



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

SEP 20 2005

Honorable Tom Horne
Superintendent of Public Instruction
State Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Dear Superintendent Horne:

The purpose of this letter is to respond to Arizona's March 29, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

OSEP's January 11, 2005 FFY 2002 APR response letter directed the State to take the following actions:

1. submit a plan for: (a) revising the State's monitoring system to ensure correction of noncompliance with Federal requirements within a reasonable period of time, not to exceed one year from identification; and (b) addressing new State-identified noncompliance with Federal requirements not previously addressed by OSEP;
2. provide evidence of correction of previously identified noncompliance with Federal requirements related to extended school year (ESY), psychological counseling services, and child find;
3. identify the Part B requirements reported as noncompliant in the general supervision sections of the Improvement Plan, Progress Report and the FFY 2002 APR, and provide an updated report on the status of correction;
4. submit: (a) updated compliance data for complaint and due process hearing timelines; (b) data and analysis of relevant information on current and anticipated personnel vacancies and shortages, in accordance with 34 CFR §§300.380(a) and 300.381(b); (c)

- data and analysis regarding disproportionality that fully meets the requirements of 34 CFR §300.755; (d) data and analysis to determine the extent to which children with disabilities were participating in Arizona's assessment program; and (e) documentation of data regarding skills for preschool children with disabilities; or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan;
5. report on the status of the data system to compare graduation data of students with and without disabilities;
 6. report on whether significant discrepancies occurred in the rate of long-term suspensions and expulsions of children with disabilities either among local education agencies (LEAs) in the State or compared to nondisabled children within the agencies, and, when there were significant discrepancies, the State's reviewed, and if appropriate, revised, policies, procedures and practices in accordance with the requirements at 34 CFR §300.146; and
 7. determine compliance or noncompliance with the requirements of 34 CFR §§300.344, 300.347, 300.503, 300.504, 300.533 regarding parent involvement; and 34 CFR §§300.29, 300.344(b), and 300.347(b) and (c) regarding secondary transition.

General Supervision

Identification and timely correction of noncompliance

Regulations at 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) require that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency: (1) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency (SEA); and (2) meets the education standards of the SEA (including the requirements of this part). Under 20 U.S.C. 1232d(b)(3), each SEA must monitor programs under its general supervisory authority to ensure compliance with the requirements of IDEA. Data and information describing compliance with these requirements may include the type and number of findings of noncompliance identified by the State during the previous reporting period along with data and other evidence of correction of the identified noncompliance within one year of identification (i.e., within one year of the date when the program was officially notified of the noncompliance). In its January 2005 letter, OSEP required the Arizona Department of Education (ADE) to submit a plan¹ to revise the State's monitoring system to ensure correction of noncompliance with Federal requirements within a reasonable time not to exceed one year. On pages 9, 13, and 31 of the FFY 2003 APR, ADE addressed this requirement and stated that in the winter of 2005, the State would: (1) modify its monitoring procedures to ensure correction of noncompliance within one year of the date of the LEA's monitoring report; and (2) notify LEAs of this change in expectation.

¹ ADE's data for the reporting period in the FFY 2003 APR predates OSEP's January 2005 letter that addressed the time period for correction. On page 9 of the FFY 2003 APR, ADE acknowledged OSEP's requirement for the State to modify its current monitoring procedures in order to ensure completion of corrective actions within one year of identification of noncompliance. After receiving this notification, ADE modified its procedures for the 2005 monitoring year. This change was reflected on pages 12-13 of the FFY 2003 APR in the Activities, Timelines and Resource components of the General Supervision section.

OSEP accepts this plan. The State must submit a Progress Report including data and analysis demonstrating progress toward compliance in this area with the State Performance Plan (SPP), due December 2, 2005. The State must also report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter. This data and analysis must address all LEA noncompliance identified by the State prior to June 2005, including any remaining uncorrected noncompliance regarding the provision of psychological counseling services, child find for children birth through three, and the provision of ESY services that has not been corrected by one year from the date of this letter, including the specific additional steps the State has taken to secure correction after the LEA's one year period to correct had expired.

On pages 10-11 of the FFY 2003 APR, ADE reported that the number of corrective action plans closed within one year of identification increased from 18% (16 of 91 LEAs) to 40% (36 of 91 LEAs) between 2001 and 2003. ADE provided OSEP with additional information during a May 19, 2005 telephone conversation regarding corrective action plans related to correction in these 91 LEAs. During the telephone conversation, ADE reported that for the 55 LEAs monitored in 2003: (1) 10 had not reached the close-out date; and (2) the State withheld funds for one LEA's failure to demonstrate compliance within the two-year period.

