



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

Honorable Alice Seagren
Commissioner of Education
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113

OCT 21 2005

Dear Commissioner Seagren:

The purpose of this letter is to respond to Minnesota's May 9, 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 and the State's June 17, 2005 letters to OSEP. OSEP has set out its comments, analysis and determinations by cluster area.

Background

OSEP's August 17, 2004 FFY 2002 APR response letter directed the State to:

1. Submit a plan within 60 days from the date of the APR letter that included strategies, proposed evidence of change, targets and timelines that would ensure correction, within a reasonable period of time not to exceed one year from when OSEP accepted the plan, of the noncompliance related to: (a) untimely complaint decisions (34 CFR §300.661(a)); and (b) untimely hearing decisions (34 CFR §300.511(a) and (c)). Additionally, OSEP required the State to include data and analysis in its FFY 2003 APR demonstrating progress toward compliance, and provide a report with data and analysis demonstrating compliance as soon as possible, but no later than 30 days following the end of the one-year timeline.
2. Within 60 days from the date of OSEP's letter, submit either: (a) documentation that it ensured the correction of its findings of noncompliance related to secondary transition

and transfer of rights; or (b) a plan, that included strategies, proposed evidence of change, targets and timelines that would ensure compliance within a reasonable period of time not to exceed one year from when OSEP accepted the plan. The State was also required to: (a) include, in its FFY 2003 APR, data and analysis demonstrating progress toward compliance; and (b) provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following the end of the one-year timeline.

3. Within 60 days from the date of OSEP's letter, submit a revised Attachment 3 to the FFY 2002 APR that included all of the required information, including grade-specific data on the participation and performance of children with disabilities on statewide reading and math assessments.
4. In the FFY 2003 APR, provide: (a) information and analysis that fully addressed identification and correction of noncompliance; (b) data and analysis demonstrating progress toward compliance regarding individualized education program (IEP) notice requirements; (c) revised targets and activities regarding disproportionality; and (d) either documentation of data, targets for improved performance and strategies to achieve those targets regarding early language/communication, pre-reading and social-emotional skills of preschool children with disabilities receiving special education, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

OSEP conducted a visit to the State in August 2004 to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of the IDEA, and statewide assessment. In a September 29, 2004 letter, the State provided a response to some of the issues that OSEP identified during the verification visit, including steps the State took, or planned to take, to address some of those issues. OSEP issued its letter reporting on the results of the visit on March 9, 2005. OSEP's letter required the State to report, in its FFY 2003 APR, its progress in ensuring that its Part B educational environment and discipline data were accurate. The Minnesota Department of Education (MDE) submitted written responses to the Part B issues raised in OSEP's verification letter on June 17, 2005. Further comment on this submission will be included in the appropriate section below.

General Supervision

Identification and timely correction of noncompliance

Identification of noncompliance. Pursuant to 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3), MDE must implement effective methods for monitoring compliance with all Part B requirements. In its March 2005 letter, OSEP reported that the State was not implementing effective procedures for identifying noncompliance with *all* Part B requirements. In the letter, OSEP accepted the strategies in the State's September 2004 letter for correcting this noncompliance, and required the State to: (1) report its progress in correcting the noncompliance, in its FFY 2003 APR; (2) correct the noncompliance (i.e., implement monitoring procedures that enable it to identify noncompliance with all Part B requirements) within a reasonable period of time not to exceed one year from the date of OSEP's verification letter; and

(3) provide evidence of such correction to OSEP no later 30 days following the end of one year from the date of the March 2005 letter. Although the State did not report, in the FFY 2003 APR, on its progress in addressing this noncompliance, in a June 17, 2005 response to OSEP's March 2005 letter, MDE described how it monitored for compliance with all Part B requirements, explaining that MDE monitored through a combined system using the Due Process Manual, a legal reference that contained all applicable law, and the Total Special Education System Plan (a numbering and violation citation system incorporating all Federal and State special education requirements). OSEP appreciates the work of the State in ensuring compliance with these requirements.

