



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

Superintendent Patricia Hamamoto  
Superintendent of Education  
Hawaii Department of Education  
1390 Miller Street, #307  
Honolulu, Hawaii 96813

OCT 13 2005

Dear Superintendent Hamamoto:

The purpose of this letter is to respond to Hawaii's April 30, 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 February 8, 2005 APR response letter directed the State to provide:

1. data and analysis such that OSEP can determine whether the State's monitoring system ensures correction of all identified noncompliance with Part B requirements within a reasonable period of time not to exceed one year from identification;
2. a report on the correction of the noncompliance with 34 CFR §300.347(a)(3) (that a statement of needed supports, services, and modifications be included in the IEP), that the State previously identified;
3. data and analysis demonstrating that the State is identifying and ensuring the correction of noncompliance with 34 CFR §§300.342(b) (that IEPs were consistently accessible to the regular education teachers, where appropriate, to ensure that they were aware of their responsibilities related to implementing IEPs), and 300.347(a)(2) (that children with disabilities had the opportunity to access, and be involved and progress in the general curriculum);
4. a report on compliance with requirements for reevaluations within the State's timelines and on the impact, if any, of the reported vacancies on the provision of special education and related services to eligible children with disabilities;

5. early childhood transition data and analysis, along with a determination of compliance or noncompliance with the requirements of 34 CFR §300.132(b);
6. the criteria the State utilized to determine significant disproportionality, including the relevant data, and revised targets to address the reviews and, if appropriate, revisions of policies, procedures and practices as required under 34 CFR §300.755;
7. a revised analysis to determine whether there is a significant discrepancy in the rates of long-term suspension and expulsion between children with and without disabilities and report on the required reviews of, and, if appropriate, revisions to, policies, procedures and practices consistent with 34 CFR §300.146;
8. data and analysis regarding skills of preschool children with disabilities; and
9. data and analysis demonstrating compliance with the requirement at 34 CFR §300.344(b) (that the public agency takes other steps to obtain agency input where a representative of an agency likely to be responsible for providing or paying for needed transition services does not attend an IEP meeting), and that the previously identified noncompliance with 34 CFR §300.347(b)(2) (that IEPs include a statement of needed transition services beginning at age 16 (or younger, if appropriate), has been fully corrected).

### ***General Supervision***

#### Identification and timely correction of noncompliance

OSEP's February 2005 letter required the Hawaii Department of Education (HIDOE) to provide data and analysis such that OSEP could determine whether the State's monitoring system ensured correction of all identified noncompliance with Part B requirements within a reasonable period of time not to exceed one year of identification (20 U.S.C. 1232d(b)(3)(E)).

On pages 2-3, and 5-9 of the FFY 2003 APR, HIDOE reported information and data regarding Hawaii's Continuous Integrated Monitoring and Improvement Process (CIMIP). According to the State, the internal review component of the CIMIP allowed personnel within the 41 complexes to: (1) examine practices; (2) identify systemic areas of noncompliance; and (3) develop improvement/corrective action plans to address the identified noncompliance to be completed within a year. Each complex with a score of 85 percent or better in the areas of system performance and child status passed the internal review.

HIDOE also noted on page 5 of the FFY 2003 APR, that during the 2003-2004 school year, internal reviews were conducted for all 41 complexes.<sup>1</sup> Thirty-seven complexes (90 percent) passed with a score of 85 percent or more on acceptable system performance and 38 complexes (93 percent) passed with the same percentage range for child status.<sup>2</sup> All complexes that failed the internal review were offered technical assistance from the State's special education staff in

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<sup>1</sup> HIDOE monitors school complexes which consist of high schools and all of the middle and elementary schools that feed into them.

<sup>2</sup> As noted in OSEP's March 31, 2004 verification letter, the complex internal review process is the internal evaluation that encompasses aspects of Felix Service Testing (under the Felix Consent Decree (*Felix*)). School personnel within the complex conduct the complex internal review of the other schools in the complex to ensure correction in areas where the court found the complexes to be in noncompliance. If a "complex system" has the necessary supports to meet the needs of the child, it receives an "acceptable" rating; if not, it gets a rating of "unacceptable."

the development of the corrective action plan (CAP). State staff also conducted follow-up visits to monitor the progress of the CAPs. In Hawaii, CAPs were developed by complexes and not by individual schools or districts.

