



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

Honorable Lui Tuitele
Director of Education
American Samoa Department of Education
P.O. Box 186
Pago Pago, American Samoa 96799

NOV 16 2004

Dear Director Tuitele:

The purpose of this letter is to respond to American Samoa's May 2003 Self-Assessment, that was developed in conjunction with American Samoa's Steering Committee, and the March 30, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by American Samoa during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and territories, and result in high quality information across States and territories.

The APR is a significant source of data utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP) within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed American Samoa to address for Part B five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

In its review of American Samoa's May 2003 Self-Assessment document, OSEP identified the following areas of noncompliance: (1) American Samoa does not have sufficient staff to provide special education and related services to meet the needs of all children with disabilities (pages 31, 60, and 72) (see 34 CFR §300.300); (2) the Part B Parent Rights Notice was not translated into the native language of parents of children with disabilities, unless it was clearly not feasible to do so (page 16) (see 34 CFR §300.503(c)(1)(ii)); and (3) secondary transition plans are not developed for youth with disabilities in accordance with Part B requirements (pages 98 and 99) (see 34 CFR §§300.344(b)(3), 300.345, 300.347(b) and 300.348). In the Self-Assessment review, OSEP identified the following areas of

potential noncompliance: (1) there was lack of coordination between the Part C Lead Agency and the American Samoa Department of Education regarding the provision of early childhood transition services for children, and specifically for children who were identified under the Part C program as “at-risk” (page 50) (see 34 CFR §§300.300(a), 300.121(c), 300.125(c) and 300.132(b)); (2) not all students participate in territory-wide assessments (page 67) (see 34 CFR §§300.138 and 300.347(a)(5)(i)); and (3) there were concerns regarding the procedures for evaluation and the determination of eligibility under the Part B program (pages 55 through 57 and 60) (see 34 CFR §300.530).

OSEP will visit American Samoa in the Spring of 2005 to verify the effectiveness of American Samoa’s system of general supervision, the collection of data under Section 618 of IDEA, and State-wide assessment. OSEP will provide American Samoa with a letter summarizing the results of the visit.

American Samoa’s APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to American Samoa’s May 2003 Self-Assessment and the FFY 2002 APR. OSEP’s comments are listed by cluster area.

General Supervision

The Self-Assessment and APR included information that indicated the following area of noncompliance: there is an insufficient number of qualified staff to provide special education and related services to children with disabilities.

On pages 30 and 31, the Self-Assessment stated: (a) there was a limited pool of trained personnel in American Samoa, and no physical therapists, occupational therapists, or social psychologists; (b) there is a need to hire several speech therapists; and (c) there was a freeze on new hires and on opening new positions. On page 60, the Self-Assessment stated there was not enough staff to conduct assessments and evaluations. On page 72, the Self-Assessment stated there was no staff to work with children who have emotional problems and no staff to diagnose the emotional problems of children and, as a result, there was no method of identification or intervention for children with behavior problems or emotional disturbance. (See pages 70 and 71 of the Self-Assessment). On the third, fourth, and fifth pages under Cluster Area I, the APR reported that: (a) there was an insufficient number of personnel to work with eligible children in public or private schools; (b) there was a need for personnel to provide related services and speech and language services; and (c) there were delays in conducting evaluations in a timely manner, IEP meetings, IEP reviews, and in the provision of educational services.

On the seventh and eighth pages of Cluster Area I in the APR, American Samoa provided strategies and timelines designed to ensure compliance by June 2004. However, the strategies do not specifically address the personnel shortages identified in the Self-Assessment and the APR. Therefore, within 60 days of the date of this letter, American Samoa must provide a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure compliance with 34 CFR §300.300. American Samoa must demonstrate progress in staffing and training sufficient, qualified personnel to provide

special education and related services for children with disabilities, in accordance with the needs described in their IEPs, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Monitoring: Identification and Correction of Noncompliance

On the fourth page of Cluster Area I in the APR, American Samoa established targets for ensuring that 90% of: (1) referrals, pre-placement evaluations, and eligibility/IEP meetings are completed within 60 days of parent consent for evaluation; (2) IEPs are reviewed at least annually; (3) special education services and needed related services are provided for children with disabilities; and (4) parents are informed and aware of the IDEA requirements for suspensions, expulsions, mediation, and due process procedures. American Samoa may not establish compliance standards of less than 100%. American Samoa must provide, in the FFY 2003 APR, the specific methods it will use to monitor to ensure full compliance in the areas listed above. The FFY 2002 APR did not provide current data or information collected from monitoring in these four areas.

