



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

Honorable Richard Cate
Commissioner of Education
Vermont State Department of Education
120 State Street
Montpelier, Vermont 05620-2500

SEP 29 2005

Dear Commissioner Cate:

The purpose of this letter is to respond to Vermont's 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 and the April 27, 2005 letter from the Vermont Department of Education (VDE) to OSEP that contained strategies, proposed evidence of change, targets and timelines for addressing identified areas of noncompliance. 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 document data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR and the plans submitted by VDE on April 27, 2005 for addressing identified areas of noncompliance. OSEP has set out its comments, analysis and determinations by cluster area.

Background

OSEP's February 8, 2005 FFY 2002 APR response letter directed VDE to include data and analysis, along with a determination of compliance or noncompliance, in the FFY 2003 APR with the requirements of:

- (1) 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3) to identify and correct noncompliance in independent, out-of-district and alternative schools and the Department of Corrections (DOC);
- (2) 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3) to determine whether the noncompliance identified in the 2002-2003 monitoring cycle was corrected;
- (3) 34 CFR §300.511(a) and (c) to ensure that, not later than 45 days after the receipt of a request for a hearing, a final decision is reached and a copy of the decision is mailed to each of the parties, unless a specific extension is granted, at the request of either party; and

- (4) 34 CFR §300.132(b) to ensure that children participating in the early intervention program under Part C of IDEA, who will participate in the preschool program under Part B, have an individualized education program (IEP) (or individualized family service plan (IFSP), if consistent with State policy) developed and implemented by their third birthdays.

If the data demonstrated that there was noncompliance with the requirements above, VDE was directed to include strategies, proposed evidence of change, targets and timelines to address the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan.

In addition, VDE was directed to submit a plan in the FFY 2003 APR, including strategies, proposed evidence of change, targets and timelines, to ensure correction of identified noncompliance with the requirements of:

- (1) 34 CFR §300.661(a) and (b)(1) to ensure that written complaint decisions are issued within 60 days unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint;
- (2) 34 CFR §§300.138-300.139 to ensure that the participation and performance in the statewide assessment system included youth with disabilities being served in juvenile correctional facilities; and
- (3) 34 CFR §§300.344(b), 300.345(b) and 300.347(b) to ensure compliance with the Part B secondary transition requirements.

Finally, VDE was asked to provide data, information and analysis, including:

- (1) Comparison of graduation rates between students with and without disabilities;
- (2) Whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities;
- (3) Whether the performance results for children with disabilities on statewide assessments improved at a rate that decreased any gap between children with and without disabilities;
- (4) Whether children who take out-of-level tests are reported according to the directions for Attachment 3 of the APR; and
- (5) Status of data collection for preschool outcomes.

General Supervision

Identification and timely correction of noncompliance

OSEP's February 2005 letter required VDE to include data and analysis, along with a determination of compliance or noncompliance in the following areas: (1) the requirement in 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3) to ensure identification and timely correction of noncompliance in independent, out-of-district and alternative schools and the DOC; and (2) noncompliance identified in the 2002-2003 monitoring cycle was corrected, including the number of corrective actions that were completed and the number overdue, and for those that are overdue, the action VDE took and the current status of corrections. If the data indicated

noncompliance, VDE was to submit a plan that includes strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period not to exceed one year of OSEP's acceptance of the plan.

On page 10 of the FFY 2002 APR, VDE reported that the monitoring team conducted eleven onsite monitoring visits during the 2003-2004 school year and all eleven compliance monitoring reports were completed by June 30, 2004. On page 2 of the April 27, 2005 letter, VDE reported that the monitoring team reviewed files for all students from LEAs monitored during the reporting period who were placed in independent, out of district and alternative schools. On page 11 of the FFY 2003 APR, VDE reported that of the 378 special education files reviewed during the 2003-2004 school year, 30 files were from students placed in independent, out of district and alternative schools. On pages 5-8 of the FFY 2003 APR, VDE included data demonstrating that it identified noncompliance with requirements around timely evaluations and IEP requirements in independent, out-of district and alternative schools during 2003-2004 and in the DOC during 2004-2005.

On page 155 of the FFY 2003 APR, VDE indicated that extensive technical assistance was provided to DOC staff regarding special education, evaluation, and IEP development, as DOC's existing policies and procedures were outdated and did not meet the requirements of IDEA. A computerized special education form was developed and installed at the DOC so that eligible students could be identified, evaluated and tracked as they moved from one location to another. On page 1 of the April 27, 2005 and pages 157-158 of the FFY 2003 APR, VDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance with the requirement in 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3) to identify and correct noncompliance in the Community High School of Vermont school sites (DOC). OSEP reviewed and accepts this plan. The State must include data and analysis documenting progress toward compliance in the State Performance Plan (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.