In the March 31, 2004 verification letter to Hawaii, OSEP found that HIDOE had not fully exercised its general supervisory authority through monitoring. In 2003, public charter schools were not included in the CIMIP system or Felix Service Testing and the State was in the process of revising its procedures so that public charter schools would be included as part of the State's monitoring during the 2003-2004 school year. Although 90 percent of complexes passed with a score of 85 percent or more on acceptable system performance and child status during the 2003-2004 school year, data in the FFY 2003 APR did not indicate which public charter schools were included in the internal review. Information in the *GS.II Table 2 Internal Review Calendar for the 2004-2005* school year attachment to the FFY 2003 APR showed that internal reviews conducted between September 2, 2004 and February 5, 2005 included Hawaii's 26 public charter schools.<sup>3</sup>

HIDOE also included information regarding the focused checklist review in the FFY 2003 APR. As part of the CIMIP, complexes conducted record reviews through a "focused checklist" process that examined IDEA compliance not addressed under Felix Service Testing. Information in the *GS.II Table 3 2004-2005 IEP Focused Checklist Training Schedule* attachment to the FFY 2003 APR showed that the training conducted for complexes between September 14, 2004 and January 14, 2005 included staff in the 26 public charter schools. However, data reported in the FFY 2003 APR did not include the results of the focused checklist reviews for any public schools, including public charter schools. Strategies on pages 8-9 of the FFY 2003 APR, addressing the implementation of the focused checklist review, included: (1) by June 2005, two individualized education programs (IEPs) per special education teacher would be reviewed using the focused checklist; (2) by June 2005, all 41 complexes would receive training on applying the focused checklist in reviewing the IEP; and (3) in the 2005-2006 school year, IEPs for 5 percent of all identified children with disabilities (1,163) randomly selected by each special education teacher in 14 complexes and eight charter schools would be reviewed using the focused checklist by the State special education staff, results summarized, areas of noncompliance identified, and evidence of correction of noncompliance verified by the State's special education section within nine months. On pages 5 and 8-9 of the FFY 2003 APR, HIDOE indicated that by June 2005, HIDOE would establish a three-year monitoring program, which would include the internal review and focused checklist review in order to identify areas of noncompliance and develop CAPs to be completed within a year. One hundred percent of schools, including public charter schools, will be included in the three-year program.

OSEP cannot ascertain from the information provided about HIDOE's monitoring system, at what point in the process HIDOE requires the correction of identified deficiencies to ensure that deficiencies that it identifies through monitoring are corrected within one year of identification (20 U.S.C. 1232d(b)(3)(E) and 34 CFR §300.600(a)(2)(ii)). The State may identify the noncompliance through a monitoring report from the State or another type of mechanism that the State uses to inform the affected schools or agencies about the State's findings of

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<sup>3</sup> The 26 public charter schools are located in 15 of the 41 complexes. Of the seven districts, only one (Central) does not include a public charter school and 12 of the public charter schools are located in one district (Hawaii).

noncompliance. If the State uses a process before issuing the final monitoring report (a draft report with comments back from the school or agency or an appeal process), the date of identification would be the date of the final report, letter, memorandum or other mechanism the State uses to inform the school or agency of the noncompliance. The State may not use a timeline of one year from the date the State approves a corrective action plan from an affected school or agency in response to notification of noncompliance. In the State Performance Plan (SPP) due December 2, 2005, HIDOE must include data and analysis demonstrating that the State's monitoring system ensures correction of all identified noncompliance with Part B requirements within a reasonable period of time, not to exceed one year of identification, as required by 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §300.600(a)(2)(ii).

Identification and correction of noncompliance is an indicator in the SPP under section 616 of the IDEA that is due December 2, 2005. In preparation for the submission of the SPP, 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. The State 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 the State's SPP.

#### Correction of previously-identified noncompliance with IEP requirements

OSEP's February 2005 letter also noted that HIDOE had made significant progress in ensuring full correction of the noncompliance that HIDOE had previously identified with 34 CFR §300.347(a)(3), that a statement of needed supports, services, and modifications be included in the IEP. In the FFY 2002 APR, OSEP required HIDOE to report on the correction of the noncompliance with this IEP requirement in the FFY 2003 APR; however, from the information that HIDOE provided about its monitoring system in the FFY 2003 APR, OSEP was unable to determine further correction of the noncompliance that HIDOE had previously identified in this area. With its SPP, in accordance with the monitoring strategies outlined above, the State must submit data and analysis reporting on the correction of the previously-identified noncompliance with this requirement.

OSEP's February 2005 letter also directed HIDOE to provide data and analysis demonstrating that the State was identifying and ensuring the correction of noncompliance identified in OSEP's 2002 Monitoring Report to HIDOE with 34 CFR §300.342(b), that IEPs were consistently accessible to the regular education teachers, where appropriate, to ensure that they were aware of their responsibilities related to implementing IEPs; and with 34 CFR §300.347(a)(2) that children with disabilities had the opportunity to access, and be involved and progress in the general curriculum. Based on the information that HIDOE provided about its monitoring system in the FFY 2003 APR, OSEP was unable to determine further correction of the noncompliance with these requirements. With its SPP, and in accordance with the monitoring strategies outlined above, the State must submit data and analysis demonstrating that it is identifying and ensuring the correction of noncompliance with 34 CFR §§300.342(b) and 300.347(a)(2).

