



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

Honorable Edward Parisian
Director
Office of Indian Education Programs
Bureau of Indian Affairs
MS-3512, MIB
1849 C Street, NW
Washington, DC 20240-0001

NOV 21 2005

Dear Director Parisian:

The purpose of this letter is to respond to the Bureau of Indian Affairs' (BIA's) April 7, 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

The conclusion of OSEP's December 22, 2004 FFY 2002 APR response letter required BIA to submit to OSEP, in the FFY 2003 APR:

- (1) Data and analysis demonstrating that any noncompliance identified with the requirements of Part B of IDEA in school year 2002-2003 through its Continuous Improvement Monitoring Process (CIMP)¹ process and "second tier"² monitoring was corrected within one year of identification;

¹ BIA's Continuous Improvement Monitoring Process (CIMP) included on-site visits to schools/agencies, issuance of a monitoring report, development of a corrective action plan, approval by Center for School Improvement (CSI), and follow-up by CSI staff to ensure correction.

² In second-tier monitoring, special education coordinators complete a yearly monitoring of schools as well as provide technical assistance and follow-up, based on monitoring results.

- (2) Monitoring data and analysis demonstrating the following areas of noncompliance identified in the April 20, 2000 monitoring report had been corrected:
 - (a) Individualized education programs (IEPs) include the content required in 34 CFR §300.347(a)(5) regarding statewide and districtwide assessments;
 - (b) Each child's placement decision is determined on the basis of individual needs as required by 34 CFR §§300.550-300.556;
 - (c) Extended school year (ESY) services are available for all children with disabilities who need such services in order to receive a free appropriate public education (FAPE) as required by CFR §300.309; and
 - (d) Meeting notices and invitations to required participants meet the requirements at 34 CFR §§300.344(b) and 300.345(b)(2)-(3); and transition services statements are included in IEPs as required at 34 CFR §§300.29 and 300.347(b)(1).
- (3) A plan to collect the information required in 34 CFR §300.381(b), including relevant information on current and anticipated personnel vacancies and shortages;
- (4) Information collected from the revised report form and the monitoring component developed to assist in clarifying what programs and activities tribes were carrying out with funds received under section 611(h)(4)(A) of IDEA;
- (5) Data comparing the suspension and expulsion rates of children with disabilities among schools or agencies or compared to the rates for nondisabled children within the schools or agencies as required in 34 CFR§300.146(a) and (b); and
- (6) Data and analysis on whether BIA is providing parents a procedural safeguards notice in accordance with the requirements in 34 CFR §300.504.

During the week of September 12, 2005, OSEP conducted a verification visit to the BIA as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of IDEA. The purpose of our verification visit was to determine how the BIA used their general supervision, State-reported data collection, and statewide assessment systems to assess and improve performance, and to protect child and family rights. A letter is forthcoming to inform BIA of the results of the OSEP's verification visit.

General Supervision

Identification and timely correction of noncompliance

OSEP's December 2004 APR letter directed BIA to report, in the FFY 2003 APR, data and analysis demonstrating that any noncompliance identified with the requirements of Part B of

IDEA in school year 2002-2003 through the CIMP and second tier monitoring were corrected within one year of identification. The BIA did not submit any data and analysis documenting that the noncompliance identified in school year 2002-2003 was corrected within one year of identification.

On page 3 of the FFY 2003 APR, BIA reported that 36 (19.56%) schools were visited in school year 2003-2004 as part of the CIMP process. On page 2 of the FFY 2003 APR, the BIA reported that within 45 days after receiving written monitoring results, the school must submit an Improvement Plan (IP) to address areas of noncompliance. On page 8 of the FFY 2003 APR, the BIA reported that 18 of the 36 schools that received CIMP monitoring submitted the required IP within 45 days. Fifteen schools submitted the required report late. Three schools did not submit the required report. Follow-up for schools not submitting the required report included calls, letters, and onsite visits by the agency special education coordinator. On page 3 of the FFY 2003 APR, the BIA reported that the agency Special Education Coordinators continued to complete a yearly monitoring at each school (second tier monitoring) as well as providing technical assistance and follow-up based on monitoring results. On page 9 of the FFY 2003 APR, BIA reported that its special education coordinators reviewed 1,403 (20%) student records.

