



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

Honorable Inez M. Tenenbaum
State Superintendent of Education
South Carolina Department of Education
1006 Rutledge Building
1429 Senate Street
Columbia, SC 29201

SEP 22 2005

Dear Superintendent Tenenbaum:

The purpose of this letter is to respond to South Carolina's April 2, 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 September 15, 2004 FFY 2002 APR response letter directed the State to provide data and analysis demonstrating progress toward compliance with the requirements at:

- (1) 34 CFR §300.600 such that OSEP could determine whether the State's monitoring system identified all Part B noncompliance and ensured correction within one year of identification;
- (2) 34 CFR §300.511 that due process hearings and State level reviews were concluded, a decision reached and mailed to all parties within required timelines;
- (3) 34 CFR §§300.135 and 300.380-300.381 that State and local needs for professional development included relevant information on current and anticipated personnel vacancies;
- (4) 34 CFR §§300.300(a), 300.121(c), §300.125(c) and 300.132(b) that eligible preschool children would have an individualized education program (IEP) and services in place on their third birthdays;

- (5) 34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3) that children with disabilities in need of psychological counseling services received the services in accordance with their IEPs; and
- (6) 34 CFR §§300.121(d)(3)(ii), 300.520 and 300.522 that appropriate personnel made the determination as to services and the appropriate setting for children with disabilities who were suspended and expelled.

OSEP also directed the State to provide strategies that would:

- (1) maintain compliance with 34 CFR §300.661(a) and (b)(1) regarding complaint resolution timelines as well as data and analysis demonstrating continued compliance for the FFY 2003 reporting period;
- (2) ensure continued progress and performance regarding accurate data collection (§618 of the IDEA);
- (3) demonstrate the State's review of its policies, procedures and practices used in the identification or placement of children with disabilities when it identified significant disproportionality, consistent with Federal law (34 CFR §300.755);
- (4) provide an analysis of compliance data related to 34 CFR §§300.347(a)(5) and 300.138 regarding the participation of children with disabilities in statewide assessments; and
- (5) either provide 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 improvement of the early language/communication, pre-reading and social-emotional skills of preschool children with disabilities receiving special education and related services, or a detailed plan to collect the data.

SCDE submitted Progress Reports on November 22, 2004 and December 6, 2004, in response to OSEP's September 2004 letter. OSEP responded to those Progress Reports in a letter dated January 26, 2005. These letters will be discussed in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

OSEP's September 2004 letter required the South Carolina Department of Education (SCDE) to provide data and analysis such that OSEP could determine whether the State's monitoring system identified all Part B noncompliance and ensured correction within one year of identification.

On page 3 of the FFY 2003 APR, SCDE reported that, during the 2003-2004 school year (SY), SCDE selected 22 districts for full compliance monitoring and focused monitoring based on noncompliance areas identified in OSEP's January 2003 Monitoring Report. On page 6 of the FFY 2003 APR, the State reported that SCDE continued to have difficulties ensuring that local educational agencies (LEAs) consistently corrected identified areas of noncompliance within the one-year timeline. Reasons cited included: (1) LEAs were not able to provide documentation requested by the State because it would not be available within a 12-month period. For example,

a district was asked to submit five folders showing the initial placement of children in the category of emotional disabilities but did not have five placements within the one-year timeline; and (2) data collected through interviews and folder reviews were not triangulated to determine differences between issues in individual student documentation and systemic issues. SCDE reported that this resulted in some districts correcting documentation issues but failing to address systemic issues. SCDE determined that its Office of Exceptional Children's (OEC) staff needed to improve skills in the compilation of data collected from folder reviews and interviews for the identification of areas of noncompliance and needed improvement. As a result, the State indicated that it developed a new focused monitoring system for the 2004-2005 SY that included a district action plan, targeted technical assistance by OEC, and sanctions, where appropriate. The State reported that training was provided to OEC staff on the new system from July-August, 2004.

On page 10 of the FFY 2003 APR, the State noted that under its revised monitoring plan all findings of noncompliance would be corrected within 12 months, and follow-up activities, such as desk audits and on-site visits were conducted to verify that systemic changes occurred within the first year and were ongoing.