### Formal written complaints

On page 10 of the APR, HIDEOE reported that as of June 2004, 100 percent of complaint decisions and orders were issued within timelines or within allowable extensions. There were three pending cases at the end of the reporting period because the issues in the complaint "mirrored the issues in a concurrent due process hearing request filed." However, data on page 22 of the APR, entitled Dispute Resolution Information, indicated that during the APR reporting period, there were 39 complaints. There were nine complaints with findings. The number of complaints not investigated, withdrawn, or lacking jurisdiction, was 27. The number of complaints completed and addressed within timelines was zero. Based on the narrative on page 10 and the data from page 22, OSEP cannot ascertain the precise number of complaints that HIDEOE received and resolved within the APR reporting period because the information provided in the APR narrative and the data in Attachment 1 are different. In the SPP, HIDEOE must provide the precise number of complaints that were received during the reporting period and clarify the number that were resolved and resulted in the issuance of final decisions within the 60-day timeline or within allowable extensions (34 CFR §300.661(a)(1) and (b)).

On page 11 of the APR, the projected target for complaint resolutions is that "by June 2005, the Department will complete 60 percent of the decisions and orders for complaints within 60 days without extensions," and that "by June 2005, the Department will complete 100 percent of the decisions and orders for complaints within 60 days with documented extensions." Part B requires States to have procedures for ensuring that a written decision on each complaint is issued 60 days from the date the complaint is filed, unless the timeline is extended because exceptional circumstances exist with respect to a particular complaint (34 CFR §300.661(a) and (b)(1)). OSEP is concerned that Hawaii's target is not consistent with the above legal standard, which permits the 60-day timeline to be extended only if exceptional circumstances exist with respect to a particular complaint. In the SPP, Hawaii must revise its target consistent with 34 CFR §300.661(a)(1) and (b) to ensure that 100 percent of Part B complaints are resolved within 60 days from the date that the complaint was filed or within allowable extensions, and must delete any targets that are inconsistent with this legal standard.

### Mediation

On page 4 of the FFY 2003 APR, HIDEOE reported that the State contracted with the Mediation Center of the Pacific to provide statewide mediation and facilitation services to all schools regarding special education issues. The State reported that because mediation was underutilized in districts, the complaint officer was working closely with the Mediation Center to encourage mediation. On pages 9-10 and Attachment 1 of the FFY 2003 APR, HIDEOE reported that eight of the ten mediation requests resulted in agreements, for the period between July 1, 2003 and June 30, 2004. These agreements were fully implemented within timelines or allowable extensions. The remaining two requests were reviewed as due process hearing requests. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §300.506 and looks forward to reviewing the State's data regarding the percent of mediations that resulted in mediation agreements as part of the SPP.

### Due process hearings and reviews

Under 34 CFR §300.511(a) and (c), HIDOE must ensure that a final decision in a hearing is reached and a copy mailed to the parties not later than 45 days from the date of receipt of the hearing request, unless the hearing officer grants a specific extension of this timeline at the request of a party. Data from Attachment 1 to the FFY 2003 APR indicated that of the 171 hearing requests, 28 hearings were held (104 were not held) and 39 were pending as of June 30, 2004. According to data subsequently provided by HIDOE, four decisions were issued within the 45-day timeline and nine hearing decisions were issued within properly granted extensions. On pages 10-11 of the FFY 2003 APR, HIDOE reported that as of June 2004, 46% of the 28 hearing decisions were issued within 45 days from the receipt of the request or allowable extensions of time. HIDOE indicated on page 10 that as of June 2005, it has developed a database for tracking hearing timeline data.

On page 10 of the FFY 2003 APR, HIDOE noted that, although hearing officers met the timelines with a larger percentage of cases within recent months, the improvement did not take place within the FFY 2003 APR reporting period. OSEP is concerned that since the last APR, HIDOE has failed to maintain continued compliance in this area. In the SPP due December 2, 2005, HIDOE must either provide data and analysis demonstrating compliance with the due process hearing timelines or a plan for ensuring that all due process hearing decisions are issued within the 45-day timeline or within allowable extensions. If HIDOE provides a plan, the plan must include strategies, proposed evidence of change, targets, and timelines to ensure 100 percent compliance with the requirements of 34 CFR §300.511. OSEP will review the plan and determine what further action is necessary.

In footnote 2 of the February 2005 letter, OSEP noted that Hawaii did not consistently establish full compliance as its projected compliance targets for meeting IDEA requirements, since it established an 85 percent target for issuance of timely due process hearing decisions, and required HIDOE to ensure, in the FFY 2003 APR and beyond, that compliance targets must be 100 percent. On page 11 of the FFY 2003 APR, HIDOE continued to maintain the 85 percent target for issuance of timely due process hearing decisions and a 95 percent target for timely implementation of final hearing decisions and settlement agreements beginning in June 2005. In the SPP, HIDOE must revise these targets to 100 percent.