Without an analysis of monitoring data, OSEP cannot determine if the general supervision requirements at 34 CFR §300.600 and 20 U.S.C.1232d(b)(3) are fully effective in identifying and correcting all noncompliance in a timely manner. In the FFY 2003 APR, American Samoa must include data and analysis, along with a determination of compliance or noncompliance in the four areas listed in the preceding paragraph, and provide information to OSEP demonstrating that American Samoa monitors in these areas and has procedures for correcting any identified noncompliance in a timely manner. If the data demonstrate noncompliance in any of these areas, American Samoa must include either: (1) data demonstrating that the noncompliance has been corrected; or (2) a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.

Timely Resolution of Formal Written Complaints and Timely Due Process Hearings

On page 22 of the Self-Assessment, American Samoa stated that there were no formal written Part B complaints; however, page 17 stated that American Samoa's Department of Education began to keep a regular log of parent complaints. On the second page of Cluster Area I in the APR, American Samoa stated that it maintains a complaint/concern log, but did not clarify whether the entries in the log were formal written complaints, or concerns that are being resolved without the submission of a formal written complaint. On the seventh page under Cluster Area I of the APR, American Samoa stated that there was a need to provide staff training in procedures for receiving and logging complaints. In addition, in Attachment I to the APR, American Samoa identified 36 complaints and indicated that all completed complaints met the timelines. On the second page of Cluster Area I in the APR, American Samoa stated that it did not maintain a log for due process hearings or requests for mediation because there were no requests for due process hearings or mediation.

In the FFY 2003 APR, American Samoa must provide OSEP with data and analysis to clarify the meaning of the statements in the Self-Assessment and the APR by explaining the

process for handling formal complaints and informal concerns, describing which complaints and concerns are recorded in the complaint log, and describing how parents are informed about complaint procedures. If the data demonstrate noncompliance, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Collection and Reporting of Accurate and Timely Data

American Samoa reported in the APR that it is continuing to provide training to ensure the accuracy of data, and all schools are required to file monthly data reports. On the fourth page of Cluster Area I of the APR, American Samoa included a target concerning timely accurate data that is somewhat unclear. In the FFY 2003 APR, American Samoa must ensure that its target regarding data collection does not imply that it might not be able to provide timely and accurate data to the Department. OSEP looks forward to reviewing the results of American Samoa's efforts in the 2003 APR.

Translation of the Parent Rights Notices

On page 16 of the Self-Assessment, American Samoa stated that the Part B Parents' Rights Notice needed to be translated into Tongan, Tagalog, Chinese, and Korean in order to improve public awareness of parents' rights under Part B, and provide access to rights and services provided under Part B. The Part B requirement at 34 CFR §300.503(c)(1)(ii) states that the Parents' Rights Notice must be "[p]rovided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so." American Samoa must demonstrate that the Parents' Rights Notice is translated into the native language of parents of children with disabilities, or that it is clearly not feasible to do so.

Therefore, within 60 days of the date of this letter, American Samoa must submit to OSEP a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of this noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.

Early Childhood Transition

The Self-Assessment and APR included information that indicated the following area of noncompliance: all eligible children with disabilities did not have an IEP developed and implemented by their third birthday.

