



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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

SEP 15 2004

Dear Superintendent Tenenbaum:

The purpose of this letter is to respond to South Carolina Department of Education's (SCDE's) April 1, 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 by the State during the reporting period compared to established objectives. The APR for Part B of 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 cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

OSEP's January 6, 2003 Monitoring Report identified the following areas of noncompliance: (1) monitoring methods were not always effective in identifying deficiencies and ensuring that local education agencies (LEAs) consistently corrected identified deficiencies; (2) a free appropriate public education (FAPE) was not made available to eligible children by their third birthday; (3) psychological counseling was not considered as part of FAPE and included, when appropriate, in the individualized education program (IEP); (4) appropriate personnel did not determine needed services and settings for children with disabilities who were suspended or expelled; (5) complaints were not resolved consistent with Part B requirements; and (6) due process hearing decisions were not reached in a timely manner consistent with Federal requirements.

To address the noncompliance, South Carolina submitted an initial Improvement Plan to OSEP in February 2003 and revisions in July 2003, October 2003, February 2004 and

March 2004. In an August 5, 2003 letter, OSEP outlined clarifications and revisions SCDE would need to make in order for OSEP to approve the State's Improvement Plan. Areas that require further actions in addition to those in the Improvement Plan are discussed in the General Supervision, Early Childhood Transition and FAPE sections of this letter.

In September 2003, OSEP conducted a visit to South Carolina to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA, and State-wide assessment. OSEP reviewed how the State used these systems to: (1) assess and improve State performance, and protect child and family rights; (2) determine how the State collected and used data to make monitoring decisions; and (3) determine the extent to which the State's systems were designed to identify and correct noncompliance. OSEP's May 7, 2004 verification letter identified that South Carolina did not have an effective system in place to ensure that decisions for due process hearings were reached, and a copy mailed to each party, within 45 days, unless extended at the request of either party, as set forth at 34 CFR §300.511.

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 (as well as other areas identified by the State). This letter responds to the State's FFY 2002 APR and March 2004 Improvement Plan. OSEP's comments are listed by cluster area.

General Supervision

Monitoring: Identification and Correction of Noncompliance

OSEP's January 2003 Monitoring Report stated that SCDE's method for identifying and correcting noncompliance was not always effective (34 CFR §300.600). Furthermore, OSEP stated in the May 2004 verification letter that without collecting additional data at the local level, OSEP could not determine whether the general supervision systems are effective in identifying and correcting noncompliance. Pages 1-6 of the APR, and pages 2-5 of the Improvement Plan reported that SCDE's monitoring methods and strategies for ensuring the identification and correction of noncompliance included: (1) developing a database for tracking and analyzing monitoring findings; (2) developing and implementing, in 22 LEAs, an interim focused monitoring system that would address issues outlined in OSEP's monitoring report; (3) implementing an onsite follow-up to determine the resolution of identified noncompliance; (4) issuing policy letters to LEAs regarding OSEP's findings of noncompliance; and (5) creating an evaluation plan to determine the effectiveness of the focused monitoring system. OSEP accepts these strategies as important steps in SCDE's efforts to develop an effective monitoring system. However, as noted on page 4 of the APR, SCDE does not have data on the extent to which public agencies that are monitored achieve compliance within one year.

As noted in January's 2003 Monitoring Report, OSEP found that SCDE was using an incorrect standard for monitoring the provision of FAPE at age three for students whose birthday occurs during the summer months. After receipt of SCDE's March 2004 Improvement Plan, OSEP reviewed South Carolina's "*Monitoring Manual for*

Determining Compliance Under IDEA, 2002-2003.” That review showed that the State corrected this standard. OSEP also reviewed the State’s focused monitoring addendum to the monitoring manual for determining compliance under IDEA, the focused monitoring folder review checklist, and interview guides for LEA staff and parents. OSEP concludes that, with the exception of monitoring documents and protocols addressing the requirement that IEPs are in effect by the child’s third birthday, SCDE has monitoring systems in place for collecting data to determine compliance with IDEA requirements. (See also discussions of psychological counseling and determining services and settings for interim alternative educational settings in this letter.) However, without collecting additional data at the local level, OSEP cannot determine whether the general supervision systems are fully effective in identifying and correcting noncompliance in accordance with Federal requirements.