Correction of noncompliance. The Part B regulations require that MDE ensure timely correction (i.e., within one year of identification) of all identified noncompliance, as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3). OSEP's March 2005 letter expressed concern that MDE had established a standard for requiring correction that was inconsistent with those requirements. Specifically, MDE did not require a school district to correct noncompliance if MDE (or the district, in the case of a self-review) found at least 80% compliance with the requirement in question². OSEP's March 2005 letter also expressed concern that the State was not meeting its responsibility under 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) to ensure that all identified Part B noncompliance was corrected no later than one year after MDE or the district identified the noncompliance. OSEP's letter required the State to submit, within 60 days: (1) either documentation that MDE revised its monitoring procedures and was requiring and ensuring the correction of all noncompliance, or the State's plan for documenting, within one year from the date on which OSEP accepted the plan, that MDE was ensuring correction of all noncompliance; and (2) either documentation that MDE was implementing effective procedures for ensuring the timely (i.e., no later than one year after MDE identifies the noncompliance) correction of noncompliance, or the State's plan for correcting and demonstrating, within one year from the date on which OSEP accepted the plan, that MDE was effectively ensuring the correction of noncompliance within the one-year timeframe.

In its June 2005 letter, the State reported that, "although the standard of 100% correction of all violations, no matter if they are found to be a paperwork violation in an individual file or a systemic misapplication of the law, has only recently been a standard communicated from OSEP," the State was "... now requiring 100% correction of all identified noncompliance." The State further reported in that letter that: (1) "Minnesota requires 100% correction of violations within one year from the date of the letter of findings;" (2) "lead monitors for a given district follow up after the letter of findings is sent to assure that violations are corrected within one year;" and (3) "where necessary, Minnesota imposes a system of increasing sanctions, including withholding of funds, where districts have not voluntarily corrected violations in a timely manner."

² MDE further explained that: (1) it required correction of any noncompliance (even if MDE found more than 80% compliance) regarding a local education agency (LEA) inappropriately determining a child eligible for Part B, and late IEPs, evaluations, and reevaluations; (2) on a case-by-case basis, the lead monitor might decide to require correction even where MDE found less than 20% noncompliance; and (3) the general practice was, however, not to require correction where MDE found less than 20% noncompliance.

On page 7 of the FFY 2003 APR, the State reported that, "A database was created to provide timelines to increase awareness of [corrective action plan (CAP)] deadlines and as a result timely implementation CAPs increased from 40 to 60 percent during the 2003-2004 school year." On page 9, the State further reported that, due to a shortage of qualified staff, follow-up reviews were often conducted more than one year after CAP approval. The State indicated that one of its future activities was to hire and train MDE monitoring staff.

OSEP appreciates the work the State has already done to comply with the requirement that it ensure the correction of all noncompliance, whether or not compliance exceeds 80%. In the SPP, the State must provide, in response to Indicator #15, data reflecting timely correction of all noncompliance, and if it cannot provide such data or the data indicate noncompliance, the State must also submit with the SPP, a plan, including strategies, proposed evidence of change, targets and timelines, designed to ensure compliance with this requirement within one year of OSEP's acceptance of the plan.

Formal written complaints

Regulations at 34 CFR §300.661(a) and (b)(1) require that, within 60 days after a complaint is filed, MDE issue its written decision on each Part B formal written complaint unless the timeline is extended due to exceptional circumstances with respect to a particular complaint. As noted above, OSEP's August 2004 letter identified noncompliance related to untimely complaint decisions, and directed the State to submit a plan within 60 days from the date of that letter that included strategies, proposed evidence of change, targets and timelines that would ensure correction of each of these areas of noncompliance, within a reasonable period of time. OSEP directed the State to include data and analysis in its FFY 2003 APR demonstrating progress toward compliance, and provide a report demonstrating compliance as soon as possible, but no later than 30 days following the end of one year from the date of that letter.

Although the data in Attachment 1 on page 4 of the FFY 2003 APR showed continued noncompliance with the requirements of 34 CFR §300.661(a) and (b)(1) for the FFY 2003 reporting period, the State included more recent information on page 10 of the APR that demonstrated subsequent correction of the noncompliance.³ On page 10, the State reported that, "MDE has placed special emphasis on timely investigations and continued to work on methods of streamlining investigations so that they are timely. All complaints from the period of July 2004 to February 15, 2005 were completed on time." In an e-mail message dated September 7, 2005, the State provided the following additional data regarding the period from June 30, 2004 and February 15, 2005: (1) the State received 64 complaints; (2) 23 of those complaint were resolved informally and decisions were issued for the other 41; (3) decisions in 39 of those complaints were issued within 60 calendar days; and (4) MDE extended the timeline for the other two due to the complexity of issues and/or the number of children involved. The State's e-mail message also included the following data for the 24 complaints that the State received

