



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

Honorable Nancy Grasmick
State Superintendent of Schools
200 West Baltimore Street
Baltimore, Maryland 21201

JUL 23 2004

Dear Superintendent Grasmick :

The purpose of this letter is to respond to the Maryland State Department of Education (MSDE) March 31, 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 activities) 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 April 23, 2004 response to Maryland's FFY 2001 APR (submitted in 2003), OSEP stated that MSDE had corrected four of the seven areas of noncompliance identified in OSEP's July 26, 2001 Monitoring Report. MSDE demonstrated improvement, but not full compliance in, three remaining areas. OSEP requested in the April 2004 response to the APR that MSDE submit, in the FFY 2002 APR, data to demonstrate compliance in the following three remaining areas: (1) providing evaluations in all developmental areas (34 CFR §303.322(c)(3)(ii)); (2) documenting present levels of physical functioning (including vision and hearing) on the Individualized Family Service Plans (IFSPs) (34 CFR §303.344(a)); and (3) holding the transition conference at least 90 days before the child's third birthday and documenting the IFSP transition content requirements (34 CFR §§303.148 and 303.344(h)). OSEP also requested that MSDE provide baseline data to determine compliance and performance in three additional areas with insufficient data: (1) the family's capacity to enhance outcomes for their infants and toddlers with disabilities; (2) the extent to which children participating in the Part C system demonstrated improved and sustained functional abilities; and (3) whether IFSPs

included steps to support the transition of the child and the family (34 CFR §§303.344(h)). In its April 23, 2004 APR letter, OSEP accepted the activities, timelines and resources proposed by MSDE in its FFY 2001 APR to address and correct the three OSEP identified areas.

The APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments are listed by cluster area.

General Supervision

OSEP's April 24, 2004 letter requested MSDE to report, in its FFY 2002 APR, the results of its general supervision activities designed to maintain compliance with the supervision and monitoring requirement of IDEA at 34 CFR §303.501. MSDE, on pages two through eleven of its FFY 2002 APR, identified the State's goals and activities undertaken, and systems change initiatives implemented, to ensure that all programs and activities used by the State were monitored, technical assistance was provided, and corrective actions and enforcement actions were taken to ensure the timely correction of deficiencies. MSDE, in Attachment 2, identified the State's capacity to coordinate various funding resources within the State to ensure the provision of early intervention services and identified the funding sources that support Part C activities, with the greatest financial support coming from local government funds: (1) Federal Part B funds; (2) medical assistance; (3) State general funds; (4) local government funds; and (5) private insurance and fees.

The State reported that these activities and systems change initiatives required all local infant and toddler programs (LITPs) to: (1) address all areas of noncompliance identified by OSEP (and the State in Targeted Priority Plan (TPP)/Improvement Plan (IP) that was approved by the State); (2) demonstrate progress towards compliance in order to receive approval of local applications for State funds; (3) adopt and implement the State's revised transition policy; (4) provide an assurance that continuous services would be provided to all eligible children and their families; and (5) submit data on a monthly basis into the electronic database consistent with State requirements.

MSDE, on pages six and seven of the FFY 2002 APR, reported that appropriately and adequately trained personnel were available to meet the needs of eligible children and their families consistent with 34 CFR §303.361(b)(1). MSDE reported, on pages six and seven of, and Attachment 1 to, the FFY 2002 APR, that a written decision was rendered in 60 days for the three State complaints filed under 34 CFR §§303.510 through 303.512. One of the two due process hearings filed with the State was not scheduled in a timely manner and was subsequently withdrawn. MSDE met with the Office of Administrative Hearings to review Part C requirements to ensure the timely scheduling of due process hearings consistent with 34 CFR §§303.420 through 303.423. MSDE's monitoring of complaint procedures and review of IFSPs demonstrated compliance with the provision to ensure families rights as required by 34 CFR §303.400.

MSDE, on pages two and nine of the FFY 2002 APR, reported that LITPs were required to report "real time" data beginning October 2003, by submitting required data sets on-line into the State's electronic database. MSDE reported that for some compliance and performance indicators, the data entry protocols were being revised to ensure the accuracy and validity of the data. MSDE reported that the

data generated from the State's electronic database and other general supervision activities would be used to develop a data profile of each LITP at least twice a year. The data profiles would be used when the State shifts to a more focused monitoring approach in FFY 2004.

MSDE's data did not indicate noncompliance and, based on OSEP's review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster area. MSDE included activities that constitute a reasonable approach to maintaining performance in this cluster. OSEP requests that, in the FFY 2003 APR, MSDE include data and its analysis of the data from its electronic database.