There appears to be a contradiction in the information presented on pages 10-11 of the FFY 2003 APR. VDE stated, "During the 2003-2004 school year, the monitoring team's expectation is that every special education file is 100% in compliance. The team issues corrective actions collaboratively with the LEA when less than 80% of the files are in compliance with specific questions that are generated from the evaluation or the IEP checklists. During the summer of 2004, the team modified the criteria for issuing corrective actions to LEAs. The revised criterion requires that all corrective actions are based on areas of noncompliance (80% threshold). The monitoring team may (emphasis added) issue a corrective action based on one file regardless of the 80% threshold." However, on page 11, VDE indicated that the expectation was that each "question" reached 100% compliance and the monitoring team issues corrective actions when compliance does not reach the 0% threshold. In the SPP, due December 2, 2005, VDE must clarify whether it is ensuring correction in every instance where noncompliance is identified. For example, if 80% of the files are in compliance, the State must clarify whether it is ensuring correction in the remaining 20% of the files.

On page 2 of the April 27, 2005 letter, VDE stated that findings in the 2002-2003 monitoring cycle were corrected. On page 12 and in Table 2 on page 9 of the FFY 2003 APR, VDE reported that the monitoring team issued 72 corrective actions during the 2003-2004 school year and 4% of corrective actions due by June 30, 2004 were outstanding and 6% of corrective actions due after June 30 were outstanding. This is an indicator in the SPP under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. The State must submit responsive baseline data regarding the percent of noncompliance related to monitoring priority areas and indicators corrected within one year from identification; the percent of noncompliance related to areas not included in the monitoring priority areas and indicators corrected within one year of identification; and the percent of noncompliance identified through other mechanisms corrected within one year of identification. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

Formal written complaints

Based on data collected during the verification visit and provided in the FFY 2002 APR demonstrating noncompliance, OSEP's February 2005 letter required VDE to submit a plan to ensure compliance with the requirements in 34 CFR §300.661(a) and (b)(1) to ensure that written complaint decisions are issued within 60 days unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint.

On page 23, 25 and 31 of the FFY 2003 APR, VDE reported that during the reporting period 11 complaint decisions were issued with findings and 7 complaint decisions were issued without findings and 23 complaint decisions were issued within 60 days or within an extended timeline.¹ On page 31 of the APR, VDE stated that 44% of administrative complaints were resolved within the 60-day timeline and the remaining complaints were extended. VDE reported that 3 complaints were extended due to exceptional circumstances and other complaints were extended for other reasons. Under 34 CFR §300.661(b)(1), an extension of the time limit is only permitted if exceptional circumstances exist with respect to a particular complaint.

In the April 2005 letter, VDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's February 2005. OSEP reviewed and accepts this plan. One of the strategies identified is that by 4/05, the legal team will define exceptional circumstances for extending complaints. The State must include updated data and analysis documenting progress toward compliance in the SPP. If the data in the SPP do not demonstrate compliance with the requirement in 34 CFR §300.661 to issue timely complaint decisions, VDE 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.

¹ This indicates that Attachment 1 may be inaccurate since the instructions to Attachment 1 of the FFY 2003 APR state that (Cells 3 + 4) minus (Cells 7 + 8) should equal the number of complaints completed late (after timelines and/or extensions expired).

Mediation

On pages 23 and 25 of the FFY 2003 APR, VDE indicated that from July 1, 2003 through June 30, 2004, there were 27 mediations related to due process hearing requests and 16 not related to due process hearing requests. VDE reported that there were 17 mediation agreements related to hearing requests and 13 mediation agreements not related to hearing requests. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP, due December 2, 2005.

Due process hearings and reviews

OSEP's February 2005 letter directed VDE to submit data and analysis, along with a determination of compliance or noncompliance with the requirements of 34 CFR §300.511(a) and (c) to ensure that, not later than 45 days after the receipt of a request for a hearing, a final decision is reached and a copy of the decision is mailed to each of the parties, unless a specific extension of time is granted at the request of either party. If the data indicated noncompliance, the State was to submit a plan that included strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from OSEP's acceptance of the plan.

