



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

SEP 15 2004

Honorable Joseph B. Morton
Interim Superintendent of Education
State Department of Education
Gordon Persons Office Building
50 North Ripley Street, P.O. Box 302102
Montgomery, AL 36104

Dear Dr. Morton:

The purpose of this letter is to respond to Alabama State Department of Education's (ALSDE) April 14, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B 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 B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

Alabama's 2002 Part B Self-Assessment and February 11, 2003 Improvement Plan did not identify any areas of noncompliance or include data indicating noncompliance. OSEP's September 29, 2003 response to the Improvement Plan did, however, identify two areas that required revisions. Those areas related to the requirements for placement in the least restrictive environment (LRE) and requirements related to determining and addressing racial

disproportionality in the identification of children with disabilities. In its April 27, 2004 letter, OSEP accepted the revised Improvement Plan that the State submitted on March 5, 2004.

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. OSEP's comments regarding the State's FFY 2002 APR, revisions to the September 29, 2003 Improvement Plan letter, and data regarding the September 30, 2003 verification letter are listed by cluster area.

General Supervision

On pages 1 and 2 of the APR (including Attachment 1), the State provided data indicating that the State resolves complaints and due process hearings in a timely manner. OSEP conducted a verification visit to the State during the week of July 7, 2003, and determined that ALSDE's General Supervision system constituted a reasonable approach to the identification and correction of noncompliance. However, OSEP also stated that, without collecting data at the local level, it could not determine if ALSDE's system was fully effective in identifying and correcting noncompliance.

On page 3 of the APR, the State included baseline monitoring data for school years 2001-2002 and 2002-2003, indicating the following levels of compliance: (1) evaluation requirements, 26.5 percent; (2) individualized education program (IEP) requirements, 50.4 percent; and (3) secondary transition requirements, 50.4 percent. The State included numerical goals to increase the level of compliance it finds when it monitors districts.

Because the State did not include data demonstrating that it ensured the correction of the identified noncompliance, the following are potential areas of noncompliance: (1) the evaluation requirements at 34 CFR §§300.530-.543; (2) the IEP requirements at 34 CFR §§300.340-.350; and (3) the secondary transition requirements at 34 CFR §§300.29, 300.344(b), 300.345(b)(2) and (3), 300.347(b), and 300.348. Within 60 days from the date of this letter, the State must submit to OSEP either: (1) documentation that the State has ensured the correction of noncompliance that it identified, within a year of identification; or (2) a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of identified noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In the next APR, the State must include data and analysis demonstrating progress toward compliance, and provide to OSEP, a report with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

The State did not provide any data and analysis responsive to probes GS.IV. (Sufficient supply of personnel to meet the needs of all children with disabilities) and GS.V. (Collection and reporting of accurate and timely data). In the next APR, the State must include data and analysis that address the required content of each probe.

Early Childhood Transition

On page 4 of the APR, the State: (1) reported baseline data for the 2000-2001 school year demonstrating that of 479 children who were determined eligible for special education and related services by their third birthday, 350 children had IEPs in place on their third birthday; (2) acknowledged that it had no data to verify what occurred for the remaining 129 children; and (3) stated that it was currently collecting data for the 2002-2003 school year. In addition, the State reported on page 4 that results of parental surveys indicated that 81% of eligible children had IEPs in place on their third birthday and 80% of the parents were very satisfied with Part C to Part B transition. These data indicated noncompliance with the requirements of 34 CFR §300.132(b), that the State ensure that by the third birthday of a child leaving the Part C program who is eligible for Part B an IEP, or if consistent with 34 CFR §300.342(c) an IFSP, has been developed and is being implemented consistent with 34 CFR §300.121(c). The State has provided strategies in the APR to address the above requirements, including: continued focused monitoring of the provision of services, the development of a Student Services Review for the preschool population, data collection and analysis of the Part C to Part B transition program, and continued investigation of children transitioning from Part C to Part B without IEPs in place by their third birthday. OSEP accepts the State's strategies. In the next APR, the State must 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 after one year from the date of this letter.

