



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Roger Sampson
Commissioner
Alaska Department of Education and Early Development
801 West Tenth Street, Suite 200
Juneau, Alaska 99801-1894

SEP 29 2005

Dear Commissioner Sampson:

The purpose of this letter is to respond to Alaska's March 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B 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 July 23, 2004 FFY 2002 APR response letter to the Alaska Department of Education and Early Development (AKEED) indicated that there was identified noncompliance in the following areas: (1) 34 CFR §300.347(b), regarding the inclusion of information regarding transition planning in Individual Education Program (IEPs); (2) 34 CFR §§300.346(a)(2)(i) and 300.520, regarding the inclusion of information regarding positive behavior interventions in some IEPs, or behavior intervention plans; and (3) 34 CFR §§300.300, 300.311, and 300.142, regarding the provision of services to incarcerated youth with disabilities. AKEED had 60 days to submit a plan to OSEP that included strategies, targets, proposed evidence of change, and timelines to ensure correction of the above noted noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan. AKEED submitted a plan to OSEP on September 16, 2004. OSEP accepted the plan in a letter dated November 10, 2004.

OSEP's December 30, 2003 verification letter and July 23, 2004 FFY 2002 APR response letter identified noncompliance with 34 CFR §300.401, oversight of children with disabilities placed in out-of-district and out-of-State placements. OSEP's July 2004 letter required Alaska to provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide to OSEP a final Progress Report within thirty days following one year from the date of the July 23, 2004 letter containing data and analysis demonstrating full compliance with this requirement.

General Supervision

Identification and timely correction of noncompliance

In its July 23, 2004 letter, OSEP identified noncompliance with 34 CFR §§300.300, 300.311, and 300.142, regarding the provision of services to incarcerated youth with disabilities. On page 52 of the FFY 2003 APR, the State included data and analysis that demonstrated 100% correction of noncompliance identified in that letter regarding the provision of services to incarcerated youth with disabilities. AKEED modified its monitoring process to include district level interagency agreements with juvenile corrections facilities and adult corrections facilities. For the reporting period July 1, 2003 – June 20, 2004, AKEED monitoring teams visited six facilities and found that special education teachers were provided by the local school district 100% of the time and that districts were serving students with disabilities in correctional facilities at a rate of 100%. To facilitate early identification, as of March 31, 2005, the intake forms at the correctional facilities were to be modified to include a question assessing whether or not the student was ever in special education. OSEP appreciates the work of the State in ensuring compliance with these requirements.

In its December 2003 and July 2004 letters, OSEP identified noncompliance with 34 CFR §300.401, oversight of children with disabilities placed in out-of-district and out-of-State placements, and required the State to demonstrate compliance by August 23, 2005. On July 25, 2005 AKEED submitted an e-mail update, which indicated that the State began work with the Office of Children's Services at the end of 2003 to develop a Memorandum of Agreement (MOA). The draft MOA had not yet been signed by all parties. Additionally, the State indicated that AKEED relied on the Interstate Compact Enacted in Alaska Statute 47.70.010 when students with disabilities are placed out-of-State. The designee of authority under this Interstate Compact was the DHSS. However, none of this information indicated that AKEED was ensuring that children in out-of-State placements had IEPs in place.

On page 54 of the FFY 2003 APR, the State acknowledged that ensuring that children placed out-of-State had IEPs was an issue, but indicated that it lacked valid data in this area. With the State Performance Plan (SPP), due December 2, 2005, AKEED must provide data demonstrating compliance with its obligation under 34 CFR §300.401 to ensure that these children have IEPs in place. Failure to provide data demonstrating compliance at that time could affect the State's next grant award

OSEP's July 2004 letter identified noncompliance with 34 CFR §§ 300.346(a)(2)(i) and 300.520, regarding the inclusion of certain information regarding positive behavior interventions in some IEPs, or behavior intervention plans. In its September 2004 letter, the State provided clarification of the data in the FFY 2002 APR and submitted a plan for correction. OSEP accepted AKEED's plan in a letter dated November 10, 2004, and required the State to demonstrate compliance not later than December 10, 2005. On page 2 of the FFY 2003 APR, the State provided data and information addressing how the State monitored for this requirement during the 2003-2004 school year as well as information indicating that where the State identified noncompliance with any requirement, AKEED required evidence of corrective action within one year of that identification. Not later than December 10, 2005, AKEED must provide

data and analysis demonstrating compliance with these requirements, including evidence that when the State identified noncompliance with these requirements, LEAs corrected the noncompliance within one year. AKEED may submit this information with the SPP.

