



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

AUG 19 2004

Honorable Patricia Harrington  
Superintendent of Public Instruction  
Utah State Office of Education  
250 East 500 South  
Salt Lake City, UT 84111

Dear Superintendent Harrington:

The purpose of this letter is to respond to the Utah's Office of Education (USOE's) March 30, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by 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***

On December 2, 1999, OSEP issued a Monitoring Report for the purpose of assessing compliance in the implementation of IDEA and assisting the State in developing strategies to improve results for children with disabilities. The report did not identify any systemic noncompliance.

On April 27-28, 2004, OSEP conducted a verification visit to Utah as part of OSEP's four-part accountability strategy. Specifically, the purpose of the visit was to verify the effectiveness and accuracy of Utah's systems for general supervision, data collection under Section 618 of IDEA and State-wide assessment. A letter, dated May 20, 2004, provided the results of the verification visit.

In Fall 2003, USOE initiated revisions to its Self-Assessment. The Utah Self-Assessment was developed in preparation for the State's APR. Utah'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). This letter responds to the State's APR and its 2004 Self-Assessment. OSEP's comments are listed by cluster.

### *General Supervision*

OSEP's May 20, 2004 verification letter explained that OSEP believes that USOE's system for general supervision constitutes a reasonable approach to the identification and correction of noncompliance. In the APR, on pages 1-20, USOE provided data and information to address the State's goal to have an effective general supervision system that resulted in all eligible children with disabilities having an opportunity to receive a free appropriate public education in the least restrictive environment. On page 2 of the APR, USOE provided an overview of its current continuous improvement monitoring system called the Utah Program Improvement Planning System (UPIPS). USOE explained that the UPIPS involved key stakeholders and emphasized a data-driven systemic approach to compliance and improved results for children with disabilities.

Under 20 U.S.C. 1232d(b)(3)(E), the State is required to correct deficiencies in program operations that are identified through monitoring. On pages 1-7 of the APR, USOE reported that it required districts to develop corrective action plans for systemic noncompliance identified or validated during district monitoring visits. Further, Utah reported that it required evidence of completion of these corrective action plans and verified the results of the corrective actions through submission of additional documentation. On page 6 of the APR, USOE reported on districts monitored from 2001 through the 2004 school year. The table included percentages of districts found in compliance with various requirements of the IDEA. In addition, page 3 of the APR contained a chart comparing compliance items from program reviews between the periods of 1994-1997 and 2000-2003 to demonstrate reductions in the levels of noncompliance over time. On page 8 of the APR, USOE described the training it provided to address a number of areas of noncompliance. However, the APR did not address the extent to which it ensured correction of non-systemic noncompliance identified through the monitoring process. Although the files that OSEP reviewed during the verification visit demonstrated that districts had completed compliance within one year, USOE acknowledged during that visit that it did not have a formal mechanism to inform districts that non-systemic noncompliance must be corrected within a year. OSEP's verification letter required USOE to submit to OSEP by July 19, 2004, either documentation that it had already ensured the correction of non-systemic noncompliance that it identified through monitoring, or a plan for correcting noncompliance as soon as possible, but no later than one year from the date when the noncompliance is identified. On July 19, 2004, USOE submitted a plan for correcting non-systemic noncompliance. The plan included steps that USOE had taken following OSEP's verification visit, and proposed additional steps to ensure correction of non-systemic noncompliance. The

proposed steps will require local educational agencies (LEAs) to provide documentation within one year that demonstrates that the non-systemic noncompliance have been corrected. USOE also listed consequences if an LEA fails to take corrective action or fails to provide verification of corrective action. OSEP accepts the strategies outlined in the plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the next APR, and provide a final progress report to OSEP, with data and analysis demonstrating that all noncompliance identified before the date of this letter has been corrected no later than 30 days following one year from the date of this letter.

The State included data and information in the APR that indicated, on Page 10 (Attachment 1) of the APR, five of thirteen complaint investigations were not completed within the 60-day timeline required by 34 CFR §§300.660-662. As described in OSEP's verification letter, USOE was required to submit to OSEP by July 19, 2004, either documentation that it has already corrected the failure to resolve all complaints within timelines or a plan for correcting that noncompliance as soon as possible, but no later than one year from the date of OSEP's acceptance of the plan. On page 12 of the APR, USOE included strategies to ensure correction of this noncompliance, including allocating staff time to meet required timelines, working with the Protection and Advocacy agency to analyze reasons for formal timeline delays and developing strategies to meet timelines. On July 19, 2004, USOE submitted additional information regarding correction of the noncompliance that included training to LEA special education personnel and an evaluation of the benefits of a single-tiered compliant investigation process as compared to the two-tiered system that currently exists in Utah. OSEP accepts the strategies outlined in the plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the next APR, and provide a final progress report to OSEP, with data and analysis demonstrating that this noncompliance has been corrected no later than 30 days following one year from the date of this letter.

