



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

Michelle Lujan Grisham, Secretary  
Department of Health  
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P.O. Box 26110  
Santa Fe, New Mexico 87502-6110

DEC 13 2004

Dear Secretary Lujan Grisham:

The purpose of this letter is to respond to New Mexico's April 5, 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***

OSEP's June 29, 2001 accepted New Mexico's Improvement Plan that was developed in response to OSEP's January 7, 2000 Monitoring Report, that identified the following eight areas of noncompliance: (1) supervision and monitoring procedures do not ensure compliance with Part C of IDEA, and all programs providing early intervention services are not monitored by the State; (2) public awareness information does not adequately reach the general public, and other agencies are not fully aware of their responsibility for referral to the early intervention program; (3) referrals are not made in a timely manner by primary referral sources in all areas of the State; (4) evaluations and assessments are not completed in a timely manner to ensure that the initial IFSP meeting is held within 45 days of referral; (5) service coordinators do not fulfill all required roles; (6) Individualized Family Service Plan (IFSP) meeting participants do not always fulfill their responsibility to identify all needed services and locations of services on an

individualized basis; (7) services included on the IFSP are not provided; and (8) the transition conference with parents and the school district does not consistently occur 90 to 120 days prior to the child's third birthday. Based on the information in the FFY 2002 APR and progress reports, OSEP has determined that the State had addressed four of the findings above (monitoring, child find, public awareness, and identification of early intervention services on the IFSP). The FFY 2002 APR, however, did not provide data demonstrating correction in the remaining four areas from OSEP's 2000 monitoring report (45-day timeline, service coordination, provision of IFSP services, and 90-day transition) and includes a new area of noncompliance in the general supervision cluster area.

In its June 2001 letter, OSEP directed the State to provide progress reports, with the final report due December 31, 2002. The New Mexico Department of Health (NMDOH) submitted its final report in February 2003; however, the final report lacked data to substantiate compliance with all eight findings from OSEP's monitoring report. In July 2003, NMDOH submitted its FFY 2001 APR and in October 2003, NMDOH submitted an additional progress report under its Improvement Plan. OSEP responded to the State's FFY 2001 APR and the October 2003 progress report in its February 24, 2004 letter indicating that three findings had been partially addressed (specifically in the general supervision, public awareness and child find areas).

OSEP issued another letter on February 24, 2004 that summarized the results of its visit to New Mexico during the week of August 18, 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA. OSEP's February 2004 verification letter acknowledged that because NMDOH's monitoring system had only been piloted in February 2003, OSEP could not determine yet how the State ensures correction of noncompliance. OSEP requested in its February 2004 verification letter that the State provide in its FFY 2002 APR, among other information, data on how the State ensures correction of identified noncompliance.

The State's APR should reflect the collection, analysis and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments regarding the FFY 2002 APR are listed by cluster area below.

### ***General Supervision***

***Identification of Noncompliance:*** In the January 2000 Monitoring Report, OSEP found that: (1) the State was not monitoring to identify noncompliance with all Part C requirements as required by 34 CFR §303.501(a) and (b)(1); and (2) the State was not monitoring all programs and agencies that provided Part C requirements as required by 34 CFR §303.501(a)(2). In its February 2004 verification visit letter, OSEP acknowledged that the State's monitoring system "constitutes a reasonable approach to the identification of noncompliance" and further noted that NMDOH had a system that would monitor all entities that provide early intervention services and for all Part C

requirements. On pages 1 and 2 of the FFY 2002 APR, NMDOH provided updated information on the ability of its monitoring system to identify noncompliance. NMDOH monitored six provider agencies during FFY 2002 after piloting its monitoring procedures in four sites during FFY 2001. All ten sites were included in the State's data analysis in its FFY 2002 APR. Results of monitoring indicated several instances of noncompliance in each of the sites monitored. In addition, the State reported on its policies and procedures to include all entities in its three-year monitoring cycle. Based on the information and data provided in the FFY 2002 APR, OSEP identifies no additional concerns regarding the State's ability to identify noncompliance.

*Correction of Noncompliance:* In the February 2004 verification visit letter, OSEP identified for the first time the issue of the State's ability to correct State-identified noncompliance. In that letter OSEP found that, because NMDOH had only begun to pilot its monitoring system, the State was not able to ensure correction of deficiencies identified through monitoring as required by 34 CFR §303.501(b)(4). OSEP's February 2004 letter requested that the State include data, strategies, targets and timelines in its FFY 2002 APR for the State to demonstrate that its monitoring system can effectively correct State-identified noncompliance.