On pages 1, 2 and 3 of the FFY 2003 APR, the State provided data and information demonstrating that AKEED identified noncompliance during the 2003-2004 school year and ensured correction of noncompliance within one year of identification. Using its monitoring data, the State supplied baseline and trend data that demonstrated an increase in district compliance. All compliance issues for 2001-2002 through 2002-2003 had received a letter closing out the noncompliance. The districts monitored in 2003-2004 had a year to submit evidence; six districts submitted evidence of compliance, seven were expected to submit evidence of compliance within "the next four months." In the SPP, the State is to report on the correction of noncompliance on the seven districts that had not yet submitted evidence. The remaining 13 districts were to be monitored during the 2004-2005 school year, completing the five-year monitoring cycle. OSEP appreciates the State's efforts in this area and looks forward to the State providing OSEP with data regarding the States ability to identify and correct noncompliance as soon as possible but in no case later than one year from identification.

Formal written complaints

On pages 15-16 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance regarding the State's timeliness in complaint investigations. The data submitted by the State indicated that of the 12 complaints received: nine were resolved within the 60-day timeline, one was completed in 66 days, and two were withdrawn. On page 16, the State provided a narrative description of the investigator's efforts to resolve the overdue complaint within the 60-day timeline. OSEP looks forward to reviewing the State's data in this area in the SPP due December 2, 2005.

Mediation

On page 15-16 of the FFY 2003 APR, the State included data and analysis on its performance in this area. AKEED reported, "Although the State Education Agency has not adopted a timeline, in order to avoid a complaint or due process the parties must reach agreement in a timely manner. The average number of days was 17." OSEP appreciates the State's efforts in this area and looks forward to the State providing OSEP with the number of mediations resulting in mediation agreements, in the SPP.

Due process hearings and reviews

On page 15-16 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. AKEED described the State's timeliness in reaching due process hearing decisions. The data provided indicated that seven hearing requests were filed and completed either within the required timeline or were appropriately granted an extension. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Personnel

On pages 17–18 of the FFY 2003 APR, the State provided information regarding the absence of data and targets for this indicator. The State did not include data addressing sufficient number of administrators, teachers, related services providers, paraprofessional, and other providers to meet the identified educational needs of all children with disabilities in Alaska. For the period between 1988 and 1996 the AKEED entered into a contract with the University of Alaska Fairbanks to conduct shortage surveys. Due to a loss of staff, the contract lapsed. The AKEED reported it was fully staffed and the contract would be renewed for the 2004-2005 school year. This survey would assess the need for special services in special education, including but not limited to: visually impaired, speech pathology, English language learners, deaf and hard of hearing, etc.

Collection and timely reporting of accurate data

On pages 19–20 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. The State described its efforts and process to collect accurate data and report it in a timely manner. The State utilized a student-level database, called OASIS, to collect the required reporting data. AKEED conducted a two-tiered edit check system to ensure timely and accurate reporting: (1) the State retained an external contractor to review the data collected, ensured that each file was in the correct order and that the fields were the correct type and length; and (2) the AKEED did an internal check of the data to ensure codes agree with placement and age. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Early Childhood Transition

On pages 21–22 of the FFY 2003 APR, the State included data and analysis addressing this area. The data provided was collected by the Part C program and was shared as part of a partnership between the two programs. Based on the "Report on infants and toddlers exiting Part C Programs" AKEED reported that 71% of the infants and toddlers who exited Part C were found eligible for Part B services and had IEPs in place by their third birthday, 13% were found ineligible and 16% exited without Part B eligibility determined.