On page 50 of the Self-Assessment and the third page of Cluster Area II in the APR, American Samoa stated that there was a lack of coordination between the Part C Lead Agency and the American Samoa Department of Education regarding the provision of transition services for children, and specifically for children who are identified by American Samoa's Part C program under the category of "at-risk." On the third page of Cluster Area II in the APR, American Samoa stated that the Part C staff was not consistent about releasing a complete list of children who will reach age three, making it difficult to track the birthday of each child transferring from the Part C program. Under 34 CFR §§300.300(a), 300.121(c); 300.125(c), and 300.132(b), American Samoa must identify, locate, and

evaluate children with suspected disabilities, regardless of the severity of their disabilities, and provide appropriate educational services for children who are eligible for Part B services by their third birthday.

OSEP assumes that the sharing of personally identifiable information between Part C and Part B agencies will be consistent with the IDEA and the Family Educational Rights and Privacy Act. OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Mary Elder, which discusses the limited disclosure of personally identifiable information for the purposes of meeting IDEA's child find mandate.

In the FFY 2003 APR, American Samoa must provide OSEP with data and analysis to demonstrate that all children served under Part C who qualify for Part B services have an IEP developed and implemented by their third birthday, including strategies for sharing child count data between the Part C and Part B programs, and procedures for transferring information about at-risk children. (See the Elder letter). If the data demonstrate noncompliance, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.

Parent Involvement

On the first page of Cluster Area III in the APR, American Samoa stated that it did not have enough data to measure parent involvement and provided a target to develop a new system for compiling data to measure parent involvement.

In the FFY 2003 APR, American Samoa must include data and analysis, along with a determination of performance and compliance in this area. American Samoa must describe its system for collecting and reporting data, including data from monitoring. If the data demonstrate noncompliance, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, American Samoa should include a plan, in the FFY 2003 APR, that describes how American Samoa will collect data to be able to determine compliance or noncompliance.

Free Appropriate Public Education

Participation and Performance of Children with Disabilities on State- and District-wide Assessments

On page 67 of the Self-Assessment and Attachment 3 of the APR, American Samoa reported that approximately 50% of children with disabilities participated in territory-wide assessments. OSEP could not determine from the APR whether any students with disabilities did not participate in the State-wide assessments due to failure by a public agency to meet the requirements of 34 CFR §§300.347(a)(5) or 300.138. American Samoa must include an analysis of compliance data, including monitoring information, related to

those requirements as part of its FFY 2003 APR. American Samoa must include accurate information on the number of students who took an alternate assessment.

In Attachment 3 to the APR, American Samoa reported on the performance of students with disabilities in the reading assessment, but did not include any performance information on math. American Samoa must report for both regular and alternate assessments separately on both reading and math performance in the FFY 2003 APR. If American Samoa has not remedied this issue by July 1, 2005, the Department may well impose special conditions relating to this issue on American Samoa's FFY 2005 Part B grant.

Procedures for Determining Eligibility

The Self-Assessment raised a concern about American Samoa's implementation of the requirements at 34 CFR §300.530 regarding procedures for evaluation and the determination of a child's eligibility for services under the Part B program. On page 55 of the Self-Assessment, American Samoa stated that there was a delay in determining eligibility for Part B services when children were referred for evaluation, and on page 60 of the Self-Assessment, American Samoa stated that files were sometimes lost before a child could be evaluated. Also on page 60, the Self-Assessment stated that when monitoring findings required corrective actions related to child identification and evaluation, the corrective actions were not completed in a timely manner, and there was not enough qualified staff to conduct evaluations.

In the FFY 2003 APR, American Samoa must include data and analysis related to this issue, along with a determination of compliance or noncompliance in this area. The data and information must demonstrate that an individual evaluation is provided for each child who is referred for an evaluation and should include the following information: (1) the number and dates of referrals; (2) the corresponding dates when evaluations were completed; and (3) an analysis of the availability of personnel to conduct evaluations. If data indicate noncompliance, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, American Samoa must include a plan, in the FFY 2003 APR, that describes how it will collect data to be able to determine compliance or noncompliance.

