



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

Honorable Alice Seagren  
Commissioner  
Minnesota Department of Education  
1500 Highway 36 West  
Roseville, MN 55113

AUG 17 2004

Dear Commissioner Seagren:

The purpose of this letter is to respond to the Minnesota's June 15, 2004<sup>1</sup> 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 the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source 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 the CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed States to address five Part B cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

### ***Background***

Minnesota's 2000 Self-Assessment (which addressed both Part B and Part C) and November 21, 2001 Improvement Plan (including the State's revisions of January 7, May 17, and June 5, 2002) did not identify any areas of noncompliance or include data indicating noncompliance. The Self-Assessment did identify five areas needing improvement: (1) improve the ability of children and youth to make successful transitions; (2) ensure a sufficient number of qualified professional and paraprofessionals to provide special education and related services; (3) improve access to mental health services from various agencies; (4) improve interagency cooperation and coordinated service delivery; and (5) reduce bias related to the needs of diverse populations. In its March 24, 2003 letter responding to the Improvement Plan, OSEP suggested that the State enhance its improvement process by: (1) including benchmarks in the Improvement Plan that would enable

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<sup>1</sup> The State originally submitted its APR on March 31, 2004, and submitted a revised APR on June 15, 2004. All page references in this letter are to the June 2004 revised APR.

the State to assess, at appropriate intervals, the effectiveness of the improvement strategies in achieving the desired improvement; and (2) conducting further analysis to determine the effectiveness of the State's monitoring procedures in identifying and correcting noncompliance.

OSEP will conduct a visit to Minnesota during the week of August 23, 2004 to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA and State-wide assessment. OSEP will provide the results of this visit to the State in a letter, following the visit.

The State'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. OSEP's comments are listed by cluster area.

### ***General Supervision***

The State included data in the APR that indicated two areas of noncompliance not previously identified by OSEP or the State.

**Untimely complaint decisions.** The Part B regulations require that the Minnesota Department of Education (MDE) issue its written decisions on each Part B formal written complaint within 60 days of receipt, unless the timeline is extended due to exceptional circumstances with regard to a particular complaint (34 CFR §300.661(a) and (b)(1)). Data in Attachment 1 of the APR showed that of the 98 complaints for which MDE issued a final complaint decision during the reporting period, only 63 were completed "on time." The State also included trend data on page 11 showing the percentage of complaints that the State "completed within the 60-day timeline" over a three-year period: (1) 2001, 53 percent; (2) 2002, 61 percent; and (3) 2003, 76 percent.

**Untimely hearing decisions.** The Part B regulations further require that the final decision in a due process hearing be reached and mailed to the parties not later than 45 days after the receipt of a request for a hearing, and that a hearing officer may grant specific extensions of time beyond that period at the request of either party (34 CFR §300.511(a) and (c)). The data in Table 1 in the APR showed that the decision in four of 13 hearings was not issued within the timelines required by 34 CFR §300.511(a) and (c). The State also included trend data on page 11 showing the number of untimely hearing decisions over a three-year period: (1) 2001, six of 13 hearings; (2) 2002, six of 15 hearings; and (3) 2003, four of 13 hearings.

Based on this information, the State must submit a plan to OSEP within 60 days from the date of this letter, that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of both of these areas of noncompliance within a reasonable period of time not to exceed one year from the date when OSEP accepts the plan. In the next APR, the State 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 no later than 30 days following the end of the one-year timeline.

**Sufficient qualified personnel.** As noted above, one of the five areas needing improvement in the State's 2001/2002 Improvement Plan was to "ensure a sufficient number of qualified professional and paraprofessionals." In the Plan, the State reported that it faced a persistent

shortage of a quality workforce which was “approaching crisis proportions for special education teachers,” and that it had established a “Workforce Initiative Work Group” to help address the issue. On pages 12 and 13 of the APR, MDE reported that 91 percent of special education teachers and 99.9 percent of related service, paraprofessional, and administrative staff were fully certified, and that there were two disability areas with especially high percentages of staff that are not fully licensed: emotional/behavioral disorders (12 percent) and physical impairments (13 percent). The State included a number of strategies to reduce the number of uncertified staff, both in general and in those two disability areas, and other strategies to enhance professional development for individuals providing educational services to children with disabilities. OSEP looks forward to reviewing the impact of the State’s strategies in the next APR.

