



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

**SEP 21 2004**

Honorable Valerie Woodruff  
Secretary of Education  
Delaware Department of Education  
The Townsend Building  
P.O. Box 1402  
Dover, Delaware 19903-1402

Dear Secretary Woodruff:

The purpose of this letter is to respond to the Delaware Department of Education's (DDE's) March 31, 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***

The placement of children with disabilities in the least restrictive environment has been a longstanding issue in Delaware. In its 1995 Monitoring Report, OSEP identified deficiencies related to placement of students in the LRE, particularly with regard to the placement of students with disabilities in regular education classes. DDE took steps toward correcting this noncompliance by monitoring, through annual unit audits in each district, to ensure that the LRE requirements were met and requiring districts found in noncompliance to complete corrective action plans. In 2000, DDE conducted a Self-Assessment and subsequently developed an Improvement Plan including periodic

Improvement Plan Progress Reports to OSEP. The Improvement Plan Progress Reports and, most recently, OSEP's visit to Delaware in September 2003 all identified the Delaware funding formula for special education as a barrier to student placement in the least restrictive environment. DDE worked with the Delaware legislature for several years to realign the funding formula in order to eliminate barriers such as a requirement that children with disabilities be with a special education teacher 12.5 hours per week in order to have full-time status as a special education student and receive the funding that follows full-time status. During the OSEP visit to Delaware in September 2003, OSEP confirmed that the Delaware legislature approved actions that increased flexibility for placement of preschool children with disabilities in the least restrictive environment by removing funding barriers. Additionally, DDE piloted a new system of granting waivers for the 12.5 hour requirement for the school age population in two districts and hired an outside consultant to evaluate the impact of this change.

OSEP visited Delaware in September 2003 to verify the effectiveness of the State's systems for general supervision, data collection and reporting under Section 618 of IDEA, and State-wide assessment. During the verification visit, OSEP found that DDE was unable to verify that due process hearing decisions were issued within the 45-day timeline after a request for a hearing unless the hearing officer had granted an extension, based on the request of a party, consistent with 34 CFR §300.511. In the verification letter to DDE dated December 15, 2003, OSEP directed the State to submit a plan that described how DDE would monitor and enforce timelines for due process hearing decisions.

During the verification visit, OSEP also reviewed the special conditions placed on the State's FFY 2003 IDEA Part B Grant Awards regarding the administration of the Delaware Alternate Portfolio Assessment (DAPA), a part of the Delaware Student Testing Program (DSTP). Delaware did not develop and administer alternate assessments in all DSTP content areas and did not report publicly and to the Secretary of the U.S. Department of Education on the participation and performance of children with disabilities on alternate assessments, as required. Subsequent updates that DDE submitted on this matter indicated that during the 2003-2004 school year, children taking the DAPA would be assessed at the same time and in the same way as children participating in the general assessment; however, the scores for children taking the alternate assessment will not be reported until the 2004-2005 school year.

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 are listed by cluster area.

### ***General Supervision***

The State provided data and information on pages one through five of the APR demonstrating that DDE's policies and procedures identified compliance, ensured correction of noncompliance in a timely manner, and encouraged positive program performance. The State presented baseline and trend data, indicators, targets, activities,

timelines, and projected resources to address each of the following topics in this cluster: (a) effective general supervision, (b) identification and remediation of systemic noncompliance, (c) timely dispute resolution, (d) sufficient personnel, and (e) accurate and timely data collection and reporting.

On pages one and two of the APR, DDE described results of the State's desk audits during the reporting period. The State reviewed each of the nineteen districts' individualized education program (IEP) forms and evaluation summary reports. The State also reviewed the districts' "Permission to Evaluate" forms and found them to be in compliance with IDEA. The State expected all districts would have completed a self-assessment by the end of the 2003-2004 school year. The State's review of the September 30, 2003 child count indicated that among 1500 student record files from nineteen school districts and ten charter schools, only five records were unable to be counted toward the State's formula for special education funding purposes. The State concluded that the high number of completed records was evidence of a high compliance rate. OSEP looks forward to reviewing the implementation of planned monitoring activities in the next APR.

