



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

Honorable Juan Flores  
Superintendent of Education  
Department of Education  
Post Office Box  
Hagtna, Guam 96932

NOV - 4 2005

Dear Dr. Flores:

The purpose of this letter is to respond to the Guam Department of Education's (GDOE's) June 17, 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 Guam 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 territories and result in high-quality information across States and territories. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

Guam'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 GDOE's FFY 2003 APR. OSEP has set out its comments, analyses, and determinations by cluster area.

***Background***

The conclusion of OSEP's February 28, 2005 letter required GDOE to:

- (1) provide data, along with analysis and a determination of whether GDOE was complying with 34 CFR §300.600(a)(2) and 20 U.S.C. 1232d(b)(3) to ensure the timely correction of identified noncompliance;
- (2) provide data and analysis demonstrating progress toward compliance with 34 CFR §300.300 to ensure a sufficient supply of personnel were available to meet the needs of all children with disabilities, and provide a final Progress Report to OSEP demonstrating compliance by March 28, 2006. In addition, provide OSEP with information to demonstrate that although there were deficiencies due to an insufficient supply of qualified personnel to meet the needs of all children with disabilities, appropriate special education and related services were provided to meet the identified needs of children with disabilities as required by 34 CFR §§300.121, 300.300 and 300.350(a);
- (3) provide data, along with a determination of whether GDOE was complying with 34 CFR §300.504(c) to provide the notice of procedural safeguards in the native

- language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so;
- (4) provide data and analysis demonstrating progress toward compliance with 34 CFR §§300.132 and 300.121(c) to ensure that, by the third birthday of a child participating in early intervention programs under Part C of IDEA, and who may participate in preschool programs under Part B, an IEP or IFSP was developed and implemented;
  - (5) provide data and analysis, along with a determination of compliance or noncompliance with 34 CFR §300.651(b), to ensure a majority of the members of the State Advisory Panel were individuals with disabilities or parents of children with disabilities;
  - (6) provide accurate data on disproportionality and report on significant disproportionality in identification and educational placements, and on the results of reviews of, and any appropriate revisions to, policies, procedures, and practices to ensure that they comply with Part B and are race-neutral;
  - (7) provide clarification that the calculation method used to determine the graduation and drop-out rates for students with disabilities was the same calculation method used to determine graduation and drop-out rates for students without disabilities, enabling Guam to make a true comparison of the graduation and drop-out rates between students with and without disabilities;
  - (8) provide data and analysis for suspension and expulsion rates between students with and without disabilities;
  - (9) follow instructions for Attachment 3 when reporting assessment data; and
  - (10) submit data (whether collected through sampling, monitoring, individual IEP review, or other methods) on early language communication, pre-reading, and social-emotional skills of preschool children with disabilities, targets for improved performance, and strategies to achieve those targets for this area, or revise its plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

### ***General Supervision***

#### **Identification and timely correction of noncompliance**

In its February 2005 letter, OSEP found that it could not determine if GDOE was complying with the requirement at 34 CFR §300.600(a)(2) and 20 U.S.C. 1232d(b)(3) to ensure the timely correction of identified noncompliance. OSEP required GDOE to include data, along with analysis and a determination of compliance or noncompliance with these requirements. On page 6 of the FFY 2003 APR, GDOE stated, “. . . data sources reviewed (i.e., GSEG Survey results & Child Record Reviews) indicate that systemically, there is still a challenge to identify and correct noncompliance areas in a timely manner.” GDOE’s analysis also indicated that the insufficient number of monitoring staff and the lack of an integrated data system were contributing factors to GDOE’s determination that it was not in compliance in this area.

Since GDOE was unable to demonstrate compliance, OSEP’s February 2005 letter required GDOE to include a plan with strategies, proposed evidence of change, targets, and timelines designed to achieve compliance as soon as possible but not later than one year after OSEP

accepted the plan. On pages 6-9 and 10-14 of the FFY 2003 APR, GDOE included the plan as required in the February 2005 letter. OSEP has reviewed and accepts this plan. GDOE must include data and analysis documenting progress toward compliance in the State Performance Plan (SPP), due December 2, 2005, and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

#### Dispute resolution

In the FFY 2003 APR, GDOE reported that it conducted two formal complaint investigations and had two due process hearings that were fully adjudicated. GDOE reported that these complaint investigations and hearings received written decisions within required timelines. Four mediations related to due process hearing requests were conducted, and all four resulted in mediation agreements. OSEP looks forward to Guam's data related to formal written complaints, due process hearings, and mediation in the SPP.