On August 4, 2005, AKEED submitted additional information that explained that their monitoring tool included measures that were closely linked to local educational agency (LEA) participation in the 90-day transition planning meetings and placement prior to age 3; specifically, the referral form documented existing information, placements and screening results; Prior Written Notice of initial evaluations was provided before an evaluation was conducted; parents were invited to participate in an eligibility determination meeting early enough to ensure they had an opportunity to attend as evidenced by a copy of the invitation; parent information and observations were documented on the Evaluation Summary and Eligibility Report (ESER); the IEP documented contributions of parent, student and transition agencies or documentation to verify attempts to encourage participation; for students entering preschool, records indicated that district staff participated in transition planning conferences at

least 90 days (up to six months¹) before the child's third birthday; and the date of the IEP/IFSP indicated it was in place by the child's third birthday. As explained on page 2 of the FFY 2003 APR, the State required evidence of corrective action within one-year where noncompliance was identified. The State also explained on p. 22 of the FFY 2003 APR that they hoped that data sharing and coordination would lead to better transitions from Part C to the Part B program.

This is an indicator in the State Performance Plan (SPP) under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The State must submit responsive baseline data regarding the percentage of children referred by Part C prior to age 3 and who are found eligible for Part B and receive special education and related services by their third birthday in the SPP.

Parent Involvement

On pages 23-33 of the FFY 2003 APR, the State included data and analysis regarding its efforts to improve performance in this area. AKEED provided monitoring data indicating that 90% of parents attended the IEP meetings and signed the IEP. AKEED stated that once the on-site monitoring was completed, the State worked with the district to establish a plan of improvement, including parent involvement, as needed.

On page 33, the State outlined its activities and partnership with the parent training centers. The goal of these activities was to provide technical assistance materials to the community, provide training and workshops for parents and recruit parent involvement specialists to increase the participation of families within schools and districts identified as needing improvement or as failing schools. OSEP appreciates the State's efforts in this area and looks forward to the State providing OSEP with the percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities, in the SPP.

Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

Disproportionality

On pages 34-37 of FFY 2003 APR, AKEED included data and analysis addressing disproportionality. On page 34, AKEED stated that, while the State utilized the risk ratio presented by WESTAT to determine disproportionality, the numbers of Alaska Native/American Indian children at the district level were so small that they skewed the results and led to inappropriate conclusions.

Using the risk ratio, AKEED also identified disproportionality for Alaskan Native/American Indian children in the following disability categories: visual impairment, other health impairment

¹ Section 637(a)(9)(A)(ii)(II), effective July 1, 2005, requires that the discretionary timeline be changed from "up to 6 months" to "not more than 9 months" before the child is eligible for preschool services.

and multiple disabilities. The State explained that these disability categories required a doctor's diagnosis and therefore determinations could not be based on ethnicity. In its analysis, AKEED explained that, as a result of this information, the State removed the disabilities that required a doctor's diagnosis and the risk ratio went from 1.43 to 1.3. As the number approached a risk ratio of 1, the disproportionality became less significant.

On page 35, AKEED described its monitoring practices that addressed this area. On page 35, the State provided research data for fetal alcohol syndrome (FAS) and its prevalence in the Alaskan Native community, .3% for Caucasians and 5.6% for Alaskan Natives. Students with FAS were identified under the other health impaired disability category. AKEED concluded that the responsive pursuit of identification and provision of services might have been reflected in the numbers of Alaska Natives receiving special education services. OSEP appreciates the State's efforts in this area and looks forward to reviewing updated information in this area in the SPP, due December 2, 2005.

Graduation and drop-out rates

On pages 38-49 of the FFY 2003 APR, AKEED presented data on graduation and drop-out rates for youth with disabilities. The data were generated from AKEED's student-level database and was collected at the conclusion of the 2002-2003 school year.

The State data indicated that the graduation rate for students with disabilities was unchanged between 2002-2003 and 2003-2004, and was not as high as the graduation rate of students without disabilities, despite a decline in the graduation rate for students without disabilities; for 2003-2004, the State reported a 64% graduation rate for students without disabilities and 46% for students with disabilities. AKEED stated that having a high stakes test might have impacted graduation and drop-out rates for students with disabilities.

