



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Dr. Jo Lynne DeMary
Superintendent of Public Instruction
Commonwealth of Virginia
Department of Education
P.O. Box 2120
Richmond, Virginia 23218-2120

OCT 14 2005

Dear Superintendent DeMary:

The purpose of this letter is to respond to Virginia's March 28, 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

The conclusion of OSEP's July 22, 2004 FFY 2002 APR response letter required the Virginia Department of Education (VDOE) to include in its FFY 2003 APR:

1. Evidence of progress in correcting the noncompliance concerning meeting the secondary transition requirements of 34 CFR §§300.344(b)(1) and 300.29(a)(2), including current supporting data and analysis (and to provide a final Progress Report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the date of that letter);
2. Documentation that VDOE implemented revised monitoring procedures that address the requirement for timely provision of a free appropriate public education (FAPE) for children with disabilities, who are eligible to receive special education and related services on their second birthdays;

3. With regard to disproportionality, the results of the State’s review of the policies, procedures, and practices used in the identification and placement of children with disabilities to ensure that they are consistent with the requirements of Part B; and
4. An analysis of compliance data related to the participation of children with disabilities in large-scale assessments.

Virginia submitted compliance data and information regarding secondary transition to OSEP in its September 10, 2004 Progress Report. OSEP responded to that submission in a letter dated December 15, 2004. Further comment on that submission will be included in the Secondary Transition section below.

OSEP conducted a visit to the State during the week of March 7, 2005 to verify the effectiveness of the State’s systems for general supervision, statewide assessment, and data collection under section 618 of the IDEA, and issued a letter on May 1, 2005 with the results of the visit. The conclusion of that letter required the State to ensure compliance with the requirements of 34 CFR §300.511(a) and (c) that hearing decisions are issued in a timely manner. Additionally, the letter required the State to submit a plan to OSEP by July 1, 2005 to ensure that youth with disabilities in juvenile detention centers are included in the State’s next child count submission, as required under section 618. Further comment on both issues will be included in the appropriate section below.

General Supervision

Identification and timely correction of noncompliance

On page 5 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correction of local education agency (LEA) noncompliance within one year of VDOE identification through monitoring (see Table 1).

Table 1 - State’s on-site monitoring, verification, and follow-up				
	LEAs receiving VDOE on-site monitoring visit	LEAs in which VDOE cited noncompliance in on-site visit	Monitoring reports issued 4 to 6 weeks after on-site visit	LEAs correcting noncompliance w/in one year of VDOE identification
2000-01	22	19	18	15 (72%)
2001-02	22	17	20	19 (86%)
2002-03	22	20	18	21 (95%)

Regulations at 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) require that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency: (1) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and (2) meets the education standards of the State educational agency (including the requirements of this part). Under 20 U.S.C. 1232d(b)(3), each State educational agency must monitor programs under its general supervisory authority to ensure compliance with the requirements of IDEA.

In its APR, Virginia did not include information about the LEAs that did not correct the identified instances of noncompliance within one year, or whether those LEAs ultimately corrected the noncompliance. Not later than the December 2, 2005 date for submission of the State Performance Plan (SPP), Virginia must provide updated data and analysis demonstrating its full compliance with this requirement and evidence that it is ensuring timely correction of noncompliance identified through monitoring. VDOE may submit this information with its SPP.

Formal written complaints

On page 11 of the FFY 2003 APR, the State included data and information regarding formal written complaints, indicating that one of the 169 complaints that VDOE received between July 1, 2003 and June 30, 2004 exceeded the timeline and no extension had been granted. As documented in OSEP's May 2004 letter, VDOE's Complaint Tracking Log showed that VDOE met the timeline requirements of 34 CFR §§300.661(a) and 300.661(b) for 58 of 60 Part B State complaints that VDOE received between July 9, 2004 and November 29, 2004. VDOE must continue to report on its progress in ensuring compliance in this area in the SPP.