On pages 17-18 of the FFY 2003 APR and in follow-up telephone conversations with OSEP in August and September, 2005, SCDE reported on the status of the correction of noncompliance in LEAs in the areas noted in OSEP's January 2003 report, as follows:

- (1) psychological counseling, as a related service, required at 34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3)—of the 22 districts monitored for the provision of counseling as a related service during the 2003-2004 SY, 73% of those districts provided counseling services, where appropriate, and 63% failed to appropriately document the services in the IEP. Four districts have corrected this noncompliance and the remaining districts were within the one-year timeline and scheduled for follow-up;
- (2) appropriate personnel to determine the needs, services, and settings for children with disabilities who were suspended or expelled as required at 34 CFR §§300.121(d)(3)(ii), 300.520 and 300.522—only one of the 22 districts monitored had the issue of failure to have the appropriate personnel determine the needs and services for children with disabilities who were suspended or expelled. In follow-up telephone conversations with the State during August and September 2005, SCDE reported that in response to the State's April 23, 2004 monitoring report, this district provided documentation on May 14, 2004, that the district had put in place systems to meet the requirements. The State also reported that SCDE conducted a follow-up visit to verify that the systems were in place; and
- (3) the provision of special education and related services by the child's third birthday as required at 34 CFR §§300.300(a), 300.121(c), 300.125(c) and 300.132(b)—the State noted improvement in this provision. Please refer to the *early childhood transition* section of this letter for OSEP's comments and analysis.

As noted in OSEP's September, 15, 2004 letter, by October 15, 2005, SCDE must provide data and analysis demonstrating compliance with the requirements at: (1) 34 CFR §300.600, that South Carolina identifies and corrects noncompliance identified through its monitoring process;

(2) 34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3) that children with disabilities in need of psychological counseling services receive the services in accordance with their IEPs; and (3) 34 CFR §§300.121(d)(3)(ii), 300.520 and 300.522 that appropriate personnel make the determination as to services and the appropriate setting for students with disabilities who have been suspended and expelled. The State can satisfy this requirement by providing updated information about the status of the psychological counseling findings, and documentation about correction of the finding related to services for students suspended or expelled.

Other: Systemic noncompliance

On pages 11 and 16 through 23, the State discussed its plans for identifying and correcting systemic noncompliance. OSEP appreciates the work of the State in this area.

Formal written complaints

OSEP's September 2004 letter required SCDE to submit strategies for maintaining compliance with 34 CFR §300.661(a) and (b)(1) regarding complaint resolution timelines, as well as data and analysis demonstrating continued compliance for the FFY 2003 reporting period. On pages 3, 24, and 25 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and performance in this area. SCDE reported that for the period from July 1, 2003 to June 30, 2004, decisions for all 100 complaints investigated were issued within the 60-day timeline. The State attributed the following strategies to the progress in this area: (1) a database that allowed for the tracking of timelines and providing a trigger to the office of general council notifying the appropriate staff of each date that fell within the 60-day timeline; and (2) complainants and LEAs were provided written notification of the 60-day timeline at the onset of the complaint investigation process. The State included strategies and activities to maintain compliance in this area. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §300.661(a) and (b)(1) and looks forward to reviewing the State's data in this area in the SPP.

Mediation

On page 4 of the FFY 2003 APR, SCDE reported that five of the six mediation requests were completed in a timely manner between the period of July 1, 2003 and June 30, 2004. The one mediation that exceeded the 14-day timeline was dismissed after repeated unsuccessful attempts to contact the parents to schedule the mediation. These agreements were fully implemented within timelines or allowable extensions. OSEP looks forward to reviewing the State's data regarding the percent of mediations held that resulted in mediation agreements, as part of the SPP.