AKEED data indicated the drop-out rate for students with and without disabilities decreased between 2002-2003 and 2003-2004, with a significant decline for students with disabilities; for 2003-2004, the State reported a 4.9% drop-out rate for students without disabilities and 3.8% for students with disabilities. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Suspension and expulsion

On pages 41-42 of the FFY 2003 APR, the State included data and analysis regarding suspension/expulsion rates. On page 41, AKEED stated that the suspension/expulsion data were collected by its NCLB Expulsion and Suspension database, not by its OASIS student-level database. AKEED provided raw data in an attached chart demonstrating the State's ability to compare suspension/expulsion rates between children with and without disabilities within each district. While the State reported suspension/expulsion data to OSEP as part of its data reporting requirements, no baseline/trend data were reported because of questions regarding the validity of the 2002-2003 data.

AKEED stated that it examined data from the NCLB database to determine whether significant discrepancies were occurring in the rates of suspensions and expulsions for children with

disabilities compared to the rates for children without disabilities in the LEAs. The State calculated the 2003-2004 data by taking the total number of expulsions and suspensions divided by the total number of children within a given population to determine a 6.7% suspension/expulsion rate for children without disabilities and 11.7% rate for children with disabilities.

Regulations at 34 CFR §300.146 require the State to have on file with the Secretary information to demonstrate that the State educational agency (SEA) examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among local educational agencies (LEAs) in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, the SEA must review and, if appropriate, revise (or requires the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of individualized education programs (IEPs) and the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA. In Enclosure 6 the State provided LEA level data on suspensions and expulsions for children with and without disabilities, however it did not analyze that data to determine whether significant discrepancies were occurring in the LEAs based on either one of the comparisons described above, and, if there were significant discrepancies review and revise policies, procedures and practices (as described above) as directed by the FFY 2003 APR instructions.

With the SPP, due December 2, 2005, the State must submit either: (1) evidence demonstrating that it is meeting the requirements of 34 CFR §300.146, as described above; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible but not later than one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including 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 the end of the one year timeline.

Statewide and districtwide assessment

The State of Alaska used three statewide assessments (1) the Alaska Benchmarks in grades 3, 6, and 8; (2) the TerraNova/CAT 6 in grades 4, 5, and 7; and (3) the High School Graduation Qualifying Exam (HSGQE) in grade 10. The State also offered an alternate assessment at each respective grade level.

Attachment 3 of the FFY 2003 APR, provided data that indicated how many children with and without disabilities participated in the math and reading statewide assessments for grades 3, 4, 5, 6, 7, 8, and 10, how many children with disabilities scored with respect to proficiency, and how many children with disabilities were administered the alternate assessment and their respective proficiency rating. AKEED did not include an analysis regarding the participation and performance of children with disabilities in statewide assessments for grades 3-8; however, the raw data presented in Attachment 3 indicated that, on average, approximately 30% of the children with disabilities who participated in the standard statewide assessment achieved

proficiency or above and that, on average, approximately 75% of the children with disabilities who participated in the Alaska alternate assessment achieved proficiency or above.

On pages 43–45, the State described its requirement that high school students pass an exam, the High School Graduation Qualifying Examination (HSGQE), as a condition for receiving a diploma. All students must take the exam during their sophomore year of high school and may re-take the exam as many times as necessary to pass.

The data presented by AKEED indicated that 24.8% of children with disabilities were proficient in the reading portion of the HSGQE and 75.8% of students without disabilities were proficient. 26.1% of students with disabilities were proficient in the math portion of the HSGQE and 71.7% of students without disabilities. Children with disabilities passed the HSGQE at a rate 1.2% higher than last year. In its future activities, AKEED referenced the anticipated impact of the *Noon v. Alaska* court decision, August 2, 2004, that allowed students to graduate regardless of test scores on the HSGQE and allowed additional accommodations and modifications to those listed in the Alaska Participation Guidelines. On page 45 AKEED stated that it established a contract to conduct a reliability and validity study of the Alaska Alternate Assessment. OSEP looks forward to reviewing the State's data and analysis in this area in the SPP, due December 2, 2005.