Parent Involvement

On page 6 of the APR, the State provided data and information indicating an increase in parent/student participation in State-sponsored training, from 1,202 during the 1998-1999 school year to 5,837 during the 2002-2003 school year. In addition, the State reported data from parent interviews that the State conducted as part of its monitoring: (1) 98 percent of the 420 parents that the State interviewed during the 2001-2002 school year rated their satisfaction with the services they received in the "maintain/refine zone" (highest zone possible), while two percent rated their satisfaction in the improvement zone; and (2) 99 percent of the 390 parents that the State interviewed during the 2002-2003 school year rated their satisfaction with the services they received in the "maintain/refine zone," while one percent rated their satisfaction in the improvement zone. The State included strategies and timelines to continue the upward trend of parent/student participation in State-sponsored training and to increase parent satisfaction with special education services provided to their children. OSEP looks forward to reviewing the resulting data demonstrating improvement in the next APR.

Free Appropriate Public Education in the Least Restrictive Environment

On page 3, the State included baseline monitoring data for school years 2001-2002 and 2002-2003, indicating the following levels of compliance: (1) evaluation requirements, 26.5 percent; and (2) IEP requirements, 50.4 percent. The actions that the State must take to address these data are set forth in the General Supervision section of this letter.

Disproportionality. On page 8 of the APR, the State included as projected targets to “[c]ontinue efforts to ensure that enrollment in the disability areas of specific learning disabilities and emotional disturbance do not become significantly disproportionate when students are appropriately placed in special education services. Continue efforts that result in the insignificant disproportionate enrollment based on race/ethnicity in the disability area of mental retardation when students are appropriately placed in special education services.” The proposed use of numerical goals based upon race raises serious concerns under federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. Such an examination generally would include a review of the availability and use of pre-referral intervention services, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluations. For example, the State may include targets to ensure no *inappropriate* disproportionality, but may not include targets to ensure that there is no *significant* disproportionality. The State must submit revised language, consistent with Federal law, in the next APR.

Exit Data. On page 10 of the APR, Alabama reported trend data indicating a “relatively static” drop-out rate for children with disabilities over the last three years. In addition, the State acknowledged that, “it is expected that efforts in drop-out reduction will have a positive affect and a downward trend will be evident at the next reporting.” On page 9, the State reported data for school year 2002-2003 indicating a decrease from school year 2001-2002 in children with disabilities graduating with a regular diploma (from 22.5 percent to 17.4 percent). The State reported that this decrease affected children both with and without disabilities, and attributed the slippage “to the elevation of higher academic standards required for graduation and the implementation of an 11th grade high school graduation examination.” The APR included strategies and activities to decrease the percentage of children with disabilities dropping out, and to increase the number of children with disabilities exiting school with a regular high school diploma. OSEP looks forward to reviewing the resulting data in the next APR.

Suspension and Expulsion. On page 14 of the APR, the State included data indicating an increase in long-term suspension/expulsion for children with disabilities from .61 percent in school year 2001-2002 to .91 percent in school year 2002-2003. The State attributed the increase to improved reporting practices with more emphasis on, and closer monitoring of, incoming data. The State included strategies in the APR to improve its performance in this area.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education

programs (IEPs), the use of behavioral interventions, and procedural safeguards to ensure that the policies, procedures and practices comply with Part B. The instructions to the 2002 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. The State's 2002 APR did not, however, include any information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of comparisons described above. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

Participation of Children with Disabilities on Large-Scale Assessments. On pages 18 and 19 (including Attachment 3) of this cluster of the APR, the State provided data on the participation of children with and without disabilities on Alabama's State-wide and alternate assessments. From school year 2001-2002 to 2002-2003, participation for children with disabilities in the writing assessment decreased from 77.7 percent (grade 5) and 68.5 percent (grade 7) to 51.0 percent (grade 5) and 53.0 percent (grade 7). No explanation for this slippage was provided.

In Attachment 3 of the APR, the State's participation data indicated a discrepancy between the numbers of children with IEPs at each grade level (Sections A and D) and the number of children with disabilities who actually participated (Sections B and E) in the assessments. As a result of this discrepancy, a number of children were unaccounted for throughout all the reported grade levels. For example, the State reported that 6,415 children with disabilities (4th grade) took the regular assessment on grade level achievement standards, 621 children with disabilities scored against alternate achievement standards and 21 children with disabilities were absent. A calculation of these data reveals that 7,057 children with IEPs participated in the math assessment; whereas, ALSDE's data on page 1 of Attachment 3, reported that 7,730 children with IEPs (4th graders) were enrolled in the math assessment. ALSDE did not provide an explanation to account for the 673 children with disabilities apparently not participating in this grade, or for those not participating in other grades. In its FFY 2003 APR, Alabama should include information to account for all children that did not participate in the assessments. Further, OSEP could not determine from the APR, whether any students with disabilities did not participate in the State-wide assessment due to a failure by a public agency to meet the requirements of 34 CFR §300.347(a)(5) and §300.138. The State must include an analysis of compliance data related to those requirements as part of its FFY 2003 APR.¹