In its January 2005 letter, OSEP required ADE to identify the Part B requirements reported as noncompliant in the general supervision sections of the Improvement Plan, Progress Report, and the FFY 2002 APR, and provide an updated report on the status of correction. Areas reported as noncompliant, where ADE's monitoring system was not effective in identifying and correcting noncompliance, included: (1) the provision of psychological counseling services; (2) the child find requirements for children birth through three; and (3) the provision of ESY services.

On pages 26-28 of the FFY 2003 APR, the State reported that ADE amended its monitoring, training and technical assistance systems to increase emphasis on the consideration of related services that address the provision of counseling services to children with disabilities as required at 34 CFR §§300.24, 300.346(a)(2)(i), 300.347(a)(3), and 300.535. The State also amended its monitoring and corrective action system to increase emphasis on the identification of children birth through age two and the provision of a Free Appropriate Public Education (FAPE) by age three as required by 34 CFR §§300.125(c), 300.121(c), and 300.132(b). As a result of the amendments, the State reported that it identified noncompliance regarding the provision of psychological counseling services and child find requirements for children birth to age three.

On page 26 of the FFY 2003 APR, ADE reported that during the monitoring process, staff reviewed documentation to note whether: (1) the individualized education programs (IEP) team considered evaluation results related to the suspected disability that included the examination of the need for psychological counseling; (2) the IEP documented the consideration of psychological counseling as a related service; (3) behavioral supports were documented in the IEP, as appropriate; and (4) all services and supports identified in the IEP were provided to the child. On page 27 of the FFY 2003 APR, ADE noted that when examining whether the monitoring system was effective in identifying and correcting noncompliance related to child find, LEAs had to demonstrate, during on-site monitoring, that they complied with the requirements of the early childhood child find agreement between the Part C lead agency and

ADE. Statewide monitoring results, on pages 27-28 of the FFY 2003 APR, showed a 24% baseline increase from 61% to 85% between 2002 to 2004 regarding compliance with child find requirements for ages birth to three. All districts were required to correct the noncompliance cited by the State through a corrective action plan that demonstrated 100% compliance at the closeout date.² On page 27 of the FFY 2003 APR, ADE noted that where ADE identified noncompliance, LEAs also amended their practices, and documented compliance during verification visits conducted by ADE staff.

On page 12 of the FFY 2003 APR, ADE reported that the State established procedures for the review of outstanding noncompliance issues. A component of the procedures required the sending of letters to LEAs regarding possible interruption of funds due to failure to demonstrate compliance. The State reported that this action resulted in most LEAs submitting the required documentation in a timely manner.

Activities conducted by the State to address ESY compliance issues, and resulting data, are discussed in the Free Appropriate Public Education in the Least Restrictive Environment section of this letter, below.

On pages 5-6 of the FFY 2003 APR, ADE reported statewide compliance in five major areas of the IDEA. These areas included: (1) child find (34 CFR §§300.123-300.125); (2) evaluation (34 CFR §§300.7, 300.320-300.321, 300.505, 300.530-300.536, and 300.563); (3) IEP (34 CFR §§300.29, 300.309, 300.342-300.348, 300.501, 300.552); (4) service delivery (34 CFR §§300.13, 300.132, 300.300-300.308, 300.347, 300.350); and (5) procedural safeguards (34 CFR §§300.501, 300.503-300.504, 300.515, 300.519-300.520, 300.523, 300.561, 300.563 and 300.565). Data reported on page 6 showed a baseline compliance rate, in the five monitoring areas for all districts monitored in 2004, between 81%-88%, compared to the baseline rate of 70%-84% for 2002. The most notable area of improvement in the baseline rate was in the area of child find (11% increase). The remaining four areas showed an increase between 1%-9%.

On pages 12-13 of the FFY 2003 APR, the State included strategies to improve compliance and performance in this area. OSEP looks forward to reviewing information in the SPP, due December 2, 2005, including the implementation of strategies and resulting data and analysis.