**Identifying and correcting noncompliance.** The State described its monitoring system on pages 1, 2 and 8 of the APR, and summarized its systemic monitoring findings and correction of those findings on pages 9 and 10. The State did not, however, address the identification and correction of nonsystemic noncompliance. In the next APR, due March 31, 2005, the State must fully address probes GS.I (“Do the general supervision instruments and procedures (including monitoring, complaint, and hearing resolution, etc.?), used by the SEA, identify and correct IDEA noncompliance in a timely manner?”) and GS.II (Are systemic issues identified and remediated through the analysis of findings from information and data collected from all available sources, including monitoring, complaint investigations, and hearing resolutions?”).

**Data collection.** The State addressed probe GS.V regarding data collection on pages 15 and 16. The State identified challenges regarding its collection of suspension/expulsion data, and the information that the State provided regarding its collection and reporting of graduation data raised additional issues. OSEP will collect further information regarding these issues as part of the upcoming verification review, and address them in the letter in which OSEP reports on the results of that visit.

### ***Early Childhood Transition***

As noted above, the State identified the following area needing improvement in its Improvement Plan: “improve the ability of children and youth to make successful transitions.” On page 17 of the APR, the State reported that, as part of its monitoring of 116 schools during the reporting period, it reviewed 130 Part C files, and made no findings of noncompliance related to transition planning for children moving from Part C into Part B (and made no such findings during the preceding year). The State included future activities to improve performance. OSEP looks forward to reviewing the results of MDE’s improvement strategies in this area in the next APR.

### ***Parent Involvement***

The APR included data that indicated noncompliance (not previously identified by OSEP or the State) related to providing notification to parents of meetings to develop, review and revise the Individualized Education Program (IEP) (see 34 CFR §300.345). On page 19, the State reported monitoring data showing that MDE made findings of noncompliance in 12 districts (seven of which were charter schools) of 116 districts that it monitored during the reporting period, related to “IEP Notice Requirements.” On pages 20-26, the State also included strategies and timelines

for improving performance and compliance in this cluster, but did not include evidence of change or a timeline to ensure compliance within a reasonable period of time, not to exceed one year from the date of this letter. The State's target and a projected target were that, "Fewer than 10 percent of the districts monitored will have compliance citations related to family involvement." A target permitting noncompliance in up to 10 percent of districts is not an acceptable standard for ensuring compliance throughout the State. OSEP accepts the proposed strategies, but the State must implement them to ensure compliance in all districts. Accordingly, in the next APR, the State must include data and analysis demonstrating progress toward compliance in all districts.

On page 19, the State also included data showing that the State identified noncompliance in five (one of which was a charter school) of 116 districts related to "Parent Informed Consent for Evaluation." Minnesota must continue to report in the next APR, due March 31, 2005, on its progress in ensuring full compliance with 34 CFR §300.505(a)(1).

On page 19 of the APR, the State reported data from a stratified random sample survey (to which 370 parents of children with disabilities, ages three to five, responded), showing a high level of parent satisfaction with family involvement, communication between providers and families, the process used to determine their child's educational plan. Sixty seven percent reported "no barriers in receiving needed services for their child."

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

**Disproportionality.** The State's 2000 Self-Assessment and 2001/2002 Improvement Plan identified the area of disproportionality as an area needing improvement, and established a goal to reduce bias related to the needs of diverse populations.