In addressing the need to have sufficient personnel to meet the identified education needs of all children with disabilities in the State, USOE presented data collected by Utah's State Improvement Grant (SIG). The data described critical personnel shortages, the number of special education teachers leaving the field within their first three years of teaching, and the attrition rate over time. On page 18 of the APR, USOE reported that, due to the efforts of the SIG in the areas of teacher induction and mentoring, the attrition rate of beginning special educators had decreased slightly. In order to maintain progress, USOE reported that it is conducting activities such as continuing to fund partnerships with institutions of higher education that train special education personnel and helping LEAs to develop effective marketing and recruitment strategies. OSEP looks forward to reviewing the impact of these strategies in the next APR.

On pages 1-9 of the APR, the State described its plans to address the analysis of data collected from monitoring, complaint investigations, and hearing decisions to ensure that systemic issues are identified. While the State has a database for collecting information on training and monitoring, USOE determined that it was not a comprehensive system

that integrated data from all sources. The State included strategies to resolve this problem including: (1) further development of a comprehensive system that integrates data from difference sources; (2) an annual review of data; and (3) alignment of the Comprehensive System for Personnel Development with identified needs. OSEP looks forward to reviewing the impact of these strategies in the next APR.

On page 19 of the APR, USOE described the influence of Utah's General Supervision Enhancement Grant (GSEG) in developing software systems to collect and generate accurate and timely data. Activities to ensure the collection and reporting of accurate and timely data included implementing systems to: ensure accuracy and improve timelines in reporting results of complaints, mediations, and due process hearings; collect and analyze data on compliance from stakeholder contacts with USOE; and compare post-school outcomes of students with disabilities with their nondisabled peers. OSEP looks forward to reviewing the impact of these strategies in the next APR.

### **Early Childhood Transition**

On pages 21-26 of the APR, USOE provided data and information that described efforts to ensure that all children eligible for Part B services received special education and related services by their third birthday. USOE indicated that limited data was available to determine whether or not LEAs in Utah identified and served all Part B eligible 3-year olds. USOE addressed this concern by strengthening their monitoring activities related to child find requirements and working collaboratively with the Utah Department of Health to enhance data collection surrounding the transition from Part C to Part B.

A chart on page 23 of the APR contains data indicating that approximately 71% of Part B eligible students are identified and receiving services on or before their third birthday. This is an area of noncompliance not previously identified by OSEP. Under 34 CFR §300.132 (b), by the third birthday of a child participating in early-intervention programs assisted under Part C of IDEA, an individualized education program (IEP) or, consistent with §300.342(c) and section 646(d) of the IDEA, an individualized family service plan (IFSP), has been developed and is being implemented for each child. The State acknowledged, on page 23 that, because of insufficient data, it was not able to determine progress in achieving its target to identify and serve all Part B eligible 3 year olds. Further, the USOE reported that the State needed to implement data collection procedures to accurately measure identification of eligible Part B 3 year olds under child find requirements. On pages 23 and 24 of the APR, the State included projected targets, activities (including strengthening its monitoring procedures), timelines, and resources to ensure compliance by June 2004. OSEP accepts the strategies for correcting the noncompliance that USOE presented in the APR. In the FY 2003 APR, the State must provide evidence of progress, including current data and analysis, in correcting the noncompliance so that the timely provision of a free appropriate public education (FAPE) is provided to eligible Part B children. This information must include supporting data and analysis. In addition, USOE must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the date of this letter.