Graduation and Drop-out Rates

On pages five, six, and seven of Cluster Area IV in the APR, American Samoa provided data and analysis to show the graduation and drop-out rates for children with disabilities relative to American Samoa's general school population. The graduation rate for children with disabilities was lower than the graduation rate for the general school population, and the drop-out rate for children with disabilities was significantly higher than the drop-out rate for the general school population. American Samoa included strategies in the APR for collecting and tracking this data. However, American Samoa did not provide strategies for improving the graduation and drop-out rates for children with disabilities.

In the FFY 2003 APR, American Samoa must include strategies for improving graduation and drop-out rates for children with disabilities.

Suspension and Expulsion

On page eight of Cluster Area IV in the APR, American Samoa reported data on suspensions and expulsions of students with disabilities, and provided strategies for decreasing the suspension and expulsion rates; however, there was no comparison to the rates of nondisabled children.

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 local educational agencies (LEAs) in the State or compared to the rates of nondisabled children within the agencies. (Since American Samoa does not have LEAs to compare with one another, it must either compare the suspension and expulsion rates for disabled and nondisabled students, or compare the suspension and expulsions rates for disabled students across consortia.) Where the State determines that significant discrepancies are occurring, it 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 the policies and practices comply with Part B. The instructions to the FFY 2002 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. In some cases, however, the State's FFY 2002 APR did not include any information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of the comparisons described above. In the next APR, the State must include the information required by the instructions. If the FFY 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of the comparisons described above, 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, then OSEP will conclude that the State is not complying with the regulation.

Improvement in the Areas of Early Language/Communication, Pre-reading, and Social-Emotional Development for Preschool Children with Disabilities

On page 12 of Cluster Area IV of the APR, American Samoa stated that preschool programs were monitored through a checklist on a weekly basis, and that there was improvement in the areas of early language/communication, pre-reading, and social-emotional development. American Samoa included activities and timelines for the next school year in this area. OSEP looks forward to reviewing the results of American Samoa's efforts in this area in the FFY 2003 APR.

Disproportionality and Least Restrictive Environment

On pages three and four of Cluster Area IV of the APR, American Samoa completed the required data table on the race/ethnicity of children with disabilities receiving special education, and data showed that all children were in the category Asian/Pacific Islander. On page ten of Cluster Area IV of the APR, American Samoa provided data showing that of 102 children with disabilities ages three through five, 100 were educated in the regular early childhood setting and two received services at home. On page 11 of Cluster Area IV of the APR, American Samoa stated that most children with disabilities ages six through 21 were integrated into regular classrooms. OSEP looks forward to reviewing the effect of American Samoa's efforts in these areas on American Samoa's data in the FFY 2003 APR.

Secondary Transition

Student Attendance and Participation in Transition Planning

On page 98 of the Self-Assessment, American Samoa stated that of 184 students with disabilities enrolled in high school in January 2003, only two had attended or participated in IEP meetings held to discuss transition needs and services, and transition plans were included in only 107 of those 184 IEPs. This is inconsistent with the requirements at 34 CFR §300.344(b) stating that the public agency shall invite a student with a disability of any age to attend his or her IEP meeting if the purpose of the meeting will be the consideration of transition service needs or needed transition services, and the requirements at 34 CFR §300.347(b) that require IEPs for students beginning at age 14 (or younger if determined appropriate by the IEP team) to have a statement of transition service needs under the applicable components of the IEP and a statement of needed transition services, beginning by age 16 (see 34 CFR §300.347(b)).

American Samoa must submit a plan to OSEP within 60 days of the date of this letter, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance with requirements regarding student participation in IEP meetings held to discuss transition needs and services, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. In the FFY 2003 APR, American Samoa must 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 Participation and Interagency Cooperation in Transition Planning

The Self-Assessment stated that there was a lack of parent participation in transition planning, and lack of interagency cooperation regarding the development of transition plans and the provision of transition services. (See pages 98 and 99 of the Self-Assessment). This is inconsistent with the requirements at 34 CFR §§300.344(b)(3) and 300.345 regarding who must participate in IEP meetings and at 34 CFR §300.348 regarding the participation of agencies likely to be responsible for providing and paying for transition services.