OSEP’s review of the monitoring documents and protocols addressing the requirement that IEPs are in effect by the child’s third birthday, showed that SCDE included in the focused monitoring addendum and folder review checklist standards requiring: (1) an IEP or Individualized Family Service Plan (IFSP) is in effect by the child’s third birthday (34 CFR §300.121(c)(1)(ii)); (2) the IEP team determining the date when services under the IEP or IFSP will begin if a child’s third birthday occurs during the summer (34 CFR 300.121(c)(2)); and (3) ESY services are available to provide FAPE. However, OSEP noted that the focused monitoring addendum and folder review checklist did not include standards requiring the administration of evaluations, in a timely manner, to ensure that IEPs were in effect by the child’s third birthday (34 CFR §300.320 and §300.530). In addition, the LEA interview guides did not include *interview* questions specific to whether ESY services were available to children with disabilities who turn three during the summer, and whether evaluations were administered in a timely manner to ensure that IEPs or IFSPs were in effect by the child’s third birthday. SCDE must include changes to its monitoring documents and protocols to address these issues.

Based on the information provided in the APR and Improvement Plan, OSEP cannot determine if the State’s system can identify and correct noncompliance in a timely manner. The State must provide, within 60 days of the date of this letter, data an analysis such that OSEP can determine whether the State’s monitoring system identifies all Part B noncompliance and ensures correction within one year of identification. SCDE can satisfy this requirement by providing documentation (1) demonstrating that it has monitoring methods to identify whether evaluations are timely conducted so that services can begin at a child’s third birthday and whether ESY services are available to children with disabilities who turn three during the summer, and (2) of the LEA corrective action plans developed to correct identified noncompliance and subsequent State follow-up activities with documentation demonstrating that correction occurred. If the State cannot demonstrate that it can identify whether evaluations are timely conducted so that services can begin at a child’s third birthday and whether ESY services are available to children with disabilities who turn three during the summer, and that it is ensuring correction of identified noncompliance in a reasonable period of time not to exceed one year, the State must provide, within 60 days of the date of this letter, strategies, proposed evidence of change, targets and timelines to ensure compliance within one year of the date of this letter; in the next APR, data and analysis demonstrating progress toward compliance; and as soon as

possible, but not later than 30 days following the end of the one-year timeline, a report to OSEP, with data and analysis demonstrating compliance.

Complaints

OSEP's January 2003 Monitoring Report stated that SCDE did not ensure that formal written complaints were resolved and a final decision was issued within 60 days of receipt of the complaint, unless there was an extension of time if exceptional circumstances exist with respect to a particular complaint (34 CFR §300.661). On page GS6 of the Improvement Plan and pages 7-10 of the APR, SCDE reported that the State developed strategies and activities to ensure that complaints were resolved and final decisions issued within a timely manner. These strategies and activities included: (1) revising the regulations that govern the complaint system to reinforce the need to meet required timelines; (2) including information on completing the complaint form in the updated *Parents' Guide to Special Education* and on the SCDE's web site; (3) hiring an additional complaint investigator; (4) developing a tracking system to ensure the timely resolution of complaints; and (5) entering information regarding follow-up letters, surveys, visits, monitoring activities, phone interviews, etc., into the data system for documenting the implementation of decisions.

Page 8 of the APR showed that during 2002-2003 less than 50% of complaint investigations were resolved in a timely manner. However, OSEP noted in the May 2004 verification letter, SCDE's hiring of a complaint investigator resulted in written decisions being issued within the 60-day timeline for all 22 complaints filed during the period from May 2003 to September 2003. South Carolina must continue to include, in the FFY 2003 APR, strategies that will maintain compliance with 34 CFR §300.661(a) and (b)(1) as well as data and analysis demonstrating continued compliance for the FFY 2003 reporting period.

