



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

Dr. Jo Lynne DeMary  
Superintendent of Public Instruction  
Commonwealth of Virginia  
Department of Education  
P.O. Box 2120  
Richmond, Virginia 23218-2120

JUL 22 2004

Dear Superintendent DeMary:

The purpose of this letter is to respond to Virginia'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 for Part B: five cluster areas: General Supervision; Early Childhood Transition, Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment (FAPE in the LRE); and Secondary Transition.

### ***Background***

In a February 24, 2003 letter, OSEP accepted the Improvement Plan that the Virginia Department of Education (VDOE) submitted to OSEP on October 18, 2002. VDOE submitted a clarifying letter on March 13, 2003, and Progress Reports on June 30 and November 21, 2003. OSEP reviewed the documentation in those Progress Reports, and informed the State in OSEP's April 6, 2004 letter that OSEP had concluded that the State's documentation demonstrated that the State had completed the required corrective actions for all but two areas of noncompliance.<sup>1</sup> As explained below, VDOE submitted additional documentation on June 2, 2004, that indicated

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<sup>1</sup> Those areas of noncompliance were: (1) VDOE had not ensured that all children with disabilities, across all categories and severities of disabilities, who required extended school year (ESY) services as part of FAPE received them; and (2) VDOE had not ensured that it was monitoring to determine whether school divisions completed timely initial evaluations for children transitioning from Part C early intervention services to Part B and timely reevaluations for preschool-aged children with disabilities.

that the State had completed the activities it identified in its Improvement Plan to address both of those areas of noncompliance. OSEP appreciates the work of the State in ensuring compliance with the requirements relating to all of the areas of noncompliance identified in its 2000 Self-Assessment and ensuring that children with disabilities receive services.

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 Virginia's continuing improvement efforts and each cluster within the APR are set forth below.

### ***General Supervision***

***Timely Correction of Noncompliance.*** On pages three through seven of the General Supervision section of the APR, the State described its monitoring system, and provided data on the monitoring findings it made and the timeliness of corrections. On page five of this section, the State included a table showing the results of its monitoring concerning requirements related to the FAPE in the LRE cluster area during the 2000-2001, 2001-2002, and 2002-2003 school years. For each of seven compliance areas, the State indicated: (1) the number of requirements; (2) the number of local education agencies (LEAs) monitored; (3) the number of requirements multiplied by the number of LEAs monitored; (4) the number of requirements met (apparently the sum of the requirements for which the State found each of the LEAs monitored in compliance); and (5) the percentage of requirements met (apparently # 3 divided by # 4). The table showed the following percentages of requirements met for the 2002-2003 school year: (1) evaluation and eligibility determination (34 CFR §§300.530-.536) – 98 percent (up from 90 percent in 2001-2002); (2) determination of services (34 CFR §300.534) – 100 percent (up from 95 percent in 2001-2002); (3) provision of FAPE (34 CFR §300.300) – 94 percent (down from 100 percent in 2001-2002); (4) IEP (34 CFR §§300.340-.349) – 88 percent (up from 81 percent in 2001-2002); (5) ESY (34 CFR §300.309) – 92 percent (up from 91 percent in 2001-2002); (6) discipline (34 CFR §§300.520-.529 and 300.121(d)) – 94 percent (up from 93 percent in 2001-2002); and (7) LRE (34 CFR §§300.550-.555) – 93 percent (up from 89 percent in 2001-2002). The State reported that overall in the 2002-2003 school year the 22 monitored school districts met 93 percent of these requirements.

On page six of this section, the State reported trend data on the timeliness of correction for 2000-2001, 2001-2002, and 2002-2003. The data for 2002-2003 showed that two of the 19 LEAs in which the State found noncompliance took up to 30 days more than one year to complete implementation of the required Corrective Action Plan (CAP), while 17 LEAs implemented CAPs in one year or less. The State also described its strategies for ensuring correction of noncompliance, including follow-up monitoring when appropriate. OSEP concluded in its April 6, 2004 letter that the State had demonstrated completion of corrective actions in this area, based on the State's November 24, 2003 final Progress Report on its Improvement Plan. The APR on page nine described the State's strategies to continue to review evidence from monitoring, complaints, due process, and mediation in order to evaluate LEAs' compliance, identify systemic issues, and target needed technical assistance. OSEP looks forward to reviewing the State's implementation of these strategies and their impact on children with disabilities in the next APR.