³ Data in Attachment 1 of the FFY 2003 APR showed that, during the July 1, 2003-June 30, 2004 reporting period, MDE: (1) received 132 complaints during the reporting period; (2) did not investigate 47 of those complaints, because the complaint was withdrawn or MDE did not have jurisdiction; (3) issued 61 decisions with findings and 24 with no findings; and (4) issued 43 of those 85 decisions within 60 calendar days, and an additional 12 beyond 60 calendar days with an appropriate extension.

between February 15 and May 31, 2005: the State issued a decision for 22 complaints within 60 calendar days, and extended the timeline for the other two due to the complexity of issues and/or the number of children involved. OSEP appreciates the work of the State in ensuring compliance with these requirements, and looks forward to reviewing the State's data in this area as part of the SPP due December 2, 2005.

Mediation

On pages 3 and 4 of the FFY 2003 APR, MDE reported that: (1) it began a unique mediation process during the 2002-2003 school year, in part so that hearing timelines would not need to be extended for the purpose of reaching settlement; (2) under this process, parties that request a due process hearing may also request an expedited mediation within three days of the request, provided that all parties are available; (3) MDE provided both mediation and facilitated IEP meetings; and (4) MDE received 51 mediation requests, of which one was related to a hearing request. The State provided no data as to the extent to which mediation resulted in written agreements.

In the SPP, due December 2, 2005, the State must provide the percent of mediations held that resulted in mediation agreements. OSEP looks forward to reviewing the State's data in the SPP.

Due process hearings and reviews

At 34 CFR §300.511(a) and (c), the Part B regulations provide that the final decision in a due process hearing must be reached and mailed to the parties not later than 45 days after the receipt of a request for a hearing, and that the hearing officer may grant specific extensions of time beyond that period, at the request of either party. As noted above, OSEP's August 2004 letter identified noncompliance related to untimely hearing decisions (34 CFR §300.511(a) and (c)), and directed the State to submit a plan within 60 days from the date of the letter that included strategies, proposed evidence of change, targets and timelines that would ensure correction of the noncompliance, within a reasonable period of time not to exceed one year from when OSEP accepted the plan. OSEP directed the State to include data and analysis in its FFY 2003 APR demonstrating progress toward compliance, and provide a report with data and analysis demonstrating compliance as soon as possible, but no later than 30 days following that one-year timeline.

In order to correct internal inconsistencies in the hearing decision data in Attachment 1 of the FFY 2003 APR, the State sent to OSEP a September 17, 2005 e-mail message, in which the State provided updated data showing that the State had corrected the noncompliance. In that e-mail message, the State reported that between July 1, 2004 and June 30, 2005: (1) MDE received 38 hearing requests; (2) 10 of those requests were fully adjudicated; (3) one decision was issued within the 45-day timeline; (4) nine decisions were issued within an extended timeline under 34 CFR §300.511(c); and (4) three hearings were pending as of September 2005. OSEP appreciates the work of the State in ensuring compliance with these requirements, and looks forward to reviewing the State's data in this area as part of the SPP, due December 2, 2005.

Personnel

Data on pages 12-13 of the FFY 2003 APR showed an overall increase in the percentage of fully certified related service provider, paraprofessional and administrator fulltime equivalents (FTEs), and a 2.6% increase in the number of fully certified special education teachers. However, the data on page 12 of the APR also showed a decrease in the number of non-certified teachers who worked with children with emotional behavior disorders and children with physical disabilities during the 2003-2004 school year. OSEP appreciates the work of the State in this area.

Collection and timely reporting of accurate data

In its March 9, 2005 verification letter, OSEP identified issues regarding the State's graduation, least restrictive environment (LRE), and discipline data under Part B and the State's plans to correct those problems as noted in MDE's September 2003 letter. OSEP's findings and the status of the State's corrective actions are addressed below in the *Free Appropriate Public Education in the Least Restrictive Environment* section of this letter.