### Personnel

OSEP's February 2005 letter required HIDOE to report on the local education agencies' (LEAs') compliance with requirements for reevaluations within the State's timelines and the impact, if any, of the reported vacancies on the provision of special education and related services to eligible children with disabilities. HIDOE did not include additional data regarding the timely completion of reevaluations by qualified personnel. With the SPP, Hawaii must include additional data demonstrating that required reevaluations are conducted in a timely manner by qualified personnel (34 CFR §300.532(c)(ii)).

The State determined that vacancies between 2002 and 2004 resulted in gaps in services to children with disabilities that exceeded 30 days. A graph attached to the FFY 2003 APR showed that 28 children were impacted in 2002, 16 in 2003, and eight in 2004. To ensure services to

children with disabilities impacted during the three-year period and to close the gap in services, HIDOE contracted with private agencies for special education teacher and related service provider positions to ensure that adequate qualified personnel were available to provide direct services to address the needs of the affected children with disabilities. On page 17 of the FFY 2003 APR, the State provided strategies to improve performance in this area. Strategies included advertising vacant positions in various professional journals/publications; providing in-service training for teachers and administrators to support a collaborative system of service provision; and capitalizing on partnerships with higher education personnel to provide education and training of related service personnel. OSEP appreciates the work of the State in improving 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 the child count data submission to OSEP. On pages 18-21 of the FFY 2003 APR, HIDOE reported that the State's integrated special education database (ISPED) allowed an online verification of Hawaii's child count data. Activities such as checking ISPED data against the State's student information system (SIS), unique student identifiers, and crosschecking information in special education records ensured that no counts were duplicated. Data indicated a decrease in the number of cases that needed to be verified by hand between 2002 (181 cases), 2003 (96 cases), and 2004 (68 cases). Activities promoting this increase included incentive awards to schools for accurate counts and posting data online. OSEP appreciates the work of the State in ensuring compliance with the requirements at 34 CFR §§300.750-300.754 and looks forward to reviewing the State's information regarding the accuracy and timely reporting of data as part of the SPP.

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

OSEP's February 2005 letter required HIDOE to include data and analysis, along with a determination of compliance or noncompliance with the requirement of 34 CFR §300.132(b) that by the third birthday of a child participating in an early intervention program, an IEP, or individual family service plan, was developed and implemented. If the data demonstrated noncompliance, HIDOE was further required to include a plan to ensure correction of the noncompliance with this requirement or, if data were not available, describe how data would be collected to enable the State to determine compliance or noncompliance.

On pages 27 to 29 of the FFY 2003 APR, HIDOE reported data and information regarding children transitioning from Part C services who were eligible to receive Part B services. HIDOE noted, in the FFY 2002 APR, that the State had not developed a data system to establish a baseline for reviewing and collecting data on transition from Part C to Part B. On page 28 of the FFY 2003 APR, HIDOE reported that it did not have a reliable data source to identify the number of children statewide who transitioned from Part C. To address this problem, HIDOE held meetings with Part C staff from the Hawaii Department of Health to coordinate the collection and analysis of data. This group also addressed ways to improve the timelines of referrals for children transitioning to Part B services and examined smooth transition practices for children who turned three late in the school year or during the summer. An outcome of this

collaboration was the development of a project to ensure that children transitioning from Part C to Part B services did not experience gaps in services.

On pages 28-29 of the FFY 2003 APR, the State included strategies, targets and timelines designed to ensure compliance as soon as possible, as required in the FFY 2002 APR letter. OSEP has reviewed and accepts this plan. The State must include data and analysis documenting progress toward compliance with 34 CFR §300.132(b) in the SPP and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter. The SPP instructions establish a new indicator in this area, for which States must provide entry 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. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

### ***Parent Involvement***

To address the area of parent involvement, Hawaii collected data obtained from a parent satisfaction survey and the State's CIMIP. On page 32 of the FFY 2003 APR, HIDOE explained that during the 2004-2005 school year, 752 parent surveys were completed and the results reported parent satisfaction in the following areas: (1) parent participation in the child's special education program (94 percent); (2) appropriate IEP to meet the needs of the child (94 percent); (3) parents being informed of the child's progress (89 percent); (4) how HIDOE ensured transition needs were addressed (91 percent); and (5) overall satisfaction (94 percent).