Formal written complaints

In its January 2005 letter, OSEP required ADE to submit updated compliance data regarding timelines for resolution of formal, written complaints. On page 28 of the FFY 2003 APR, ADE reported that for the last two years, on average, districts have completed all corrective actions before the timeline stated in the letter of findings. On page 9, ADE reported that timelines for corrective action following a letter of findings were monitored through the Exceptional Student Services data tracking system. In cases where corrective actions were not completed in a timely manner, districts were subject to enforcement actions such as the withholding of IDEA funds for a specific year.

² As discussed previously, however, OSEP continues to have an issue regarding the amount of time ADE has taken to secure 'close-out.'

On page 7 of the FFY 2003 APR, ADE reported that from July 1, 2003 to June 30, 2004, of the 102 complaints investigated, 84 decisions (82%) were issued within the timelines. 34 CFR §300.661 requires that States issue written decisions within 60 days of receipt of a State complaint, unless the timeline is extended for exceptional circumstances. With the SPP due December 2, 2005, ADE must submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

Mediation

On page 16 of the FFY 2003 APR, ADE reported that it determined that mediation mechanisms met the requirements of IDEA. On page 7, ADE reported that as of August 2004, there were no mediations pending. For the period of July 1, 2003 - June 30, 2004, 14 mediations were related to hearing requests and 11 of the 14 resulted in mediation agreements. OSEP appreciates the work of the State in this area and looks forward to reviewing the State's update in this area as part of the SPP.

Due process hearings and reviews

In its January 2005 letter, OSEP required ADE to submit updated data regarding the due process hearing timeline requirements at 34 CFR §300.511. On page 28 of the FFY 2003 APR, ADE reported that the State had not reached full compliance with the timelines for due process hearing and review decisions. On page 16, ADE stated that while the State improved in meeting timelines for due process hearings, it was still not within the Federal timelines. In the "explanation of progress or slippage" section, on page 17, ADE noted that the number of hearing decisions that were issued after extensions had expired was reduced by 50% from 2003 to 2004.

According to a telephone conversation with State staff in May 2005, and page 12 of the FFY 2003 APR, the State continued its effort to facilitate the timely resolution of due process hearings by moving to a one-tier due process hearing system. The current two-tier system allowed parents to access a system for negotiating the selection of the due process hearing officer. This selection process often caused delays, and was pinpointed by the State as resulting in the State's failure to meet the 45-day timeline.

Arizona also completed the activities and timelines proposed in the State's FFY 2002 APR as part of the State's effort to facilitate the timely resolution of due process hearings. Continued efforts for the current school year noted on page 13 of the FFY 2003 APR included: (1) instituting quarterly meetings with dispute resolution staff to monitor the status and timeliness of all letters of findings and extensions; (2) hiring an administrative assistant to facilitate and monitor the timeliness of both the letter of findings and the conducting of due process hearings; and (3) providing information to ADE's legislative analyst and to the State legislature on due process hearings. In addition to the above, the State reported in a telephone conversation in June

2005, that it implemented efforts to sanction due process hearing officers who demonstrated an inability to render decisions within the Federal timelines.

The State reported, via telephone and electronic mail communications during May and June 2005, that from July 1, 2003 to June 30, 2004, decisions were reached within the required timelines for 82% (28 of 34) of the due process hearing requests. Thirty-two of the 34 due process hearing requests were dismissed or withdrawn. Of these 32 requests, 20 were dismissed or withdrawn during the initial 45-day timeline; six were extended and the extended timeline met; and six were not extended and exceeded the 45-day timeline by a range of 25 days to four months. Due process hearings were held for two of the 34 requests and a decision issued within the 45-day timeline in both cases. Only one of the 34 requests was appealed. The appeal decision was issued within appeal timelines.

OSEP also reviewed Arizona's due process hearing logs for the period of June 2004 to June 2005. OSEP found that of the 53 due process hearing requests filed, decisions were reached within the 45-day timeline for 26 requests, 22 extensions were granted, two requests exceeded the 45-day timeline by three to six days with no extensions granted, and three requests filed during May and June 2005 had decisions due in July 2005. In the SPP, the State must submit updated data demonstrating compliance in this area.

Personnel

In its January 2005 letter, OSEP required ADE to submit an analysis of relevant data and information on current and anticipated personnel vacancies and shortages, in accordance with 34 CFR §§300.380(a) and 300.381(b). On page 22 of the FFY 2003 APR, the State's analysis showed that during 2004, the number of fully certified teachers increased by 400 and there was a slight decline in the number of under-certified teachers. ADE also noted that the State was experiencing a shortage of related services personnel, with a shortage of speech/language pathologists as the most critical. On pages 22 and 23 of the FFY 2003 APR, the State included strategies to improve performance in this area. For example, the State coordinated the establishment of a speech language track at a university that allows for the expansion of a master's degree program in clinical speech pathology with a focus on services within an education setting. OSEP appreciates the State's efforts to improve performance in this area.