On page three of the APR, DDE described the steps the State took to identify and remediate systemic issues found through an analysis of data collected during the monitoring process, complaint investigations, and hearing resolutions. On Attachment I of the APR, DDE reported that all complaint decisions met the 60-day timeline. The APR also indicated that training offered by the State contributed to successful mediations. One mediation was pending on August 31, 2003. On Attachment 1 of the APR, DDE also reported that, of the 19 requests for hearings during the reporting period, three were held with a decision rendered. DDE was unable to determine the number of decisions issued after timelines and extensions expired; however, according to the data on Attachment I, as of September 30, 2003, there were no hearings pending.

In response to the due process issue raised in the verification letter, DDE submitted a plan to OSEP dated August 30, 2004 that included the mechanisms that DDE is using to ensure that due process hearing decisions timelines are met in accordance with due process requirements. OSEP accepts DDE's plan which appears to be designed to lead to resolution of this issue. The plan that DDE submitted on August 30, 2004 includes both training and monitoring activities, including an internal tracking system that documents the date the written approval for extension of the due process hearing timelines was granted.

On pages four and five of the APR, DDE discussed the status of trained personnel to meet the educational needs of all children with disabilities in the State. Of the 1945 full-time equivalent (FTE) teachers providing special education, 482 were not fully certified; 12 of the 18 FTE occupational therapists were not fully certified; and four of the eight FTE physical therapists were not fully certified. The districts also provided compensatory services to children who were affected by a loss of service. The State proposed activities, timelines and projected resources for reaching the goal to have sufficient numbers of administrators, teachers, related service providers, paraprofessionals and other providers to meet the identified needs of all children with disabilities in the State. OSEP looks forward to reviewing the results of these activities in the next APR.

On pages five and six of the APR, the State identified a goal to collect accurate and timely data to use in reports and decision-making. DDE stated that all LEAs submitted accurate and timely data to the State and that the State reported data to OSEP in a manner that was both timely and accurate. The greatest challenge in reporting data was in the area of student discipline because districts used different databases to report to the State. DDE reported that the State would work with districts to standardize discipline data reporting so that data were accurate and received in a timely manner. OSEP looks forward to reviewing the results of DDE's efforts to standardize discipline data in the next APR.

### *Early Childhood Transition*

On pages six and seven of the APR, DDE reported that the State did not have goals, performance indicators or baseline trend data for early childhood transition for the reporting period. The State identified targets, activities, timelines and resources for the next reporting period and stated the information would be included in the State's next APR.

Among the activities listed on page six of the APR, DDE reported that it would work with the Part C system and local school districts to identify operational and/or organizational elements that require further resources so all children begin services by their third birthday. DDE also indicated that it would work with the State's Part C program to track students exiting Part C who are eligible for Part B services. OSEP assumes that any Part C to Part B tracking system that Delaware develops will not involve the disclosure of personally identifiable information from student's education records or, if it will, that it is consistent with the IDEA and FERPA. OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Elder which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

While the Part B APR did not contain evidence of noncompliance, the Part C FFY 2002 APR submitted by the Department of Health and Social Services (DHSS) documented systemic noncompliance not previously identified by OSEP. The data that DHSS submitted indicated potential noncompliance regarding transition requirements in that for FFY 2002 only 61%, and in FFY 2003 only 64% of transition conferences that were held by DHSS under Part C included school district participation. Part B requires that school districts participate in the early childhood transition conferences required to be held under Part C. (See 34 CFR § 300.132(c).) A copy of the pages of the DHSS' FFY 2002 APR that references this early childhood transition conference data is enclosed. Within 60 days of the date of this letter, DDE must review the data and provide to OSEP an explanation of whether LEAs are participating in transition planning conferences for children leaving the Part C program who are eligible for Part B services. If the data indicates noncompliance, DDE must also submit to OSEP, within 60 days of the date of this letter, a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. If there is noncompliance, in the next APR, the State also must include current data and analysis demonstrating progress toward

compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepts the plan.