Comprehensive Public Awareness and Child Find System

OSEP's April 23, 2004 letter requested MSDE to ensure that eligibility decisions for all infants and toddlers were made in conformity with the individual evaluation and assessment requirements at 34 CFR §§303.320 through 303.323 of IDEA and not based upon a numerical goal. MSDE provided trend data on pages 11-17 of the APR that demonstrated coordinated child find and public awareness activities were implemented and mechanisms were in place to ensure that all potentially eligible infants and toddlers and their families were identified, located and evaluated. MSDE reported on pages 12-16 that, while there was a decrease in referrals from physicians and hospitals, the number of children referred from underrepresented groups increased, as did the total number of eligible children served. MSDE reported that, in FFY 2002, 2.62% of the eligible birth to three population, and 1.04% of the birth to one population received Part C services. MSDE identified current and future activities designed to ensure that all infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated consistent with 34 CFR §303.321.

Pages 15 and 18 of the FFY 2002 APR contain goals for the number of infants and toddlers with disabilities of certain racial or ethnic backgrounds who will be identified as eligible for services under Part C. The use of a goal for a racial or ethnic subgroup is inconsistent with Federal law. If the State wishes to examine whether and why infants and toddlers with disabilities in certain subpopulations are not referred, identified and/or determined eligible for services under Part C, under Title VI of the Civil Rights Act, it must do so in a race-neutral manner without the use of race- or ethnicity-specific goals. If the State has proposed these goals because it is concerned about the number of infants and toddlers with disabilities being served under Part C who are from a particular racial or ethnic subgroup, the State should instead review, and if necessary revise, its policies, practices and procedures (including monitoring) to ensure that traditionally underserved groups are not being excluded by current policies, practices and procedures. For example, the State may wish to review its eligibility procedures and practices to ensure that infants and toddlers suspected of having a disability are individually evaluated and assessed using tests and other evaluation methods consistent with 34 CFR §§303.320 through 303.323, including ensuring that nondiscriminatory procedures are used (see 34 CFR §303.323). In addition, the State may wish to ensure that traditionally underserved groups are involved and informed of the Part C program and processes, consistent with 34 CFR §§303.128 and 303.320. Please review and revise these goals in the FFY 2002 APR to be consistent with Federal law and submit the revised child-find language with the State's next APR to OSEP.

MSDE's data did not indicate noncompliance and, based on OSEP's review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster area.

Family Centered Services

OSEP's April 23, 2004 letter requested MSDE to provide data for the following compliance and performance areas to determine the extent to which: (1) family outcomes were documented on IFSPs consistent with 34 CFR §303.344 (c); and (2) the supports and services provided enhance outcomes for infants and toddlers and their families in accordance with 34 CFR §303.322(d)(1). MSDE, on pages 19-24 of the APR, stated that for those families that granted permission for a family assessment, 90% had resources, concerns and priorities documented on the IFSP; 3% of the families declined a family assessment. MSDE on page 20 of the APR, stated that the results of record reviews conducted by the State indicated that family outcomes were being documented on the IFSPs and that families were receiving services and supports needed to meet the needs of the eligible child and family. MSDE initiated the activities that were included in the FFY 2001 APR to obtain performance data. MSDE reported, in the FFY 2002 APR, the progress in the implementation of these and other activities, and stated that the initial data would be available by July 2004. These activities included the oversight of family-centered activities by the State's family support coordinator, to improve data collection efforts and to evaluate family support services. OSEP is requesting that MSDE continue to report on the status of family assessments in the next FFY 2003 APR. MSDE's data did not indicate noncompliance and, based on OSEP's review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster.

Early Intervention Services in Natural Environments

OSEP's April 23, 2004 letter requested MSDE to report on the analysis of data regarding: (1) evaluations provided in all developmental areas as listed in 34 CFR §303.322(c)(3)(ii); (2) present levels of functioning from evaluations (including vision and hearing) documented on IFSPs as required by 34 CFR §303.344(a); and (3) the extent to which children demonstrate improved and sustained functional abilities. MSDE, on pages 25-33 of the FFY 2002 APR, presented baseline data that, in FFY 2001, on a sampling of 45% of the IFSPs of eligible children referred, 60% of the children referred were provided an evaluation and assessment in all areas of development. In February 2004, MSDE upgraded its database to collect and report data on evaluations and assessment. MSDE reported that, in March 2004, all LITPs were entering the dates from IFSPs into the database to indicate that evaluations and assessments were being conducted in all required developmental areas and that IFSPs contained this data. MSDE identified challenges in the data entry process from monitoring. MSDE noted that LITPs were correctly implementing the requirements but some LITPs were not entering a date into the electronic system to indicate that the evaluation had been completed. MSDE indicated that it would develop protocols to assist LITPs to address this issue and any emerging issues.