Due process hearings and reviews

On page 11 of the FFY 2003 APR, the State included data for the period of July 1, 2003 to June 30, 2004. The data and information gathered as part of the verification visit are more current than the data on page 11. OSEP's May 2005 verification letter stated that VDOE must ensure correction of noncompliance related to the requirements of 34 CFR §300.511(a) and (c) regarding timelines for due process hearing decisions, within a reasonable period of time, not to exceed one year from the date of that letter, and provide a report to OSEP with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline. OSEP looks forward to reviewing the State's data in its SPP and in the report due thirty days after one year following OSEP's May 2005 verification letter.

Mediation

On page 11 of the FFY 2003 APR, the State included data and information regarding mediation indicating that from July 1, 2003 through June 30, 2004, there were 41 mediations related to due process hearing requests and 94 mediations not related to due process hearing requests. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP related to the percent of mediations resulting in mediation agreements.

Personnel

On pages 22 and 23 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance regarding sufficient numbers of qualified interpreters. The State also included strategies to improve performance. Further, on pages 16 through 21, the State included data and information regarding sufficient numbers of administrators, teachers, related service providers, and paraprofessionals indicating an increase in providers. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

OSEP’s July 2004 APR letter stated, “VDOE reported that its education environment data show the percent of children with disabilities receiving services in the regular school building, but that these data do not show the percent of time children receive special education outside the regular classroom. VDOE stated that it would add an additional required data element, on the percentage of time children receive special education outside the regular class, starting with the December 1, 2004 child count and will report this information as part of its FFY 2004 APR. VDOE provided the following clarification in a conversation between OSEP and VDOE on May 13, 2004 and a May 18, 2004 e-mail: (1) VDOE has reported its Part B setting data, based on the percentage of the school day for which each child with a disability receives special education and related services (rather than the percentage of the school day for which the child is removed from the regular education classroom); (2) VDOE plans to correct this problem by adding an additional required data element, on the percentage of time children receive special education outside the regular class, starting with the December 1, 2004 child count; and (3) the language from page 38 of the State’s APR referenced above does not mean that VDOE has been reporting to OSEP the percentage of the school day for which a child has been removed from the regular education school (rather than the percentage of the school day for which the child is removed from the regular education classroom). The State must ensure that its next submission of Part B settings data under section 618 is consistent with the requirements of section 618 and OSEP’s directions to States.”

In its May 2005 letter, OSEP stated, “OSEP considers this [the Least Restrictive Environment (LRE)] area of focus to be resolved based on the data that VDOE has provided, and these data are summarized below. These data demonstrate a significant increase in the number of children served in less restrictive settings.”

Educational Placement of Children with Disabilities ages 6-21¹						
School Year	Percentage of Day Removed from Regular Education Classroom					
	< 21% of day		21-60% of day		> 60% of day	
2003-2004	55,882	37%	56,490	37.4%	38,474	25.6%
2004-2005	87,836	56%	40,491	26%	22,607	14%

On page 24 of the FFY 2003 APR, the State commented that the preliminary data collected in the December 1, 2004 child count more accurately and favorably reflect the level of inclusive service delivery models that are in place in Virginia. OSEP appreciates the State’s efforts in this area.

As documented in OSEP’s May 2005 letter, VDOE informed OSEP that the State provided special education and related services to approximately 200 youth with disabilities in juvenile detention facilities, but did not use any Part B funds to provide those services, and does not include these youth in its Part B child count data. VDOE’s practice of not including these youth in its Part B child count is inconsistent with the requirements of section 618 and OSEP’s

¹ This table is from the May 1, 2005 verification letter.

directions to States for data collection, which require a State to include all children receiving FAPE in the child count data. OSEP directed the State to submit, within 60 days from the date of OSEP's letter, a plan for ensuring these youth are included in the State's December 1, 2005 child count submission. In its August 5, 2005 letter, VDOE indicated that beginning with the December 1, 2005 child count, youth receiving special education services in juvenile detention homes would be reported in the child count, and that State staff would coordinate with detention center home staff for reporting students with IEPs served on December 1 of each year. OSEP appreciates the State's prompt response.