On pages 25 through 32 of the FFY 2003 APR, VDE submitted required data, along with a determination, on page 32, of noncompliance with 34 CFR §300.511(a) and (c). Trend data on page 25 of the APR demonstrated the following: State Fiscal Year (SFY) 2002, 4 hearings held and 4 decisions made after the 45-day timeline; SFY 2003, 2 held and 2 decisions made after the 45-day timeline; VT's SFY 2004, 5 held and 5 decisions made after the 45-day timeline.² However, VDE reported in Attachment 1 that in 5 of the 5 fully adjudicated hearings, decisions were issued within an extended timeline. On pages 26- 31 of the FFY 2003 APR, VDE submitted the part of its due process log that included the reasons due process request filed from July 1, 2003-June 30, 2004 were dismissed. OSEP had requested this information because of the large discrepancy between the number of hearing requests and the number of hearings held.

On page 32 of the FFY 2003 APR, VDE identified as a target that extensions for written complaint decisions and due process hearings are granted only for exceptional circumstances. It appears that there is some confusion about the issue of extensions. As noted above, under 34 CFR §300.661(b)(1), an extension of the 60-day time limit for issuing a complaint decision is only permitted if exceptional circumstances exist with respect to a particular complaint. If all complaint decisions are issued within the 60-day timeline or a properly granted extension, the State is in compliance with 34 CFR §300.661. Under 34 CFR §300.511(c), a hearing officer may grant specific extensions of time beyond the 45-day time limit at the request of either party. If all due process decisions are issued within the 45-day timeline or within a properly granted extension, the State is in compliance with 34 CFR §300.511.

In its April 2005 letter, VDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's February 2005 letter. OSEP reviewed and accepts this plan. The State must include updated data and

² VDE's reporting period is included in the APR as a State Fiscal Year (SFY), not the Federal Fiscal Year (FFY).

analysis documenting progress toward compliance in the SPP. If the data in the SPP do not demonstrate compliance with the requirement in 34 CFR §300.511 to issue timely due process decisions, VDE 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.

Personnel

On pages 35-43 of the FFY 2003 APR, VDE included data and analysis regarding special education personnel. On pages 36 and 40 of the APR, VDE indicated that the number of special educators working in Vermont schools who are not fully licensed dropped from 164 during the 2002-2003 school year to 110 during the 2003-2004 school year. Additionally, on page 40 of the APR, VDE indicated that the number of unfilled special education positions dropped from 43.8 Full Time Equivalents (FTE) for SFY 2003 to 21.2 FTEs for SFY 2004. The Vermont Higher Education Collaborative operated four training sites to prepare students for special education licensure. Since 2001, there were 130 graduates of the special education program, with 84 employed as special educators in Vermont. On pages 41-43, VDE included strategies to improve performance in all targeted areas related to personnel. OSEP appreciates the State's efforts to improve performance in this area.

Collection and timely reporting of accurate data

In FFY 2002 APR, VDE provided several strategies that the State intended to implement to improve data collection. In the FFY 2003 APR, VDE continued its intradepartmental Student Support Team (STT) and Data Management and Analysis Team/Information Technology (DMAT/IT), to collect and report data regarding child count, discipline, and personnel. On pages 50 through 53 of the FFY 2003 APR, VDE reported some of the following difficulties in implementing proposed strategies:

1. Vermont experienced difficulty resolving departmental procedures to complete the hiring process to perform data related work. However, as of June 30, 2004, an outside contractor was working on a comprehensive inventory of VDE's data collection.
2. Since the contract did not begin until June 30, 2004, recommendations on areas of data collection were not developed.
3. Vermont did not accomplish the matching of child count databases to ensure consistency of student-level reporting between collections and across databases.
4. Vermont did not develop a new integrated database for administrative complaints, mediations, and due process hearings.
5. Vermont was unable to develop a monitoring database to track compliance trends in 2003-2004.
6. Using the December 1, 2003 child count as baseline data (also reported in graph 3 on page 47 of the FFY 2003 APR), an assessment for accuracy and consistency of educational placements outside the regular education classroom revealed that, in a large number of cases, educational placement was incorrectly reported.

As indicated on page 52, VDE identified several data areas in need of verification to ensure accuracy including discipline, LRE and residential placement data. On pages 53 and 54 of the

FFY 2003 APR, VDE identified strategies to improve performance in these areas. Given some of the difficulties noted above, OSEP looks forward to reviewing data in the SPP, due December 2, 2005, reflecting implementation of the proposed strategies on pages 53 and 54 to ensure that data submitted is accurate, reliable and valid.