Data in Attachment 2 of the State's FFY 2002 APR showed: (1) overrepresentation of African-American students in specific learning disabilities, emotional/behavioral disorders (E/BD), mild/moderate mental impairment, traumatic brain injury, and deaf/blind; (2) overrepresentation of Hispanic students in speech language, deaf and hard of hearing, deaf/blind, and developmentally delayed; (3) overrepresentation of Asian students in deaf and hard of hearing, visually impaired, and traumatic brain injury; and (4) overrepresentation of American Indian students in specific learning disabilities, emotional/behavioral disorders, mild/moderate mental impairment, other health impairment, autism, deaf/blind, and developmentally delayed. The data on page 29 of the APR indicated that African American students were more likely to be served in more restrictive placements, including separate classrooms and separate schools. On page 30, MDE indicated that it was not certain whether the growth in E/BD represented newly-identified children, or reclassification of children already receiving services.

On page 31 of the APR, the State set forth the following projected targets: (1) an increase in proportional representation for racial minority and culturally diverse groups in special education disability categories; and (2) an increase in proportional representation for racial minority and diverse students with disabilities across instructional settings. The projected target's 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 on race, even where the numerical goal or target is based on comparable numbers in the general population, raises the same legal concerns. In addressing significant disproportionality related to identification or placement under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices in the referral, evaluation, identification and placement process to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. Limiting participation in programs on the basis of race also would raise significant concerns under federal civil rights laws and the United States Constitution. The State must revise these targets and activities in the next APR.

**Participation and Performance in State- and District-wide Assessments.** In the March 2004 APR, the State reported that: (1) data on the percentage of third and fifth grade children with disabilities who performed at the proficient range on the April 2003 Minnesota Comprehensive Assessment in Reading and Math were not available; (2) data on the performance of all children who participated in the Minnesota Comprehensive Assessment (MCA), including children with disabilities, were artificially inflated by an inappropriate alignment of the performance data with State standards for proficient performance; and (3) the 2003 MCA data were currently being realigned and recalculated. In June 2004, the State submitted a revised APR that included, on pages 45-54, data on the participation and performance of children with disabilities in grades 3 and 5 in the areas of reading and math. The State assesses children in grades 3, 5, 7, 8, 10 and 11 in the areas of reading, writing and mathematic, and reported on the participation and performance of students in all of these grades on its web-site. Although the State reported data on the participation and performance of children with disabilities for each of those grades on its web-site, the State did not include the following data in the APR: (1) grade-specific reading and math information for grades 7, 8, 10 and 11; and (2) all data regarding the writing assessment. Within 60 days from the date of this letter, the State must submit a revised Attachment 3 that includes all of this missing information.

**Graduation/drop-out.** The State included information on pages 37 through 41 on graduation and drop-out rates for children with disabilities, and disaggregated data by disability category and race/ethnicity, as well as activities to increase rate at which children with disabilities who successfully complete school.

**Suspension and expulsion.** The State included information on page 42 that raised significant questions regarding the quality of the State's suspension/expulsion data. As part of its review of the State's data collection system during the August 2004 verification review, OSEP will collect further information regarding these issues, and address them in the letter in which OSEP provides the results of this visit to the State.

**Placement.** The State reported placement data on page 55 showing a decrease from 1998-1999 to 2002-2003 in the percentage of children with disabilities served less than 21% of the day outside the regular education classroom from 64.60% to 63.39%, and an increase over that same time span in the percentage of children with disabilities served outside the regular education classroom more than 60% of the school day, from 7.73% to 9.62%. On page 56, the State included targets, activities, and timelines and resources. OSEP looks forward to reviewing the impact of the State's strategies in the next APR.

**Pre-school outcomes.** On page 60 of the APR, the State reported that the State did not currently collect data on outcomes for preschool-aged children with disabilities, although it did report on a pilot survey of randomly- selected elementary schools on kindergarten readiness. The State reported that in the future it anticipated being able to identify results for special education students. 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 socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, Minnesota must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