Due process hearings and reviews

OSEP's September 2004 letter required SCDE to submit updated compliance data for meeting the requirements at 34 CFR §300.511, that due process hearings and State-level reviews were concluded, and a decision reached and mailed to all parties within the required timelines. On pages 25 through 27 and 33 of the FFY 2003 APR, SCDE reported that of the 29 due process

hearing requests filed during the 2003-2004 SY, decisions were reached for nine of the 11 fully adjudicated hearings within the 45-day timeline or an appropriately extended timeline. One request exceeded the 45-day timeline by seven days due to unsuccessful attempts to contact the parent to schedule the hearing and delays by the parent in responding to correspondence from the hearing officer. The remaining request exceeded the 45-day timeline due to delays by both parties. Four State-level appeals were granted and decisions were rendered within the 30-day timeline for three appeals and within the extended timeline for the remaining appeal. As noted in OSEP's September 15, 2004 letter, the State must demonstrate compliance with the timeline in 34 CFR §300.511 not later than October 15, 2005. The State can satisfy this requirement by providing due process hearing and State review logs demonstrating that all hearings and reviews resulted in written decisions within the regulatory timelines, including specific extensions of time at the request of a party.

Personnel

OSEP's September 2004 letter required SCDE to submit an analysis of State and local needs for professional development, including relevant information on current and anticipated personnel vacancies (34 CFR §§300.135, and 300.380-300.381). On page 39 of the FFY 2003 APR, SCDE reported that South Carolina increased the percentage of fully certified special education teachers from 94% to 95% from 2003 to 2004. The December 1, 2004 data, reported on pages 37 to 38 of the FFY 2003 APR, showed that 96% to 100% of personnel who provided services to children with disabilities (special educators, occupational and physical therapists, speech/language pathologists, psychologists, counselors, audiologists, social workers, vocation education teachers, and social workers) were fully certified. SCDE reported that the State's partnerships with four institutions of higher education provided coursework to teachers to gain licensure in their respective areas. The State also provided personnel preparation grants to LEAs for teachers to gain licensure. OSEP appreciates the work of the State in this area.

Collection and timely reporting of accurate data

Information and data reported on pages 43-45 in the FFY 2003 APR showed the State's progress in implementing strategies to ensure continued progress and performance regarding accurate data collection under §618 of the IDEA. SCDE attributed the continued progress and performance in this area to the following: (1) the State's work with the National Center on Special Education Accountability Monitoring; and (2) the implementation of an electronic system to collect data and increase the level of reporting accuracy. These interventions resulted in an 18.9% increase in LEAs meeting the State's deadline for submitting section 618 data to the State for Tables 1 and 3 between the 2003-2004 SY (79%) and 2004-2005 SY (97.9%). SCDE also noted that during the 2003-2004 SY, 100% of LEAs submitted data to the State for Tables 2, 4, and 5 by the established deadline. SCDE provided data on the implementation of an electronic system that improved the process of timely data submission from the LEA to the State. The State also included on page 48, strategies and activities to address accuracy. OSEP appreciates the work of the State in this area and looks forward to reviewing the State's update in this area, that includes information on the accuracy of reporting, as part of the SPP.

Early Childhood Transition

OSEP's January 2005 letter, responding to SCDE's November and December 2004 Progress Reports, accepted SCDE's plan and strategies to ensure compliance with the requirements at 34 CFR §§300.320, 300.121(c)(1)(ii) and (c)(2), and 300.530 to make FAPE available to Part B eligible children by their third birthdays. Strategies in that plan included: (1) developing transition activities between SCDE and South Carolina's Part C BabyNet program; (2) reviewing data from the interim focused monitoring visits during the 2003-2004 SY regarding timely evaluation to ensure FAPE by the third birthday; (3) conducting follow-up file reviews of children with disabilities who were three years of age; (4) reviewing data regarding whether children who turned three during the summer were being considered for extended school year (ESY) services and whether children turning three during the summer received ESY services, where appropriate; (5) conducting follow-up interviews with LEA staff; (6) requiring LEAs to submit assurances regarding the provision of services by the child's third birthday; (7) disseminating a policy letter to LEAs regarding these provisions; (8) conducting follow-up visits to LEAs where corrective actions were not made within one year of identified noncompliance; and (9) imposing sanctions, where appropriate.