On pages 30-31 of the FFY 2003 APR, HIDOE reported that the State also examined the extent of parent involvement by examining data results obtained through the CIMIP. This process used information gathered from student file reviews using the focused checklist and on-site monitoring as part of the State's internal review. During the 2002-2003 school year, HIDOE established baseline data gathered from the IEP participants' section of the focused checklist and the child and family participation section of the internal review document. The focused checklist baseline was established at 90 percent for parent attendance at IEP meetings, 91 percent for parent participation in placement decisions, and 95 percent for child and family participation (internal review). Data collected during school year 2003-2004 showed 87 percent, 91 percent and 95 percent respectively. Data reported during the 2004-2005 school year indicated that 91 percent of parents attended IEP meetings and 92 percent participated in placement decisions. OSEP appreciates the work of the State in continuing to improve performance in this area. 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. In the SPP due December 2, 2005, Hawaii must describe how data are to be collected for this new indicator so that Hawaii will be able to report baseline data and targets in the FFY 2005 APR due February 1, 2007. OSEP looks forward to reviewing this information in the SPP.



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

Disproportionality

OSEP's February 2005 letter required the State to report the criteria it utilized to determine significant disproportionality, including the relevant data, and revise its targets and, if appropriate, reviews and revisions of policies, procedures and practices as required under 34 CFR §300.755. On page 36 of the FFY 2003 APR, HIDOE reported that it compared Hawaii's special education child count data to data from the State's SIS on the general education population in terms of risk ratios, using the formulas developed by WESTAT for risk ratio. On page 37 of the FFY 2003 APR, Hawaii reported that the State analyzed data for six disability categories (mental retardation, specific learning disabilities, emotional disturbance, speech and language impairments, other health impairments, and autism). For the American Indian, Alaska native ethnic group, Hawaii reported that in analyzing data for 2003-04, all disability categories had risk ratios above 1.0; however, it also appears that this ethnic group had a risk ratio below 1.0 for the mental retardation category. With respect to the Asian Pacific Islander ethnic group, Hawaii reported that the mental retardation category was the only category with a risk ratio above 1.0. In the Black nonhispanic group, several disability categories had a risk ratio above 1.0, including categories for emotional disturbance, speech language impaired, and other health impaired. Risk ratios for the Hispanic group were above 1.0 for all disability categories. For the White nonhispanic group, Hawaii reported risk ratios above 1.0 for all disability categories except for mental retardation. Hawaii established as its target for the next APR reporting period to determine whether there is disproportional representation in the category of mental retardation and autism. On page 37 of the FFY 2003 APR, Hawaii reported that risk ratios were indicated for most of the ethnic groups in the six disability categories, and that the comparison data between 2002 and 2003 suggested the need for further analysis by the State.

The State projected as its targets to determine the extent of disproportionality that exists among the ethnic groups and disability categories in the State and to review the State's procedural guidelines for identification, evaluation, and eligibility determination for special education services and make modifications if appropriate. OSEP appreciates the State's efforts in this area and looks forward to the results of the State's analysis in the SPP.

In the FFY 2002 APR, OSEP also expressed a concern about the inappropriate use of racial and ethnic criteria as reflected in Hawaii's goal statements. In the FFY 2003 APR, Hawaii has continued to set targets that require it to review data annually to maintain proportionality in placement in the least restrictive environment that could entail the continued use of race-based numerical goals. The proposed use of numerical goals based upon race raises serious concerns under Federal civil rights laws and the United States Constitution and is not an appropriate way to address the potential compliance problems that significant disproportionality may indicate. Any proposed use of numerical goals/targets based upon race, even where the numerical goal is based upon comparable numbers in the general population, raises the same legal concerns.

OSEP reminds the State that the SPP instructions establish new indicators (#9 and #10) 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. The State must provide information on the percent of disproportionate representation

of racial and ethnic groups in specific disability categories, and in special education and related services, that is the result of inappropriate identification, in accordance with indicators #9 and #10.

#### Graduation and drop-out rates

On page 39 of the FFY 2003 APR, Hawaii reported that data on the State's graduation and drop-out rates were generated from two reports: (1) graduation data gathered at the end of each school year; and (2) completer/leaver data that was collected from school year to school year that allowed the State to capture any movement of students during the summer break.

HIDOE calculated the graduation rate in the same way for children with and without disabilities earning diplomas, with the total population of children with disabilities. Table BF.IIa and page 39 of the FFY 2003 APR showed that the graduation rate for children without disabilities was 95.96 percent, and 79.65 percent for children with disabilities. When the State compared graduation rates between 2003 and 2004, results showed that there was a .3 percent decrease in the number of students without disabilities who graduated as compared to a .6 percent increase for children with disabilities. Reasons cited by the State for the increase in the graduation rate of children with disabilities included: (1) no high stakes test for graduation; and (2) continued support for general education classroom teachers and children with disabilities.