Collection and timely reporting of accurate data

Information in the FFY 2003 APR showed the State's progress in implementing strategies proposed in the FFY 2002 APR and their impact on the accuracy and reliability of its data under section 618 of IDEA. On pages 24-25, ADE reported that the State continued to make progress in this area and indicated improvement in submitting timely child count data to OSEP. A table documenting due dates and dates ADE was able to supply the child count information showed that Arizona missed the submission date by three days in 2002, four days in 2003 and reported the data 17 days early in 2004. OSEP appreciates the work of the State in ensuring compliance with the requirements of section 618 of IDEA and looks forward to reviewing the State's update in this area as part of the SPP.

Early Childhood Transition

In its January 2005 letter, OSEP required ADE to determine the extent to which the data reported in the FFY 2002 APR constituted new noncompliance, not previously identified by OSEP (i.e., not related to the child find requirements for children birth through three). If ADE identified noncompliance, OSEP also required ADE to submit, with its FFY 2003 APR, a plan including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan.

On page 31 of the FFY 2003 APR, ADE reported that where noncompliance was cited in districts monitored from 2002 to 2004 for ensuring FAPE by age three (34 CFR §300.121(c)), districts had to address the noncompliance through a corrective action plan that demonstrated compliance within one year of identification. (For further action in this area see *the Identification and Timely Correction of Noncompliance* section of this letter.)

On page 31 of the FFY 2003 APR, ADE reported that the percentage of three-year-old children who entered preschool on or before their third birthdays continued to grow, and the percentage of children who entered late in their third year continued to decline. In addition, changes were made to ADE's database to address the underreporting of children who received FAPE by their third birthdays. This change should be reflected in the data reported beginning in the State's 2005 fiscal year. On pages 31-32 of the FFY 2003 APR, the State included strategies designed to encourage a smooth transition from Part C to Part B services.

This is an indicator in the SPP under section 616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements.

Parent Involvement

In its January 2005 letter, OSEP required ADE to provide a determination of compliance or noncompliance with the requirements at 34 CFR §§300.344; 300.347; 300.503; 300.504; and 300.533, regarding parent involvement. If the data indicated noncompliance, ADE was to submit a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan.

On page 34 of the FFY 2003 APR, ADE reported that, because each fiscal year had a different cohort of LEAs monitored, monitoring results fluctuated. Monitoring results related to parent participation showed the following compliance percentages for cohort LEAs during the period 2001-2004: (1) parents received copies of progress reports as often as parents of nondisabled children required at 34 CFR §300.347, showed an increase from 66% to 77%; (2) required notices provided in the native language of the parent (34 CFR §300.503) fluctuated between 87% and 89%; (3) parental receipt of the procedural safeguards notice, in accordance with the requirements at 34 CFR §300.504, showed an increase from 72% to 85%; (4) IEP team review of

information provided by parents of children with disabilities (34 CFR §300.533) showed an increase from 78% to 82%; and (5) parental receipt of copies of the evaluation report required at 34 CFR §300.534(a)(2) fluctuated between 94% and 97%. ADE noted that the completion of corrective action plans by LEAs where findings of noncompliance existed resulted in full compliance when the plans were closed out.

On page 35 of the FFY 2003 APR, ADE reported parent satisfaction survey results on the percent of parents who were satisfied with their participation in the IEP process for 2003 (88%) and for 2004 (91%). The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection.

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

Psychological counseling services

In its January 2005 letter, OSEP required ADE to provide evidence of correction of previously identified noncompliance with Federal requirements in the FFY 2003 APR to the extent that the reported data were based upon noncompliance with the requirements of 34 CFR §300.346(a)(2) related to the provision of psychological counseling services. On pages 70 and 71 of the FFY 2003 APR, ADE stated that Arizona was in compliance with the requirements for the provision of counseling services for children and families for whom such services were necessary to ensure FAPE. On page 69 of the FFY 2003 APR, ADE reported that the State revised the monitoring system to include substantial inquiry into the consideration for the need for counseling, the inclusion of counseling services in the IEP when appropriate, and the provision of counseling in accordance with an IEP. (For further action in this area see the *Identification and Timely Correction of Noncompliance* section of this letter.)

