



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Shirley J. Neeley
Chief Commissioner
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

DEC 13 2004

Dear Commissioner Neeley:

The purpose of this letter is to respond to Texas' March 31, 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 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 cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

The March 10, 2003 OSEP Monitoring Report identified the following areas of noncompliance: (1) Texas Education Agency's (TEA's) monitoring system was not effective in identifying and correcting all deficiencies in a timely manner, and there was no other mechanism for ensuring compliance with the requirements of IDEA (34 CFR §300.600); (2) TEA's complaint resolution system did not meet all the requirements of 34 CFR §§300.660-300.662; (3) IEPs did not reflect the amounts of services that the IEP team had determined the child needed nor the amount and frequency of services provided to the child (34 CFR §300.300(a)(3) and 34 CFR §300.347 (a)(3), (6)); (4) IEPs did not reflect alternate assessments (34 CFR §300.347(a)(5)(ii)); (5) children with disabilities who required extended school year services as part of a free appropriate public education (FAPE) were not provided these services in accordance with an appropriate individualized education program (IEP) (34 CFR §§300.309(a)(3) and 300.309(b)(1)); (6) TEA did not report publicly and to the Secretary on

the participation and performance of children with disabilities on alternate assessments (34 CFR §300.139); (7) required services were not reflected on the IEPs for children with disabilities in facilities operated by the Texas Youth Commission (34 CFR §300.2(b)); (8) other steps were not taken to obtain the participation of agencies likely to provide or pay for secondary transition services if an agency representative did not participate in the IEP meeting (34 CFR §§300.344(b)(3)(ii) and 300.347(b)(2)); and (9) IEPs did not include a statement of needed transition services that represented a coordinated set of activities within an outcome-oriented process designed to facilitate a child's transition from high school into post-secondary activities (34 CFR §§300.347(b)(2) and 300.29).

OSEP acknowledged the resolution of issues related to reporting publicly and to the Secretary regarding the participation and performance of children with disabilities on alternate assessments in a February 14, 2003 letter to TEA. The November 10, 2003 TEA revised Improvement Plan, with attachments, and the monitoring summary data sent by email to OSEP on May 25, 2004 included documentation of its efforts to resolve the identified noncompliance addressed the remaining eight areas of identified noncompliance.

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 any other areas identified by the State to ensure improvement). OSEP's comments regarding TEA's revised Improvement Plan and APR, are listed by cluster area.

General Supervision

On pages one and in attachments one and two of the revised Improvement Plan, and pages one through ten of the General Supervision cluster of the APR, the State reported on the identified noncompliance in the following areas of the General Supervision cluster: (1) the timely identification and correction of noncompliance; and (2) a complaint process (including the State's expedited complaint process) that meets the timeline requirements of 34 CFR §300.661, and prevents the inappropriate requirement that a complaint must be filed if the hearing officers' decisions were not implemented. On page 11 of this section of the APR, the State also addressed the adequate supply of personnel to meet the identified needs of all children with disabilities in the State. On pages 12 and 13 of this section of the APR, the State discussed its data validity procedures.

Timely Identification and Correction of Noncompliance: On pages one and two of the General Supervision cluster of the APR, the State included data for the reporting period indicating that: (1) 1,199 of the 1,238 entities in the State (including LEAs, charter schools and State agencies) were rated using the State's Data Analysis System (DAS), that determined factors contributing to higher levels of program risk, with 36 LEAs identified as possible high risk; and (2) TEA conducted site visits to 189 LEAs, including the high risk LEAs, 54 charter schools, and one State agency. The State reported that: 57 entities did not receive any findings of noncompliance; the average time period for corrective action resolution was 34.09 days; and all

corrective actions were resolved within one year of identification with the exception of the two LEAs that were under sanction and direct intervention from TEA¹.