On page 52 of the FFY 2003 APR, SCDE reported that results of the State's 2003-2004 interim focused monitoring in the area of early childhood transition showed that of 20 districts monitored, half of the districts failed to: (1) either attend the transition conference or document attendance at the transition planning conference; (2) have services in place by the child's third birthday, especially for children with birthdays during vacation periods, thereby failing to provide consideration of ESY services; and (3) return documentation indicating the determination of eligibility and date of the IEP meeting to Part C in a timely manner.

On page 54 of the FFY 2003 APR, SCDE reported that the State also found that some districts did not have staff available during the summer months to complete evaluations, or if they did have staff, waited to conduct evaluations or develop IEPs after the beginning of the next school year. The districts cited for noncompliance were required to develop and submit a corrective action plan to OEC. Follow-up file reviews of children with disabilities who were three years of age, in addition to interviews with staff and parents, were conducted during the 2004-2005 SY. As noted in the September, 15, 2004 letter, by October 15, 2005, SCDE must provide data and analysis demonstrating compliance with the requirements at 34 CFR §§300.320, 300.121(c)(1)(ii) and (c)(2), and 300.530 to make FAPE available to Part B eligible children by their third birthdays.

OSEP also requested in the September 2004 letter that SCDE submit changes to its monitoring documents and protocols to include: (1) in the focused monitoring addendum and folder review checklist, standards requiring the administration of evaluations, in a timely manner, to ensure IEPs were in effect by the child's third birthday; and (2) in the LEA interview guides, *interview* questions specific to whether ESY services were available to children with disabilities who turn three during the summer, and whether evaluations were administered in a timely manner to ensure that IEPs or individualized family service plans (IFSPs) were in effect by the child's third birthday. Because the FFY 2003 APR did not include these documents, SCDE must ensure that they are included in the State's submission to OSEP on October 15, 2005.

Parent Involvement

OSEP's September 2004 letter suggested that SCDE establish baseline data and continue to include strategies to ensure performance and compliance in this area. On pages 63 through 65, SCDE reported that the State developed new performance indicators for the area of parent involvement through the implementation of a study entitled, "*Family Involvement and Special Education: A Survey of South Carolina's Caregivers with Children in Special Education.*" The State is anticipating establishing baseline data from survey results during the 2005-2006 SY. Data examined will include: (1) the percentage of parents participating in the IEP annual review meeting; (2) parents from diverse backgrounds who were involved in planning their child's special education program; and (3) parents' awareness and access to due process, mediation and complaint resolution strategies. LEAs would be trained on the method for data collection during the Fall/Winter 2005.

On pages 61 and 62 of the FFY 2003 APR, SCDE reported that, in order to advance parent involvement through training and access to information, the State: (1) distributed child find brochures among parent training, support, and advocacy groups; (2) posted all documents related to services for children with disabilities on SCDE's website; and (3) provided opportunities to parents of students with disabilities to attend the State's 2004 summer training for individuals working with preschool children with disabilities.

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. The State should carefully review the instructions to the SPP in developing its plans for this collection.

FAPE in the Least Restrictive Environment (LRE)

Disproportionality

OSEP's September 2004 letter required SCDE to review policies, procedures and practices used in the identification or placement of children with disabilities when it identified significant disproportionality on the basis of race, and revise targets on this issue consistent with Federal law (34 CFR §300.755). On page 92 of the FFY 2003 APR, South Carolina reported that the State used the WESTAT tool developed for the FFY 2003 APR reporting to determine disproportionality. The State's review of the disproportionality data showed that: (1) South Carolina needed to continue its focus on reducing the overrepresentation of African-American children in the area of mild mental disabilities; (2) African-American children were overrepresented in the category of emotional disturbance; and (3) African-American children were overrepresented in placements outside the regular class for greater than 60% of the day. Data on pages 68-87 reported on the number of districts where African-American children were represented above the State's weighted risk ratio for the 85 districts. Results showed the following for African American representation in districts above the State's risk ratio in the various disability categories: (1) 41 districts for children with all disabilities; (2) 35 districts for children with educable mental disabilities; (3) 28 for children with trainable mental disabilities; and (4) 27 for children with emotional disabilities.

On page 92 of the FFY 2003 APR, SCDE reported that during the 2003-2004 SY, only 54% of the 529 students initially placed and receiving special education and related services under the category of mild mental disabilities met the State's eligibility criteria. SCDE indicated that this "is an area to be addressed."