NMDOH provided on pages 3-4 of the FFY 2002 APR a summary of the ten provider agencies monitored during the FFY 2002 reporting period. Of the first four pilot sites, three resolved their noncompliance. The State reported that the fourth site did not provide adequate data to determine compliance; technical assistance was provided and the corrective action plan was still in process for this site. Of the six sites monitored during FFY 2002, all corrective action plans had been approved by the State; however, the deadline for the one-year completion timeline to resolve their noncompliance occurs during the FFY 2003 APR reporting period. In the FFY 2002 APR, the State also included strategies, targets and timelines to ensure correction of State-identified noncompliance.

OSEP accepts the strategies, timelines, and targets in the FFY 2002 APR to address compliance with 34 CFR §303.501(b)(4), correction of noncompliance within a reasonable period of time. The State must submit two progress reports, the first as part of the FFY 2003 APR and the final progress report 30 days following one year from the date of this letter. As part of the next APR (due March 31, 2005), NMDOH must submit to OSEP: (1) the corrective action plan from the fourth site in the first pilot (Tresco TOT'S); (2) a summary of the corrective actions taken by, and correction data from, the other six sites monitored during FFY 2002 (Mescalero, DSI, PB&J, Zia Therapy, Las Cumbres, and Casa Alegre), which are expected to have completed their corrective action plans during FFY 2003. In its final progress report due thirty days following one year from the date of this letter, NMDOH must provide updated correction data.

*Personnel:* On pages 7-9 of the APR, NMDOH reported that data demonstrated an increase in the numbers of early intervention professional staff except nursing. They further stated that the increase in staff was commensurate with the increase in eligible

children and that there were sufficient numbers of appropriately and adequately trained personnel to provide early intervention services.

*Dispute Resolution:* The State reported no complaints were filed or due process or mediation requests received during the FFY 2002 reporting period. The State also reported in the FFY 2002 APR that two provider agencies were found out of compliance with the requirement to provide parents with dispute resolution options but also reported that the two agencies had completed corrective action plans to address these areas of noncompliance. The State indicated its target to monitor ten additional provider agencies to determine if there are systemic bases for the lack of use of dispute resolution mechanisms. OSEP's February 2004 letter to New Mexico requested NMDOH provide a written assurance by April 24, 2004 that all programs in the State that provide Part C services were using corrected prior written notice materials required by 34 CFR §303.403(b). OSEP has not yet received this assurance. In the next APR, due March 31, 2005, NMDOH must provide the requested assurance.

*Data:* The State reported that the Family Infant Toddler (FIT) data system was programmed to ensure that all required data are entered. The system had built-in edits and security to ensure accuracy and confidentiality. During the CBA on-site monitoring, at least 10 percent of child records were compared to information entered into the FIT database. Agencies with errors were provided with technical assistance, which sometimes included attendance at training sessions, until accuracy was ensured.

### ***Comprehensive Child Find System***

In the January 2000 Monitoring Report, OSEP found that: (1) the State had not met its responsibility to implement an effective public awareness program, that would include providing a variety of materials to adequately inform the general public, including parents, about the provision of early intervention services, and disseminating materials broadly enough to reach the general public (34 CFR §303.320); and (2) the State had not implemented their policies and procedures to ensure that all eligible children were identified and that primary referral sources make referrals in a timely manner (34 CFR §303.321).

OSEP's February 24, 2004 letter responding to the FFY 2001 APR noted that the State had implemented its Improvement Plan strategies to address these two areas of noncompliance, but requested that the State provide trend child find data to illustrate progress. On page 12 of the FFY 2002 APR, NMDOH described additional actions implemented and provided trend data that indicated an increase in the percentage of children served, including at-risk children, from 2.08 percent in 2000-2002 to 2.54 percent in 2002-2003; however, the State reported that when the at-risk numbers are removed from the child count, NMDOH's December 2002 child count is 1.52 percent compared to the national average of 2.19 percent. The State has implemented the public awareness and primary referral outreach strategies identified in its Improvement Plan. OSEP requests that the State continue to report in the next APR on its ongoing activities to improve child find efforts in the State.