The Texas Division of Special Education Monitoring and a policy making group will add a student results and outcome monitoring review process as described on page four of the General Supervision cluster of the APR. The information presented by the State indicates that the State has resolved the deficiencies identified in the Monitoring Report regarding monitoring. OSEP looks forward to reviewing information in the next APR that includes both implementation of strategies and the resulting data demonstrating improvement as the State continues to refine its monitoring system.

Complaint Investigation, Mediations and Due Process Hearings and Reviews were Completed in a Timely Manner: In the Monitoring Report, OSEP reported that TEA did not ensure that: (1) the expedited complaint resolution processes had met the requirements of 34 CFR §§300.600-300.662; and (2) all complaints were resolved within the 60 day timeline (34 CFR §300.661(a)-(b)). In addition, OSEP found that the complaint process was used inappropriately to ensure the implementation of hearing officer decisions. The revised Improvement Plan and the APR addressed these issues regarding the complaint resolution system.

On page eight of the General Supervision cluster of the APR and Attachment 1 to the APR, the State reported trend data that indicated 16 complaints had exceeded the 60 day timeline for the 2000-2001 school year; 39 for the 2001-2002 school year; and six for the 2002-2003 school year. On September 16, 2004 the State reported that four of the six complaints for 2002-2003 were extended for exceptional circumstances². As an attachment to the revised Improvement Plan, the State submitted the *Special Education Complaint Management System Procedures Manual* that documents on page nine that the State had developed an electronic management system for complaints, including the State's expedited complaints, that provides a tracking system that monitors timelines and the reasons timelines are exceeded. In the next APR, the State must continue to report on its progress in ensuring compliance with complaint timelines.

In addressing the issues related to the expedited complaint process in the Monitoring Report, the revised Improvement Plan indicated that: the State's electronic management system for complaints also tracked issues related to the expedited complaint process; the complaint management procedural manual addressed the guidelines for the expedited complaints per 34 CFR §300.661; and the State disseminated information regarding the expedited complaint process on the State web page. On page eight of the General Supervision cluster of the APR, the State reported trend data for expedited complaints indicating that: there were two for the 2000-2001 school year; one for the 2001-2002 school year; and four for the 2002-2003 school year. Page two of the *TEA Division of Special Education Programs and Complaints, Standards of Investigation* submitted via email to OSEP on September 15, 2004, describes an expedited complaint process that meets the requirements at 34 CFR §300.661.

¹ The sanctions/interventions for the reporting period were reported as closed on page two of the General Supervision section of the APR, but page three of this section of the APR indicates that TEA is continuing to pursue additional responses and/or actions from two LEAs.

² Approximately 2.3 percent of the complaints exceeded the timelines without exceptional circumstances.

The State addressed the issue from the Monitoring Report regarding the inappropriate use of the complaint system to ensure implementation of hearing officer decisions on page five of the attachment to the revised Improvement Plan, the *Special Education Complaint Management System Procedures Manual*. This document states that a district must submit documentation that is sufficient to ensure that the decision has been implemented. If the documentation is not sufficient to ensure that the decision has been implemented, the district is given an opportunity to provide additional documentation. If the district response fails to provide sufficient documentation, or if the district does not respond, the State agency conducts an on-site review and imposes sanctions to ensure that the decision is implemented. Thus the State has a process that ensures that hearing officer decisions are implemented unless appealed, per the requirements at 34 CFR §300.510(a) and (d).

On page nine of the General Supervision cluster of the APR, the State reported that approximately 99 percent of all due process hearings are granted extensions to the 45-day timeline, in accordance with 34 CFR §300.511(c). The reasons for delay included conflicting schedules of either the district or the parent, concerns with obtaining legal counsel, attempts at settlement, and mediation. The State reported that the continuance timeline is monitored. On page one of this section, the State reported that no hearing decisions were issued after the timelines for the extensions had expired.

