR §§303.321(e), 303.322(e), and 303.342(a)); and
2. The Lead Agency convenes a conference among the Lead Agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before a child who may be eligible for preschool services becomes eligible

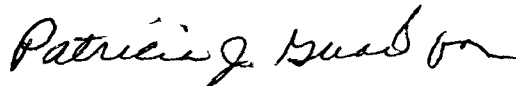
for those services, to discuss any services that the child may receive (34 CFR §303.148(b)(2)(i)).

If the counties the State identified in the FFY 2002 APR as being in noncompliance in these two areas are not in full compliance by that date, the State must include: (1) the status of correction for each of these counties on the issue; (2) its analysis of the factors that have impeded correction of the noncompliance in those counties, and whether existing strategies are effective or need to be refined or targeted to ensure full compliance; (3) documentation of the specific steps, including any sanctions that it has taken to ensure correction, and the impact of those actions; and (4) if the State determines that additional strategies are needed or that existing strategies must be modified, its proposed strategies, evidence of change data and timelines to ensure full compliance as soon as possible.

As further noted above, the State must also provide, within 60 days data, analysis, and a determination of compliance related to ensuring that: (1) early intervention services on IFSPs are implemented, as required by 34 CFR §§303.340(c) and 303.342(e); and (2) services are provided appropriately in natural environments as required by 34 CFR §303.12(a). If the data demonstrate noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, the State should submit, within 60 days from the date of this letter, a plan for collecting the data and reporting them by the FFY 2003 APR (due March 31, 2005).

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Barbara Route at (202) 245-7510.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Dawn Downer, Part C Coordinator