In addition, on pages 25-26, USOE presented data indicating that the system could not account for the eligibility of 14% of the children exiting Part C. As discussed in the verification letter, USOE has a memorandum of understanding with Part C for transition from early intervention to early childhood special education. USOE also stated that it is participating in the Early Childhood Council to provide leadership and facilitate collaboration among all interested stakeholders in the State. In addition, the State reported, in the APR, activities to enhance data collection to more accurately reflect Part B eligibility or ineligibility for students transitioning from Part C to Part B. OSEP is concerned that this may be an area of noncompliance. In the next APR, USOE should include data and its analysis, along with a determination of compliance or noncompliance with these requirements. If the data show evidence of noncompliance, USOE must include a plan for correcting that noncompliance, including strategies, benchmarks, proposed evidence of change and timelines designed to achieve compliance within a reasonable period of time, not to exceed one year from when OSEP approves the plan.

### **Parent Involvement**

On pages 29-30 of the APR, USOE provided data and information that described efforts to ensure that the provision of a free appropriate public education (FAPE) to children with disabilities is facilitated through parent involvement in special education services. USOE monitored compliance for parent involvement through UPIPS. Key sources of data included file review, parent surveys and parent focus groups. The monitoring findings showed that seven of eight districts in 2001-2002 and six of seven districts in 2002-2003 were in compliance with all IDEA requirements related to parental involvement in the IEP process. As described in the General Supervision section of this letter, the State must report progress, in the next APR, and final data and analysis demonstrating that all noncompliance identified before the date of this letter has been corrected no later than 30 days following one year from the date of this letter.

An analysis of the parent survey and parent focus group data showed that a majority of the parents who responded to the survey felt that they were involved in the IEP process. USOE worked with the Utah Special Education Self-Assessment Steering Committee to enhance the collection of parent involvement data and identify specific gaps in data collection and reporting concerning parental involvement and the impact on the provision of FAPE. USOE worked with the National Monitoring Center to develop an instrument for measuring parental involvement. OSEP looks forward to reviewing the implementation of USOE's strategies to ensure parental involvement in the IEP process in the next APR.

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

On pages 31-36 of the APR, USOE included data and analysis that identified over-or under-representation by race/ethnicity and disability categories. USOE analyzed data across disability and race/ethnicity categories to identify areas where further investigation was warranted. On page 35, USOE reported that two of the 40 LEAs have large

American Indian populations. These two school districts are also highly impacted by poverty and other socio-economic factors. The counts from these two school districts influence the State's American Indian population data. USOE also reported that black students are overrepresented in other categories including mental retardation, hearing impaired, visually impaired, other health impaired, autistic, deaf-blind, emotionally disturbed, traumatic brain injury, and developmentally disabled as compared to the general population in Utah. USOE noted that the small population of Black students in the State creates a situation in which small changes in the number of students may result in large percentage swings in calculating this data. The result, therefore, was not considered significant. Hispanics are underrepresented in the categories of emotionally disturbed, other health impaired, mental retardation, autistic and deaf-blind as compared with the general population and overrepresented in the categories of developmentally disabled, hearing impaired, other health impaired and specific learning disabled. For the data regarding Hispanics, USOE indicated that training in appropriate assessment and pre-referral interventions for English Language Learners has helped to improve the disproportionality rate for this segment of the population.

USOE identified strategies in the APR to address disproportionality such as: annually compiling and comparing disproportionality data and using the disproportionality data in the monitoring process. In using disproportionality data in monitoring, please keep in mind that a State must review its policies, procedures and practices in the evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B, and race neutral if it identifies significant disproportionality in identification (including identification into particular disability categories) or placement into various educational environments. 34 CFR §300.755. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities as part of the next APR.

On pages 36-37, USOE reported high school graduation rates and drop-out rates for children with disabilities in comparison to graduation rates and drop-out rates for nondisabled children. Utah reported an increase in the number of students with disabilities that graduated with a regular diploma and a reduction in the percentage of students with disabilities who drop out of school. In order to maintain progress in this area, USOE is working to identify LEAs with high graduation rates for students with disabilities and identifying promising practices in those LEAs. Although on page 37 of the APR, USOE explained that the proposed implementation of high stakes graduation assessment appeared to be indefinitely postponed, during the verification visit in April 2004, OSEP learned that a newly-adopted high stakes graduation test will apply to the graduating class of 2006 and beyond. In the APR on page 37, USOE reported that the State had taken steps to ensure that the graduation rates and the drop-out rates for children with disabilities are not negatively affected by the test requirements. OSEP looks forward in the next APR to reviewing the impact of these steps on these students.