On pages 40-41 of the FFY 2003 APR, HIDOE reported that, for the 2003-2004 school year, the drop-out rate for students without disabilities ranged from 2.53 percent to 5.73 percent and ranged between 1.42 percent and 5.72 percent for children with disabilities. Data showed that overall, the drop-out rate for students without disabilities was approximately 37 percent higher than that for children with disabilities. The data further showed that between six and 11 percent of the dropouts in grades 9-12 were children with disabilities who tended to drop out early in high school as compared to students without disabilities who appeared to drop out later in high school. Reasons cited by the State for the low drop-out rate of children with disabilities included: (1) children with disabilities can remain in high school and work toward a diploma or a certificate until age 20; and (2) quality transition planning and goal setting.

On pages 42-43 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 in the SPP.

#### Suspension and expulsion

OSEP's February 2005 letter required HIDOE to revise its analysis to determine whether there is a significant discrepancy in the rates of long-term suspension and expulsion of children with disabilities compared to children without disabilities, and report on the required reviews of, and, if appropriate, revisions to, policies, procedures and practices consistent with 34 CFR §300.146.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Since Hawaii is a unitary system, OSEP requested that HIDOE report on a comparison of the suspension/expulsion rates for disabled and nondisabled children, and required that this

comparison include students from all schools in the State. Where the State determines that significant discrepancies are 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 APR direct States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. HIDOE noted that during the 2001-2002 school year, Hawaii and the Federal court monitor for *Felix* combined findings regarding student discipline and determined that a suspension rate ratio greater than 3.3 was unacceptable when comparing the suspension of children with and without disabilities. It applied the 3.3 suspension ratio to all public schools to identify significant discrepancies between the suspension rate of students with disabilities and their non-disabled peers. Calculation of the ratio was based on a school's/district's actual ratio of students with disabilities to students without disabilities and the number of suspensions involving students from each group. The suspension ratio of 3.3 or less was the target for public schools in the State of Hawaii. Public charter school data were not included in the table, since many public charter schools did not consistently report the data.

HIDOE noted that "schools with a ratio of 3.3 or greater were required to review their current cases, discipline practices, procedures, and policies to ensure that children with disabilities were provided their procedural safeguards. Suspension data were reviewed and compared at the school level, across districts, and statewide. State and district staff and administrators worked with schools that repeatedly demonstrated unacceptable suspension ratios."

On page 45 of the FFY 2003 APR, the State reported that while smaller districts with smaller schools exceeded the 3.3 target, the statewide ratio was 2.8, as demonstrated in Table BF.IIIb of the FFY 2003 APR. This table presented a three-year comparison of the suspensions of children with disabilities by districts. In the seven districts, HIDOE reported that the 3.3 target was exceeded in: (1) five of the districts by differences of .2 to 1.8 during the 2001-2002 school year; (2) two of the districts by differences of 1.0 to 1.1; and (3) five of the districts by differences of .2 to .9. HIDOE attributed the fluctuation of data presented over the three-year period to changes in the collection requirements and procedures. The State further reported a slight decrease in the suspension ratio of children with disabilities during the three years. The State attributed these decreases to such factors as: (1) the State level support staff providing monthly reports to district and school administrators to inform them of the suspension ratios in order that appropriate actions could be taken, and schools being held accountable for their decisions; (2) school-based behavior health programs in every school, providing timely and appropriate support to students and stakeholders working with behaviorally challenged students; and (3) a statewide positive behavior support initiative that was implemented to train school cadres to identify, analyze, and address issues of discipline and school-wide supports to improve student behavior. OSEP commends HIDOE for its efforts to improve performance in this area.

OSEP is concerned that Hawaii did not include a comparison of all children with disabilities and nondisabled children from all public schools in the State, as required by 34 CFR §300.146, since

the suspension/expulsion data from public charter schools were not reported. HIDEOE also indicated that as a future activity, it was reviewing use of the 3.3 suspension ratio and considering use of the z-score statistic in determining whether there was a significant discrepancy in suspension and expulsion rates for students with disabilities as compared with those for nondisabled children across the State. In the SPP, due December 2, 2005, the State must either provide a comparison consistent with 34 CFR §300.146 that reflects data about suspensions and expulsions of all disabled and nondisabled students, including students attending public charter schools, in determining whether there is a significant discrepancy in the long-term suspension and expulsion rates for students with disabilities and nondisabled children in the State, or a plan to include students attending public charter schools in the comparison used to make the discrepancy determination as soon as possible, but not later than thirty days following one year from the date that OSEP accepts the plan.

The SPP instructions establish a new indicator regarding the percent of districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year of children with disabilities by race and ethnicity. Baseline data must be provided for this indicator 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.