Data reported from 2002 to 2004 showed a three percent increase from 89% to 92%, in meeting the requirement at 34 CFR §300.347(a)(2)(i). On page 70 of the FFY 2003 APR, ADE also reported a drop in the number of complaint findings of noncompliance related to the provision of counseling services from 2003 (3) to 2004 (0).

Extended school year (ESY) services

In its January 2005 letter, OSEP required ADE to provide evidence of correction of previously identified noncompliance with Federal requirements related to ESY in the FFY 2003 APR. To ensure ESY services to children for whom the IEP team determined it was necessary to ensure FAPE, ADE reported, on page 70 of the FFY 2003 APR, that the State provided statewide training and technical assistance on ESY requirements, decision-making, and appropriate documentation in the IEP process, thereby enabling IEP teams to have sufficient information to make decisions regarding eligibility for ESY services in accordance with the requirements at 34 CFR §300.309. On page 71 of the FFY 2003 APR, ADE noted a 12% increase in their baseline compliance rate from 2002 (77%) to 2004 (89%) and a reduction in the number of complaint findings of noncompliance from 2003 (8) to 2004 (3). ADE further reported on page 71 that an agency must demonstrate compliance before a monitoring finding is closed out. (For further

action in this area see the *Identification and Timely Correction of Noncompliance* section of this letter.)

Disproportionality

In its January 2005 letter, OSEP required ADE to submit data and analysis that met the requirements of 34 CFR §300.755, including: (1) disaggregated identification and placement data; (2) the State's significant disproportionality analysis; and (3) the results of the review, and if appropriate, revisions to policies, procedures and practices.

On pages 40-41 of the FFY 2003 APR, ADE described the State's method for determining significant disproportionality. ADE reported that the State first identified ethnic groups that were performing at or near the "meets the standard" criteria on the statewide assessment. Next, the State factored in the drop-out rates for each ethnic group and used the weighted risk ratios generated by the WESTAT spreadsheet to determine a risk ratio of 1.25 or greater or .80 or less that would be considered significantly disproportionate. Finally, ADE used a scoring system to determine the LEAs that had the greatest risk for having policies, procedures, and practices that could lead to inappropriate identification/non-identification, thereby impacting over/under-identification.

On page 41 of the FFY 2003 APR, ADE noted that, although there were different methods used to determine disproportionality (over/under-identification) in 2003 and 2004, the general trends were the same for both years. For example, White children with disabilities were over-identified and Hispanic children under-identified in the category of emotional disturbance for both years. ADE reported that the State identified 16 LEAs for in-depth study regarding significant disproportionality (disabilities by ethnicity) and was reviewing procedures, where appropriate. Because Arizona had procedures and requirements in place to ensure that all LEAs had written policies and procedures to support nondiscriminatory determination of disability and placement of children with disabilities, the focus of the State investigation of disproportionality was on the practice within an LEA, as noted on page 45 of the FFY 2003 APR. On page 45, ADE further reported that where noncompliance in the area of disproportionality was identified during the cyclical monitoring process, the LEA was required to develop and implement a corrective action plan and demonstrate proof of the corrective action.

On page 47, the State included strategies to improve performance in this area. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §§300.755 and looks forward to reviewing the State's information in this area as part of the SPP.

Graduation and drop-out rates

In its January 2005 letter, OSEP required ADE to report on the status of its data system to compare graduation rates of children with and without disabilities, including the implementation of strategies and their impact.

On page 48 of the FFY 2003 APR, ADE reported that the State was planning to use data extracted from the Student Accountability Information System (SAIS) beginning in FFY 2008 to

report comparable graduation statistics for students with and without disabilities. This reporting would allow the State to disaggregate data within ethnicities and disabilities. For FFY 2004-2007, ADE will continue to report on the graduation rate of children with disabilities based on calculations from OSEP exiting tables. Data reported on page 49 showed an approximate 6% decline in the graduation rate of children with disabilities between the 2002-2003 (69.34%) and 2003-2004 (63.5%) school years. However, the State's graduation rate was close to the national average of 57%. On pages 50-51 of the FFY 2003 APR, the State reported that in 2006 all students must pass all components of the Arizona Instrument to Measure Standards high school test. Students who were sophomores during the 2003-2004 school year would be the first class that must meet this requirement. On page 51 of the FFY 2003 APR, ADE reported that it believes that this requirement impacted the drop-out rate for children with disabilities, thus pushing the graduation rate downward. The State also noted that the increased enrollment rate of children with disabilities in adult education programs for obtaining a general education diploma supported this assumption. Strategies to increase the graduation rate included: (1) discussing the impact of graduation studies with the State's research and policy division; and (2) requesting a change in the State's statutory requirements for children with disabilities to pass the statewide assessment in order to receive a regular high school diploma.