On page 93 of the FFY 2003 APR, SCDE included a target that the percentage of children with disabilities, receiving special education, by race/ethnicity, for all disability categories and environments is comparable to the general population. 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. Therefore, the State must not use numerical goals/targets based on race in implementing the requirements of IDEA.

On pages 93 through 95 of the FFY 2003 APR, the State indicated that it would identify districts with overrepresentation in the areas of mild mental retardation and emotional disturbance and placement issues and require the districts to develop plans for improvement. The State also included strategies and timelines to improve performance. However, the State did not provide the results of its review of policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they were consistent with the requirements of Part B and were race-neutral, for those districts with significant disproportionality in the identification of children in specific disability categories and the placement of children in particular educational settings. Therefore, we conclude that the State is not complying with the requirements of 34 CFR §300.755.

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. In addressing significant disproportionality related to placement, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices related to placement in the least restrictive environment consistent with the requirements at 34 CFR §§300.501 and 300.550-300.556 in order to determine if they are educationally appropriate, consistent with the requirements of Part B and race-neutral. This would generally include a review of policies, procedures and practices related to: the continuum of placement options; the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. The State must ensure that the SPP is consistent with this guidance.

Not later than the submission of the SPP, due December 2, 2005, the State must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance 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.

Graduation and drop-out rates

On pages 98 to 105 of the FFY 2003 APR, SCDE provided information on the graduation rate of students with and without disabilities by examining graduation data reported for the 2004 adequate yearly progress (AYP) under No Child Left Behind Act (NCLB) and §618 of the IDEA. SCDE reported that South Carolina was not narrowing the gap between the graduation rate of students without disabilities (82.4%) and students with disabilities (35.7%) who graduated with a diploma. SCDE noted that South Carolina ranked 53 of 57, nationally, in the graduation rates of children with disabilities based on §618 State-reported data. South Carolina attributed the low graduation rate of students with disabilities to a lack of alternative diplomas and stringent graduation requirements. To examine these concerns, graduation rates were one of the State's focused monitoring areas during the 2004-2005 SY. The five districts that showed the lowest graduation rates were selected for monitoring. SCDE reported that OEC provided technical assistance to those districts to develop strategies for increasing the graduation rates of students with disabilities. The State also reported that in June 2005, the State would increase the number of identified districts from five to ten and require those districts to address plans for improvement in this area in their self-assessments.

On pages 96, and 101 to 103 of the FFY 2003 APR, SCDE reported that data on drop-out rates for students with and without disabilities were collected from two data sources that did not allow a comparison of the drop-out rates between the two groups. The State explained that the drop-out rate for nondisabled students provided a comparison of the total number of dropouts with the total enrollment in grades nine through 12 showing the portion of students who drop out in one year.¹ The drop-out data for students with disabilities, collected through §618 of the IDEA, were determined by dividing the number of students with disabilities who dropped out by the number of students with disabilities who left school in any given year. A slight decrease was noted in the drop-out rate of students with disabilities between 2002-2003 (34.63%) and 2003-2004 (31.37%). Therefore, SCDE did not meet its target to reduce the drop-out rate by 1%. According to data provided by South Carolina's Office of Safe and Drug Free Schools, the drop-out rate for all students, including students with disabilities, decreased by .03%. South Carolina's Offices of Exceptional Children and Technology and Research worked together to collect drop-out data on all students. The State anticipated disaggregating the data for students with disabilities for the 2004-2005 SY.

On pages 102 to 104 of the FFY 2003 APR, the State noted that South Carolina implemented several initiatives to increase the graduation rates and decrease the drop-out rates for students with disabilities. Some of these initiatives included: (1) training on clear and effective transition plans leading to successful post secondary outcomes; (2) transition-focused technical assistance to LEAs, consumers, and providers of secondary transition services; (3) a regional transition training on self-determination with a focus on students with mild disabilities; and (4) transition

¹ South Carolina's Office of Safe and Drug Free Schools collected the drop-out rate data.

training and courses for general and special education secondary educators through the State Improvement Grant and IDEA funding. OSEP looks forward to reviewing the State's update in this area in the SPP.