Early Childhood Transition

OSEP's July 2004 letter stated "... the State acknowledged... that VDOE had not been monitoring to determine whether children with disabilities, eligible for Part B, received special education and related services by their second birthday. (Under Virginia State law, children with disabilities are entitled to receive FAPE beginning on their second birthday.) VDOE reported that it has revised its monitoring procedures to address this requirement, and stated that it did not have enough data by the end of this reporting period to be able to report progress, slippage, or compliance. (The State reported no data regarding this requirement in this APR.) ...the State included projected targets, activities, timelines, and resources to ensure compliance by June 2004. OSEP accepts these strategies, and in the next APR, the State must include documentation that VDOE has implemented revised monitoring procedures that address the requirement for timely provision of FAPE for children with disabilities, who are eligible to receive special education and related services on their second birthday."

On pages 1-5 of the FFY 2003 APR, the State provided the data and information requested in OSEP's July 2004 letter. Those data and information indicated the following area of noncompliance, not previously identified by OSEP: 34 CFR §300.132(a)-(b) require that children participating in early intervention programs assisted under Part C and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to those preschool programs and that by the third birthday of such a child, an individualized education program (IEP) or, if consistent with 34 CFR §§300.342(c) and 636(d) of the IDEA, an individualized family service plan (IFSP) has been developed and is being implemented for the child. On page 2 of the FFY 2003 APR, the data provided by VDOE indicated that for the 2003-2004 school year 1,492 children referred by Part C were found eligible for Part B services; however, only 1,256 children were reported served under Part B. VDOE provided no explanation for the other 236 children (15 percent).

Further, the State described its plan to better align the Part C and B data collection instruments to facilitate the tracking of children through the eligibility process to document that services are being provided. However, the APR did not include strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance noted above. Therefore, the State must submit a plan to OSEP, not later than the date for submission of the SPP, due December 2, 2005, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible not to exceed one year from the date OSEP accepts the plan. In the SPP, the State must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis

demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

Parent Involvement

On pages 1-6 of the FFY 2003 APR, the State included data and information regarding parent involvement, indicating an increase in parent involvement in the special education process. 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. OSEP looks forward to reviewing the State's plan for collecting these data, in the SPP.

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

Disproportionality

On pages 3-5 of the FFY 2003 APR, VDOE provided its analysis of the data in Attachment 2, and concluded that there was statewide disproportionate representation of Black children in special education when compared to the proportion of the general population, and a disproportionate number of Black children were identified in the disability categories of mental retardation, emotional disturbance, and developmental delay. The State also concluded that there was disproportionate representation of Black children in the placement categories of receiving special education more than 60 percent of the day (as calculated by the prior LRE reporting – see LRE data discussion above), separate special education school placement, private day placements, and private residential placements. Further, VDOE compared the 2003-2004 data with data from previous years and found that the following areas of disproportionality were continuing for Black children: identification as children with disabilities, identification in the category of mental retardation, and a greater portion of the school day spent in special education programs. However, the State did not include its review, and if appropriate, revision, of policies, procedures, and practices in identification and/or placement when it identifies significant disproportionality under 34 CFR §300.755, as directed in OSEP's July 22, 2004 letter. Not later than 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. The State may submit this information with the SPP.

Page 11 of the APR contains targets that the percentage of each race/ethnicity in special education disability categories, as well as the percentage of each race/ethnicity in special education placement categories, will be 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

or targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns.

In the case of a determination of 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. VDOE must ensure that information submitted in the SPP is consistent with this guidance.

Graduation rates

On pages 13 through 16 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the area of graduation rates for the number and percentage of children with disabilities receiving standard or advanced studies diplomas. The State also included strategies to improve performance. OSEP looks forward to reviewing information in the SPP, including the implementation of strategies and resulting data and analysis. Further, the State included data and analysis indicating an increase in the number of children with disabilities who received either modified standard diplomas or special education diplomas. In addition, the State indicated an increase in the percentage of completers² who received a diploma or certificate from 70 percent in 2002-2003 to 87 percent in 2003-2004. VDOE noted also an increase in the number of students with disabilities completing high school and attributes this increase to a decrease in drop-out rates (see section below).

Drop-out rates

On pages 17 through 20 of the FFY 2003 APR, the State included data and information regarding drop-out rates, indicating a decrease in the number of children with disabilities reported as dropped-out, from 1,708 in 2002-2003 to 1,593 in 2003-2004. This is a decrease of 6.7 percent. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP demonstrating continued improvement in this area.

² Completers are defined by VDOE as those children receiving a diploma or certificate, children who reach maximum age, and children dropping out.