On pages 49 and 50 of the FFY 2003 APR, ADE provided information and data on the comparison of drop-out rates of students with and without disabilities for the 2003-2004 school year. Results showed that the drop-out rate for students without disabilities in grades 8-12 was 12.7% and for children with disabilities 10.1%. ADE's 2004 target was to maintain drop-out rates at or below 10%. Some of the strategies to further examine drop-out rates of children with disabilities included: (1) rank ordering LEAs according to drop-out rates of children with disabilities and publishing the results; and (2) developing technical assistance mechanisms for LEAs with high dropout rates for children with disabilities.

On page 51 of the FFY 2003 APR, the State included strategies to improve performance in this area. OSEP looks forward to reviewing the State's data in this area as part of the SPP.

Suspension and expulsion

In its January 2005 letter, OSEP required ADE to include the information required by the instructions for reporting in the FFY 2002 APR. The provisions at 34 CFR §300.146 require that States examine data to determine if significant discrepancies occur 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 determined that significant discrepancies were occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that the policies, procedures and practices comply with Part B. The instructions to the FFY 2002 APR directed States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constituted a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies were occurring, a description of those discrepancies and how the State planned to address them.

On pages 52 and 53 of the FFY 2003 APR, ADE reported that the State reviewed the policy revisions as part of the general monitoring cycle for all LEAs. In addition, all school-based staff involved in the disciplinary procedures were required to conduct an annual review of the policies and procedures related to suspension/expulsion. On page 52, ADE specified that the State used a comparison of the suspension/expulsion rates of children with disabilities among LEAs within the State to analyze suspension/expulsion data. Data reported on page 54 showed a decrease in the number of LEAs with suspension rates greater than 10% from 2001 (39) to 2004 (10). As noted on page 53, ADE attributed this significant decrease to: (1) the public sharing of data and workshops on data collection; (2) State-sponsored school-wide behavioral initiatives; and (3) an increased emphasis on counseling services. As noted on page 54, the State also provided technical assistance to the LEAs with suspension/expulsion rates greater than 10% that included: (1) reviewing of LEAs' policies, procedures and practices to ensure compliance with IDEA; (2) reviewing the distribution of policies and procedures related to discipline; (3) training on appropriate disciplinary steps and positive behavioral supports; and (4) recording and reporting of suspension data. The change to the Arizona's Administrative Code clarifying the definition of "suspension" was also cited on page 54 as a factor in the decrease of suspension rates.

On page 55 of the FFY 2003 APR, the State included strategies to improve performance in this area. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §300.146 and looks forward to reviewing the State's data in this area as part of the SPP.

Statewide and districtwide assessment

In its January 2005 letter, OSEP required ADE to: (1) include data and analysis to determine the extent to which children with disabilities were participating in Arizona's assessment program; and (2) ensure that children with disabilities who took out-of-level tests were reported according to the directions for Attachment 3 of the APR.

On page 57 of the FFY 2003 APR, ADE provided data on the participation rates of children with disabilities in the statewide assessment program. The State noted that the 2004 participation rate percentages exceeded the No Child Left Behind math and reading requirement of 95% (96.5% to 99.4%), except on the math assessment for 10th graders (89.3%) as measured by the *Arizona Instrument to Measure Standards (AIMS)*.

The State provided participation results of children with disabilities who took an out-of-level assessment in math (page 3 of 18) and reading (page 12 of 18) in Attachment 3 for children with disabilities in grades 5, 8, and 10. No children with disabilities in grade 3 participated in the out-of-level assessment.

On page 58 of the FFY 2003 APR, ADE reported that the new baseline percentages for the third grade achievement results showed that between 2001 (22%) and 2004 (29%) the number of children with disabilities meeting/exceeding State standards in the area of math increased by 7% and by 3% in the area of reading (from 31% to 34%). ADE reported that the new baseline for grades 5, 8, and 10 would be set based on the 2004 achievement rates. This information would be used for reporting in 2005 of the "closing the gap measurement" data between children with and without disabilities. On pages 59-60 of the FFY 2003 APR, the State included strategies to

improve performance in this area. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §300.138 and looks forward to reviewing the State's data in this area as part of the SPP.