### *Family Centered Services*

No previous noncompliance was identified in this cluster area. OSEP's February 24, 2004 FFY 2001 APR letter requested that NMDOH provide: (1) data to support the conclusion that parents reported an increased capacity to meet the developmental needs of their child; and (2) data to indicate compliance with the IDEA requirements in 34 CFR §303.322(d) and 34 CFR §303.344(b) and (d) that family assessments and family services were offered and provided. NMDOH provided information, on page 18 of the FFY 2002 APR, indicating that the percent of families reporting increased capacity to meet their child's needs was 95 percent in FFY 2001 and 98 percent in FFY 2002. OSEP appreciates the State's efforts to improve performance in this cluster area.

### *Early Intervention Services in Natural Environments*

OSEP's 2000 Monitoring Report identified the following four areas of noncompliance in this cluster area: (1) evaluations and assessments were not completed in a timely manner to ensure that the initial IFSP meeting was held within 45 days of referral (34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a)); (2) service coordinators did not fulfill all required roles (34 CFR §303.23(a)(1) and (b)); (3) IFSPs did not identify all needed services and locations of services on an individualized basis (34 CFR §§303.344(d)(1), 303.343 and 303.167(c)); and (4) early intervention services included on the IFSP were not provided (34 CFR §303.344(d)). In addition, OSEP's February 2004 FFY 2001 APR letter requested data on two additional areas: (1) natural environments and (2) early childhood outcomes.

*45-Day Timeline:* OSEP's 2000 monitoring report identified noncompliance with Part C's 45-day timeline requirements at 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a), that evaluations, assessments, and an initial meeting to develop the IFSP are completed within 45 days of referral. OSEP's June 29, 2001 letter that accepted the State's Improvement Plan noted that the State's strategies included providing training and technical assistance, making diagnostic and specialty evaluation available State-wide, partnering with local personnel, and monitoring for compliance with the goal of timely evaluations and assessments.

On pages 2-4 and 23 of the FFY 2002 APR, NMDOH reported State-wide data for each year from 2000-2003 that indicated the percentages of initial IFSPs developed within the State's required 45-day timeline were 41 percent, 52 percent, 55 percent and 54 percent respectively.<sup>1</sup> These data indicate continued noncompliance and only minimal improvement in the last few years. On page 4 of the FFY 2002 APR, NMDOH reported that it continued to identify noncompliance with this requirement; of ten sites monitored using the CBA, six were identified as in noncompliance with the 45-day timeline. However, on page 2 of the FFY 2002 APR, NMDOH reported that three pilot sites had

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<sup>1</sup> Although Part C requires that an initial meeting to develop the IFSP be held within 45 days, it is our understanding that New Mexico requires that the initial IFSP be developed at the initial IFSP meeting. While New Mexico is not required to maintain this higher standard, its data indicate noncompliance with Part C's 45-day timeline requirement.

completed their corrective action plans, one pilot site had partially corrected noncompliance, and the remaining six sites had not reached their one-year deadline to complete their corrective action plan.

In the next APR (due March 31, 2005), the State must provide: (1) correction data from the three pilot provider agencies that the State identified as having completed corrective action plans that demonstrate compliance with Part C's 45-day timeline requirement (NAPPR, PMS, and Tobosa); and (2) a summary of the correction status and any available correction data from the other seven provider agencies. If any of these ten provider agencies have not achieved full compliance with Part C's 45-day timeline requirement, the State must also include in its FFY 2003 APR: (1) its analysis of why full compliance has not been achieved in these agencies; (2) additional or revised strategies, targets and timelines to ensure compliance as soon as possible; and (3) a summary of the State's response to and correspondence with each agency not in compliance, including any sanctions or enforcement actions taken. Failure to demonstrate full compliance with Part C's 45-day timeline requirement by the FFY 2003 APR may result in the State's designation as a "high risk" grantee for its FFY 2005 Part C grant funds.

*Service Coordination:* In its January 2000 Monitoring Report, OSEP reported that service coordinators did not coordinate all services that children and families needed as required by 34 CFR §303.23(a)(2), citing that three of the areas monitored had not complied with the requirement. OSEP's June 29, 2001 letter that accepted the State's Improvement Plan noted that the State's strategies included developing a training module for service coordinators, developing an agreement with the Medically Fragile Program, and monitoring for compliance with service coordinator roles and responsibilities. The State reported in its 2003 progress reports that it had implemented all of its strategies.