Suspension and expulsion

On pages 21 through 23 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in this area. The State's analysis concluded that children with disabilities receive long-term suspensions at a higher rate than children without disabilities, that this disparity has continued for the past three years, and that the expulsion rate for children with and without disabilities increased. On page 22 of the FFY 2003 APR, the State included data indicating that 8 of 22 school divisions monitored in 2003-2004 were found out of compliance with requirements related to discipline. The monitoring data, on page 7 of the FFY 2003 APR, indicated that 94 percent of all discipline requirements found out of compliance during 2003-2004 were corrected within one year of the State's finding of noncompliance. The State also included strategies to improve performance and compliance. OSEP looks forward to reviewing information in the SPP, including the implementation of strategies and resulting data and analysis.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. If the State identifies significant discrepancies, the SEA must review and, if appropriate, 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 the IDEA. The instructions to the 2003 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them.

VDOE provided State-level data comparing the rates of suspensions and expulsions for children with disabilities to children without disabilities. However, the State did not provide any information comparing the rates across the school divisions, which is required under 34 CFR §300.146(a)(2). The State projected that for 2004-2005 data it would analyze State and school division level data to identify areas with the largest difference in suspension and expulsion rates between children with disabilities and children without disabilities. If the State identifies significant discrepancies, the State must follow 34 CFR §300.146(b) and review its policies, procedures, and practices, and revise them, if appropriate.

Not later than the date for submission of the SPP, due December 2, 2005, the State must either demonstrate that it is complying with the requirements of 34 CFR §300.146 or provide a plan to ensure the correction of the noncompliance as soon as possible and not more than one year after OSEP accepts the plan. The final report under the plan would be due 30 days following the end of the one-year timeline. In preparation for the SPP, the State should carefully consider the data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Statewide assessment

Performance. On pages 25, 31 through 34, and 40 through 46 of the FFY 2003 APR, the State provided data and analysis indicating a lower achievement rate in all assessment areas for children with disabilities compared to rates for children without disabilities. The State also included data and analysis indicating improved performance of children with disabilities on statewide assessments in all but one (high school end-of-course English/ reading assessment) of the eight assessment areas; however, the State included the same projected targets for 2004-2005 as for 2003-2004 (61 percent passing rate for English/ reading and 59 percent passing rate for mathematics), despite the fact that these targets were already met in four of the eight assessment areas. While the State included measurable targets, in the SPP, the State must also include rigorous targets to demonstrate a continued effort to increase performance. OSEP looks forward to reviewing the targets and strategies in the SPP.

Participation. OSEP's July 2004 letter stated, "the State included data indicating that the percentage of children who participated in Virginia's State-wide assessment is lower for children with disabilities than for children without disabilities in all areas assessed. (The participation rate for children with disabilities ranged from 79.1 percent on the third grade Reading, Literature, and Research assessment, to 94.29 percent on the Math High School End of Course assessment.) The State indicated in Attachment 3 that a substantial portion of children with disabilities were exempted entirely from the assessments, but did not provide explanations of why, as requested in that form. In its FFY 2003 APR, Virginia should include information on the reasons why children with disabilities are exempted from assessments as requested by the Attachment 3 instructions. Further, OSEP could not determine from the APR whether any children with disabilities did not participate in the State-wide assessment due to a failure by a public agency to meet the requirements of 34 CFR §300.347(a)(5) or 300.138. The State must include an analysis of compliance data related to those requirements as part of its FFY 2003 APR.³"

On pages 30 and 39 of Attachment 3 of the FFY 2003 APR, the State included data regarding the participation of children with disabilities on the reading and math assessments and the reasons why children were not assessed. Those data indicated that children with disabilities were not assessed between 2.7 percent and 6.2 percent of the time on the regular math assessments and between 3.1 percent and 6.8 percent of the time on the regular reading assessments. The State reported the reasons for not being assessed as: absent, decision of the IEP team, use of an alternate form, or missing required documentation-test not scored (for the Virginia Alternate Assessment Program only). The most frequently cited reason for not assessing was the decision of the IEP team category. On page 24, the State included data indicating, and concluded that, there had been an increase in the participation rate from the previous year. OSEP looks forward to reviewing data and information in the SPP.