On page eight of the General Supervision cluster of the APR, the State trend data indicated: the number of due process hearing cases in which a mediator was assigned; the number of mediations not resulting from a hearing that reached agreement; the number of mediations resulting from a hearing that reached agreement; and the average number of days in which mediations were concluded from the date of assignment (38 days for school year 2002-2003). OSEP looks forward to reviewing information in the next APR that includes targets regarding mediations and due process hearings, and activities to achieve those targets, including resulting data on performance.

Systemic Issues are Identified and Remediated: On page seven of the General Supervision section of the APR, the State acknowledged that it had begun to connect data systems from specific State supervision functions, but it included no data, targets, activities or timelines in this area. The State must address these items in the next APR.

Adequate Supply of Personnel to Meet the Identified Needs of All Children with Disabilities in the State: On page 11 of the General Supervision cluster of the APR, the State included data and analysis demonstrating that its recruitment and retention plan could maintain a sufficient number of administrators, teachers, related services providers, paraprofessionals, and other providers to meet the identified educational needs of all children with disabilities in the State. TEA reported trend data, beginning with the 2000-2001 school year, that tracked the number of special education certificates issued, the number of special education emergency permits issued, the total number of special education providers employed in the State, and the number of special education teaching assistant permits issued. Efforts regarding recruitment, retention, and support have been implemented in the State to address potential shortages of providers identified in *The State-wide Study of Special Education Professionals' Personnel Needs*,

completed September 2001. The State indicated that the Leadership Council would establish targets, and activities during the Spring/Summer meeting. The State must address targets, activities and timelines for this area in the next APR.

State Procedures and Practices Ensure Collection and Reporting of Accurate and Timely Data:

On pages 12 and 13 of the General Supervision section of the APR, the State identified its efforts to collect accurate and timely data to use in reports and decision-making. The State maintained a web-based Public Education Information Management System (PEIMS), which is linked to the Texas Education Agency web page. The State referenced the procedures to ensure that student performance on State-wide assessments is accurately measured through a data validation process that includes: the data reasonableness analyses; the Texas Assessment of Academic Skills (TAAS) and PEIMS consistency reviews; audit examination; audits of non-tested students; data quality desk audits; and accreditation investigations. Additionally, the State reported that data systems have been developed and will continue to be formalized for monitoring, mediation, complaint resolution, and due process hearings. The State also reported that the State Supervision Committee would set targets, timelines, and resources during Improvement Planning conducted in the spring of 2004, and that there would be continued development and refinement of informal data systems. The State must address targets, activities, and timelines for this cluster area in the next APR.

Early Childhood Transition

On pages one through three of the Early Childhood cluster of the APR and page four of the revised Improvement Plan, the State included three-year trend data regarding the number of children with disabilities, ages three through five, served in the special education system. For the FFY 2002 reporting period, TEA indicated that: (1) there were 16 citations, (99 percent rate of compliance) for early childhood transition issues; (2) the majority of the citations were for LEAs not holding the individualized education program (IEP) meeting³ in a timely manner; and (3) some citations were made because LEAs did not have policies and/or procedures to evaluate a child, not previously in an Early Childhood Intervention (ECI) program and referred prior to the child's third birthday. The State also indicated that: corrective actions were completed; improvement planning in this area was jointly implemented by TEA and ECI; the State continued to monitor this issue through compliance reviews; the early childhood transition Memorandum of Understanding (MOU) was signed on May 19, 2004 as confirmed by a September 23, 2004 e-mail from the State; and TEA and ECI planned to disseminate information and ensure consistency of information.

Parent Involvement

On pages one through six of the Parent Involvement cluster of the APR, the State reported data and information regarding parent involvement in the special education process including: results from the 5,000 returned parent surveys regarding parent knowledge of issues related to referral, eligibility, the multidisciplinary process, the IEP process, provision of education services, types of training availability, participation in training opportunities, transition, and discipline; parent attendance at trainings offered jointly to parents and educators; data from the

³ In Texas, the IEP meeting is referred to as the admission, review and dismissal (ARD) meeting.