Due Process Hearings

OSEP's January 2003 Monitoring Report and May 2004 verification letter stated that SCDE's due process hearing procedures were inconsistent with 34 CFR §300.511. On pages GS4-6 of the Improvement Plan and pages 9-13 of the APR, SCDE reported that in order to meet the timelines for reaching due process hearing decisions, the State: (1) developed a web-based data system to track due process hearing timelines; (2) provided training to due process hearing officers; (3) provided written guidance to LEAs, due process hearing officers, State-level review officers, and attorneys representing LEAs relative to the mandate for compliance with timelines; (4) developed, implemented, and maintained a system to monitor the continued implementation of the due process hearing decisions; and (5) entered information regarding follow-up letters, surveys, visits, monitoring activities, phone interviews, etc., into the data-base system.

OSEP's January 2003 Monitoring Report noted that from 1999 to 2001, the State did not track timelines from the date the hearing request was filed with an LEA until the date of the decision. In addition, on page 8 of the APR, SCDE reported that: (1) 16.7% of the due process hearing reviews for the 2001-2002 school year were conducted in a timely manner;

and (2) no due process hearing reviews for the 2002–2003 school year were conducted in a timely manner.

OSEP accepts the State's improvement strategies. The State must include data and analysis demonstrating progress toward compliance on meeting both due process hearing and State-level review timelines in the next APR, and submit a report to OSEP, with data and analysis demonstrating compliance on both due process hearing and State-level review timelines, within 30 days following one year from the date of this letter. The State can satisfy this requirement by providing due process hearing and State-level review logs demonstrating that all hearings and reviews result in written decisions being issued within the regulatory timelines, including specific extensions of time at the request of a party.

Adequate Supply of Qualified Personnel

On pages 15-24 of the APR, SCDE provided data and information regarding: (1) the reporting of personnel data to the State required under section 618 of IDEA; and (2) certified special education staff. SCDE reported that the State is unable to verify the accuracy of the personnel data it reports to OSEP. The inaccuracy of submissions was attributed to a lack of clear directions for completing the personnel tables. To address the inaccuracies, SCDE is providing clear operational definitions for the LEAs' submission of the FY 04 personnel data to the State.

The APR reported that there was an increase in the percentage of fully certified teachers from 90% to 94% from 2002-2003; however, there was a need to ensure that teachers of students with low incidence disabilities were also fully certified (.05% are not fully certified). Data on fully certified paraprofessionals fluctuated yearly and there is no State definition for what constitutes a fully certified paraprofessional. On pages 18-19 of the APR, the State indicated that it does not have data on whether there is a sufficient number of staff. Under 34 CFR §300.135, each State must develop and implement a comprehensive system of personnel development that includes an analysis of relevant information on current and anticipated personnel vacancies and shortages, in accordance with 34 CFR §§300.380(a) and 300.381(b). SCDE included strategies and activities in the APR to address this issue on pages 22 and 23 of the APR. OSEP accepts the State's improvement strategies. The State must include data and analysis demonstrating progress toward compliance on meeting the requirement in the next APR, and submit a report to OSEP, with data and analysis demonstrating compliance, within 30 days following one year from the date of this letter.

Data Collection Under Section 618 of the IDEA

OSEP's May 2004 verification letter reported that SCDE was improving its system for collecting and reporting accurate data to OSEP under section 618. See 34 CFR §§300.740-745 and Section 618 of IDEA. Until SCDE implements its plan to change its data collection system, and OSEP receives SCDE's data submissions, OSEP cannot determine whether SCDE's revised system results in the collection of more valid and reliable data. As noted in the verification letter and reported on pages 16-17 of the APR, SCDE hired a dedicated computer programmer, in 2003, to collect and report 618 data. SCDE staff

reported that the hiring of a dedicated computer programmer and implementation of activities for improving SCDE's data collection system enhanced the accuracy, reliability and validity of SCDE's data.

In a July 16, 2004 letter to OSEP, SCDE reported that South Carolina developed, with the assistance of WESTAT, electronic data collection systems for all 618 data except personnel. SCDE further reported that it would develop the electronic personnel data collection system by December 2004. OSEP will review SCDE's data during the upcoming submission cycle and determine what, if any, further actions are necessary. In the FFY 2003 APR, SCDE must include strategies that will ensure continued progress and performance in this area.