Least restrictive environment (LRE)

On pages 46-47 of the FFY 2003 APR, the State included data in this area. On page 47, AKEED presented data indicating an increase in the percentage of 3-5 year old children with disabilities in early childhood settings and an increase in the percentage of children with disabilities placed out of the regular classroom more than 21% of the school day. While the State monitored for compliance with the requirements of 34 CFR §300.553, AKEED acknowledged that it was unable to explain the increase.

Preschool performance outcomes

On pages 48–51 of the FFY 2003 APR, the State provided data and analysis of results of developmental profiles administered to all kindergarten children in Alaska. While this information addressed the early language/communication, pre-reading, and social/emotional skills of preschool children it did not specifically address children with disabilities receiving special education and related services.

The SPP instructions establish a new indicator in this area, for which States must provide baseline 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.

Secondary Transition

OSEP's July 2004 letter identified noncompliance with 34 CFR §300.347(b), regarding the inclusion of information regarding transition planning in IEPs. In its September 2004 letter, the State provided clarification of the data in the FFY 2002 APR and submitted a plan for correction. OSEP accepted AKEED's plan in a letter dated November 10, 2004, and required the State to demonstrate compliance not later than December 10, 2005.

On page 2 of the FFY 2003 APR, the State provided data and information addressing how the State monitored for this requirement during the 2003-2004 school year. On page 56, AKEED indicated that school districts documented transition plans 89% of the time. On pages 11-12, the State provided data and analysis that indicated the AKEED identified systemic issues regarding transition plans being in place by the fourteenth birthday. On page 2, the State indicated that it required evidence of correction within one year where noncompliance was identified. And, on page 12 the State indicated it would continue to use the Alaska Transition Outcomes Project (ATOP) to support transition planning. ATOP is a three-stage project that provides skills needed for adult life to students with disabilities and students without disabilities.

Not later than December 10, 2005, AKEED must provide data and analysis demonstrating compliance with these requirements specifically, that youth aged 16 and above have an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. AKEED may provide this information with the SPP.

On pages 55-58 of the FFY 2003 APR, AKEED provided data and analysis regarding its secondary transition initiatives. The State established some limited partnerships with the Alaska Department of Labor but noted that the information collected as a result of this partnership pertained only to vocational education "completers." Of the 2886 completers only 177 were students with disabilities.

The SPP instructions establish two new indicators in this area, for which States must provide baseline 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 these collections.

Conclusion

With the SPP, due December 2, 2005, or at the State's discretion by December 10, 2005, where applicable, Alaska must provide:

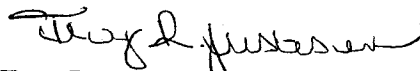
- (1) Data demonstrating the correction of noncompliance on the seven districts that had not yet submitted evidence of compliance as required by 34 CFR §300.600;
- (2) data demonstrating that children placed out-of-State had IEPs in place, as required by 34 CFR §300.401;

- (3) data and analysis demonstrating compliance with the requirements at 34 CFR §§ 300.346(a)(2)(i) and 300.520 regarding the inclusion of certain information regarding positive behavior interventions in some IEPs, or behavior plans including evidence that when the State identified noncompliance with these requirements, LEAs corrected the noncompliance within one year. AKEED may submit this information with the SPP or no later than December 10, 2005;
- (4) either evidence demonstrating that the State is meeting the requirements of 34 CFR §300.146, or a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance regarding 34 CFR §300.146 as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including 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 the end of the one year timeline; and
- (5) data and analysis demonstrating compliance with these requirements specifically, that youth aged 16 and above have an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals as required in 34 CFR §300.347(b) regarding the inclusion of information regarding transition planning in IEPs. AKEED may submit this information with the SPP or no later than December 10, 2005.

IDEA 2004, §616, requires each State to submit a 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 represents only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you questions, please contact Ellen Safranek at (202) 245-7515.

Sincerely,



Troy R. Justesen
Acting Director

Office of Special Education Programs

Cc: Art Arnold