In the FFY 2003 APR, American Samoa must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance regarding the participation of parents and outside agencies in IEP meetings held to discuss transition planning, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Conclusion

As noted above, within 60 days of the date of this letter, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of noncompliance, within a reasonable period of time but not to exceed one year from the date when OSEP accepts the plan, in the following areas:

- American Samoa must ensure compliance with 34 CFR §300.300 and demonstrate progress in staffing and training sufficient, qualified personnel to provide special education and related services for children with disabilities, in accordance with the needs described in their IEPs;
- The Parents' Rights Notice must be translated into the native languages of parents of children with disabilities, unless it is clearly not feasible to do so; and
- American Samoa must demonstrate that students with disabilities, of any age, are invited to attend his or her IEP meeting if the purpose of the meeting will be the consideration of transition service needs or needed transition services.

In the FFY 2003 APR, American Samoa must include data and its analysis, along with a determination of compliance or noncompliance in the following areas:

- American Samoa must provide to OSEP monitoring data and procedures for correcting any identified noncompliance in a timely manner, to demonstrate that American Samoa monitors in the following areas: (1) referrals, pre-placement evaluations, and eligibility/IEP meetings are completed within 60 days of parent consent for evaluation; (2) IEPs are reviewed at least annually; (3) special education services and needed related services are provided for children with disabilities; and (4) parents are informed and aware of the IDEA requirements regarding suspensions, expulsions, mediation, and due process procedures;
- American Samoa must clarify the meaning of statements in the Self-Assessment and the APR by explaining the process for handling formal complaints and informal concerns, describing which complaints and concerns are recorded in the complaint log, and describing how parents are informed about complaint procedures; and
- American Samoa must demonstrate that all children served under Part C who qualify for Part B services have an IEP developed and implemented by their third birthday, including strategies for sharing child count data between Part C and Part B programs, and American Samoa must provide procedures for transferring information about at-risk children.

In the FFY 2003 APR, American Samoa must include data and analysis, along with a determination of performance and compliance in the following areas. If the data demonstrate noncompliance, American Samoa must include a plan with strategies, proposed evidence of change, targets, and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data are not available, American Samoa should include a plan, in the FFY 2003 APR that describes how American Samoa will collect data to be able to determine compliance or noncompliance.

- American Samoa must have a system for compiling data to measure parent involvement and make a determination of performance in this area; and
- American Samoa must provide data and information for evaluation and determination of a child's eligibility for Part B services, including: (1) the number and dates of referrals; (2) the corresponding dates when evaluations were completed; and (3) an analysis of the availability of personnel to conduct evaluations.

In the FFY 2003 APR, American Samoa must include an analysis of compliance data, including monitoring information, related to the requirements at 34 CFR §§300.347(a)(5) and 300.138, and must report for both regular and alternate assessments separately on both reading and math performance.

In the FFY 2003 APR, American Samoa must include strategies for improving the graduation and drop-out rates.

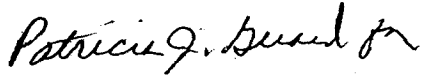
In the FFY 2003 APR, American Samoa must provide information describing how it determines if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities, in accordance with the instructions in the APR. Since American Samoa does not have local educational agencies to compare with one another, it must either compare the suspension and expulsion rates for disabled and nondisabled students, or the suspension and expulsion rates for disabled students across consortia.

In the FFY 2003 APR, American Samoa must submit a plan to OSEP to ensure correction of noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan, in the following area:

- American Samoa must demonstrate that parents and outside agencies that are likely to be responsible for providing and paying for transition services are included as participants in IEP meetings held to discuss transition planning.

OSEP recognizes that the APR and its related activities represent only a portion of the work in American Samoa, and we look 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 Lucille Sleger at (202) 245-7528.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Smith Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosure

cc: Moeolo Va'atausili, Director
Special Education Programs