#### Personnel

OSEP's February 2005 letter required GDOE to demonstrate that although there were deficiencies due to an insufficient supply of qualified personnel to meet the needs of all children with disabilities, appropriate special education and related services were provided to meet the identified needs of children with disabilities as required by 34 CFR §§300.121, 300.300, and 300.350(a). On pages 14-16 of the FFY 2003 APR, GDOE reported that the percentage of services that were identified on IEPs but not delivered in 2003-2004, ranged from 3% to 44%, depending on the category of service. The services impacted the most by the lack of sufficient personnel were in the areas of speech/language (44% undelivered) and occupational therapy (27% undelivered). On page 16 of the FFY 2003 APR, GDOE determined that it was not in compliance with these requirements.

Because GDOE was unable to demonstrate compliance, OSEP's February 2005 letter required GDOE to include a plan, with strategies, proposed evidence of change, targets, and timelines designed to achieve compliance as soon as possible but not later than one year after OSEP accepted the plan. On page 17 of the FFY 2003 APR, GDOE included the required plan. OSEP has reviewed the plan and accepts the plan with the following requirement: the plan must be revised to set a target of 100% of eligible children with disabilities receiving all of the special education and related services on their IEPs. With the SPP, GDOE must include data and analysis documenting progress toward compliance in this area, and GDOE must provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

#### Data and timely reporting of accurate data

On pages 18-20 of its FFY 2003 APR, GDOE reported on its continuing efforts to upgrade its data system. GDOE noted that during OSEP's 2004 verification visit, its existing §618 data collection system was judged reliable, accurate, and valid. GDOE reported that it was studying the integration of Part B and Part C data systems, as well as the integration of various data

sources with other GDOE programs. GDOE also described its efforts to upgrade its data collection to support the Complaint Management System and the development of a school profiles system. OSEP looks forward to reviewing updated information in the SPP, including the implementation of strategies to improve performance and resulting data and analysis.

Other: Procedural safeguards notice

In its February 2005 letter, OSEP indicated that it could not determine if GDOE was complying with 34 CFR §300.504(c) regarding its procedural safeguard notice to parents and requested that GDOE provide data, along with a determination of compliance or noncompliance, in this area. GDOE was also asked to clarify why the notice was *orally* translated. On page 6 of the FFY 2003 APR, GDOE indicated that the native languages of the many Pacific Island cultures and sub-ethnic groups represented are primarily spoken (oral) languages, and that "...meeting parent requests for oral translation of notices is more feasible, reasonable, and user-friendly for Guam's context." GDOE determined, based on the data collected and analyzed from child record reviews and survey results on parent understanding of procedural safeguards as required under 34 CFR §300.504(c), that it did not meet compliance in this area. GDOE provided strategies, proposed evidence of change, and timelines to ensure compliance by March 2005. OSEP has reviewed and accepts the plan. Guam must include data and analysis documenting progress toward compliance with the SPP and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter.

***Early Childhood Transition***

OSEP's February 2005 letter found that GDOE was unable to demonstrate that, by the third birthday of a child who is participating in early intervention programs under Part C of IDEA and is eligible to participate in preschool programs under Part B, an IEP or IFSP was developed and implemented consistent with 34 CFR §§300.132 and 300.121(c). OSEP accepted the plan that GDOE provided and required GDOE to provide data and analysis in its FFY 2003 APR to demonstrate progress toward compliance, and to provide a final progress report demonstrating full compliance by March 28, 2006. On page 22 of the FFY 2003 APR, GDOE provided data that showed that of those children receiving services under Part C and eligible for Part B, the percentage of IEPs in effect by the child's third birthday increased from 12% in 2002-2003 to 38% in 2003-2004. GDOE also reported that 83% of a focus group of parents of children with disabilities exiting the Part C program indicated on a parent survey that the Part C program assisted them "with planning for the future and transitioning into other programs." In the SPP, GDOE must report the percent of children referred by Part C prior to age 3 who are found eligible for Part B and who have an IEP developed and implemented by their third birthday. If Guam is unable to demonstrate compliance by its final progress report due by March 28, 2006, OSEP will consider designating Guam a high-risk grantee in this area.