Parent Training and Information (PTI) projects; and a summary of multiple activities provided through the 20 Education Service Centers (ESCs) in the State. The State appears to have a reasonable approach to obtaining data from parents that is used to identify issues and provide relevant training opportunities.

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

In the APR, the revised Improvement Plan, and the summary of monitoring data submitted by e-mail to OSEP on May 25, 2004, the State reported correction of noncompliance in the following areas in this cluster: (1) availability and provision of extended school year (ESY) services (page 24 of the FAPE in the LRE cluster and page five of the revised Improvement Plan); and (2) participation of children with disabilities on State-wide assessments, including alternate assessments (pages 14 through 15 of the FAPE in the LRE cluster and Attachment 3). The identification of the amounts of services on children's IEPs (page 25 of the FAPE in the LRE cluster and page six of the revised Improvement Plan) was also addressed, with monitoring data provided. In the revised Improvement Plan, the State reported on the required services reflected on IEPs at Texas Youth Commission Facilities to address the area of noncompliance.

Availability and Provision of Extended School Year (ESY) Services: In the Monitoring Report, OSEP reported that TEA did not ensure that all children with disabilities who require ESY services as part of FAPE were provided these services in accordance with an IEP (34 CFR §§300.300 and 300.309). The revised Improvement Plan indicated that TEA would: disseminate a manual on ESY; provide district trainings conducted through the Texas Educational Service Centers; and add areas addressing ESY to the special education monitoring system.

In the revised Improvement Plan, TEA reported completion of the revised Improvement Plan activities, and monitoring data indicating that: (1) districts must ensure that ESY services are provided as recommended by the child's IEP team; (2) districts must ensure that IEP teams considered ESY services based on the individual needs of the children and that those services were provided for children in all disability categories, as required; (3) districts must ensure that the IEP teams considered a variety of types, amounts of time, and durations of ESY services provided to meet children's needs; (4) related services, including transportation to and from the location of the ESY services, were provided; and (5) that the ESY services were connected to previous and future school year services. On May 25, 2004, the State submitted monitoring data that indicated for the 2001-2002 and the 2002-2003 school years 99 percent of the IEPs were in compliance with the ESY requirements and that corrective actions were completed for the one percent reported in noncompliance within one year of identification. The State completed the activities in its revised Improvement Plan to address this area of noncompliance.

Participation in Alternate Assessments: In the Monitoring Report, OSEP reported that IEPs of children with disabilities do not always reflect how the child will be assessed when they do not participate in a particular State or district-wide assessment of student achievement (or part of an assessment) (34 CFR §§300.347(a)(5)(ii), 300.138(b)). The revised Improvement Plan reported that IEP teams were required to document why a State-wide or district-wide

assessment was not appropriate for the child, and indicate how the child would be assessed. However, as noted below, participation data from the State-wide assessment suggest that there may still be a problem in this area.

The TEA web page addresses the participation of students in the State-wide assessment process at <http://www.tea.state.tx.us/student.assessment/taks/booklets/index.html>. The State reports that students with disabilities in Texas participate in the TAAS (with or without accommodations); the Texas Assessment of Knowledge and Skills (TAKS); or the State-Developed Alternative Assessment (SDAA). Students may be exempted from any part of the above assessments, or a part of the assessment, but must participate in the assessment using the locally-determined alternate assessment (LDAA). If the child is exempted from the assessment (the TAAS, TAKS, or the SDAA) or any part of the assessment, the district must document that the child met the performance criteria established in the IEP for the LDAA. The State indicated that the following guidelines were utilized for determining which assessment is conducted: (1) the TAKS if participating in the Texas Essential Knowledge and Skills (TEKS) instruction on grade level, with no accommodations that would invalidate the test; (2) the SDAA if the TEKS instruction is on grade level with accommodations that would invalidate the TAKS, or the child receives TEKS instruction that is below grade level with no accommodations that would invalidate the SDAA; and (3) the LDAA if the child is not receiving TEKS instruction or is receiving TEKS instruction but with accommodations that would invalidate the SDAA.