¹ Please note that the regulations under the No Child Left Behind Act (NCLBA) provide, at 34 CFR §200.20(c), that, in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its students with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

Performance of Children with Disabilities on Large-Scale Assessments. On pages 12, 20 and 21 of the APR, Alabama reported data indicating little change in the percentages of children with disabilities who were proficient in all reported assessments between school years 2001-2002 and 2002-2003. The State further reported that, “it was difficult to assess the slight changes in progress for this reporting period because of the implementation of the SAT 10” and it expected increases during the next reporting period. The State provided strategies and activities to increase the performance of children with disabilities on large-scale assessments. OSEP looks forward to reviewing the resulting data in the next APR.

Education Environments for Children with Disabilities. On page 15 of the APR, ALSDE reported that the data for children with disabilities (ages 3-21) served in natural environments or general education classrooms at least 80 percent of the time revealed no significant change from 2001-2002 to 2002-2003. On pages 15 and 16 of the APR, the State included targets, explanation of progress or slippage, activities, timelines, and resources to improve the data in this area. OSEP looks forward to reviewing the resulting data in the next APR.

Early Language/Communication, Pre-Reading, and Social-Emotional Skills. The State did not provide any data and analysis responsive to probe BF VI (regarding the early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities). Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, Alabama must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

On page 3 of the APR, the State included baseline monitoring data for school years 2001-2002 and 2002-2003, indicating a compliance rate of 50.4 percent on secondary transition requirements. The actions that the State must take to address these data are set forth in the general supervision section of this letter.

On page 22 of this cluster of the APR, the State provided data and information indicating an increase in the total percentage of children with disabilities enrolled in postsecondary education (including technical school and two- and four-year colleges) from 68 percent in 1998-1999 to 79 percent in 2002-2003. In addition, ALSDE reported that more children attended IEP meetings, and more participated in setting goals. The State attributed this upward trend to increased and strengthened interagency partnerships among education, rehabilitation, social, and health services. On page 23 of this cluster of the APR, the State included strategies and timelines to maintain the increase in children with disabilities participating in post-school activities. OSEP looks forward to reviewing the resulting data in the next APR.

Conclusion

Within 60 days from the date of this letter, the State must submit either:

1. documentation that the State has ensured the correction of noncompliance that it has identified with the evaluation requirements at 34 CFR §§300.530-.543, the IEP requirements at 34 CFR §§300.340-.350, and the secondary transition requirements at 34 CFR §§300.29, 300.344(b), 300.345(b) and (3), 300.347(b), and 300.348, and documentation that the State is in compliance with the early childhood transition requirements at 34 CFR §300.121(c)(1); or
2. a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In addition, the State must include in the next APR, data and analysis demonstrating progress toward compliance, and must submit a report with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

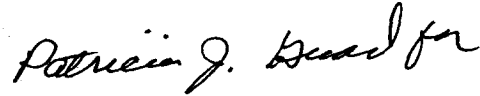
In its FFY 2003 APR, due March 31, 2005, the State must include:

1. an analysis of compliance data related to the requirements of 34 CFR §§300.347(a)(5) and 300.138;
2. data and analysis responsive to probes GS IV and V;
3. data and analysis demonstrating progress to compliance with 34 CFR §300.132(b) regarding children transitioning from Part C to Part B;
4. revised language regarding targets for disproportionality on the basis of race and a report on its review of policies, procedures and practices regarding identification and placement when it identifies significant disproportionality;
5. the requested information regarding suspensions and expulsions; and
6. either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets regarding the early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

In addition, within 30 days following one year from the date of this letter, the State must provide OSEP with a report including data and analysis demonstrating compliance regarding the requirements of 34 CFR §300.132(b).

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 children and youth with disabilities and their families. If you have questions, please contact Perry Williams at (202) 245-7575.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie J. Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Dr. Mabrey Whetstone