However, on page 21 of the FFY 2002 APR, the State concluded that two of ten programs (80%) it monitored did not comply with the requirement that service coordinators monitor the delivery of all services needed on the IFSP. In the FFY 2003 APR, NMDOH must report on the status of correction of the noncompliance related to service coordination from the two programs that it monitored during the FFY 2002 reporting period.

*Identification of Services on the IFSP:* In its January 2000 Monitoring Report, OSEP reported that the IFSP meeting participants did not always fulfill their responsibility to identify all needed services and locations of services on an individual basis (34 CFR §§303.344(d), 303.343 and 303.167(c)). OSEP also noted in its report that decisions concerning provision of early intervention services and the location of services were based on parent choice, rather than the needs of the child and results of the evaluation and assessment. The State reported in its 2003 progress reports that it had implemented all of its strategies from its Improvement Plan, but indicated it would monitor for compliance with this requirement. However, because the State did not provide monitoring data in its FFY 2001 APR, OSEP requested in its February 2004 FFY 2001 APR letter that the State include in its FFY 2002 APR updated monitoring data.

On page 25 of the FFY 2002 APR, NMDOH reported that one of six providers monitored was found to be out of compliance with the standard "all needed services are listed on the IFSP." The chart on page 20 of the FFY 2002 APR indicated that one of ten providers was found to be noncompliant in the provision of information that families need to participate in the IFSP process, and one provider was found to be noncompliant in ensuring that service coordinators conducted an assessment of the families' resources, priorities and concerns. Providers found to be noncompliant established corrective action plans and technical assistance was provided to the providers. The State completed the strategies it identified in its Improvement Plan to address this area of noncompliance and OSEP has identified no additional concerns in this area.

*Provision of Early Intervention Services:* In its 2000 Monitoring Report, OSEP reported that needed early intervention services were not always provided (34 CFR §303.342(e)). OSEP's June 29, 2001 letter that accepted the State's Improvement Plan noted that the State's strategies included that service coordinators would conduct follow-up activities to ensure provision of services, and conduct analyses to compare services provided to those listed on the IFSP. Although the State reported implementation of its strategies, it noted in its October 2003 progress report that compliance with this requirement had not yet been achieved. Specifically, the State noted, "results indicate 76% of families receive services on their IFSP." The State indicated in that report a range of 10% to 100% but also noted "often a provider agency did not have adequate documentation that the service was provided."

On pages 24-26 of its FFY 2002 APR, NMDOH included data identifying early intervention services received by eligible children. The State reported in its FFY 2002 APR that the CBA measures the standard "Families receive all services in accordance with their IFSP," which is monitored through review of progress notes/contact logs and interviews. Five of six providers were found out of compliance because all early intervention services were not provided in accordance with the child's IFSP. Corrective action plans were in place for each agency, and two provider agencies monitored during the pilot phase had been determined compliant.

In the next APR (due March 31, 2005), the State must provide: correction data, technical assistance and corrective action plan summaries from the five provider agencies that the State identified as being in noncompliance with the provision of IFSP services. If any of these five provider agencies have not achieved full compliance with Part C requirement to provide IFSP services, the State must also include in its FFY 2003 APR: (1) its analysis of why full compliance has not been achieved in these agencies; (2) additional or revised strategies, targets and timelines to ensure compliance as soon as possible; and (3) a summary of the State's response to and correspondence with each agency not in compliance, including any sanctions or enforcement actions taken. Failure to demonstrate full compliance with this requirement by the FFY 2003 APR may result in the State's designation as a "high risk" grantee for its FFY 2005 Part C grant funds.

*Natural Environment:* OSEP's February 2004 response to the FFY 2001 APR, requested updated information on monitoring of services provided in the natural environment or

evidence that a justification was included on the IFSP when services were not provided in a natural environment. On pages 26-27 of its FFY 2002 APR, NMDOH reported the FIT database did not collect information on whether there was a justification for services provided in other than a natural environment, but the CBA did monitor for the justification. CBA monitoring found four of six sites out of compliance with the justification for placements in other than a natural environment, but that each of these agencies had a corrective action plan in place. The performance data provided on page 27 of the FFY 2002 APR indicated that NMDOH has increased the number of children who receive services in the home or in programs with typically developing children. In addition, the State rank orders its provider agencies on natural environments indicators and has strategies to improve performance in this area. In the next APR, the State must continue to report and provide updated monitoring data on its efforts to improve performance and ensure compliance in this area.