***Timely Due Process Hearing Decisions.*** The data in Table 1 in the APR showed that the decision in three of 23 hearings during the reporting period (July 1, 2002-June 30, 2003) was not issued within the timelines required by 34 CFR §300.511(a) and (c). However, based on more recent data in the State's October 2003 Progress Report showing that hearing officers met those timelines for the 41 hearings since July 1, 2003, OSEP informed the State in its letter of April 6, 2004 that the documentation from the State showed that the State had completed the required corrective actions.

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

***Timely Initial Evaluations and Timely Reevaluations.*** As noted above, the State acknowledged in its Self-Assessment and Improvement Plan that it was not monitoring to determine whether school divisions completed timely initial evaluations for children transitioning from Part C early intervention services to Part B services and timely reevaluations for preschool-aged children with disabilities. In its November 21, 2003 Progress Report and on pages two and three of the Early Childhood Transition section of the APR, VDOE: (1) indicated that it had begun to monitor regarding these requirements; (2) provided preliminary data of the results of that monitoring in 11 school divisions; and (3) indicated that it would provide more complete documentation by June 2004. In its November 2003 Progress Report, the State concluded that it had not yet collected sufficient data to show correction of the finding regarding timely evaluations for preschoolers with disabilities. Accordingly, in its April 6, 2004 letter, OSEP requested that VDOE submit that more complete documentation within 60 days from the date of OSEP's letter. On June 2, 2004, VDOE submitted documentation that 21 of the 22 school divisions that it monitored during the 2003-2004 school year regarding these requirement were in compliance, and that the remaining school division had corrected its noncompliance within 30 days, which indicated that the State had completed the activities it identified in its Improvement Plan to address this area of noncompliance. The State also reported on self-assessments for districts scheduled for onsite reviews in the 2004-2005 school year, and the State's plans to continue to review this issue through its monitoring efforts. OSEP appreciates the work of the State in ensuring compliance with these requirements and ensuring that children with disabilities receive services.

***Services by the Second Birthday.*** In addition, the State acknowledged, on pages two and three of the Early Childhood Transition section of the APR, that VDOE had not been monitoring to determine whether children with disabilities, eligible for Part B, received special education and related services by their second birthday. (Under Virginia State law, children with disabilities are entitled to receive FAPE beginning on their second birthday.) VDOE reported that it has revised its monitoring procedures to address this requirement, and stated that it did not have enough data by the end of this reporting period to be able to report progress, slippage, or compliance. (The State reported no data regarding this requirement in this APR.) On page three of the early childhood transition section of the APR, the State included projected targets, activities, timelines, and resources to ensure compliance by June 2004. OSEP accepts these strategies, and in the next APR, the State must include documentation that VDOE has implemented revised monitoring procedures that address the requirement for timely provision of FAPE for children with disabilities, who are eligible to receive special education and related services on their second birthday.

### ***Parent Involvement***

The State provided data and information throughout the seven pages of the Parent Involvement cluster of the APR that indicated an increase in parent involvement in the special education process. VDOE stated, on page three of the Parent Involvement cluster of the APR, that its data demonstrated: (1) a slight increase in the number of local education agencies (LEAs) that used parents on their self-assessment committees and LEAs that used parent surveys as part of the LEA self-assessment process; and (2) an increase in the number of parents that attended LEA public meetings as part of VDOE's on-site monitoring. In addition, VDOE included strategies to increase parent involvement through VDOE and local school division dissemination of information. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities as part of the next APR.

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

***Extended School Year Services.*** As noted above, VDOE acknowledged in its Self-Assessment and Improvement Plan that it had not ensured that all children with disabilities, across all categories and severities of disabilities, who required extended school year (ESY) services as part of a free appropriate public education (FAPE) received them (34 CFR §300.309(a)(3)(i)). VDOE submitted a clarifying letter on March 13, 2003, and Progress Reports on June 30 and November 21, 2003. OSEP reviewed the documentation in those Progress Reports, and informed the State in OSEP's April 6, 2004 letter that OSEP had concluded that the State's documentation did not demonstrate compliance with this requirement. In its April 6, 2004 letter responding to the progress reports, OSEP stated that it was unclear to OSEP whether the seven corrective action plans relating to VDOE findings from 2001-02 and 2002-03 had been fully implemented, and requested that VDOE submit, no later than 60 days from the date of OSEP's letter, documentation that it had completed correction of this finding. VDOE's submission, on June 2, 2004, of documentation of closure for those seven corrective action plans, indicated that the State completed the activities it identified in its Improvement Plan to address this area of noncompliance. OSEP appreciates the work of the State in ensuring compliance with ESY requirements and ensuring that children with disabilities receive services.