On page 16 of the FFY 2003 APR, MDE reported that it continued to report accurate data in the following areas: child count, exit, personnel and fiscal data. Further, MDE indicated that improvement was made in the accuracy of the statewide assessment data by integrating assessment data with the child count database, ensuring that each child was accounted for in the assessment database.

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. OSEP looks forward to reviewing the State's data in this area as part of the SPP, due December 2, 2005.

Early Childhood Transition

On page 18 of the FFY 2003 APR, the State reported that, "Since MDE is the lead agency for both Part C and B, children who are Part B eligible at age three continue to receive services." The FFY 2003 APR did not include data documenting whether children who participated in Part C, who were found eligible for services under Part B, had an IEP (or individualized family service plan (IFSP) consistent with Part B) in effect by their third birthdays, as required by 34 CFR §300.132(b). 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. The State must submit responsive baseline data regarding the percentage of children referred by Part C prior to age three, who are found eligible for Part B and have an IEP (or IFSP) developed and implemented by their third birthdays, in the SPP.

Parent Involvement

On page 20 of the FFY 2003 APR, the State reported that, "The monitoring system [to address this cluster] has not been developed; therefore data are not available." The State further reported that, although the State did not have data to report regarding family involvement, a new process for securing this information was piloted in 13 LEAs and would be used statewide as part of the monitoring process beginning in 2004-2005.

The SPP instructions establish a new indicator in this area (#8), 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.

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

Disproportionality

Because the State's FFY 2002 APR included race-based numerical targets for disproportionality, OSEP's August 2004 letter directed the State to submit revised targets and activities regarding disproportionality as part of its FFY 2003 APR. The State revised its target and provided an array of activities to achieve its targets and projected timelines. OSEP accepts this revised target.

Regulations at 34 CFR §300.755(b) require that, in the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, the State shall provide for the review and, if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that the policies, procedures and practices comply with the requirements of Part B of IDEA.

On page 24 of the FFY 2003 APR, the State reported data showing that Black children had the highest-ranked risk ratios for the emotional-behavior disorder and mental retardation categories. The State further reported significant disproportionality in the area of mental retardation for American Indian children. The State used evidence of poor school performance to flag instances of under-representation or over-representation as significant and to require review for disproportionality. On page 31, MDE reported that Black children were the only group identified as significantly disproportionate for settings and that this would be flagged for review of policies and procedures and practices at the State level. The State indicated that monitors increased their scrutiny of evaluation procedures, utilizing a checklist based upon the Reducing Bias handbook. Further, MDE indicated that it identified areas of concern at the district level regarding disproportionality and that it would continue to provide technical assistance when noncompliant policies, procedures and practices were identified. The State did not, however, indicate that it had reviewed policies, procedures or practices at the State level related to disproportionality, or that its review in monitoring of policies, practices and procedures regarding evaluation was based on the identification of significant disproportionality, or report

on the results of its review of policies, procedures and practices used in identification or placement to ensure that they complied with the requirements of Part B of the IDEA.

Not later than 60 days from the date of this letter, the State must either: (1) provide: (a) documentation that it ensured the review of policies, procedures, and practices used in the identification and placement of children with disabilities to ensure consistency with the requirements of Part B and are race-neutral, for those districts with data showing significant disproportionality in the identification of children as disabled and in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; and (b) the results of such review; or (2) specify what steps the State will take to implement its plan to report on the results of its review of policies, procedures, and practices, as outlined above, and to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date of this letter.

The SPP instructions establish two new indicators in this area (#9 and #10), 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.

Graduation and drop-out rates

Pursuant to OSEP's directions to States for reporting graduation data, a State may only include students with disabilities who meet the same requirements as nondisabled students. As noted in OSEP's March 2005 letter, MDE informed OSEP that nondisabled students must pass the State's Eighth Grade Basic Skills Test and meet course credit requirements, but that it included students with disabilities who met the objectives in their IEPs but did not meet those requirements in its section 618 count of students receiving a regular diploma. During the verification visit, the State agreed to correct this problem by the time that it made its next data submission. In its September 2004 letter, MDE described how it would correct this problem and ensure the accuracy of its section 618 data on graduation. OSEP's March 2005 letter directed the State to report, in the FFY 2003 APR, on its progress in ensuring that the graduation data that it reports under section 618 of the IDEA are consistent with OSEP's instructions.