#### Statewide and districtwide assessment

OSEP's February 2005 letter required HIDEOE to report publicly and to the Secretary on the participation and performance of children with disabilities in the alternate assessment with the same frequency and in the same detail as it reports on the participation and performance of nondisabled students, as required by 20 U.S.C. 1412(a)(17) (IDEA 1997) and 34 CFR §300.139(a)(2), by June 15, 2005. Hawaii reported that the State revised its methods of reporting to make them consistent with the frequency and detail that it reported on nondisabled students, but did not demonstrate that it reported publicly and to the Secretary on the performance of disabled students participating in alternate assessments by the June 15 date. Therefore, the Department imposed Special Conditions on Hawaii's FFY 2005 Grant Awards under Part B, requiring Hawaii to demonstrate to OSEP that by November 1, 2005, the special conditions attached to its FFY 2005 Part B grant awards have been satisfied. OSEP looks forward to Hawaii's reporting publicly and to the Secretary on the participation of children with disabilities in alternate assessments no later than November 1, 2005.

On page 48 and Table BF.IVa of the FFY 2003 APR, the State reported data on the participation of children with disabilities in the statewide assessment program during three school years (2001-2002, 2002-2003, and 2003-2004) for grades 3, 5, 8, and 10. The participation for children with disabilities in grades 3, 5, and 8 ranged from 96 percent to 99 percent and was 84 percent for children with disabilities in grade 10 for the 2003-2004 school year. An increase of one to four percent participation was noted during the three-year period.

In Table BF.IVb of the FFY 2003 APR, HIDEOE reported on the percentage of children with and without disabilities who met or exceeded proficiency on Hawaii's statewide assessment. The gap between the scores of children with disabilities in grades 3, 5, 8 and 10 and their nondisabled peers during the three-year period ranged between 36 percent and 46 percent for reading, and between 16 percent and 23 percent for math. HIDEOE also examined the percent of children with

disabilities who performed in the “well below proficiency” level for reading and math. On page 48 and in Tables BF.IVc and BF.IVd of the FFY 2003 APR, the State noted that although there appeared to be a decrease in the percent of children with disabilities performing in the “well below proficiency” level in math (performance ranges fluctuated in reading), there were large numbers of children with disabilities in all grades tested performing at this level.

As noted on page 49 of the FFY 2003 APR, some of the reasons cited by the State for the fluctuation in performance included: (1) the format of the assessment differed greatly from the previous statewide assessment; (2) the constructed response and open-ended test items were unfamiliar to children with disabilities receiving instruction in more restrictive settings; and (3) children with disabilities at the secondary level may have received much of their instruction from special education teachers who had only basic content knowledge that did not support current expectations of all children. HIDOE implemented strategies to address the factors that impacted the performance of children with disabilities. For example, to assist children with disabilities in becoming familiar with the assessment format, teachers were provided clearer guidelines and training on the participation of children with disabilities in statewide assessments. OSEP looks forward to reviewing the State’s data regarding the participation and performance of children with disabilities on statewide assessments as part of the SPP.

#### Least restrictive environment

On page 52 of the FFY 2003 APR, HIDOE reported that during the period of July 1, 2003 to June 30, 2004, 2,284 children with disabilities ages 3 through 5, and 20,982 children with disabilities ages 6 through 20 received special education and related services in Hawaii. In examining the data, HIDOE noted that for children with disabilities ages 3 through 5: (1) the integration of this age group in less restrictive environments increased with age; (2) 4.2 percent of three-year olds and 21.3 percent of five-year olds were provided services in early childhood environments; (3) 18.3 percent of three-year olds and 31.8 percent of five-year olds were provided services in part time early childhood and part time early childhood special education environments; and (4) the percentage of children with disabilities served in different educational environments appeared consistent across race/ethnic groups. OSEP appreciates the State’s efforts in this area and looks forward to the State’s data and analysis in the SPP.

#### Preschool performance outcomes

OSEP’s February 2005 letter accepted the State’s plan for collecting data on performance of preschool children in the areas of pre-reading, early language and communication, and social and emotional skills and requested submission of data on preschool skills in the FFY 2003 APR. On page 55 of the FFY 2003 APR, HIDOE reported that due to their small sample size, the State was unable to draw conclusions. Therefore, the State: (1) set a projected target that 85 percent of children aged 3-5 would be rated at or above the minimally acceptable indicator in the areas of learning progress, responsible behavior and academic achievement; (2) developed additional valid data sources to document and track the progress of preschool children with disabilities; and (3) developed a number of activities to address these areas such as: (a) convening a statewide task force of 619 coordinators to discuss/decide on appropriate assessment tools, measurements and process for data collection; and (b) revising the IEP focused checklist to include items

regarding progress in early language/communication, pre-reading, and social-emotional skills of preschool children.