On page 4 of the FFY 2003 APR, BIA reported the following as the five areas of noncompliance most often identified during the CIMP process in 2003-2004: (1) content of IEP; (2) review/revision of IEP; (3) progress on goals; (4) determination of eligibility; and (5) extended school year. The following five areas of noncompliance were most often identified in 2003-2004 second tier monitoring: (1) input from participants; (2) transition requirements for students with disabilities at age 14; (3) eligibility; (4) IEP team participants; and (5) parent notice. The BIA did not report the specific Part B of IDEA requirements identified as noncompliant or the percentage of schools/agencies found out of compliance.

On pages 6 and 10 of the FFY 2003 APR, the BIA reported that during the next reporting period agency special education coordinators would visit every school, validate the school's IP, and forward a progress report on every school by April 29, 2005 and that BIA would work with the Mountain Plains Regional Resource Center to develop a plan that would provide for consistent and timely follow-up for all issues identified during CIMP monitoring.

During its September 2005 Verification Visit, OSEP found BIA has not ensured that identified deficiencies are corrected in a timely manner, not to exceed one year from the date such deficiencies are identified. Through interviews with CSI and agency staff, and a review of BIA monitoring records, OSEP learned that BIA has considerable difficulty with enforcement, especially as it concerns tribally-operated schools. This issue will be discussed in detail in OSEP's forthcoming letter addressing the results of its Verification Visit.

With the State Performance Plan (SPP), due December 2, 2005, the BIA must provide data demonstrating that the noncompliance identified in the CIMP process and second tier monitoring in school year 2003-2004 was corrected in a timely manner (i.e., within one year of identification), in accordance with section 612(a)(11) of IDEA and 34 CFR §300.600. If the data does not demonstrate compliance with this requirement, the BIA must submit a plan, including strategies, proposed evidence of change, targets and timelines for ensuring that the

requirement is met within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

This is an indicator in the SPP under §616 that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, BIA should carefully consider its current data collection against the requirements related to indicator 15 in the SPP packet to ensure that data will be responsive to those requirements. BIA must submit responsive baseline data regarding the percent of noncompliance related to monitoring priority areas and indicators corrected within one year from identification; the percent of noncompliance related to areas not included in the monitoring priority areas and indicators corrected within one year of identification; and the percent of noncompliance identified through other mechanisms corrected within one year of identification. The absence of baseline data in this area will be considered in OSEP's decision about approval of BIA's SPP.

Formal written complaints

On page 12 of the FFY 2003 APR (Attachment 1), BIA reported receiving 17 formal complaints. Although BIA reported in the APR that all 17 complaints were completed within the timelines required at 34 CFR §300.661 and findings were made for each complaint, OSEP learned during its verification visit that 13 of the 17 complaints were not investigated within 60 days, or within properly extended timelines. Furthermore, BIA had not ensured that corrective actions resulting from these complaint investigations had been implemented. A detailed discussion of this issue will be included in OSEP's report of its Verification Visit to BIA. OSEP looks forward to reviewing data and information in this area in the SPP, due December 2, 2005.

Mediation

On page 12 of the FFY 2003 APR (Attachment 1), BIA reported three mediation requests. All three mediations resulted in mediation agreements. OSEP appreciates BIA's efforts in this area and looks forward to reviewing data and information in this area in the SPP.

Due process hearing and reviews

On page 12 of the FFY 2003 APR (Attachment 1), BIA reported four due process hearing requests. However, no due process hearings were held. Of the four requests, two were withdrawn and two were resolved through mediation. OSEP appreciates BIA's efforts in this area and looks forward to reviewing data and information in this area in the SPP.

Personnel

OSEP's December 2004 letter directed BIA to submit a plan to collect the information required in 34 CFR §300.381(b), including relevant information on current and anticipated personnel vacancies and shortages in the FFY 2003 APR. On page 14 of the FFY 2003 APR, the BIA reported that the BIA education system is located in 23 States and schools must follow the license/certification of the State in which the schools are located. On page 15 of the FFY 2003 APR, BIA reported 53 vacancies for staff serving children with disabilities. Of the 53, 43 were

teacher vacancies. From the data presented, it appeared that BIA had a vacancy rate of 3% (53/1,532).