***Educational Environment Data.*** Section 618 requires States to report the number of children with disabilities, by race, ethnicity, and disability category, who are participating in: (a) regular education, (b) separate classes, (c) separate schools or facilities, and (d) public and private residential facilities. OSEP's directions to States specifically require them to report the number of children who are educated in a regular school building and outside the regular classroom: (a) less than 21 percent of the school day; (b) more than 21 percent but less than 60 percent of the school day; and (c) more than 60 percent of the school day.

On pages 38 through 41 of this section, VDOE reported that its education environment data show the percent of students with disabilities receiving services in the regular school building, but that these data do not show the percent of time students receive special education outside the regular classroom. VDOE stated that it would add an additional required data element, on the percentage of time students receive special education outside the regular class, starting with the December 1, 2004 child count and will report this information as part of its FFY 2004 APR.

VDOE provided the following clarification in a conversation between OSEP and VDOE on May 13, 2004 and a May 18, 2004 e-mail: (1) VDOE has reported its Part B setting data, based on the percentage of the school day for which each child with a disability receives special education and related services (rather than the percentage of the school day for which the child is removed from the regular education classroom); (2) VDOE plans to correct this problem by adding an additional required data element, on the percentage of time students receive special education outside the regular class, starting with the December 1, 2004 child count; and (3) the language from page 38 of the State's APR referenced above does not mean that VDOE has been reporting to OSEP the percentage of the school day for which a child has been removed from the regular education school (rather than the percentage of the school day for which the child is removed from the regular education classroom). The State must ensure that its next submission of Part B settings data under section 618 is consistent with the requirements of section 618 and OSEP's directions to States.

**Disproportionality.** Virginia has established the following indicator: "If the percentage of children with disabilities receiving special education, by race/ethnicity, is significantly disproportionate to the percentage of children, by race/ethnicity in the general population, then a review has been conducted of the policies, procedures, and practices for identification of children with disabilities and they have been determined to be appropriate and race neutral." On pages three through 12 of the FAPE in the LRE section of the APR, the State's data (including Attachment 2) and analysis identified barriers to decreasing disproportionality, along with strategies and timelines for improving performance. On page 11 of the section, VDOE stated that, "Data show that there continues to be a problem in Virginia." On page four of this section, VDOE provided its analysis of the data in Attachment 2, and concluded that State-wide there was a disproportionate representation of Black students in special education when compared to the proportion of the general population, and a disproportionate number of Black students were identified in the disability category areas of mental retardation, emotional disturbance, deaf-blindness, and developmental delay.

Part B requires, at 34 CFR §300.755(b), that "In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational setting of these children, in accordance with [§300.755(a)], the State ... shall provide for review and, if appropriate revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with Part B of the act." Virginia's FFY 2003 APR must include the results of the State's review of the policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B.

**Dropout Rates.** On pages 18 and 19 of the FAPE in the LRE section of the APR, VDOE reported that it was not able to compare the dropout rate for students with disabilities with the rate for students without disabilities because the methodology that VDOE uses does not allow for comparison. VDOE did include their strategies to enable valid comparisons and analysis for the 2003-2004 data. OSEP looks forward to reviewing these comparative data and the State's analysis.

**Early Language/Communication, Pre-Reading, and Social-Emotional Skills.** On page 44 of this section, the APR noted that VDOE did not currently collect data on this issue and indicated that it would develop a plan by June 2004 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 socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, OSEP expects States to include either 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.

**Participation of Children with Disabilities in Large-Scale Assessments:** On page 31 of this section, the State included data indicating that the percentage of students who participated in Virginia's State-wide assessment is lower for students with disabilities than for students without disabilities in all areas assessed. (The participation rate for students with disabilities ranged from 79.1 percent on the third grade Reading, Literature, and Research assessment, to 94.29 percent on the Math High School End of Course assessment.) The State indicated in Attachment 3 that a substantial portion of children with disabilities were exempted entirely from the assessments, but did not provide explanations of why, as requested in that form. In its FFY 2003 APR, Virginia 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>2</sup>

**Other areas needing improvement.** Although VDOE did not identify noncompliance in the following areas, the State identified the need for improved performance and included strategies for such improvement. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities as part of the next APR.