³ Please note that the regulations under the No Child Left Behind Act (NCLBA) provide, at 34 CFR §200.20(c), that, in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its children with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

Least restrictive environment

On page 48, the State included monitoring data and information indicating an increase in noncompliance citations in this area, and that the State conducted follow-up on those findings to ensure correction. On page 47 of the FFY 2003 APR, the State indicated that it would report the new “accurate” data to OSEP in the 2004-2005 Annual Performance Report; therefore data and information included in the FFY 2003 APR did not reflect the new data. OSEP appreciates the State’s efforts in this area (please see the current data gathered through the March 2005 verification visit and reflected in the table in the data section of this letter) and looks forward to reviewing data and information demonstrating continued improvement in LRE in the SPP.

Preschool performance outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. On page 55 of the FFY 2003 APR, the State provided a plan to collect data and information in this area that included beginning a longitudinal study, participating in technical assistance opportunities, and developing outcome measures as a member of the Virginia General Supervision Enhancement Grant (GSEG) team. VDOE did not include projected targets for this indicator. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements. OSEP looks forward to reviewing the State’s plan for collecting these data, in the SPP.

Secondary Transition

In its December 2004 letter, OSEP stated, “In its July 2004 letter, OSEP directed the State to submit evidence of progress in correcting the noncompliance concerning the secondary transition requirements of 34 CFR §§300.344(b)(1) and 300.29(a)(2), including current supporting data and analysis, in the FFY 2003 APR, and, in addition to, provide a final Progress Report, to OSEP, demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date of that letter. In its September 2004 [progress report] letter, VDOE indicated that its monitoring staff had made follow-up visits to verify compliance with the secondary transition requirements of 34 CFR §§300.344(b)(1) and 300.29(a)(2) in the 18 school divisions that were found out of compliance during the FFY 2002 reporting period. VDOE determined that the specific noncompliance had been corrected. However, VDOE indicated that there would be a further follow-up visit to one school division in the fall of 2004. In addition, in 2002-2003 Virginia implemented a model transition project for meeting transition requirements and improving service delivery in 21 school divisions. OSEP appreciates the work of the State in ensuring compliance with the transition requirements of 34 CFR §§300.344(b)(1) and 300.29(a)(2). VDOE must continue to report in the FFY 2003 APR, due March 31, 2005, progress in ensuring full compliance with these requirements, including the results of its further follow-up visit to the school division addressed in the September 2004 letter.”

On pages 2 through 12 of the FFY 2003 APR, the State included monitoring data and information regarding secondary transition indicating that noncompliance decreased from 2001 to 2003. In addition there were no secondary transition issues raised through complaints, mediations, or due process requests during 2003-2004. OSEP appreciates the State's efforts in this area. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements. OSEP looks forward to reviewing the information in the State's SPP.

Conclusion

As noted above, not later than the submission date for the SPP, due December 2, 2005, Virginia must submit to OSEP:

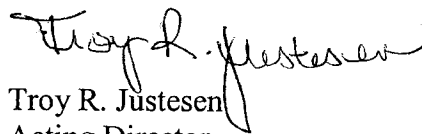
1. Evidence that the State is fully meeting the requirement to ensure the correction of noncompliance within one year of the State's identification of that noncompliance through their monitoring process (34 CFR §300.600, 20 U.S.C. 1232d(b)(3), and 34 CFR §76.770);
2. A plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance regarding early childhood transition as soon as possible and not to exceed one year from the date OSEP accepts the plan. In the SPP, the State must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline (34 CFR §300.132(a) and (b));
3. A plan, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance regarding review, and if appropriate revision of policies, practices, and procedures in identification and placement when it identifies significant disproportionality, as soon as possible and not to exceed 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.
4. In the SPP, the State must also include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline (34 CFR §300.755); and
5. Either a demonstration that it is complying with the requirements of 34 CFR §300.146, or a plan to ensure the correction of the noncompliance as soon as possible and not more

than one year after OSEP accepts the plan. The final report under the plan would be due 30 days following the end of the one-year timeline (34 CFR §300.146).

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 any questions, please contact Samara Goodman, at (202) 245-7356.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: H. Douglas Cox