Early Childhood Transition

OSEP's January 2003 Monitoring Report stated that SCDE did not make FAPE available to Part B eligible children by their third birthday. Reasons cited in the report included the following issues related to early childhood transition: (1) required assessments to determine eligibility for preschoolers who received early intervention services were not always completed before the child's third birthday; and (2) IEP team decisions regarding the provision of special education and related services to eligible children who reach their third birthday during the summer months were not based on the individual needs of the child. On page BF 9 of the Improvement Plan, SCDE acknowledged that it did not have data on the number of three year old children with disabilities who received ESY services.

SCDE's strategies and activities addressing the requirements at 34 CFR §§300.300(a), 300.121(c), 300.125(c) and 300.132(b) on pages BF9-12 of the Improvement Plan, and pages 37-42 of the APR, included: (1) receiving signed assurance letters from LEAs stating that all eligible children would have an IEP and services in place on their third birthday as a part of their IDEA funding application; (2) providing LEAs with information relative to procedural requirements regarding the provision of FAPE to children with disabilities by their third birthday; (3) ensuring that all LEAs and Part C programs documented the completion of evaluations, determination of eligibility, and the development and implementation of IEPs by the child's third birthday; (4) monitoring results indicating that IEP meetings occurred prior to eligible children's third birthdays; (5) training LEA, Part C, and State agency staff on ESY and transition guidelines, policies and procedures; (6) ensuring school districts documented the consideration of ESY for all eligible children who turn three during the summer; (7) collaborating with Part C agencies in the development of a guidance document on early childhood transition; (8) disseminating a policy letter to all public agencies that delineated the responsibility for LEAs in providing FAPE to children with disabilities by their third birthday; and (9) developing an accurate data collection system for early childhood transition and the provision of FAPE to children with disabilities by their third birthday.

In addition to the activities identified above, SCDE reported on pages 37-41 of the APR that the State: (1) collaborated with Part C to develop a system to accurately collect data on transition and services to students with disabilities by their third birthday; and (2) conducted focused monitoring activities to ensure IDEA transition requirements were met. SCDE

reported monitoring trends regarding transition at age three, but these data were collected prior to corrections to SCDE's monitoring methods concerning services beginning at the third birthday; therefore, OSEP could not rely on them as evidence of performance or compliance in meeting the requirements at 34 CFR §§300.300(a), 300.121(c), §300.125(c) and 300.132 (b).

OSEP accepts the State's improvement strategies. The State must include data and analysis demonstrating progress toward compliance in the next APR, and submit a report to OSEP, with data and analysis demonstrating compliance, within 30 days following one year from the date of this letter. Data may include: focused monitoring findings, IEP reviews, results of interviews with teachers and administrators, systematic sampling of students who are eligible to receive services on their third birthday, and disaggregated data by age group for the percentage of three year olds receiving ESY services.

Parent Involvement

OSEP's January 2003 Monitoring Report and May 2004 verification letter identified no noncompliance in the area of parent involvement. On pages 43-47 of the APR, SCDE reported that the State currently had no baseline/trend data to measure the effectiveness of South Carolina's ability to ensure that the provision of FAPE to children with disabilities was facilitated through parent involvement. To promote opportunities for parent involvement, the State provided a number of parent trainings and held a summit in 2003 focusing on increased parent involvement in the IDEA process. South Carolina also issued policy letters and guidance that assisted parents with educational issues regarding children with disabilities. OSEP suggests that, in the FFY 2003 APR, SCDE establish baseline data and continue to include strategies to ensure performance and compliance in this area.

Free Appropriate Public Education in the Least Restrictive Environment

OSEP's January 2003 Monitoring Report identified the following areas of noncompliance in this cluster area: (1) psychological counseling was not considered as part of FAPE and was not included, when appropriate, in IEPs and (2) appropriate personnel did not determine needed services for children with disabilities who were suspended or expelled.