Early Childhood Transition

OSEP's February 2005 letter required VDE to submit data and analysis, along with a determination of compliance or noncompliance with the requirement of 34 CFR §300.132(b) to ensure that children participating in the early intervention program under Part C of IDEA, who would participate in the preschool program under Part B, had an IEP (or IFSP, if consistent with State policy), developed and implemented by their third birthdays. If the data demonstrated noncompliance, the State was to submit a plan, including strategies, proposed evidence of change, targets and timelines that would ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan. On pages 59 and 60 of the FFY 2003 APR, VDE identified noncompliance with this requirement. VDE indicated that 95% of the children in Essential Early Education enter from Part C and only 67% of eligible children had IEP's in place by their third birthdays. In its April 2005 letter and on page 60 of the FFY 2003 APR, VDE indicated that an analysis of the data at the district level in FY 04 showed that 23% of districts had IEPs in place for all eligible children by their third birthdays.

In its April 2005 letter, VDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible, as required in OSEP's February 2005 letter. OSEP reviewed and accepts this plan. The State must include responsive baseline data regarding the percentage of children referred by Part C prior to age 3 and who are found eligible for Part B and have an individualized education program (IEP) developed and implemented by their third birthday and analysis documenting progress toward compliance with 34 CFR §300.132(b) in 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.

Parent Involvement

On page 66 of the FFY 2003 APR, VDE indicated that it revised its State Advisory Panel (SAP) to meet the new IDEA requirements relating to the membership. In addition to the SAP, parents were involved in the monitoring of school districts. All parents of children with disabilities received a survey regarding the participation and satisfaction with the special education process and a percentage of these parents were interviewed on site. On page 67 of the FFY 2003 APR, VDE reported that the Vermont Parent Information Center (VPIC), with some funding from the State, provided 11 workshops for 175 parents and professionals. The topics included evaluations, transition to college, Attention Deficit-Hyperactivity Disorder, IEPs, extended school year services, and autism. Joint trainings were also conducted by the Student Support Team Consultants and the VPIC, relating to IEP development and decision-making.

On page 67–69 of the FFY 2003 APR, VDE listed future activities to achieve projected targets, including timelines and resources needed. 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.

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

Disproportionality

On page 70 of the FFY 2003 APR, VDE identified two performance indicators for addressing disproportionality regarding the numbers of children with disabilities receiving special education and the numbers of children with disabilities in each particular disability category and educational setting. These indicators address whether the percentage of children with disabilities, receiving special education, by race/ethnicity, is proportionate to the percentage of children, by race/ethnicity, in the State's general student enrollment; and for each particular disability category and educational setting, whether the percentage of children by race/ethnicity is proportionate to the percentage of children by race/ethnicity in the State's general student enrollment. 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 page 78 of the FFY 2003 APR, VDE listed, among its targets for disproportionality, a target to "determine the extent of the disproportionality with Vermont's students with disabilities population." In an analysis of the data provided in Attachment 2, VDE stated, on page 78 of the FFY 2003 APR, that "due to the small number of students in each disaggregated category, OSEP's '20% rule' does not trigger a meaningful analysis of disproportionality among minority students in Vermont in regard to their primary disability and placement. The under-representation calculated by the '20% rule' in many of the primary disability categories and placement categories is a direct result of the slight under-representation in the category as a whole. Additionally, the extremely small numbers trigger significant discrepancies in percentages of students." VDE's data and analysis appeared skewed by the homogeneity of the student population. OSEP does not require this "20% rule" method, or any specific method, for determining disproportionality. States should consider using multiple methods in calculating disproportionality to reduce the risk of overlooking potential problems.

On page 80 of the FFY 2003 APR, VDE reported the results of a district level analysis of disproportionality. VDE aggregated its data and used the five Superintendent Regions as the unit of analysis. VDE reported that the district data mirrored the statewide data and Vermont's numbers were too small to identify areas of disproportionality. In light of the growing population of minority students and the seemingly regional aspects of that growth, VDE indicated that it would proactively consider its policies and procedures to identify and place special education students with consistency and neutrality. On page 81 of the FFY 2003, VDE also indicated that further analysis would be done to determine if disproportionality exists in

districts with growing numbers of minority students. OSEP appreciates the State's efforts in this area.

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.