1. **Graduation.** On pages 13 through 17 of the FAPE in the LRE section, the State included data indicating an increase in the graduation rate and school completion rate of students with disabilities in "the context of higher academic expectations," along with strategies to maintain the increase. In addition, the State acknowledged that when the data are disaggregated by school and student subgroup, the rate produces unreliable results, and included strategies to improve these results over the next three to five years.
2. **Suspension and Expulsion.** On pages 20 through 22 of the FAPE in the LRE section, the State included data indicating that students with disabilities received

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<sup>2</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.

suspensions (long-term and short-term) and expulsions at a rate higher than students without disabilities, and set forth strategies to decrease this disparity, including dissemination of functional behavioral assessment and behavioral intervention plan multimedia training to LEAs.

3. ***Performance of Children with Disabilities on Large-Scale Assessments.*** On pages 23 through 37 of the FAPE in the LRE section, the State provided data (including Attachment 3) on the participation and performance of children with disabilities in Virginia's State-wide assessment and alternate assessment. On pages 32 and 33, and in Attachment 3 on pages 23 through 30, the State included data indicating that, from 2001-2002 to 2002-2003, performance for students with disabilities on the State-wide assessment: (1) increased in three content areas; (2) decreased in one area; and (3) remained the same in two areas. VDOE stated that a lower percentage of students with disabilities achieved at proficient levels than their nondisabled peers at all grade levels on English and mathematics for 2002-2003. On pages 33 through 37 of this section in the APR, the State included strategies to increase performance for the next reporting period.
4. ***Children with Disabilities, Six through 21, Educated with Nondisabled Peers to the Maximum Extent Appropriate.*** On page 39 of this section of the APR, the State included data indicating a decrease, from 2000-2001 to 2002-2003, in monitoring findings of noncompliance relating to placement in the LRE.
5. ***Children with Disabilities, Two through Five, Educated with Nondisabled Peers to the Maximum Extent Appropriate.*** On pages 42 and 43 of this section of the APR, the State included data indicating a decrease in the number of students, ages 2-5, receiving special education in early childhood settings primarily designed for students without disabilities; and an increase in the total number of students receiving itinerant services. VDOE explained that these data changes are a result of school divisions correctly using the itinerant services placement option for students receiving only speech-language services. VDOE included strategies to increase the percentage of preschool-aged children receiving services in settings with nondisabled peers.

### ***Secondary Transition***

The State provided monitoring data and information on page two of the Secondary Transition section of the APR that indicated noncompliance not previously identified. The State reported a decrease in noncompliance findings in this area over a three year period, but still made noncompliance findings in 4 out of 22 districts monitored in the 2002-2003 school year regarding the requirements of 34 CFR §§300.344(b)(1) [inviting students to IEP meetings to discuss transition services] and 300.29(a)(2) [transition services based on students' individual needs and preferences]. On pages four through 10 of this section of the APR, the State also included strategies, evidence of change, targets and timelines to ensure compliance. OSEP accepts the State's plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP, with data and analysis demonstrating

compliance, as soon as possible, but no later than thirty days following one year after the date of this letter.

***Conclusion***

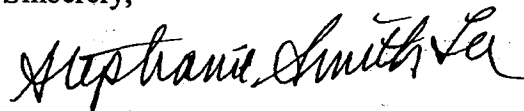
As noted above in the Secondary Transition section, the State must provide evidence of progress in correcting the noncompliance concerning meeting the requirements of 34 CFR §§300.344(b)(1) and 300.29(a)(2), including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date of this letter.

As further noted above, VDOE must also include in its FFY 2003 APR:

1. Documentation that VDOE has implemented revised monitoring procedures that address the requirement for timely provision of FAPE for children with disabilities, who are eligible to receive special education and related services on their second birthday;
2. The results of the State's review of the policies, procedures, and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B; and
3. An analysis of compliance data related to the participation of children with disabilities in large-scale assessments.

OSEP appreciates the work of the State in ensuring compliance with the requirements relating to all of the areas of noncompliance identified in its 2000 Self-Assessment and ensuring that children with disabilities receive 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 for children and youth with disabilities and their families. If you have questions, please contact Samara Goodman at (202) 245-7356.

Sincerely,



Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: H. Douglas Cox