Psychological Counseling Services

OSEP's January 2003 Monitoring Report stated that: (1) psychological counseling services were not provided as a related service except as a result of due process hearings; (2) psychological counseling services were only provided to children with disabilities who were determined eligible for Part B services in the category of emotional disturbance; and (3) psychological counseling services were provided as determined by school personnel and not through the IEP process. See 34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3).

On pages BF5-6 of the Improvement Plan, and 2 and 3 of the APR, SCDE included strategies, such as issuing policy letters, conducting trainings, revising monitoring procedures, and conducting monitoring and follow-up activities to ensure compliance with

this requirement. SCDE, for example, reported that it added specific questions to the monitoring process to assist the State in determining compliance with this provision.

Although the State included data in the Improvement Plan noting the percentage of LEAs that received monitoring citations for noncompliance in this area, there was no evidence in the Improvement Plan and APR demonstrating the State's progress in ensuring correction of identified noncompliance within one year of identification.

OSEP accepts the State's improvement strategies. The State must include data and analysis demonstrating progress toward compliance in the next APR, and submit a report to OSEP, with data and analysis demonstrating compliance, within 30 days following one year from the date of this letter. SCDE can satisfy this requirement by providing documentation of the LEA corrective action plans developed to correct identified noncompliance and subsequent State follow-up activities with documentation demonstrating that correction occurred.

Personnel to Determine Services and Settings

OSEP's January 2003 Monitoring Report stated that the IEP team did not, in all cases, determine the interim alternative educational setting or the extent to which services are necessary, where a child is expelled for behavior related to weapons or drugs that were not a manifestation of the child's disability.

On pages BF12-13 of the Improvement Plan and 2 and 70 of the APR, SCDE identified strategies and activities to address appropriate personnel determining the interim alternative educational setting and services where a child with a disability is expelled for behavior related to weapons or drugs. SCDE included strategies, such as issuing policy letters, conducting trainings, and conducting monitoring and follow-up activities to ensure compliance with this requirement. SCDE also added specific questions to the monitoring process to assist the State in determining compliance with this provision.

Although the State included data noting the percentage of districts where the IEP team did not determine the interim alternative placement, and the complaints filed involving discipline procedures, there was no evidence in the Improvement Plan and APR demonstrating the State's progress in ensuring that identified noncompliance is corrected not later than one year from identification.

OSEP accepts the State's improvement strategies. The State must include data and analysis demonstrating progress toward compliance in the next APR, and submit a report to OSEP, with data and analysis demonstrating compliance, within 30 days following one year from the date of this letter. SCDE can satisfy this requirement by providing documentation of the LEA corrective action plans developed to correct identified noncompliance and subsequent State follow-up activities with documentation demonstrating that correction occurred.

Disproportionality

On pages BF1 of the Improvement Plan and 48-66 of the APR, SCDE reported that the State's partnership agreement with the Office of Civil Rights (OCR) includes 13 activities to address the issues regarding the over-representation of African-American children in the

disability categories of mental retardation, emotional disturbance, multiple disabilities, and autism and placement of these children in particular educational environments. 34 CFR §300.755 requires that States that identify significant disproportionality on the basis of race in the identification of children with disabilities (including identification within particular categories of disability) or in placements into particular settings must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement to ensure that they comply with Part B. The instructions to the 2002 APR require States that identify significant disproportionality to report on the results of that review of policies, procedures and practices. SCDE's 2002 APR indicated that the State is reviewing and revising policies, procedures and practices that may affect the identification and placement decisions. OSEP looks forward to reviewing the results of these efforts in the next APR.

However, page 49 of the APR contains a goal for the number of children with disabilities of certain racial or ethnic backgrounds who would be identified as eligible for services under Part B. 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. In addressing significant disproportionality related to identification and placement, under 34 CFR §300.755, it is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B and race neutral. Such an examination generally would include a review, for identification, of the availability and use of pre-referral intervention services, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluations, and for placement, a review of policies, procedures and practices related to: the continuum of placement options; the availability of, and access to, supplementary aids and services; the participation of parents in placement team decisions; and State monitoring activities and technical assistance related to placement in the least restrictive environment. SCDE must submit revised language regarding the targets, consistent with Federal law, in the next APR.