As OSEP explained in the July 7, 2003 grant award letter and the May 20, 2004 verification letter, Utah's FFY 2003 IDEA Part B Grant Award was released subject to special conditions regarding the alternate assessment. Specifically, OSEP determined

that Utah was not developing and administering alternate assessments and reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, specifically science, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a)(2). USOE was contracting with Utah State University to develop an alternate assessment in the area of science that would be aligned with the Utah Core Curriculum. According to Utah's corrective action plan and Utah's APR on page 39, full implementation of Utah's alternate assessment in science will occur during the 2005-06 school year. OSEP indicated in its March 18, 2004 letter that this was a reasonable plan. However, because the plan did not ensure that the special conditions would be met by June 30, 2004, OSEP continued the special conditions for the FFY 2004 grant award.

On pages 41-47 of this section, the State included data indicating that the numbers of students who participated in the State-wide assessments in reading and math were in many grades significantly lower than the numbers of children with disabilities enrolled in those grades. However, the State did not account for these discrepancies, as requested by the instructions for Attachment 3. In its FFY 2003 APR, USOE should include information on the reasons why children with disabilities are exempted from assessments as requested by the Attachment 3 instructions. Further, 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 part of its FFY 2003 APR.<sup>1</sup>

On page 53 of the APR, USOE reported that it currently had no system for collecting follow-up data on preschool children with disabilities that would enable accurate reporting regarding improved skills of preschool children with disabilities. USOE was researching how to collect and report this data. USOE indicated that it would work collaboratively with other agencies to develop State-wide preschool standards and establish a task force to research effective ways to collect and report early language/communication, pre-reading, and social-emotional skills, of preschool children with disabilities. 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, Utah 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.

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<sup>1</sup> 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.

On page 38 of the APR, USOE addressed its efforts to ensure that suspension and expulsion rates for children with disabilities are comparable among local education agencies within the State, or to the rates for nondisabled children in Utah. On page 51 of the APR, USOE provided data and information to ensure the provision of a free appropriate public education for children with disabilities in the least restrictive environment. In both instances, USOE included targets, explanation of progress or slippage, activities, and timelines and resources. OSEP looks forward to reviewing the impact of USOE's strategies in the next APR.

### ***Secondary Transition***

On pages 54-58 of the APR, USOE addressed the need to explore whether youth with disabilities are participating in post-school employment, education and training activities at a comparable rate to nondisabled youth. USOE's data indicated a slippage in participation in employment activities for youth with disabilities. USOE identified strategies to increase post school education and training activities for youth with disabilities including measures to increase awareness of strategies to access employment services for youth with disabilities by establishing a State interagency council, sponsoring conferences that focus on transition, and providing personnel development to parents, agency personnel and educators in a variety of settings. OSEP looks forward to reviewing the results of these strategies in the next APR.

### ***Conclusion***

In the FFY 2003 APR the State must provide evidence of progress in correcting noncompliance, including current data and analysis on:

- Ensuring correction of all noncompliance, including noncompliance it considers non-systemic, within one year of identification. This includes the noncompliance discussed in the parent involvement section of this letter.
- Ensuring that all complaints are resolved within the 60-day timeline.
- Ensuring that a free appropriate public education is available, by their third birthday, to eligible children leaving the Part C program.

As further noted above, the State must include in its FFY 2003 APR:

- Data and its analysis, along with a determination of compliance or noncompliance regarding Part B eligibility determinations for children leaving the Part C program. If the data show evidence of noncompliance, USOE must include a plan for correcting that noncompliance, including strategies, proposed evidence of change and timelines designed to achieve compliance within a reasonable period of time, not to exceed one year from when OSEP approves the plan.
- An analysis of compliance data related to the participation of children with disabilities in State-wide assessments.
- Either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and



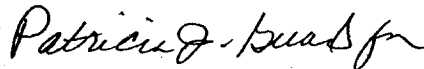
strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

In addition, USOE must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the date of this letter regarding the following issues:

- Ensuring correction of all noncompliance, including noncompliance it considers non-systemic, within one year of identification. This includes the noncompliance discussed in the parent involvement section of this letter.
- Ensuring that all complaints are resolved within the 60-day timeline.
- Ensuring that a free appropriate public education is available, by their third birthday, to eligible children leaving the Part C program.

OSEP appreciates the work of the State in ensuring compliance with the requirements of Part B and ensuring that all children with disabilities receive appropriate services. 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 of children and youth with disabilities and their families. If you have questions, please contact Sheila Friedman at (202) 245-7349.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Karl Wilson