



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

Honorable Eddy A. Bresnitz  
Deputy Commissioner  
Department of Health and Senior Services  
John Fitch Plaza  
P.O. Box 360  
Trenton, NJ 08625-0360

OCT - 4 2005

Dear Deputy Commissioner Bresnitz:

The purpose of this letter is to respond to New Jersey's Department of Health and Senior Services (DHSS) May 9, 2005 and June 28, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

*Background*

OSEP's November 16, 2004 FFY 2002 APR response letter required the State to submit, in the FFY 2003 APR, data and analysis to support correction of the following four areas of noncompliance, outstanding from OSEP's 2001 Monitoring Report: (1) monitoring procedures identified all areas of noncompliance with Part C and ensured corrective actions (34 CFR §§303.501(a) and (b)(1)-(4)); (2) DHSS ensured that individualized family service plan (IFSP) teams were making individualized decisions for IFSP services, based on the unique needs of each child and family (34 CFR §303.344(d)); (3) IFSPs included all required content relating to the transition process (34 CFR §303.344(h)); and (4) a transition planning meeting, where appropriate, was held at least 90 days prior to the child's third birthday (34 CFR §303.148(b)(2)(i)).

In addition, OSEP requested that DHSS provide OSEP with data (whether collected through sampling, monitoring, or other methods) on the percentage of children who demonstrated sustained and improved functional abilities or, if the data were not yet available, an update of the

State's plan to collect and report such data, including a detailed timeline of the activities necessary to implement that plan.

As discussed below, DHSS submitted data and analyses demonstrating correction for the following two areas of noncompliance identified in OSEP's 2001 Monitoring Report that: (1) DHSS had procedures to identify noncompliance; and (2) DHSS ensures that IFSP teams were making individualized decisions for IFSP services, based on the unique needs of each child and family.

### *General Supervision*

#### Identification and timely correction of noncompliance

OSEP's November 16, 2004 FFY 2002 APR response letter required the State to provide, in the FFY 2003 APR, documentation that the State implemented monitoring procedures to ensure that it could identify all noncompliance with Part C and ensure correction in a timely manner. If no systemic findings of noncompliance were identified, DHSS was asked to indicate this and provide data to demonstrate compliance with Part C requirements (inclusive of OSEP-identified compliance concerns). OSEP also provided examples that the State could use for analyses, monitoring and reporting performance data throughout the FFY 2002 APR response letter.

On pages 1-3 of Appendix 1 and pages 2-6 of the FFY 2003 APR, the State described its various strategies for implementing its continuous monitoring and improvement in the State's early intervention system, such as its management information system (MIS), monthly service coordinators' reports, desk audits, self-assessments, focused monitoring, and dispute resolution oversight. As OSEP requested, DHSS provided its analysis regarding its findings of noncompliance and its plans for correcting noncompliance for: (1) ensuring initial IFSP meetings were held within 45 days of the referral to Part C as required by 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342 (a); and, (2) ensuring transition planning meetings, where appropriate, were held at least 90 days prior to the child's third birthday (34 CFR §303.148(b)(2)(i)). The State also provided data to demonstrate its continued compliance and performance for: (1) providing service coordination as required by 34 CFR §303.23(a) and (b); and, (2) providing early intervention services in natural environments as required by 34 CFR §303.342(d)(1)(ii). (See Early Intervention Services in Natural Environments below.) As noted above, the State provided information and analysis that it was ensuring compliance with the Part C provisions that IFSP teams were making individualized decisions for IFSP services, based on the unique needs of each child and family as required by 34 CFR §303.344(d). (See Early Intervention Services in Natural Environments below.) In addition, as described below, DHSS used both formal and informal mechanisms to resolve issues or disputes in a timely manner in accordance with Part C provisions (See Dispute Resolution below) and ensured the State had mechanisms in place to ensure ongoing certification of personnel and respond to personnel vacancies. (See Personnel below.)

DHSS provided data indicating that its systems for general supervision can identify noncompliance. OSEP cannot conclude, however, that the monitoring methods that were implemented constituted effective monitoring for *correcting* noncompliance. Specifically,

DHSS did *not* provide confirmation of correction for the following areas of noncompliance identified in OSEP's 2001 Monitoring Report: (1) IFSPs include all of the required content relating to the transition process (34 CFR §303.344(h)); and (2) transition planning meetings, where appropriate, are held at least 90 days prior to the child's third birthday (34 CFR §303.148(b)(2)(i)).

New Jersey must submit data and analysis demonstrating compliance with the Part C provisions that the State is implementing a monitoring system that ensures correction of noncompliance as required by 34 CFR §303.501 in the State Performance Plan (SPP), due December 2, 2005. OSEP will review the information submitted and determine what, if any, further action may be required.