On page 14 of the FFY 2003 APR, BIA reported that 87% of special education teachers were fully certified, an increase of nearly two percent from FFY 2002. During 2003-2004, there were slightly more teachers than reported in 2002-2003 and there was a small decrease in the use of paraprofessionals. BIA projected as a target a 10% increase in the number of highly qualified special education teachers system-wide. Future activities to achieve the projected target included continued use of higher education contracts to make available degree programs and to provide technical assistance to schools. OSEP appreciates BIA's efforts to improve in this area.

Collection and timely reporting of accurate data

OSEP's December 2004 letter required BIA to report progress of "code implementation" as well as other efforts to develop an integrated data collection system. On page 19 of the FFY 2003 APR, BIA reported that the Indian Student Equalization Program (ISEP) rosters were the single system-wide data collection tool that listed all students and which was on-site verified each October. The ISEP codes for students with disabilities were revised so as to use the same definitions as those used by OSEP, thereby allowing student count data to be collected system wide. (The small number of non-ISEP eligible students did not appear on the ISEP count, but were listed on Table 1 (Child Count) and verified at the Agency level.) For the first time the 2003-2004 ISEP roster was used to verify the numbers for OSEP Table 1 (Child Count) and Table 2 (Environment). On page 19 of the FFY 2003 APR, BIA stated that a request for proposals was published to provide a system-wide Student Information System that would include special education data. This was the initial step toward implementing a Native American Student Information System (NASIS) that would accept academic achievement scores from publishers and provide better control over all student-related data collection. BIA reported that codes for disability and placement were added to the ISEP rosters, facilitating a crosswalk between information submitted by the agency and the verified rosters. Also, achievement reporting for children with disabilities was added to the annual reports. However, BIA reported that data on discipline, exiting and staff were still collected at the school level before being forwarded through the agency line offices. Projected targets for FFY 2004 included selecting vendors to provide a unified information system and an inclusion of schools' self-reported data in the Office of Indian Education Programs' (OIEP's) Annual Report.

OSEP learned during the verification visit that under BIA's current system verification of data is difficult mainly due to the system's reliance on manual processes. BIA does not provide clear guidance to agency line staff for training and providing technical assistance to school personnel. By implementing NASIS, BIA is attempting to make improvements in its data collection system. A detailed discussion of this issue will be included in OSEP's report of its Verification Visit to BIA. OSEP appreciates BIA's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Early Childhood Transition

OSEP's December 2004 letter required BIA to submit information that it collected from the revised report form and the monitoring component it developed to determine what programs and activities the tribes were carrying out with the funds received under section 611(h)(4) of IDEA. Under section 611(h)(4)(A) of IDEA, the Secretary of Interior distributes twenty percent of the funds allotted under section 611(b)(2) to tribes and tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. Under section 611(h)(4)(D), the funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children ages 3 through 5, parent training, and the provision of direct services.

On page 22 of the FFY 2003 APR, BIA presented a flow chart developed to assist in clarifying the child find activities of tribes receiving funds under section 611(h)(4)(A) of IDEA, and on pages 23-25, reported tribal early childhood counts. On page 21 of the FFY 2003 APR, BIA reported that during the 2003-2004 school year, 59 tribes received Part B funds to provide various services for three-to-five-year-old children with disabilities who resided on reservations. There were 3,428 children with disabilities (aged 3-5) identified as residing on reservations and of those, 2,946 were served (85.9%). To assist tribes in understanding the process and terms related to early childhood services, tribes and States were invited to participate in activities/trainings provided by OIEP for BIA's Family and Child Education (FACE) program. During FFY 2003, BIA implemented a pilot project to gain knowledge about the programs and activities funded received by the tribes. The pilot review was completed with eight tribes. OSEP appreciates BIA's efforts in this area. With the exception of 5-year-old children enrolled in elementary schools for Indian children operated or funded by the Secretary of the Interior, State educational agencies (SEAs) are responsible for ensuring that all of the requirements of Part B of IDEA are implemented for preschool children with disabilities on reservations. Therefore, BIA will not need to report on indicator 12, the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays, in the SPP.