### ***Parent Involvement***

On pages seven through nine of the APR, DDE reported that the State goal for parent involvement was that “family satisfaction with opportunities, variety and convenience of training activities will increase and family involvement in all State/district/school level activities involving the education of children with disabilities will increase.” The State had baseline and trend data, indicators, targets, activities, timelines, and resources to address this cluster. The State included a copy of the parent survey, description of the sampling process, and methodology for analyzing data gathered from the survey. OSEP looks forward to reviewing the results of these activities in the next APR.

### ***Free Appropriate Public Education in the Least Restrictive Environment***

On pages ten through 24 of the APR, DDE provided information about the State’s goals to appropriately identify and serve all children eligible for Part B services. The State presented data, disaggregated by race and ethnicity, for enrollment, educational environment, and assignment to disability category in Attachment 2. On pages ten and 11 of the APR, the State did not set goals and performance indicators specific to disproportionality; but reported that projected targets would be set during the 2004-2005 school year.

34 CFR §300.755 requires that States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or in placements into particular settings must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement to ensure that they comply with Part B. The instructions to the 2002 APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. The State’s 2002 APR, however, while identifying significant disproportionality, did not include any information indicating that the State had provided for a review of policies, procedures or practices used in identification or placement of children with disabilities. 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, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation.

The State identified a goal to increase the number of youth in special education who successfully complete high school. Indicators included the graduation and dropout rates. Baseline data, targets, explanation of progress and slippage, activities, timelines, and resources were included in the APR. The State expressed the concern that activities and

projected targets would be affected by the State's plan to adopt high stakes graduation requirements.<sup>1</sup>

Pages 13-16 of the APR addressed suspensions and expulsions. The State reported trend data regarding suspensions and expulsions for the years 2001-2003. Baseline data, targets, explanation of progress and slippage, targets, activities, timelines, and resources were included in the APR. Performance indicators included the percentage of children with disabilities receiving long-term suspensions or expulsions, the number of days children with disabilities were suspended, and the percentage of students committing Delaware State Code §4112 incidents (school crimes). DDE reported that stakeholders expressed concern over inconsistencies in the data. DDE also indicated that it created a data reporting system to ensure accuracy of these data. The APR also included information on training and technical assistance activities including work on implementing positive behavior support programs in some schools. DDE also reported that a high percentage of IEPs with behavior identified as a need had either accommodations/adaptations or goals to address the behavior or a behavior support plan. The APR identified a number of future activities to increase the capacity of all school personnel to support the behavioral and emotional needs of children.

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 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, however, did not 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.

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<sup>1</sup> Subsequent to the State's submission of the APR, the State delayed implementation of the new graduation requirements.

The State reported on participation and performance on State-wide assessments on pages 17–21 and Attachment 3. The large-scale assessment in Delaware was the DSTP. The State goal was to increase the performance of children on the assessment. Indicators included the reported results of children who took the assessment with no accommodations, students who took the assessment with accommodations and children who took the DAPA. The State reported participation rates of over 94% for 2002 and over 95% for 2003 for the DSTP and over 98% for 2002 and over 93% for 2003 for the DAPA. The State reported results for 2001, 2002, and 2003 in grades 3, 5, 8, and 10. Overall, children with disabilities in grades 3, 5, and 8 increased performance results. However, the State reported that students with disabilities were primarily performing below the standard at all grade levels on the DSPT reading, mathematics, and writing; however, data generally indicated an increase in the percentage of children with a valid score who were meeting/exceeding the standard at all grade levels. The APR identified baseline data, explanation of progress and slippage, targets, activities, timelines, and resources. DDE indicated that one of the goals of the State Improvement Grant (SIG) was to improve reading results for children with disabilities. In the State's next APR, OSEP encourages Delaware to continue to report the State's progress in narrowing the achievement gap between children with and without disabilities as well as the impact of the SIG on reading scores.