On pages 14 and 15 of the FAPE in the LRE cluster of the APR and on Attachment 3, the data and information indicated that children with disabilities were tested in grades three through eight, and grade 11 in reading and math, and that children with disabilities participated in the regular State-wide assessment or the alternate assessments. The participation rates of children with disabilities in a regular or alternate assessments for math were as follows: grade three, 95.6 percent; grade four, 95.5 percent; grade five, 97.5 percent; grade six, 96.8 percent; grade seven, 96.4 percent; grade eight, 96.4 percent and grade 11, 84.7 percent. The participation rates in a regular or alternate assessment of children with disabilities for reading were as follows: grade three, 95.7 percent; grade four, 96.8 percent; grade five, 97.9 percent; grade six, 97.5 percent; grade seven, 95.7 percent; grade eight, 96.4 percent and grade 11, 46.5 percent.

In Attachment 3 to the APR, the data further indicated on page three, that in grade 11, 5,065 children with disabilities did not participate in any math assessment, and on page seven, 16,838 children with disabilities did not participate in any reading assessment due to absence, data error, or other unknown reason. These data indicate that a relatively high percentage of children with disabilities in grade 11 did not participate in the State-wide assessments⁴. 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) or 300.138. The State must include an analysis of compliance data related to those requirements as a part of its FFY 2003 APR.

⁴ 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.

The directions to Attachment 3 of the APR state: "Include students who took out-of-level tests and students whose changes to the assessment invalidated their score. These students are to be counted in the lowest achievement column. States that can provide documentation of the linking or equating evidence for the levels of their tests may report out-of-level tests on all achievement levels. This linking or equating evidence must be provided." Texas did not report scores from out-of-level testing in the lowest achievement category and did not provide linking or equating evidence. In the next APR, Texas must ensure that students who take out-of-level tests are reported according to the directions for Attachment 3 of the APR.

Identification of Amounts of Services: In the Monitoring Report, OSEP reported that TEA did not ensure that IEPs for children with disabilities identified the amount and frequency of services (34 CFR §§300.347(a) (3) and (6)). The revised Improvement Plan stated that TEA would: revise the related services matrix; develop a Guide for the IEP teams regarding related services; and include provision of related services in the TEA State Supervisory Review to ensure that initiation, duration, frequency, and location of services would be included for related services, modifications, and services on behalf of children with disabilities. On May 25, 2004 the State submitted monitoring results indicating that in 2001-2002, approximately 77.8 percent, and in 2002-2003, 81.7 percent, of the IEPs addressed all the requirements for related services and the implementation of those related services as specified by the IEP. This issue was addressed by districts in which noncompliance was identified, and required corrective actions were monitored for timely and appropriate implementation.

While the monitoring data demonstrated improvement, TEA has not demonstrated correction of the noncompliance in this area. Therefore, in the next APR, TEA must submit to OSEP either more current data demonstrating that the noncompliance has been resolved or a plan including strategies, proposed evidence of change, targets, and timelines that will ensure correction of the remaining noncompliance within a reasonable period of time not to exceed one year from when OSEP accepts the plan.

Required Services are not Reflected on IEPs at Texas Youth Commission Facilities: In the Monitoring Report, OSEP reported that TEA did not ensure that IEPs at the Texas Youth Commission (TYC) facilities included psychological counseling services needed by each child with a disability (34 CFR §§300.2(b), 300.347(a)(3), and 300.300(a)(3)(i)).