Suspension and expulsion

Regulations at 34 CFR §300.146 require the State educational agency (SEA) to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among 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 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 these policies, procedures and practices comply with IDEA. Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant discrepancies among LEAs or compared to children without disabilities in the agencies; (2) a description of the procedures used to conduct a review of policies, procedures and practices; (3) a description of the decision-making process used for determining whether existing policies, procedures and practices in the areas mentioned above contributed to, or were the cause of, the identified discrepancies; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the discrepancies; (5) a description of other steps taken if it is determined that policies, procedures or practices did not cause, or contribute to, the identified discrepancies, to identify the causes; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing discrepancies.

On page 105 of the FFY 2003 APR, SCDE reported that the State did not have data available on the suspension/expulsion rates of nondisabled students. South Carolina compared the rates at which individual LEAs were suspending/expelling children with disabilities, long-term, against the rates at which other individual LEAs were suspending/expelling children with disabilities, long-term. Although the State provided information and data on the suspension/expulsion rates of children with disabilities, the State did not determine if there was a significant discrepancy among the rates from different LEAs. On page 108 of the FFY 2003 APR, the State noted that there was: (1) a 44% decrease in the unduplicated count of children suspended in excess of 10 days; (2) an 11% decrease in multiple suspensions; and (3) a 21% decrease in the number of LEAs with no suspensions or expulsions (from 37 to 30). On pages 110 to 111 of the FFY 2003 APR, the State included strategies to assist LEAs in reducing the number of suspensions and expulsions.

With the SPP, due December 2, 2005, the State must provide either:

- (1) data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that SCDE examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, SCDE 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 IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or

- (2) a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance 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.

Statewide and districtwide assessment

OSEP's September 2004 letter required the State to include, in the FFY 2003 APR², an analysis of compliance data related to the requirements of 34 CFR §§300.138 and 300.347(a)(5) that children with disabilities were included in statewide and districtwide assessment programs with appropriate accommodations and modifications identified in the IEP. On pages 112 through 117 of the FFY 2003 APR, the State reported data on the participation rate of children with disabilities in the statewide assessment program³ during three years (2002, 2003, and 2004) for grades 3 through 8. The participation rates for children with disabilities in grades 3 to 8 ranged between 97.6% to 99% in the area of English/language arts and mathematics as compared to children without disabilities in those same grades whose participation rate ranged from 98.9% to 99.8%.

The performance rate for students with disabilities fluctuated during the three-year period. On pages 112 and 113 of the FYY 2003 APR, data showed that approximately half (52% to 55%) of the children with disabilities performed at the below-basic level in English/language arts and mathematics as compared to approximately 23% of children without disabilities performing at the same level and in the same academic areas. The smallest performance gap was at the basic level, i.e., 32% to 41% of children with disabilities compared to 40% to 45% of children without disabilities. South Carolina noted that the performance gap between children with and without disabilities was not closing at the expected rate determined by the State for 2004 for the four performance levels.

SCDE attributed the performance gap to the limited effort by the State to drive instructional decision-making, lack of evidence-based instructional techniques for children with disabilities, and the lack of the development of school-wide instructional models. To address these areas, SCDE developed initiatives as part of its State Improvement Grant targeting the areas of reading and mathematics. OSEP looks forward to reviewing the State's data regarding the participation and performance of children with disabilities in statewide and districtwide assessments as part of the SPP.

² The regulations under NCLB provide, at 34 CFR §200.20(c), that, in order to meet 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.

³ Students with disabilities took the Palmetto Achievement Challenge Test (PACT) or PACT-Alternate.

On pages 113, 114, 116 and 117 of the FFY 2003 APR, the State reported that in 2004, students in grade 10 participated in South Carolina's High School Assessment Program (HSAP). Results of the 2004 HSAP administration were used to establish baseline performance for students with and without disabilities, in grade 10, in the areas of English/language arts and mathematics. During July and August 2005, the State established and publicized to stakeholders and LEAs targets for students with and without disabilities based on results of the 2005 HSAP administration.