*Early Childhood Outcomes:* For the FFY 2001 and FFY 2002 APRs, OSEP required States to provide information on the percentage of children participating in the Part C program who demonstrated improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). NMDOH reported that it had strong anecdotal evidence that New Mexico children made developmental gains as a result of early intervention, but the FIT data system did not collect that data. The State explained that it had consulted with national experts and identified four possible methods to obtain the data. The target for 2003 was to establish a baseline for this performance indicator by developing a methodology for measuring child outcomes. In the FFY 2003 APR, NMDOH must provide its plan to collect and report by the FFY 2004 APR (expected deadline: March 31, 2006) data (whether collected through sampling, monitoring, or other methods) on the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas.

#### *Early Childhood Transition*

In its January 2000 Monitoring Report and its February 24, 2002 FFY 2001 APR letter, OSEP reported that transition conferences for children potentially eligible did not occur at least 90 days prior to a child's third birthday. On pages 31-32 of the FFY 2002 APR, NMDOH reported that a survey of parents indicated that 84 percent of parents stated that the conference had been held at appropriate times. In the CBA monitoring for the sites monitored during this reporting period, NMDOH found that four sites out of six were noncompliant with the standard for holding the transition planning conference on time. All of the providers found out of compliance had a corrective action plan in place during the FFY 2002 APR reporting period and these plans were expected to be completed in the FFY 2003 APR reporting period.

In the next APR (due March 31, 2005), NMDOH must report on the status of the corrective action plans in the four provider agencies found out of noncompliance with the 90-day transition conference requirement during the FFY 2002 reporting period and



include the State's analysis of the data from the four provider agencies with corrective action plans and a summary of the completed strategies for those provider agencies.

***Conclusion***

As part of the next APR (due March 31, 2005), NMDOH must submit to OSEP:

1. the corrective action plan from the fourth site in the first pilot (Tresco TOTS);
2. a summary of the corrective actions taken by, and correction data from, the other six sites monitored during FFY 2002 (Mescalero, DSI, PB&J, Zia Therapy, Las Cumbres, and Casa Alegre);
3. a written assurance that all programs in the State that provide Part C services were using corrected prior written notice materials required by 34 CFR §303.403(b);
4. a report on its ongoing activities to improve child find efforts in the State;
5. correction data from the three pilot provider agencies that the State identified as having completed corrective action plans that demonstrate compliance with Part C's 45-day timeline requirement (NAPPR, PMS, and Tobosa); and a summary of the correction status and any available correction data from the other seven provider agencies. (If any of these ten provider agencies have not achieved full compliance with Part C's 45-day timeline requirement, the State must also include in its FFY 2003 APR: (1) its analysis of why full compliance has not been achieved in these agencies; (2) additional or revised strategies, targets and timelines to ensure compliance as soon as possible; and (3) a summary of the State's response to and correspondence with each agency not in compliance, including any sanctions or enforcement actions taken.);
6. the status of correction of the noncompliance related to service coordination from the two programs that it monitored during the FFY 2002 reporting period.;
7. correction data, technical assistance and corrective action plan summaries from the five provider agencies that the State identified as being in noncompliance with the provision of IFSP services. (If any of these five provider agencies have not achieved full compliance with Part C requirement to provide IFSP services, the State must also include in its FFY 2003 APR: (1) its analysis of why full compliance has not been achieved in these agencies; (2) additional or revised strategies, targets and timelines to ensure compliance as soon as possible; and (3) a summary of the State's response to and correspondence with each agency not in compliance, including any sanctions or enforcement actions taken.);
8. a report and updated monitoring data on its efforts to improve performance and ensure compliance in the area of natural environments;

9. its plan to collect and report by the FFY 2004 APR (expected deadline: March 31, 2006) data (whether collected through sampling, monitoring, or other methods) on the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas; and
10. a report on the status of the corrective action plans in the four provider agencies found out of noncompliance with the 90-day transition conference requirement during the FFY 2002 reporting period and including the State's analysis of the data from the four provider agencies with corrective action plans and a summary of the completed strategies for those provider agencies.

Failure to demonstrate compliance with Part C's 45-day timeline (34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a)) and IFSP service provision (34 CFR §303.342(e)) requirements by the FFY 2003 APR may result in the State's designation as a "high risk" grantee for its FFY 2005 Part C grant funds.

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 any questions, please contact Ginger Johnson at 202-245-7353.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special  
Education Programs

cc: Andrew Gomm,  
Part C Coordinator