On pages seven through nine of the revised Improvement Plan, TEA reported that the State had: set targets to address the issues related to the noncompliance; developed a system of care that included Community Mental Health and Mental Retardation (MHMR), LEAs, the Texas Workforce Commission (TWC), and Community Resource Coordination Groups (CRCGs); supported the development of local/community-level MOUs (partnership agreements that support the implementation of State and regional MOUs); and developed and implemented a plan for TYC to utilize Public Education Information Management System (PEIMS) to access information; and revised the TYC Guide regarding the provision of related services. In supplemental information submitted to OSEP on September 15, 2004, the State indicated that it is collecting baseline data regarding the provision of required services, including the provision of psychological counseling services, during the 2004-2005 school year. Therefore, in the next APR, TEA must submit a plan to OSEP that includes the schedule for the identification and

correction of noncompliance regarding the provision of services, including psychological services, at the TYC, that will ensure correction by the next APR.

Disproportionality: On pages one through six of the FAPE in the LRE cluster of the APR, the State included data and analysis demonstrating that: African-Americans were over-represented in the disability categories of mental retardation, emotional disturbance, deaf-blind, learning disabled, multiple disabilities, and traumatic brain injury; and were over-represented in settings outside the regular class more than 60 percent of the time, public separate school facilities, private school separate facilities, and public residential facilities. To address the issue, the State conducted a study, including a review of the professional literature, national and State statistics from the IDEA data base, focus group discussions of stakeholders in seven Texas cities, analysis of survey data from the 20 ESCs across the State, and an analysis of the PEIMS database. The study concluded that there were many factors that potentially influence placement in special education. A logistic regression model was constructed to control for gender, "at-risk" designation, income status, English proficiency, and immigrant or migrant status. With this analysis, Texas concluded that: (1) based on information about ethnicity alone, African-American children were the most likely to be placed in special education, followed by White, then Hispanic; (2) if factors other than race were considered, White children were significantly more likely to be placed in special education programs, followed by African-American, then Hispanic; (3) Hispanic children, especially those with limited-English proficiency, were consistently under-represented in special education programs; (4) low-income children were about 50 percent more likely to be in a special education placement compared to children with no risk characteristics; (5) female children were consistently under-represented in special education programs; and (6) children of all ethnicities considered "at-risk" of dropping out of school were more than twice as likely to be enrolled in special education compared to children with no risk characteristics. The report made ten recommendations to change special education practice to ensure appropriate placement into special education. The State did not report any targets for 2002-2003, and indicated that the projected targets would be determined by the improvement planning committee.

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. If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP will conclude that the State is not complying with the regulation. In the next APR, the State must include targets, strategies, proposed evidence of change, timelines, and any available data analysis demonstrating progress in this area, including reporting on the results of its review of policies, procedures, and practices used in the identification and placement of children with disabilities.

Exiting: On pages seven through ten of the FAPE in the LRE cluster of the APR, the State included data and analysis regarding graduation and drop-out rates. The State indicated that the graduation rates for children with disabilities were 70.9 percent in 2001 and 72.7 percent in 2002, and for children without disabilities, 82.4 percent in 2001 and 84.1 percent in 2002. The graduation rate for children with disabilities was higher in Texas than the national average of 56.2 percent.

The State indicated that the drop-out rates for children with disabilities were 9.7 percent in 2001 and 8.3 percent in 2002, and for children without disabilities, 5.8 percent in 2001 and 4.6 percent in 2002. The State discussed transition planning as key to improving graduation and retention rates for students with disabilities and indicated that a new State law regarding transition was better aligned with Federal law than the prior State statute.

Suspension and Expulsion: On pages 11 through 13 of the FAPE in the LRE cluster of the APR, the State reported the following relative differences between the suspension/expulsion rates for children with disabilities and children without disabilities: (1) single suspensions or expulsions greater than ten days, 0.86889 percent; (2) multiple suspensions or expulsions greater than ten days, 1.54114 percent; and (3) the unduplicated count for single and multiple suspension or expulsions referenced above, 1.03401 percent.