The SPP instructions establish a new indicator in this area, for which States must provide entry 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. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

### *Secondary Transition*

OSEP's February 2005 letter directed the State to provide data and analysis demonstrating compliance with the requirements at: (1) 34 CFR §300.347(b)(2), that IEPs include a statement of needed transition services beginning at age 16 (or younger, if appropriate); and (2) 34 CFR §300.344(b), that the public agency takes other steps to obtain agency input where a representative of an agency likely to be responsible for providing or paying for needed transition services does not attend an IEP meeting. On page 65 of the FFY 2003 APR, the State reported that HIDOE examined IEP focused checklist reviews to determine compliance with these requirements. Data from each high school and complex were disaggregated and an analysis was done to determine the percentage of compliance reported by high school, complex and the State. Results indicated that during the 2002-2004 school years, the compliance rate on these two requirements remained at 89 percent for 34 CFR §300.347(b)(2), and improved from 69 percent to 83 percent for 34 CFR §300.344(b).

On pages 66-67 of the FFY 2003 APR, HIDOE reported that the State examined transition by reviewing data compiled in the State's ISPED transition report for 2003. The development and revision of this report was completed during the 2003-2004 school year and baseline data was gathered for each school, district, and the State. The results of the report indicated a 94 percent compliance rate with the requirements at 34 CFR §300.347(b)(2), and a 20 percent compliance rate with the requirement at 34 CFR §300.344(b). HIDOE attributed low performance with the requirement at 34 CFR §300.344(b) to the fact that a number of teachers/schools recorded the notification to agencies in the wrong section of ISPED, and therefore, these data were not gathered by the system. When staff was trained on where to record the data, the compliance rate improved to 83 percent. OSEP appreciates the State's efforts to improve compliance with these requirements. With the SPP, the State must include data and analysis demonstrating full compliance with these requirements.

### Post-school outcomes

The instructions to this cluster also ask States to indicate whether the post-school outcomes (e.g., employment, independent living and postsecondary education) for youth with disabilities are comparable to those for nondisabled youth. On page 68 of the FFY 2003 APR, Hawaii reported that during the past school year it had conducted a phone survey on post-school outcomes for students with disabilities. However, because Hawaii does not currently have a system in place for reporting the post-school outcomes of nondisabled students, no comparisons can be made this year.

The SPP instructions establish two new indicators in this area (#13 and #14). States must provide baseline data in the FFY 2005 APR, due February 1, 2007 for Indicator #13 and February 1, 2008 for Indicator #14. The indicators are: the percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals; and the percent of youth who had IEPs, are no longer in secondary school and who have been competitively employed, enrolled in some type of post-secondary school, or both, within one year of leaving high school. 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 these collections.

### ***Conclusion***

In the State's Performance Plan, due December 2, 2005, Hawaii must submit to OSEP:

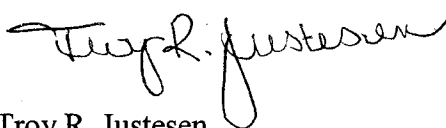
1. data and analysis demonstrating that the State's monitoring system ensures correction of all identified noncompliance with Part B requirements within a reasonable period of time, not to exceed one year. In addition, HIDOE must submit with the SPP, copies of all complex reports, focused checklist review results, corrective action plans and their status for the 2004-2005 school year;
2. data on the number of complaints filed during the APR reporting period and delete any targets that are inconsistent with its responsibility to ensure that 100 percent of decisions in Part B complaints are issued within the 60-day timeline or within allowable extensions (34 CFR §300.661(a)(1) and (b));
3. either data and analysis demonstrating compliance with the due process hearing timelines or a plan for ensuring that all due process hearing decisions are issued within the 45-day timeline or within allowable extensions, with a report to OSEP not later than thirty days following one year from the date that OSEP accepts the plan (34 CFR §300.511). The State also must revise to 100 percent its targets for issuance of timely hearing decisions and timely implementation of hearing decisions and settlement agreements;
4. data and analysis documenting progress toward compliance with 34 CFR §300.132(b) related to transition of children from Part C to preschool programs, and provide a final report to OSEP, including data and analysis demonstrating compliance, no later than 30 days following one year from the date of this letter; and
5. a revised comparison, consistent with 34 CFR §300.146, of the rates of long-term suspension and expulsion of students with disabilities as compared with nondisabled students to include suspensions and expulsions of students in public charter schools, or a plan to include these students in its comparison consistent with 34 CFR §300.146, with a report to OSEP not later than thirty days following one year from the date that OSEP accepts the plan.

With the SPP, due December 2, 2005, in accordance with its revised monitoring strategies, Hawaii must report on correction of noncompliance that the State had previously identified with the requirements of 34 CFR §300.347(a)(3), that the State is ensuring identification and correction of noncompliance with 34 CFR §§300.342(b) and 300.347(a)(2); that reevaluations are being conducted by qualified personnel in a timely manner (34 CFR §300.532(c)(ii)).

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,

A handwritten signature in black ink that reads "Troy R. Justesen". The signature is written in a cursive style with a large, looped initial "T".

Troy R. Justesen  
Acting Director  
Office of Special Education Programs

cc: Dr. Paul Ban