Parent Involvement

OSEP's December 2004 letter, based on data provided in the FFY 2002 APR, required BIA to report data and analysis on whether BIA is providing parents a procedural safeguards notice in accordance with the requirements in 34 CFR §300.504.³ The BIA did not provide any data on compliance with 34 CFR §300.504 in this section of the APR. On page 5 of the FFY 2003 APR, the BIA noted that during 2002-2003, parent notice was the second most frequent issue found during both the CIMP process and second tier monitoring. For 2003-2004, this concern was not included among the five most frequently found areas of noncompliance in the CIMP

³ Section 615(d)(1) of IDEA now requires that a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents-- (1) upon initial referral or parental request for evaluation; (2) upon receipt of the first State complaint or a due process complaint in that school year; and (3) upon request by a parent.

process and fell to fifth most frequently identified issue in second tier monitoring. As noted above, in the Identification and timely correction of noncompliance section, with the SPP, due December 2, 2005, the BIA must provide data demonstrating that the noncompliance identified in the CIMP process and second tier monitoring during 2003-2004, including noncompliance with the parent notice requirements, was corrected in a timely manner (i.e., within one year of identification), in accordance with section 612 (a)(11) of IDEA and 34 CFR §300.600.

On page 27 of the FFY 2003 APR, BIA reported that invitations for parents were documented 96% of the time. On page 31 of the FFY 2003 APR, as a projected target, BIA indicated that parent notices would be provided for all meetings and actions as required and that parent consent would be obtained before any actions requiring parent consent would be initiated. School and agency staff would receive training on parental rights, required parental notifications, and actions that require parent consent prior to initiation.

The SPP instructions establish a new indicator in this area, for which the BIA must provide baseline data in the FFY 2005 APR, due February 1, 2007. The BIA should carefully review the instructions to the SPP in developing its plan for this collection. OSEP looks forward to reviewing BIA's plan for collecting this data, in the SPP.

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

Disproportionality

BIA schools represent a single ethnic group (American Indian). On page 33 of the FFY 2003 APR, BIA reported that for this reason, the BIA looked at disproportionality from two different perspectives. Data was analyzed in comparison to the States in which the BIA had schools located. The BIA had a high percent of placement (65.89%) in the disability category of learning disabled and a low percent (2.86%) in the disability category of other health impaired. The BIA noted that it had a similar pattern to the States in which the schools were located (in aggregate) and that cultural factors may have had an impact on the category of eligibility identified. On page 35 of the FFY 2003 APR, BIA reported 16.87% placement in special education, compared with a national average of approximately 9%. On page 35 of the FFY 2003 APR, BIA reported that when looking at internal disproportionality between agencies, there were small differences in both placements and categories. BIA identified a placement concern in one agency, which had a placement rate of 26.9% as compared to the BIA average of 16.8%. Beginning in 2002-2003 a great deal of technical support had been provided to address this placement rate. OSEP appreciates BIA's efforts in this area and looks forward to reviewing data and information in the SPP.

Graduation and drop-out rates

On page 38 of the FFY 2003 APR, BIA reported that 57.77% of students with disabilities graduated in 2003-2004 compared with 58.95 % of their nondisabled peers. The BIA reported that the graduation rate for students with disabilities had remained stable over two school years, however the gap between students with disabilities and nondisabled peers had closed due to a drop in graduation rate for nondisabled versus a gain for disabled. BIA reported a 9.54% drop-

out rate for students with disabilities and a 10.51% rate for nondisabled students. The dropout rate for students with disabilities as well as their nondisabled peers showed no improvement. As projected targets, BIA reported it would increase the graduation rate for all students by 5% and decrease drop-outs by 2%. To achieve this target, BIA reported future activities that include continued efforts of the transition initiative and curriculum training project provided to all schools. OSEP appreciates BIA's efforts in this area and looks forward to reviewing data and information in this area in the SPP.