The State conducted a State-wide discrepancy analysis on the rates of suspensions or expulsions greater than ten days, comparing children with and without disabilities with single suspensions or expulsions greater than ten days: (1) in 542 school districts (43.78%), children with disabilities had higher rates of single suspensions or expulsions; (2) in 230 school districts (18.58%), children with disabilities had lower rates of single suspension/expulsion; and (3) in 466 school districts (37.64%), there was no significant discrepancy. For the number of multiple suspensions/expulsions greater than ten days: (1) in 321 school districts (25.93%), children with disabilities had higher rates of multiple suspensions or expulsions; (2) in 154 school districts (12.44%), children with disabilities had lower rates of multiple suspensions/expulsions; and (3) in 763 school districts (61.63%), there was no significant discrepancy.

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 exist, 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. The instructions to the FFY 2002 APR direct States to describe which of these comparisons it made, 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 exist, a description of those discrepancies and how the State plans to address them. While the State's FFY 2002 APR indicated that the State had identified significant discrepancies in the rates of suspensions and expulsions for children with disabilities compared to nondisabled students, it did not indicate the results of its review of

policies, procedures, and practices under 34 CFR §300.146. 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.

Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent

Appropriate: On pages 16 through 19 of the FAPE in the LRE cluster of the APR, the State reported educational environment data for children with disabilities ages three through five, and six through 21. The educational environment settings for children with disabilities ages three through five reported by the State indicated that: (1) 51.4 percent of the children with disabilities received itinerant services outside the home; (2) 26.7 percent received services in early childhood special education settings; (3) 15.4 percent received services in part-time early childhood/early childhood special education settings; (4) .6 percent received services in the home; and (5) .10 percent received services in either a separate school or a residential facility. The educational environment settings of children with disabilities ages six through 21 reported by the State indicated that: (1) 53.2 percent of children with disabilities were placed outside the regular class less than 21 percent of the day; (2) 31.8 percent were placed outside the regular class at least 21 percent, but not more than 60 percent of the day; (3) 13.5 percent were placed outside the regular class more than 60 percent of the day; and (4) the remaining 1.5 percent were placed in public or private separate facilities, public or private residential facilities, or in homebound or hospitalized placements. The State indicated that the data for this reporting period were considered baseline, and the State concluded that LRE for preschool continues to be an area for focused priority. The State must address targets, activities, and timelines for this cluster area in the next APR.

Early Language/Communication, Pre-reading, and Social-emotional Skills of Preschool

Children with Disabilities Receiving Special Education and Related Services: On pages 20 through 23 of the FAPE in the LRE cluster of the APR, the State acknowledged that it did not currently have data on the performance of preschool children with disabilities receiving special education services on early language communication, pre-reading, and social-emotional skills. However, it reported on efforts the State had taken to provide guidance on preschool curriculum and skills that included: prekindergarten curriculum guidelines; TEKS for children five years of age; the center for improving the readiness of children for learning and education (CIRCLE) at the University of Texas-Houston (Health Science Center/Early Childhood Initiative); Texas Primary Reading Inventory (TPRI); and the Kindergarten Teacher Reading Academy (KTRA). During the reporting period, TEA did not set targets, or projected targets.

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, TEA must provide 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 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

On page six and the attachment to the revised Improvement Plan, pages two through seven of the Secondary Transition cluster of the APR, and in the summary of monitoring data submitted by email to OSEP on May 25, 2004, the State addressed the previously-identified noncompliance in the following areas of the Secondary Transition cluster: IEPs did not include statements of needed transition services that represented a coordinated set of activities within an outcome-oriented process designed to facilitate a child's transition from high school into an appropriate post-secondary situation; and public agencies did not take other steps to obtain participation in the individual transition planning for each child with a disability beginning no later than age 16 (or younger, if determined appropriate by the IEP team), if agencies invited to send a representative to send a representative to transition planning meetings do not do so. Additionally on pages two and three of the APR, the State reported comparable data on post-school activities for children with and without disabilities in the areas of post-secondary education, employment, residency environment, and leisure time activities.