### *Secondary Transition*

One of the five areas “needing improvement” that the State identified in its 2001/2002 Improvement Plan was “improve the ability of children and youth to make success transitions.” In September 2003, OSEP and the Rehabilitation Services Administration (RSA) conducted a joint visit to Minnesota to review collaboration between MDE and the Department of Economic Development (DEED) related to transition. During the visit, the State informed OSEP and RSA that the Interagency Agreement between MDE and DEED had expired. On November 21, 2003, OSEP received a copy of the new, signed Interagency Agreement. As stated in their August 6, 2004 letter to the State regarding the visit, some of the information that OSEP and RSA collected from education staff at both the State and local levels indicated a need for the State to examine closely whether all public agencies are complying with Part B’s transition-related requirements. In the letter, OSEP and RSA directed the State to carefully review available data, including data from monitoring, resolution of State complaints, and hearing decisions, to determine the extent to which the State was complying with Part B, and informed the State that, if the State determined that it was not in compliance with any of those requirements, it would need to develop and submit to OSEP a plan to ensure correction of such noncompliance.

On page 66 of the APR, the State included a table that provided monitoring data which appeared to show that, of the 116 districts that MDE monitored in 2002-2003<sup>2</sup>, it found: (1) 16 out of compliance with requirements related to “secondary transition evaluation;” (2) 13 out of compliance with requirements related to transfer of rights at the age of majority; and (3) 14 out of compliance with requirements related to “transition services.” Because the State did not include a clear indication of the specific Part B requirements found noncompliant in these districts or documentation that it ensured the correction of this noncompliance, OSEP cannot determine whether the State was in compliance with the secondary transition requirements of 34 CFR §§300.347(b), 300.29, 300.344(b), 300.345(b)(2) and (3), and 300.348, or the requirements related to transfer of rights at the age of majority at 34 CFR §§300.347(c) and 300.517. Within 60 days from the date of this letter, the State must submit either: (1) documentation that it has ensured the correction of its findings of noncompliance related to secondary transition and transfer of rights; or (2) a plan, that includes strategies, proposed evidence of change, targets and timelines that will ensure compliance within a reasonable period of time, not to exceed one year

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<sup>2</sup> MDE clarified in a telephone conversation that the appropriate denominator in this table for 2002-2003 was the 116 districts that MDE monitored, rather than the number of students 14-21 in the State’s child count.

from the date OSEP accepts the plan. In the next APR, the State 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.

On page 67 of the APR, the State provided data regarding transition-related complaints: (1) in 2000-2001, seven of the 112 complaints that MDE received related to transition; MDE found the district in noncompliance in six of those seven complaints; (2) in 2001-2002, four of the 133 complaints that MDE received related to transition; MDE found the district in noncompliance in two of those four complaints; and (3) in 2002-2003, five of the 116 complaints that MDE received related to transition; MDE found the district in noncompliance in four of those five complaints. The State did not include any information regarding its effectiveness in ensuring the correction of those findings, and should include such information in the next APR.

### ***Conclusion***

As noted above, the State must, for the two areas of noncompliance identified in the discussion above of the General Supervision cluster, related to untimely complaint decisions and untimely hearing decisions, submit a plan within 60 days of the date of this letter that includes strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from when OSEP accepts the plan. In the next APR, the State must include data and analysis demonstrating progress toward compliance. The State must also provide a report with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

Within 60 days from the date of this letter, the State must also submit either: (1) documentation that it has ensured the correction of its findings of noncompliance related to secondary transition and transfer of rights; or (2) a plan, that includes strategies, proposed evidence of change, targets and timelines that will ensure compliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. In the next APR, the State 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.

Within 60 days from the date of this letter, the State must further submit a revised Attachment 3 to the APR, that includes all of the required information, including grade-specific data on the participation and performance of children with disabilities on reading and math State-wide assessments.

In addition, in the next APR, the State must, as noted above: (1) fully address identification and correction of noncompliance; (2) include data and analysis demonstrating progress toward compliance regarding IEP notice requirements; (3) revise targets and some activities regarding disproportionality; and (4) submit either documentation of data, targets for improved performance and strategies to achieve those targets regarding early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State 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 Angela McCaskill at (202) 245-7076.

Sincerely,

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

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Dr. Norena Hale