Suspension and expulsion

OSEP's December 2004 letter required BIA to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among schools or agencies or compared to the rates for nondisabled children within the schools or agencies as required in 34 CFR §300.146(a). If significant discrepancies are occurring in the rate of long-term suspensions and expulsions, BIA must review and, if appropriate revise (or require the affected school or agency 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 these policies, procedures and practices comply with IDEA. On page 40 of the FFY 2003 APR, BIA stated that suspension and expulsion data for the period between July 2003 and June 2004 were not collected for the general education population. Discipline data on students with disabilities was provided from 2002-2003 on the number of students involved in incidents that resulted in suspension. However, BIA did not provide data comparing the rate of long-term suspensions and expulsions of children with disabilities among schools or agencies or compared to the rates for nondisabled children within the schools or agencies. The BIA reported that data was gathered at the school level but there was no integrated system wide reporting process; and therefore there were no single definitions of suspensions and expulsions, which were used consistently across the system or between general education and special education. With the SPP, due December 2, 2005, or within 60 days of the date of this letter, BIA must submit either: (1) evidence demonstrating that it is meeting the requirements of 34 CFR §300.146, as described above; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance with 34 CFR §300.146 as soon as possible but not later than one year from the date OSEP accepts the plan. 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.

Statewide and districtwide assessment

On page 41 of the FFY 2003 APR, the BIA reported that in 2003-2004 schools were operating in an interim status relative to assessment. BIA schools had the choice of using State criteria or the BIA interim criteria for adequate yearly progress (AYP). Because of this and the fact that schools are using 23 different assessments, it was difficult make a broad statement about achievement such as closing the gap. On page 61 of the FFY 2003 APR, BIA reported that for both mathematics and reading assessments, there was a 97.15% participation rate for children with disabilities. BIA stated that it would maintain a 95% or higher participation rate for children with disabilities on the schoolwide assessments. In addition, ten percent of children

with disabilities who were currently achieving in the “basic” group would move to the “proficient” or “advanced” groups.

OSEP’s December 2004 letter required BIA to report monitoring data and analysis demonstrating that IEPs included the content concerning statewide and districtwide assessments, as required by 34 CFR §300.347(a)(5).⁴ BIA did not report monitoring data on whether the IEPs include the required content regarding assessments. With the SPP due December 2, 2005, the BIA must provide monitoring data and analysis demonstrating that noncompliance with 34 CFR §300.347(a)(5) has been corrected or a date certain by which this monitoring data will be available.

Least restrictive environment (LRE)

OSEP’s December 2004 letter required BIA to report monitoring data and analysis demonstrating that each child’s placement decision was determined on the basis of individual child needs. BIA did not submit such information in the FFY 2003 APR. With the SPP due December 2, 2005, the BIA must provide monitoring data and analysis demonstrating that noncompliance identified in the April 20, 2000 monitoring report has been corrected or a date certain by which this monitoring data will be available. On page 36 of the FFY 2003 APR, BIA reported 60.8% of children with disabilities in the category “outside the regular class < 21%,” in 2003-2004, which was above the national average of 50%. BIA reported that 30.64% of children with disabilities were placed “outside the regular class 21% - 60%.”

Indicator 5 in the SPP under §616 that is due December 2, 2005 requires BIA to report placement data for children with IEPs aged 6 through 21. BIA will not need to include data and information regarding indicator 6, the percent of preschool children with IEPs who received special education and related services in settings with typically developing peers.

Preschool performance outcomes

Because SEAs are responsible for ensuring that all of the requirements of Part B of IDEA are implemented for preschool children on reservations, BIA will not need to include data and information regarding indicator 7, the percent of preschool children with IEPs who demonstrate improved: (a) positive social-emotional skills; (b) acquisition and use of knowledge and skills; and (c) use of appropriate behaviors to meet their needs, in the SPP.

⁴ Effective July 1, 2005, section 614(d)(1)(A)(i)(VI) requires that the IEP include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and if the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why-- the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child.

Other: Extended school year (ESY) services

OSEP's December 2004 letter required BIA to report monitoring data and analysis demonstrating that ESY services were available for all children with disabilities who needed such services in order to receive FAPE. On page 4 of the FFY 2003 APR, the BIA provided data that ESY was one of the five most identified areas of noncompliance in the CIMP process in school year 2003-2004. BIA noted that in 2002-2003 it was the number 4 most identified area of noncompliance and in 2003-2004 it was the number 5 most identified area of noncompliance. Training had been provided to clarify confusion over ESY and summer school and the issue moved from number 4 to number 5. As noted above, in the identification and timely correction of noncompliance section, with the SPP, due December 2, 2005, the BIA must provide data demonstrating that the noncompliance identified in the CIMP process and second tier monitoring during 2003-2004, including noncompliance with ESY, was corrected in a timely manner (i.e., within one year of identification), in accordance with section 612 (a)(11) and 34 CFR §300.600.