Least restrictive environment (LRE)

On page 150 of the FFY 2003 APR, SCDE reported that, because OSEP identified the placement of children in special education classes for less than 21% and greater than 60% of the day as areas of concern, the State examined data for children with disabilities in these two placements. Data was reported, by district, for 2003 and 2004 on pages 150 through 166 of the FFY 2003 APR. On page 171, the State reported that South Carolina met the target in 2003, with 48% of the children with disabilities placed in special education classrooms less than 21% of the day. This placement percentage remained constant in 2004.

The State noted an increase in the percentage of children with disabilities in special education classes for greater than 60% of the day for these two years (18.82% in 2003 and 19.45% in 2004), but the FFY 2003 APR did not include reasons for the increase; however, SCDE noted that the State addressed improvement in this area by: (1) including presentations on improving results for children with disabilities in the general curriculum during the State's fall special education administrators training; (2) hiring consultants to provide training on accommodations and modifications for standards-based instruction and the use of curriculum-based measurements as a progress monitoring tool; and (3) supporting the school-wide model in positive behavior supports and the strategic instruction model through the State Improvement Grant. On pages 173 through 175, SCDE included strategies and activities to improve performance in this area. OSEP looks forward to reviewing the State's data and analysis, strategies and targets for improved performance regarding the placement of children with disabilities in the LRE, in the SPP.

Preschool performance outcomes

On page 176 of FFY 2003 APR, SCDE noted that the State did not collect data in this area; however, the State established targets for improved performance and strategies and activities to achieve those targets by: (1) developing a method for collecting data and analysis on outcomes for preschool children with disabilities; (2) creating a draft framework for developing and measuring early childhood outcomes; and (3) identifying other offices in the State for collecting and using data and analysis.

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

On page 179 of the FFY 2003 APR, SCDE reported that OEC met with members of SCDE's technology team to add data fields to the current database on collecting information on post-school outcomes information for students with and without disabilities who graduate each year. The forms for data collection were posted on SCDE's website and collected during the 2004-2005 SY on students exiting in the spring of 2004. The State proposed that these data be disaggregated by the fall of 2005.

The SPP instructions establish two new indicators in this area (#13 and #14), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The indicators are: the percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals; and the percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of post-secondary school, or both, within one year of leaving high school. The State should carefully review the instructions to the SPP in developing its plans for these collections.

Conclusion

South Carolina must submit to OSEP, not later than October 15, 2005, data and analysis demonstrating compliance with the requirements at: (1) 34 CFR §300.600, that South Carolina identifies and corrects noncompliance identified through its monitoring process; (2) 34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3) that children with disabilities in need of psychological counseling services receive the services in accordance with their IEPs; (3) 34 CFR §§300.121(d)(3)(ii), 300.520 and 300.522 that appropriate personnel make the determination as to services and the appropriate setting for students with disabilities who have been suspended and expelled; (4) 34 CFR §300.511 that due process hearing decisions are issued to parties within timelines; and (5) 34 CFR §§300.320, 300.121(c)(1)(ii) and (c)(2), and 300.530 to make FAPE available to Part B eligible children by their third birthday (including the focused monitoring addendum and folder review checklist, standards requiring the administration of evaluations, in a timely manner, to ensure IEPs were in effect by the child's third birthday; and , from the LEA interview guides, *interview* questions specific to whether ESY services were available to children with disabilities who turn three during the summer, and whether evaluations were administered in a timely manner to ensure that IEPs or individualized family service plans (IFSPs) were in effect by the child's third birthday).

With the SPP due December 2, 2005, the State must:

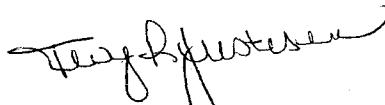
- (1) submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines designed to ensure compliance with the requirements at 34 CFR §300.755 as soon as possible and not more than one year after OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance with the requirements at 34 CFR §300.755, 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
- (2) either data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that SCDE examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, SCDE 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 IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA; or a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance 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.

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 represent 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 have questions, please contact Debra Jennings at (202) 245-7389.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Susan DuRant