#### Dispute resolution

On pages 3-5, 8-10 and Attachment 1 of the FFY 2003 APR, DHSS reported that requests for five hearings, ten complaint investigations, and ten mediations were filed with the State. Of the five hearings, one did not allege a Part C violation and the remaining four were withdrawn and resolved informally. Of the ten complaints, two included findings and were resolved within the timelines, seven were withdrawn and resolved informally, and one did not allege a Part C violation. Of the ten mediations, six were not related to hearing requests; and four were related to hearing requests. According to DHSS, all disputes were resolved in accordance with regulatory timelines. On page 4, the State also established procedures to address any informal family inquiry as follows: (1) the State Procedural Safeguards personnel and regional parent liaisons were required to document any parent issues or concerns and work with the State Procedural Safeguards Coordinator to resolve issues or concerns; (2) parents could contact the State via a toll free number; and (3) within two days of receipt of a call, the parent liaison gathered information from the parents regarding their concern and within ten business days from the date of the call, the parent's issues were addressed. The State reported that it was rare that an issue was not resolved during the ten-day time frame. OSEP appreciates the State's efforts in this area and looks forward to reviewing the State's data in this area as part of the SPP.

#### Personnel

On pages 10-16 of the FFY 2003 APR, DHSS provided an analysis of its comprehensive system of personnel development that it indicated was crucial to ensuring system improvement for New Jersey's early intervention system. By December 31, 2004, 3,000 early intervention practitioners had completed enrollment into the State's centralized management information system; thereby providing DHSS with a mechanism to monitor that all practitioners met personnel standards. The management information system also contained a tracking element by which DHSS was alerted when a practitioner was not identified for a needed IFSP service; thus notifying the State that it needed to immediately assist the local program in identifying an early intervention practitioner.

On page 12 of the FFY 2003 APR, graphs of trend data of additional personnel hired in comparison to services provided, demonstrated an increase in the number of personnel who provided occupational therapy, physical therapy, special instruction, speech pathology and social

work hired between 2003 and 2004. During the reporting period, DHSS expanded its personnel standards to include a child development associate, interpreter of the deaf, optometrist, ophthalmologist and special educators for hearing impaired and visually impaired. Many initiatives were implemented to address the needs of children with autism. OSEP appreciates the State's efforts in this area.

#### Collection and timely reporting of accurate data

On pages 16-20 of the FFY 2003 APR, the State reported that it implemented data collection methods that were used to carry out general supervision. These included: (1) service coordination units submitted monthly reports to the regional early intervention collaboratives (REICs)<sup>1</sup>; and (2) REICs conducted record reviews for all children enrolled on December 1 of each year. Service coordination units reported on referrals, IFSPs, service coordination caseloads, 45-day timeline from referral to initial IFSP meeting, and exiting data. Record reviews provided information regarding age at referral, primary diagnosis, referral sources, IFSP services provided, and measurement of the 45-day timeline from referral to initial IFSP meeting.

On page 18 of the FFY 2003 APR, the State reported implementation of a management information system (MIS) to support its general supervision system (monitor IFSP services recorded and provided, improve timely responses to potential noncompliance concerns through utilization of data triggers gleaned from the database for immediate follow-up with providers, ensure timely reimbursement of providers, and track personnel credentials).<sup>2</sup> In Appendix 1 of the FFY 2003 APR, the State reported results from its analysis of data contained in the MIS to support its general supervisory responsibilities. OSEP looks forward to reviewing the State's data in this area as part of the SPP.

#### Fiscal responsibility

In Attachment 2 of the FFY 2003 APR, DHSS reported on the State's capacity to coordinate the various funding sources within the State to ensure the provision of early intervention services. The greatest financial support for Part C came from State appropriations. Others included: (1) Federal Title V (Maternal and Child Health); (2) medical assistance; (3) city and county governments; (4) private/charity/fundraising; and, (5) family fees through the State's system of payments. OSEP appreciates the State's efforts to coordinate various funding sources to support Part C.

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

On pages 20-28 of the FFY 2003 APR, the State included data and analysis regarding the compliance and performance of the State's public awareness and child find system as required by 34 CFR §§303.320-303.323. DHSS also reported monitoring referral patterns for all children enrolled in early intervention services on December 1, 2004 (7,709), demonstrating that a variety

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<sup>1</sup> Through contract mechanisms, DHSS supports four REICs that are responsible for local planning, development, and implementation of the early intervention system and for ensuring that families have a voice in decision-making on Regional Boards.