Secondary Transition

OSEP's December 2004 letter required BIA to report monitoring data and analysis demonstrating that meeting notices and invitations to required participants met the requirements in 34 CFR §§300.344(b) and 300.345(b)(2)-(3); and transition services statements were included in IEPs as required by 34 CFR §§300.29 and 300.347(b)(1).⁵ On page 4 of the FFY 2003 APR, the BIA reported that in 2003-2004 transition was the second most frequently found area of noncompliance in second tier monitoring. However, BIA did not report specific monitoring data on secondary transition requirements in the FFY 2003 APR, nor was it evident that BIA monitored for these requirements in its CIMP or second-tier monitoring system. With the SPP due December 2, 2005, BIA must submit data and analysis demonstrating that the noncompliance identified in the April 20, 2000 monitoring report has been corrected or a date certain by which this monitoring data will be available.

On page 64 of the FFY 2003 APR, BIA reported that during the 2003-2004 school year, one staff person was identified to take the lead for transition activities in BIA schools. The role of this staff person would include providing guidance regarding transition activities and expectations and developing a transition team for the BIA. The BIA reported that to gather information about the number of 12th grade students with disabilities who graduated during the 2003-2004 school year a survey was sent to schools to gather graduation numbers and other information for students with disabilities. The BIA provided transition information from the survey that was completed six months post-graduation. On page 66 of the FFY 2003 APR, the BIA reported that an action plan was developed to continue to address the area of transition for the 2004-2005 school year.

The SPP instructions establish two new indicators in this area (13 and 14). For indicator 13, BIA must provide baseline data in the FFY 2005 APR due February 1, 2007 and for indicator 14, States must provide baseline data in the FFY 2006 APR, due February 1, 2008, based on students who exit during the 2005-2006 school year. BIA should carefully review the instructions to the

⁵ Effective July 1, 2005, changes made to the IDEA by the IDEA Amendments of 2004 eliminate the requirement to include a statement of transition services needs for students by the age of 14.

SPP in developing its plan for this collection. OSEP looks forward to reviewing BIA's plan for collecting this data, in the SPP.

Conclusion

With the SPP, due December 2, 2005, the BIA must submit to OSEP:

- (1) Data demonstrating that the noncompliance identified in the CIMP process and second tier monitoring in school year 2003-2004, including noncompliance with the requirements regarding parent notice in 34 CFR §300.504 and ESY services in 34 CFR §300.309, was corrected in a timely manner (i.e., within one year of identification), in accordance with section 612(a)(11) of IDEA and 34 CFR §300.600. If the data does not demonstrate compliance with this requirement, the BIA must submit a plan, including strategies, proposed evidence of change, targets and timelines for ensuring that the requirement is met within a reasonable period of time not to exceed one year from the date OSEP accepts the plan;
- (2) Monitoring data and analysis demonstrating the following areas of noncompliance identified in the April 20, 2000 monitoring report have been corrected or a date certain by which this monitoring data will be available:
 - (a) Individualized education programs (IEPs) include the content required in 34 CFR §300.347(a)(5) regarding statewide and districtwide assessments;
 - (b) Each child's placement decision is determined on the basis of individual needs as required by 34 CFR §§300.550-300.556;
 - (c) Meeting notices and invitations to required participants meet the requirements at 34 CFR §§300.344(b) and 300.345(b)(2)-(3); and transition services statements are included in IEPs as required at 34 CFR §§300.29 and 300.347(b)(1).

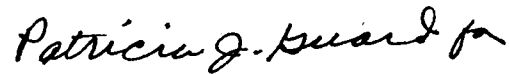
With the SPP, due December 2, 2005, or within 60 days of the date of this letter, the BIA must submit to OSEP:

Evidence demonstrating that it is meeting the requirements of 34 CFR §300.146 regarding the rate of long-term suspensions and expulsions, as described above or a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance with 34 CFR §300.146 as soon as possible but not later than one year from the date OSEP accepts the plan;

IDEA 2004, §616, requires each State to submit a State Performance Plan (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 BIA 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 BIA's work. 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 Tony G. Williams at (202) 245-7477.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Justesen".

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Ms. Gloria Yepa