***Parent Involvement***

OSEP's February 2005 letter required GDOE to provide data and analysis, along with a determination of compliance or noncompliance with 34 CFR §300.651(b), to ensure a majority of the members of the State advisory panel were individuals with disabilities or parents of

children with disabilities. On page 28 of the FFY 2003 APR, GDOE indicated compliance with this requirement. GDOE reported that 69% of the State advisory panel members were individuals with disabilities or parents of children with disabilities. OSEP appreciates GDOE's efforts in this area.

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

#### Disproportionality

OSEP's February 2005 letter required GDOE to provide accurate data and report on its identification of significant disproportionality in identification and educational placements, and, if appropriate, report on the results of reviews of, and any appropriate revisions to, policies, procedures, and practices. On page 32 of the FFY 2003 APR, GDOE clarified an error in the FFY 2002 APR that reported an unusually high percent of American or Alaskan Natives in the category of mental retardation. GDOE's analysis of 2003-2004 child count demonstrated no instances of disproportionality with regard to race/ethnicity comparisons between children with disabilities and the general education population, with regard to race/ethnicity comparisons for each disability category, and with regard to race/ethnicity comparisons for each educational setting. OSEP appreciates GDOE's efforts in this area and looks forward to reviewing its data in the SPP.

#### Graduation and drop-out rates

OSEP's February 2005 letter required GDOE to provide graduation and drop-out rates for the 2002-2003 and 2003-2004 reporting periods. In addition, Guam was required to clarify whether the calculation method used to determine the graduation and drop-out rates for students with disabilities was the same calculation method used to determine graduation and drop-out rates for students without disabilities. On page 35-36 of the FFY 2003 APR, GDOE reported on the percentage of graduates who are students with disabilities. GDOE did not report on the graduation and drop-out rates for each group, disabled and nondisabled, and thus did not provide data responsive to GDOE's performance indicators, which state that the rates for disabled children be comparable to the rates for nondisabled children. GDOE indicated its methods were not consistent for collecting and analyzing data for students with and without disabilities, and on page 38 of the APR, GDOE provided a plan to develop an integrated data system and an integrated calculation method for children with and without disabilities by July 2005. OSEP appreciates GDOE's efforts in this area and looks forward to GDOE's reporting in the SPP on the percent of youth with IEPs graduating from high school with a regular diploma compared to the percent of all youth in Guam graduating with a regular diploma, and the percent of youth with IEPs dropping out of high school compared to the percent of all youth in Guam dropping out of high school.

#### Suspension and expulsion

OSEP's February 2005 letter required GDOE to provide suspension and expulsion data for children with disabilities. On pages 35-36 of the FFY 2003 APR, GDOE reported its suspension and expulsion rates for children with disabilities for the 2002-2003 and 2003-2004 reporting

periods. However, GDOE also indicated that its methods were not consistent for comparing and analyzing data between children with and without disabilities. On page 38 of the APR, GDOE provided a plan to develop an integrated data system and an integrated calculation method for children with and without disabilities by July 2005. OSEP appreciates Guam's efforts in this area and looks forward to reviewing updated data and information regarding Guam's efforts in this area in the SPP.

#### Statewide and districtwide assessments

OSEP's February 2005 letter required GDOE to follow the directions for Attachment 3 when reporting assessment data. In the FFY 2003 APR, GDOE reported the performance of children with disabilities, providing a breakdown of the participation of children with disabilities at each grade level tested. However, OSEP also noted that the data presented in Attachment 3 were not internally consistent. For example, the total in column 11, page 9 of Attachment 3 does not equal the number of "students with IEPs" in column 1, page 1 of Attachment 3. GDOE noted on page 39 of the FFY 2003 APR that it had already analyzed, prepared, and distributed its assessment data prior to its receipt of OSEP's reporting guidelines and formats. On page 40, GDOE reiterated its plan to initiate an integrated data system for children with and without disabilities by July 2005. OSEP appreciates GDOE's efforts in this area and looks forward to Guam's reporting in the SPP on the participation and performance of children with disabilities on statewide assessments.