<sup>2</sup> A complete listing of management information functions was outlined on page 18 of the APR.

of primary referral agencies and individuals were referring children to the early intervention system. The State also provided analyses of age at referral-by-referral source, and referral patterns by selected agencies. The largest percentage of referrals for children, birth to 2, was from physicians. Moreover, the monitoring data showed that 38% of all children in the early intervention system on December 1, 2004 were referred prior to their first birthday. This demonstrated a large percentage of children referred prior to age one. Data comparing the State's December 1, 2004 child count of 7,790 infants and toddlers (2.21% of birth to three population) to the cumulative number of children served (15,829) during one year (July 1, 2003 and June 30, 2004) demonstrated that the number of children served during a given year was twice the number reported in the December 1 child count. The State reported that a slight decline in the number of children served on December 1, 2004 (7,790) compared to December 1, 2003 (8,085) might be explained by the implementation of a family cost share for early intervention services and/or the implementation of the management information system. OSEP appreciates the State's efforts and looks forward to reviewing the State's data related to indicator 6 in the SPP.

#### *Family Centered Services*

On pages 28-35 of the FFY 2003 APR, DHSS indicated that it implemented numerous initiatives to promote a family-centered Part C system. These included: (1) a family support coordinator was housed in each of the four REICs to provide training and information to families; (2) a Family Support Vision Workgroup was convened to provide recommendations to DHSS about how to enhance family support; (3) a statewide family survey was conducted; and (4) numerous family-centered training opportunities were provided. Preliminary statewide family surveys demonstrated a range of positive responses from 37% to 97.6% regarding initial evaluations, IFSP services, and family supports. DHSS reported that it could and would disaggregate the State survey data by region and county in order to identify the need for training and technical assistance and improvement. OSEP looks forward to reviewing the State's plan for collecting data related to indicator 4 in the SPP, due December 2, 2005. Baseline data is expected as part of the FFY 2005 APR, due February 1, 2007.

#### *Early Intervention Services in Natural Environments*

##### Service coordination

OSEP's November 2004 letter requested that the State provide updated service coordinator monitoring data in the FFY 2003 APR. On pages 36-40 of the FFY 2003 APR, the State reported that it continued to monitor service coordination caseloads and instances of vacancies so that DHSS can ensure vacancies are filled as soon as possible. The State also reported average service coordination caseloads had decreased from 54.7 in 2003 to 49.7 in 2004. DHSS reported it planned to utilize several mechanisms (described on page 39 of the FFY 2003 APR) to ensure service coordinators carried out responsibilities as required by Part C. OSEP appreciates the State's efforts in this area.

### Evaluation and identification of needs

OSEP's November 2004 letter required the State to report, in the FFY 2003 APR, its analysis of its IFSP record review and/or data from other monitoring activities (for example, the electronic database, self-assessments, or procedural safeguards oversight) that would demonstrate that IFSPs were individualized, based on the unique needs of each child and family, as required by 34 CFR §303.344(d). According to OSEP's November 2004 letter, in its 2001 Monitoring Report, OSEP identified two factors that appeared to impede the State's ability to ensure that IFSPs were individualized: (1) early intervention service providers were not implementing the State policy that a child and family were eligible for up to two hours of early intervention services per week at public expense; and thereafter, a fee was charged (based on State financial determination procedures) or a family's insurance was billed for additional early intervention services; and (2) lack of adequate personnel.

The State included information in the FFY 2003 APR, that it implemented systems change activities and increased the numbers of early intervention personnel. In Appendix 1, page 1 and pages 43-49 of the FFY 2003 APR, the State included data and analysis demonstrating that IFSPs were individualized and that service providers were implementing State policy (analysis from its management information system). The State provided data to demonstrate that a variety of types of services and range of frequencies were included in 8,023 IFSPs. Moreover, local self-assessments were conducted to ensure individualized services were identified. As described above under "Personnel," DHSS increased the number of personnel who provided occupational therapy, physical therapy, special instruction, speech pathology and social work between 2003 and 2004 and has a mechanism in place to monitor provider vacancies. OSEP appreciates the work of the State in ensuring compliance with these requirements.

### Individualized family service plans (IFSPs)

On pages 40-43 and page 2 of Appendix 1 of the FFY 2003 APR, the State included information about monitoring activities to ensure that initial IFSP meetings were held within 45 days of the referral to Part C as required by 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342 (a). The State conducted desk audits (data from in its management information system) beginning in February 2005 for all children who had an initial IFSP meeting in the month of November 2004 in all 21 counties in the State, resulting in the following outcomes: (1) 15 of 20 counties were in 100% compliance; (2) six counties had corrective action plans in place to be completed no later than October 31, 2005; and (3) 86.3% of initial IFSPs in these six counties met the 45-day timeline. This is an area of noncompliance not previously identified by OSEP. On page 2 of Appendix 1 of the FFY 2003 APR, the State also included strategies, proposed evidence of change, targets and timelines designed to ensure compliance within a reasonable period of time, not to exceed one year from the date of this letter. OSEP accepts this plan. In the SPP, the State must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter. OSEP looks forward to reviewing updated data related to indicator 7 as part of the SPP.