Graduation and Drop-out Rates

On pages BT1-2 of the Improvement Plan and pages 67-76 of the APR, SCDE included information, data, and analysis that identified barriers to calculating and reporting graduation and drop-out rates for children with disabilities comparable to graduation and drop-out rates for nondisabled children. SCDE reported that the graduation and drop-out data for nondisabled and students with disabilities was not comparable. SCDE also reported that plans were underway to develop a data system that would generate data to facilitate such a comparison. On pages 68-69 of the APR, data indicated a decline in the drop-out rate for students with disabilities from 1999-2003 while the graduation rate for students with disabilities has remained steady. OSEP looks forward to reviewing data in the FFY 2003 APR regarding the development of a data system to compare graduation data of students with disabilities to nondisabled students and implementation of strategies and

any resulting changes in collecting and examining graduation and drop-out data in the State.

Suspension and Expulsion Rates

On pages 77-81 of the APR, SCDE included information, data and analysis that identified barriers to calculating and reporting suspension and expulsion rates for children with disabilities comparable to suspension and expulsion rates for nondisabled children, along with strategies and timelines for improving performance. 34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. 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, procedures and practices comply with Part B. Because SCDE did not have the ability to compare suspension/expulsion rates for children with disabilities to their nondisabled peers, the method used to analyze suspension/expulsion rates for students with disabilities was to compare suspension/expulsion rates among LEAs within the State. Data collected from 2002 to 2003 indicated that approximately 31% of 54 districts were above the State average where suspensions or expulsions were greater than 10 days. The APR included activities and strategies for reviewing policies, procedures and practices to promote the reduction of suspension/expulsion rates in targeted LEAs with high suspension rates, including issuing new policy guidance, conducting monitoring activities on suspension/expulsion, training on the use of behavioral interventions and developing site-specific prevention programs. OSEP looks forward to reviewing data in the FFY 2003 APR regarding the implementation of strategies and any changes resulting from implementation.

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

OSEP's January 2003 Monitoring Report and May 2004 verification letter identified no noncompliance in the area of the participation and performance of children with disabilities on State-wide assessments. On pages 83-101 of the APR, SCDE included data and information indicating that, from 2002 to 2003, there was a decrease in the performance gap between children with and without disabilities scoring at the basic or above levels on the State-wide reading and math assessments. This was also the case for those scoring at the proficient and advanced levels for reading. However, there was a slight increase (.9%) in the performance gap between children with and without disabilities scoring at proficient and advanced levels for math.

SCDE set targets and designed strategies and activities to continue to improve the performance of children with disabilities on State-wide assessments and close the gap between the performance of children with and without disabilities. OSEP will review data submitted in the FFY 2003 APR regarding both implementation of strategies and any resulting data changes.

The State also reported data that indicated significant differences between the reported first day of testing enrollment and numbers of children with disabilities who participated in regular, out-of-grade level, and alternate assessments in the various grades tested. The State did indicate that some students might have been absent on the day of testing and so not tested. OSEP could not determine from the APR, whether any students with disabilities did not participate in the State-wide assessment due to a failure by a public agency to meet the requirements of 34 CFR §300.347(a)(5) and §300.138. The State must include an analysis of compliance data related to those requirements as part of its FFY 2003 APR.¹

Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent Appropriate

OSEP's January 2003 Monitoring Report identified no findings of noncompliance in the area of least restrictive environment (LRE); however, the Monitoring Report did note the requirements under 34 CFR §300.347(a)(3) as an area of concern. On pages 111-117 of the APR, SCDE reported that the percentage of preschool children with disabilities educated in settings with nondisabled peers is comparable to the national ratio (based on the December 2000 national count). SCDE further reported, on pages 102-105 of the APR, that by using the Federal definitions of education environments and ensuring LEAs reported accurate data, there was an increase (44% compared to 46% for the national average) in the total percentage of children with disabilities served outside the regular class less than 21% of the day. The APR further stated that SCDE developed a plan to address LRE issues, including training and implementation on positive behavioral interventions and positive school discipline techniques. OSEP looks forward to reviewing data in the FFY 2003 APR, resulting from the implementation of the strategies included in the APR.