Coordinated Set of Activities within an Outcome-Oriented Process: In the Monitoring Report, OSEP stated that TEA did not ensure that IEPs of children with disabilities included a statement of needed transition services that represented a coordinated set of activities within an outcome-oriented process designed to promote transition from high school into an appropriate post-secondary situation (34 CFR §§300.347(b)(1)-(2), 300.29). The revised Improvement Plan stated that TEA would utilize the ESCs to implement a process that provides information to school district personnel addressing post-secondary outcomes for children with disabilities on IEPs and self-determination training for children with disabilities that would improve their ability to identify appropriate post-secondary outcomes as they participated in IEP team meetings.

On May 25, 2004, the State submitted monitoring data that indicated that in 2001-2002, 91 percent of IEPs addressed the required secondary transition services, and that in 2002-2003, 88 percent of IEPs complied with this requirement. The State also indicated that appropriate corrective actions for noncompliance were implemented and verified. The State completed its activities to address this area of noncompliance. In the next APR the State must report the results of the monitoring findings related to this area and the status of the correction of noncompliance.

Inviting Representatives of Agencies Likely to be Responsible for Providing or Paying for Transition Services: In the Monitoring Report, OSEP stated that TEA did not ensure that, if a purpose of the meeting was the consideration of needed transition services for a child, and that if an agency invited to send a representative to a meeting did not do so, the public agency took other steps to obtain the participation of the other agency in the planning of any transition services (34 CFR §300.344(b)(3)). The revised Improvement Plan stated that TEA currently monitors what other steps were taken by public agencies to obtain participation if the agency representative did not attend.

The State submitted data on May 25, 2004, that indicated that in 2001-2002 approximately 91 percent, and in 2002-2003, 88 percent of the IEPs reviewed demonstrated compliance with the requirement that other steps were taken to obtain the participation of outside agencies invited to an IEP meeting to plan transition services, if the agency representative did not attend. The State also reported that corrective actions were completed and verified for those IEPs in which noncompliance was identified. The State completed its activities to address this area of noncompliance. In the next APR the State must report the results of the monitoring findings related to this area and the status of the correction of noncompliance.

Conclusions

As noted above, while the monitoring data demonstrated improvement, it also demonstrated continuing noncompliance in some areas; therefore, in the next APR, TEA must submit a plan to OSEP, including strategies, proposed evidence of change, targets, and timelines that will ensure correction of the remaining noncompliance by the next APR in the following areas: (1) IEPs for children with disabilities identify the amount and frequency of services (34 CFR §§300.347(a)(3) and (6)); and (2) provision of services, including psychological services, for youth with disabilities educated at TYC facilities (34 CFR §§300.2(b), 300.347(a)(3), and 300.300(a)(3)(i)).

Additionally, in the next APR, the State must: (1) continue to report on its progress in ensuring compliance with complaint timelines; (2) include an analysis of compliance with 34 CFR §§300.347(a)(5) and 300.138 regarding participation of students in State-wide assessments; (3) include information on 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; (4) include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies exist 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, and if it identifies significant discrepancies, the results of its review and, if appropriate, revision (or of the affected State agency's or LEA's review and revision) of policies, procedures, and practices consistent with 34 CFR §300.146; (5) include either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan; and (6) report on the results of the monitoring findings related to post-secondary transition services and the status of the correction of noncompliance.

Also in the next APR the State must report on targets, activities and timelines for the following areas: (1) identification and remediation of systemic issues identified through the coordinated data system; (2) adequate supply of personnel to meet identified needs of all children with disabilities in the State; (3) State procedures and practices for ensuring collection and reporting of accurate and timely data; and (4) educational settings.

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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 Hugh Reid (202) 245-7491.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Eugene Lenz
Kathy Clayton