### Natural environments

On pages 49-53 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and improved performance with the provision to ensure that services were provided in the natural environments and an appropriate justification was written on the IFSP when early intervention services were not provided in the natural environment as required by 34 CFR §303.342(d)(1)(ii). On page 50, the State reported that, as of December 1, 2003, 95% of the services provided in natural environments were in the home and 5% were in community settings such as Early Head Start and childcare. DHSS reported that a monitoring procedure was in place to ensure justifications for services not provided in natural environments were appropriate. Survey information from families indicated that early intervention services were being provided in a variety of natural environments (home, relatives' home, library story times, childcare setting, parks and play groups). To sustain its ongoing system of improvement, DHSS intended to collaborate with a variety of other agencies, including childcare agencies, to develop interagency activities and to provide technical assistance about including children with disabilities in a variety of community settings. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated data related to indicator 2 as part of the SPP.

### Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional and adaptive developmental areas. The Part C FFY 2001, 2002 and 2003 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). On pages 53-55 of the FFY 2003 APR, the State reported that it "did not provide baseline/trend data because there has been insufficient capacity or resources to collect and provide outcome data." 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.

### *Early Childhood Transition*

OSEP's November 16, 2004 FFY 2002 APR response letter required the State to provide in the FFY 2003 APR: (1) its analysis from the State's monitoring of provider self-assessments, record reviews, or data from other sources that confirm the State has corrected the noncompliance; (2) a copy of the revised IFSP process and form regarding transition; and (3) confirmation that the revised IFSP form containing transition requirements was implemented in the State. OSEP also requested that the monitoring analysis include: (1) the number or percent of IFSPs of children at transition age that included steps to be taken to support the child to preschool special education services or other services, as appropriate; and (2) the number or percent of IFSPs of children at 33 months or older that indicated transition planning conferences, where appropriate, were

convened at least 90 days prior to the child's third birthday. If the data indicated continuing noncompliance for either or both requirements, OSEP requested that the State provide its strategies, targets, and timelines to ensure full compliance as soon as possible with the requirements.

On pages 2 and 3 of Appendix 1 and pages 55-61 of the FFY 2003 APR, the State provided the following information regarding holding transition meetings in accordance with 34 CFR §303.148(b)(2)(i). The State conducted an audit (through its management information system) of all children who should have had a transition conference in all 21 counties throughout the State during the month of November 2004. The State found that in 11 counties, 85 transition conferences were not held or occurred late due to Part C delays, local educational agency (LEA) delays or unknown delays. The State required these counties to submit corrective action plans, offered technical assistance, and selected four counties for on-site monitoring to be completed by December 31, 2005. In the SPP, the State must include data and analysis demonstrating progress toward compliance. OSEP will review the information submitted and determine what, if any, further action may be required.

On page 3 of Appendix 1 and pages 55-61 of the FFY 2003 APR, the State provided the following information regarding including transition steps on the IFSP in accordance with 34 CFR §303.344(h): (1) results from the State's monitoring (self-assessment) would be provided in the SPP, due December 2, 2005; and, (2) the State would implement its revised IFSP form containing transition requirements no later than January 1, 2006. OSEP is unable to determine whether the State made progress in this area of noncompliance since required data (the number or percent of IFSPs of children at transition age that include steps to be taken to support the child to preschool special education services or other services, as appropriate) were not included in the FFY 2003 APR. New Jersey must submit data and analysis demonstrating compliance with the Part C provisions that transition steps are included on the IFSP in accordance with 34 CFR §303.344(h), as part of the SPP. OSEP will review the information submitted and determine what, if any, further action may be required.

### *Conclusion*

In the SPP, due December 2, 2005, New Jersey must submit the following information to OSEP: (1) data and analysis demonstrating compliance with the Part C provisions that the State is implementing a monitoring system that ensures correction of noncompliance as required by 34 CFR §§303.501; (2) updated data demonstrating progress toward compliance with holding IFSP meetings within 45 days of referral as required by 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342 (a); (3) updated data demonstrating progress toward compliance for holding a transition conference, with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §303.148(b)(2)(i); and (4) data demonstrating compliance with including steps on the IFSP to support the transition of the child and family as required by 34 CFR §303.344(h).

The State must also submit its data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter, with holding IFSP

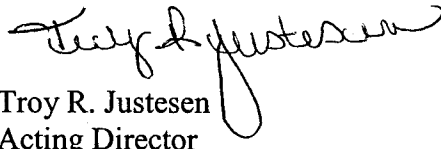


meetings within 45 days of referral as required by 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342 (a).

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, similar to 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 infants and toddlers with disabilities and their families. If you have questions, please contact Sheryl Parkhurst at (202) 245-7472.

Sincerely,

A handwritten signature in cursive script, appearing to read "Troy R. Justesen".

Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Terry Harrison  
Part C Coordinator