Special conditions continued on the State's FFY 2004 IDEA Part B Grant Award regarding the administration of the DAPA. Specifically, OSEP determined that Delaware was not reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments (science and social studies), as required at 20 U.S.C. 1412(a) and 34 CFR §300.139(a)(2). In the State's next APR, Delaware must include this information to demonstrate compliance with 34 CFR §300.139(a)(2).

On pages 22-24 of the APR, Delaware reported a goal in the Delaware State Improvement Grant that children with disabilities would be effectively included in the general education classroom and participate with their nondisabled peers. The State had baseline and trend data, targets, explanation for slippage and progress, targets, activities, timelines, and resources to address this issue. As noted in the Background section of this letter, DDE and OSEP identified Delaware's formula for special education funding as a barrier to placement of students with disabilities in the LRE. The State also reported on future activities to develop and implement inclusive schools initiatives. In the State's next APR, Delaware must continue to report on its progress in removing the funding barrier. In addition, DDE must include monitoring data related to LRE and continue to report on the success of inclusive school initiatives in the next APR.

Indicators for this goal included the percentage of students who were educated in the general education classroom more than 80% of the day. Pages 22-23 of this section of the APR included percentage goals to determine whether or not children with disabilities were educated in the least restrictive environment. While it is not inconsistent with Part B of the IDEA to include a numerical goal to increase the percentage of children with disabilities determined eligible for services, the State must continue to monitor to ensure that

eligibility decisions for all children are made in conformity with the requirements of Part B of the IDEA (at 34 CFR §§300.531 through 300.535) and not based upon a numerical goal.

On page 24 of the APR, DDE noted that it did not currently collect data on preschool outcomes, although DDE indicated that the State would research how to collect and report this data. Under the Government Performance and Results Act of 1993, 31U.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, DDE must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to reach 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 pages 25-26 of the APR, the State discussed a goal of improving post-school outcomes for youth with disabilities to reflect participation in post-school activities, including post-secondary education at two-year and four-year colleges and employment within two years of leaving high school. However, the State reported in the APR that while the State collected data beginning in 1999, the data were inadequate to provide baseline and trend data analyses. The State changed its data-gathering instrument to more accurately identify post-school education and employment data and planned to administer the new instrument in 2004. The State reported that baseline and trend data, targets, explanation for slippage and progress, targets, activities, timelines, and resources to address this goal would be reported in the State's next APR.

### ***Conclusion***

Within 60 days of the date of this letter, DDE must review the early childhood transition data and provide to OSEP an explanation of whether LEAs are participating in transition planning conferences for children leaving the Part C program who are eligible for Part B services. If the data indicates noncompliance, DDE must also submit to OSEP within 60 days of the date of this letter, a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

In the FFY 2003 APR, the State must:

- Demonstrate compliance with 34 CFR §300.139(a)(2) regarding the reporting of test scores for the States' alternate assessment;
- Continue to report on its progress in revising the State formula for special education funding that OSEP and the State identified as a barrier to placement of children with disabilities in the least restrictive environment. In addition, the State



must include monitoring data related to LRE and continue to report on the success of the inclusive school initiatives;

- If DDE identifies noncompliance regarding the early childhood transition requirements, the State also must include current data and analysis demonstrating progress toward compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepts the plan;
- Include information on the results of its review of policies, procedures and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race;
- Include information indicating that the State has examined all data for all LEAs to determine whether 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, and if it identifies significant discrepancies, the results of its review and, if appropriate, revision (or of the affected State agency's or LEA's review and revision) of policies, procedures and practices consistent with 34 CFR §300.146; and
- Include 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 on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State. We appreciate your work on the APR and we look forward to collaborating with Delaware as you continue to improve results for students with disabilities and their families. If you have questions, please contact Sheila Friedman at (202) 245-7349.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

Enclosures

cc: Martha Brooks