Skills of Preschool Children with Disabilities

On pages 118-120 of this section, the APR noted that South Carolina did not collect data on this issue and indicated that it would develop a plan to collect the data. Under the Government Performance and Results Act of 1993 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, South Carolina 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.

¹ Please note that the regulations under the No Child Left Behind Act (NCLBA) provide, at 34 CFR §200.20(c), that, in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its students with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

Secondary Transition

OSEP's January 2003 Monitoring Report identified no noncompliance in the area of secondary transition. On pages 122 and 129 of the APR, SCDE reported that the State was working to develop a system for collecting and analyzing data regarding the percentage of youth with disabilities participating in post-school employment, education, and other activities compared to that of youth without disabilities. OSEP looks forward to reviewing data in the FFY 2003 APR resulting from the implementation of the strategies and any resulting changes.

Conclusion

As described earlier in this letter, the State must provide, within 60 days of the date of this letter data and analysis such that OSEP can determine whether the State's monitoring system identifies all Part B noncompliance and ensures correction within one year of identification. If the State cannot demonstrate that it can identify whether evaluations are timely conducted so that services can begin at a child's third birthday and whether ESY services are available to children with disabilities who turn three during the summer, and that it is ensuring correction of identified noncompliance in a reasonable period of time not to exceed one year, the State must provide, within 60 days of the date of this letter, strategies, proposed evidence of change, targets and timelines to ensure compliance within one year of the date of this letter; in the next APR, data and analysis demonstrating progress toward compliance; and as soon as possible, but not later than 30 days following the end of the one-year timeline, a report to OSEP, with data and analysis demonstrating compliance.

In addition, the FFY 2003 APR, due March 31, 2005, must include data and analysis demonstrating progress toward compliance and SCDE must submit a report to OSEP, with data and analysis demonstrating compliance within 30 days following one year from the date of this letter in the following areas:

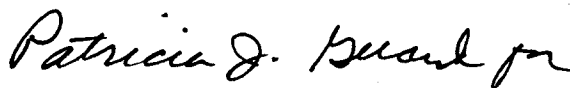
- due process hearings and State level reviews are concluded, a decision reached and mailed to all parties within timelines (34 CFR §300.511);
- the State analysis of State and local needs for professional development includes relevant information on current and anticipated personnel vacancies (34 CFR §§300.135, 300-380-300.381);
- preschool eligible children will have an IEP and services in place on their third birthday (34 CFR §§300.300(a), 300.121(c), §300.125(c) and 300.132(b));
- children with disabilities in need of psychological counseling services receive the services in accordance with their IEPs (34 CFR §§300.24(b)(2) and (9), 300.300 and 300.347(a)(3)); and
- appropriate personnel make the determination as to services and the appropriate setting for students with disabilities who have been suspended and expelled (34 CFR §§300.121(d)(3)(ii), 300.520 and 300.522).

In addition, in the next APR, the State must include:

- strategies that will maintain compliance with 34 CFR §300.661(a) and (b)(1) regarding complaint resolution timelines as well as data and analysis demonstrating continued compliance for FFY 2003 reporting period;
- strategies that will ensure continued progress and performance regarding accurate data collection (Section 618 of the IDEA);
- the results of its review of policies, procedures and practices used in the identification or placement of children with disabilities when it identifies significant disproportionality on the basis of race and revised targets on this issue consistent with Federal law (34 CFR §300.755);
- an analysis of compliance data related to 34 CFR §§300.347(a)(5) and 300.138 regarding participation of children with disabilities in State-wide assessments; and
- 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 regarding improvement of the early language/communication, pre-reading and social-emotional skills of preschool children with disabilities receiving special education and related services, or a detailed plan to collect the data for the FFY 2004 APR.

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 Debra Jennings at (202) 245-7389.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Susan DuRant