Graduation and drop-out rates

OSEP's February 2005 letter required VDE to submit a plan (unless VDE provided the actual data) that included strategies, proposed evidence of change, targets and timelines to ensure the State resolved the data collection differences to make a true comparison of graduation rates between students with and without disabilities. On pages 83-89 of the FFY 2003 APR, VDE provided data regarding graduation and drop-out rates. VDE reported a 92% graduation rate for students without disabilities and a 76% graduation rate for students with disabilities. At the district level, (with 53 out of 60 supervisory unions reported) graduation rates by districts for students with disabilities ranged from 100% to 49% compared to 100% to 82% for students without disabilities. Data indicated that 36 supervisory unions, or 68%, have graduation rates higher for regular education students than for special education students. In three supervisory unions, the rate of graduation was equal for students with and without disabilities. In 13 supervisory unions, the graduation rate was higher for students with disabilities than students without disabilities.

VDE reported an overall drop-out rate for all students in grades 9-12 at 3%. Data included a 3% drop-out rate for students without disabilities and a 4% rate for students with disabilities. OSEP appreciates the data and analysis provided by the State in the FFY 2003 APR and looks forward to reviewing data and information in the SPP, due December 2, 2005.

Suspension and expulsion

OSEP's February 2005 letter required VDE to submit information indicating that the State examined all data for all LEAs to determine whether significant discrepancies occurred in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates of nondisabled children within the agencies and, that when it identifies significant discrepancies, it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146. On pages 92-95, VDE provided data regarding suspension and expulsion. VDE reported that it continued to maintain very low statewide and district level rates of suspension and expulsion of students with disabilities. On page 95 of the FFY 2003 APR, Vermont reported that for the first time using the 2004 data, the State compared the number of suspension and expulsions for children with disabilities to comparable data for children without disabilities. The data were also disaggregated at the district level. Sixty percent of the 60 supervisory unions reported suspensions for more than 10 days or expulsions for either special education or regular education students. Of the 36 supervisory units that reported long term suspension (over 10 days) and expulsions, 52% reported long-term suspensions/expulsions for children with disabilities and 77% reported long-term suspension/expulsions for children without disabilities.

In the April 27, 2005 letter, VDE reported that district level information identified 5 districts with higher rates of suspension/expulsion for students with disabilities than for those without disabilities. However, the numbers were very low, therefore do not appear to be statistically significant. OSEP appreciates the data and analysis provided by the State in the FFY 2003 APR and looks forward to reviewing data and information in the SPP, due December 2, 2005.

Statewide and districtwide assessment

OSEP's February 2005 letter required the VDE to provide:

- (1) baseline data and analysis to address whether the performance results for children with disabilities on statewide assessments improved at a rate that decreased any gap between children with and without disabilities;
- (2) whether children who take out-of-level tests were reported according to the directions for Attachment 3 of the APR; and
- (3) a plan that included strategies, proposed evidence of change, targets, and timelines that would correct the noncompliance with the Part B assessment requirements at 34 CFR §§300.138-300.139, specifically with regard to youth with disabilities being served in juvenile correctional facilities, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

In Attachment 3, VDE reported data consistent with the instructions for the FFY 2003 APR. On pages 98-112 of the FFY 2003 APR, VDE provided the required baseline data and analysis. On pages 105-111, specific data were presented on the performance gaps of children with and without disabilities. On page 112 of the FFY 2003 APR, VDE indicated that the gap between children with and without disabilities at grade 2, as measured by the performance on the Developmental Reading Assessment was 50% in 2004. This reflects a decrease of 6% in the performance gap between the two groups since 2002. For grades 4, 8 and 10, VDE indicated that the performance gap between children with and without disabilities remains between 30% and 50% with larger gaps in grades 8 and 10. Based on the review of data for grades 4, 8 and 10, performance rates were not improving for this population. VDE included strategies to increase the performance results in the APR.

In its April 2005 letter, VDE included assessment performance data for students with disabilities at the one juvenile correctional facility in Vermont demonstrating that students with disabilities are included in the statewide assessment/accountability system consistent with the requirements of 34 CFR §300.138. OSEP appreciates the data and analysis provided by the State in the FFY 2003 APR and looks forward to reviewing data and information in the SPP, due December 2, 2005.

Least restrictive environment (LRE)

On page 136 of the FFY 2003 APR, VDE indicated that "inclusion is highly valued in Vermont, both in early education and K-12 programs." OSEP's February 2005 letter reported that Vermont ranked first in the nation in terms of educating children with disabilities, ages 6 through 21, within the regular education classroom at least 80% of the day. However, Vermont also

ranked first in residential placements for children with specific learning disabilities. On pages 132 and 135 of the FFY 2005 APR, VDE provided baseline data, targets and future activities to decrease, when appropriate, the residential placements for specific learning disabilities.