#### Least restrictive environment (LRE)

On pages 41-43 of the FFY 2003 APR, GDOE provided a comparison of educational placements for children with disabilities at the preschool and school-aged levels. The data showed that from 2002-2003 to 2003-2004, there was a numerical increase of 31 children with disabilities in an educational environment outside the regular classroom less than 21% of the time. In addition, there was an increase of 66 children with disabilities in an educational environment outside the regular classroom more than 60% of the time. In its analysis on page 42, GDOE noted that this was a variation of approximately 5%, which was within the range of GDOE's previous targets. GDOE also provided a separate analysis of its placements for preschool children with disabilities, noting limited opportunities for preschool children with disabilities in community settings. OSEP appreciates GDOE's efforts in this area and looks forward to Guam's reporting in the SPP on the percent of children with disabilities in the various educational settings.

#### Preschool performance outcomes

In its February 2005 letter, OSEP required GDOE to submit data (whether collected through sampling, monitoring, individual IEP review, or other methods) on early language communication, pre-reading, and social-emotional skills of preschool children with disabilities, targets for improved performance, and strategies to achieve those targets for this area, or revise its plan to collect the data. On pages 44-45 of the FFY 2003 APR, GDOE noted that it has not yet collected this data. GDOE provided a plan to develop and implement a standard mode of skill assessment that would begin collecting data in 2005-2006. The SPP instructions establish a new indicator in this area, for which States and territories must provide entry data in the FFY

2005 (school year 2005-2006) APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of Guam's performance and compliance required under section 616(d) of the IDEA. Guam should carefully review the instructions to the SPP in developing its plans for this collection.

### ***Secondary Transition***

On pages 47-51 of the FFY 2003 APR, GDOE provided data and reported on its progress for ensuring the success of secondary transition for children with disabilities. GDOE reported progress including signing a new agreement with the Division for Vocational Rehabilitation and hiring a Transition Coordinator. GDOE reported problems in collecting post-secondary survey data from students with disabilities, although it conducted a survey of graduates to identify systemic issues in this area. The SPP instructions establish a new indicator in this area, for which States and territories must provide baseline data in the FFY 2005 APR due February 1, 2007. Guam should carefully review the instructions to the SPP in developing its plans for this collection. OSEP appreciates Guam's efforts in this area.

### ***Conclusion***

In the State's Performance Plan, due December 2, 2005, GDOE must submit to OSEP:

- (1) data and analysis documenting progress toward compliance with the requirement in 34 CFR §300.600(a)(2) and 20 U.S.C. 1232d(b)(3) to ensure the timely correction of identified noncompliance and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter; and
- (2) data and analysis documenting progress toward compliance with 34 CFR §§300.132 and 300.121(c) to ensure that, by the third birthday of a child participating in early intervention programs under Part C of IDEA, and who is eligible for preschool programs under Part B, an IEP, or IFSP was developed and implemented.

With the SPP, GDOE must submit to OSEP:

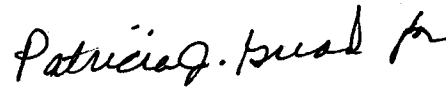
- (1) data and analysis documenting progress toward compliance with the requirement in 34 CFR §300.504(c) to provide the notice of procedural safeguards in the native language of the parent and take steps to ensure that the parent understands the content of the notice and that there is written evidence that the requirements in 34 CFR §300.504(c) have been met; and
- (2) data and analysis documenting progress toward compliance with 34 CFR §§300.121, 300.300 and 300.350(a) regarding children with disabilities receiving all of the special education and related services on their IEPs.

IDEA 2004, §616, requires each State and territory 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 Guam 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 Guam and looks 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 Judith Gregorian at (202) 245-7360.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy R. Justesen". The signature is written in a cursive style with a prominent initial "T" and a flourish at the end.

Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Katrina Celes