Least restrictive environment (LRE)

On page 61 of the FFY 2003 APR, ADE reported that children with disabilities aged 6-12 were educated with their nondisabled peers at rates comparable to the national averages, with the largest percentage of children with disabilities served in the regular classroom. On page 63 of the FFY 2003 APR, ADE reported an increase in the percentage of preschool children with disabilities served in self-contained classrooms between 1999-2003. State and national comparisons showed that in 1999, the provision of services to preschoolers with disabilities in the self-contained setting fell 3% below the national average as compared to 2003 when Arizona was 17% above the national average. ADE noted on page 63, that while the percentage was increasing "in the wrong direction," the number of children served in typical early childhood settings increased between 1999 (3,349) and 2003 (4,063).

On pages 64-65 of the FFY 2003 APR, ADE included strategies to improve performance in the area of the provision of services to preschoolers with disabilities. OSEP looks forward to reviewing the State's data in this area as part of the SPP.

Preschool performance outcomes

In its January 2005 letter, OSEP required ADE to 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 skills for preschool children with disabilities, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan. On page 66, ADE reported that the State was still unable to report outcome measures but that it made progress in identifying targeted data collection. The State instructed LEAs to focus data collection on IEP goal attainment by goal type that included pre-reading/cognition, language/communication, and social/emotional areas for school year 2004-2005. In addition, during the 2003-2004 school year, ADE identified and conducted training for the sampling system. ADE selected preschool programs where the system will be implemented during the 2004-2005 school year.

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Secondary Transition

In its January 2005 letter, OSEP required ADE to provide a determination of compliance or noncompliance with the Part B requirements for secondary transition services. If the data indicated noncompliance, ADE was to submit a plan, including strategies, proposed evidence of

change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepted the plan.

On page 73 of the FFY 2003 APR, ADE determined that baseline compliance rates with the secondary transition requirements, evaluated through monitoring, improved from FFY 2002 to 2004. ADE's monitoring system included compliance with the requirements at 34 CFR §§300.29; 300.344(b); and 300.347(b) and (c). Baseline data results for these requirements in the FFY 2002 APR showed a compliance range of 44-57%, and for 2004, a compliance range of 69-85%. On page 74, ADE stated that an agency must demonstrate compliance before a monitoring finding is closed out. On pages 79-80 of the FFY 2003 APR, the State identified several strategies to improve performance in this area. Some of the strategies included: (1) hiring additional transition staff to enhance training and technical assistance opportunities; (2) identifying and recruiting youth and young adults with disabilities to serve on the Arizona Transition Leadership Team (ATLT) and various subcommittees within the ATLT; and (3) working with youth and young adults with disabilities to develop a youth strand for the Fall 2005 transition conference.

With regard to post-school outcomes information, on page 73 of the FFY 2003 APR, ADE indicated that it had begun discussions to identify data collection methods that would provide valid information. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Conclusion

In the SPP, due December 2, 2005, ADE must submit to OSEP:

- (1) a Progress Report including data and analysis demonstrating progress toward compliance with ensuring correction of identified noncompliance within one year. The State must also report to OSEP, with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year from the date of this letter. This data and analysis must address all LEA noncompliance identified by the State prior to June 2005, including any remaining uncorrected noncompliance regarding the provision of psychological counseling services, child find for children birth through three, and the provision of ESY services, that has not been corrected by one year from the date of this letter, including the specific additional steps the State has taken to secure correction after the LEA's one year period to correct had expired.
- (2) a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure that written complaint decisions are issued within 60 days of receipt of the complaint, unless the timeline is extended for exceptional circumstances within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and

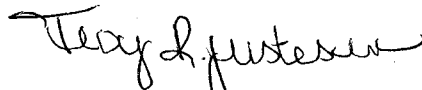
provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

- (3) updated data demonstrating that due process hearing requests are resolved and a final decision issued within 45 days of receipt of the request, unless there is an extension of time if exceptional circumstances exist with respect to a particular request.

IDEA 2004, §616, requires each State to submit a SPP that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Debra Jennings at (202) 245-7389.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Joanne Phillips