On page 136 of the FFY 2002 APR, Vermont reported that it was well ahead of the national average in serving preschool children with disabilities in early education settings with nondisabled peers. In the FFY 2002 and FFY 2003 APR's, VDE set a target to increase the percentage of preschool children in early childhood settings. On pages 134 and 136 of the FFY 2003 APR, VDE presented data indicating that the percentage of preschool children in integrated early childhood settings increased from 45% to 60% over the past 6 years. This trend was supported by the decrease in the number of children placed in both special education and part-time settings. OSEP appreciates the data and analysis provided by the State in the FFY 2003 APR and looks forward to reviewing data and information in the SPP, due December 2, 2005.

Preschool performance outcomes

OSEP's February 2005 letter required VDE to submit either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets on whether the early language/communication, pre-reading, and social emotional skills of preschool children with disabilities are improving, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

On pages 148 and 149 of the FFY 2003 APR, VDE provided an analysis of baseline data presented on pages 139-147 demonstrating improvement in the following three areas for preschool children with disabilities: pre-reading, communication and the social-emotional domains. In all three areas, the gap in demonstrated competence between children who received early childhood special education services and those who did not decreased from SFY 2003 to SFY 2004. On pages 150-154, VDE identified many strategies and future activities to achieve projected targets. OSEP appreciates the State's efforts in this area.

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.

Secondary Transition

OSEP's February 2005 letter required VDE to submit a plan that included strategies, proposed evidence of change, targets, and timelines that would ensure compliance with the Part B secondary transition requirements at 34 CFR §§300.344(b), 300.345(b) and 300.347(b), including the collection of data to make evidenced-based compliance determinations, within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan. Effective July 1, 2005, section 614(d)(1)(A)(i)(VIII) of IDEA requires that beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP must contain: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate,

independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals.

On page 159 of the FFY 2003 APR, VDE reported that 95% of 16 year olds in the districts monitored in 03-04 had IEPs that included a statement of needed transition services. On page 160 of the FFY 2003 APR, VDE reported that in that in 90% of these cases, there was evidence that the transition plan was based upon the student's needs and preferences, even when the student was not in attendance. The data from the record reviews indicated that 75% of the four secondary questions showed improvement. OSEP appreciates the State's efforts in this area

In its April 2005 letter, VDE included strategies, proposed evidence of change, targets and timelines designed to ensure compliance as soon as possible. OSEP reviewed and accepts this plan. The State must include data and analysis documenting progress toward compliance in 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.

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 of 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 plan for this collection.

Conclusion

In the SPP, due December 2, 2005, VDE must clarify whether it is ensuring correction in every instance where noncompliance is identified (34 CFR §300.600 and 20 U.S.C. §1232d(b)(3)). For example, if 80% of the files are in compliance, the State must clarify whether it is ensuring correction in the remaining 20% of the files.

In the SPP, VDE must also provide updated data and analysis documenting progress toward compliance with the following requirements. If the data in the SPP do not demonstrate compliance with the requirements below, VDE 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.

- (1) 34 CFR and §§300.661(a) and (b)(1) to ensure that written complaint decisions are issued within 60 days of the receipt of the complaint unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint;
- (2) 34 CFR §§300.511(a) and (c) to ensure that, not later than 45 days after the receipt of a request for a hearing, a final decision is reached and a copy of the decision is mailed to each of the parties, unless a specific extension of time is granted at the request of either party.

In addition, in the SPP, VDE must provide data and analysis documenting progress toward compliance and provide a final report to OSEP, including data and analysis demonstrating

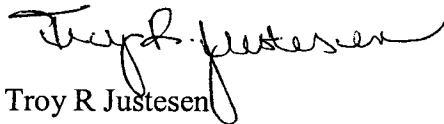
compliance, no later than 30 days following one year from the date of this letter in the following areas:

- (1) 34 CFR §300.600 and 20 U.S.C. §1232d(b)(3) to identify and correct noncompliance at DOC facilities;
- (2) 34 CFR §300.132(b) to ensure that children participating in the early intervention program under Part C of IDEA, who will participate in the preschool program under Part B, have an IEP or IFSP, if consistent with State policy, developed and implemented by their third birthdays; and
- (3) 34 CFR §§300.344(b), 300.345(b) and 300.347(b) to ensure compliance with the Part B secondary transition requirements.

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 cluster 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 Jill Harris at (202) 245-7372.

Sincerely,



Troy R Justesen
Acting Director
Office of Special Education Programs

cc: Karin Edwards