Pages 29-30 of the FFY 2002 APR reported that 81% of the IFSPs documented that eligible children were provided services in natural environments, of the remaining 19% for which early intervention services were not provided in natural environments, 89% of the 19% had an appropriate justification. Therefore 96% of the IFSPs were in compliance with the natural environments and justification requirements as required by 34 CFR §303.342(d)(ii). OSEP is requesting that MSDE continue to report on the natural environment requirements in the FFY 2003 APR.

The Part C FFYs 2001 and 2002 APRs 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)). Under the General Education Provisions Act (GEPA) at 20 U.S.C. 1232d(b)(4), States are required to cooperate in carrying out any evaluation conducted by or for the Secretary. Under the Government Performance and Results Act of 1993 (GPRA) at 31 U.S.C. 1116, the effectiveness of the IDEA Part C program is being measured based on the extent to which infants and toddlers with disabilities demonstrate improved and sustained functional abilities in the areas listed in 34 CFR §303.322(c)(3)(ii) (cognitive, physical including vision and hearing, communication, social or emotional and adaptive development). On Page 26 of the FFY 2002 APR, MSDE reported that it does not currently collect data on how children participating in Part C demonstrate improved and sustained functional abilities. Please provide to OSEP in the next APR (for FFY 2003) responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas. MSDE must immediately develop and implement a plan to ensure that it is able to provide responsive information under the GEPA and GPRA indicators in the FFY 2003 APR (expected due date March 31, 2005).

MSDE's data did not indicate noncompliance; however, OSEP requests that MSDE continue to apprise OSEP in the FFY 2003 APR of its data collection and analysis on evaluations being conducted in all five developmental areas and the present levels of functioning reflected on the IFSP as well as the GPRA child outcome data.

Based on OSEP's review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster.

Early Childhood Transition

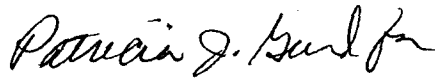
OSEP's April 2004 response to the APR required MSDE to continue to report on progress being made, to ensure that: (1) transition planning meetings are being held at least 90 days prior to the child's third birthday as required by 34 CFR §303.148 and 34 CFR §303.344(h); and (2) IFSPs included steps to support the transition of the child and the family, consistent with 34 CFR §303.344(h). MSDE reported that current State policy regarding the transition from Part C to Part B was a barrier to ensuring compliance with the transition provisions. MSDE reported, on page 37 of its APR, that the State's transition policy and procedures were revised in February and March 2004. The revised transition policy required LITPs to conduct a transition meeting no earlier than 6 months or later than 90 days before a child's third birthday. The revised transition policy was shared with local directors of special education, local preschool coordinators and LITP directors in March 2004. MSDE required all local school districts and LITPs to jointly develop revised transition policies and procedures and submit them to MSDE by September 2004 and all transition policies and procedures would go into effect on October 1, 2004. MSDE also required that Part B and Part C jointly monitor the implementation of the revised transition policies and procedures. All LITPs that did not meet the new State transition standards would be required to develop a Targeted Priority Plan or Improvement Plan to ensure correction. The State indicated that activities are being implemented and data collected to determine compliance to ensure that IFSPs include steps to support the transition of the child and the family.

Conclusion

MSDE must submit, in the FFY 2003 APR: (1) data and its analysis of the data from its electronic database as part of MSDE's monitoring and general supervision responsibilities; (2) updated data on the evaluation of children in all developmental areas and documentation of present levels of functioning on the IFSP; (3) data on how children participating in Part C demonstrate improved and sustained functional abilities; (4) updated data on family assessments being conducted with the approval of the family; (5) updated data on the provision of services in natural environments and IFSP justifications when early intervention services are not provided in natural environments; (6) data demonstrating compliance with the requirement to hold the transition planning conference 90 to 120 days prior to the child's third birthday; and (7) data to determine whether steps to support the transition of the child and family are documented on the IFSP. In addition, as noted in the child find section above, MSDE must delete its numerical goals for the Asian and Hispanic populations to be consistent with Federal law and note this deletion in the FFY 2003 APR.

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 Alma McPherson at (202) 245-7443.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Carol Ann Baglin
Deborah Metzger