Although it was not clear from the FFY 2003 APR whether the State corrected this problem and was including its section 618 count of children graduating with a diploma only children with disabilities who met the same requirements that nondisabled children were required to meet, the State confirmed in an e-mail message dated September 13, 2005 that it had made this correction.

The data on page 33 of the APR showed a slight increase for students with and without disabilities graduating with a diploma. In the FFY 2003 APR, the State provided data regarding the total percentage of students with disabilities graduating (81.90 percent), those who met the same requirements as nondisabled children (37.93 %), and those who received a diploma based on their IEP (43.97%).

On page 34 of the FFY 2003 APR, MDE included data showing that students with disabilities had a higher drop-out rate (4.9%) when compared with all students; however, the trend data showed a slight decrease in the drop-out rate for students with disabilities when compared with the drop-out rate for the previous year (5.04%). The State listed an array of future activities to achieve projected targets and timelines. OSEP looks forward to reviewing the State's data regarding graduation and drop-out rates, in the SPP.

Suspension and expulsion

OSEP's March 2005 letter noted that MDE explained, during the verification visit, that it did not expect the discipline data collected during the 2004-2005 school year to be fully accurate because: (1) although school districts were required to use the new system for reporting discipline data throughout the 2004-2005 school year, the software would not be available to school districts until the latter part of September 2004, and districts would need to collect data manually for the first few weeks of the school year; and (2) the first semester of the school year would be a "ramp-up" period during which MDE worked closely with districts to train them in using the new system, and the data from the first semester were not likely to be as accurate as in the second semester. In its September 2004 letter, the State indicated that its new web-based collection of discipline data would address OSEP's concerns, and that MDE would stress the need for, and support LEAs in, reporting accurate data even during the start-up of the new system. OSEP's verification letter directed the State to report, in its FFY 2003 Part B APR, on its progress in ensuring that the discipline data that it reports under section 618 of the IDEA are accurate.

On page 36 of the FFY 2003 APR, the State indicated that the data presented in the FFY 2003 APR were inaccurate due to inconsistent reporting by LEAs, and should be interpreted with great caution. The State further indicated that it developed a new web-based reporting system and, beginning with 2004-2005 data, MDE should be able to establish a baseline and begin to analyze data in this area.

Regulations at 34 CFR §300.146 require the State educational agency (SEA) to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, the SEA 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 these policies, procedures and practices comply with IDEA. Presumably because of the data issues noted above, MDE did not demonstrate in the FFY 2003 APR, that it had done one of the comparisons described in the regulation to identify any significant discrepancies or done the review, and, if appropriate, revised (or required LEAs to revise) those policies, procedures and practices.

With the SPP, due December 2, 2005, the State must provide either:

1. Data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that MDE examines data to determine if significant discrepancies are

occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, MDE 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 these policies, procedures and practices comply with IDEA; or

2. A plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after 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.

Indicator #4A in the SPP requires the submission of baseline data on 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 districts identified by the State as having a significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than ten days in a school year, in the SPP.

The SPP instructions establish a new indicator in this area (#4B), 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.

Statewide and districtwide assessment

On pages 38 through 42 and Attachment 3 of the FFY 2003 APR, MDE reported on the participation and performance of children with disabilities on statewide assessments. MDE reported a participation rate of 96 percent or greater for children with disabilities in all grades and subjects except Grade 10 (reading), which had a participation rate for children with disabilities of 91 percent. MDE also reported overall proficiency rates for students with disabilities participating in both the Minnesota Comprehensive Assessments (MCAs) and alternate assessment. MDE indicated that there were no gains in the proficient level for students with disabilities taking the grade 3 math MCA, (45 percent scored at the proficient level in both 2002-2003). MDE further reported that the percentage of students scoring at the proficient level or above in grade 5 math declined from 46 percent to 44 percent in the reporting year. MDE indicated in its analysis that part of the slippage could be due to the increase in the number of students taking the MCA as opposed to the alternate assessment. Trend data were not available for other grades, as testing for them was in the pilot phase in 2003. OSEP look forward to reviewing the data in this area, in the SPP.

Least restrictive environment (LRE)

OSEP's March 2005 letter noted that MDE acknowledged that approximately ten percent of the State's children with disabilities were served in area learning centers, which are alternative schools for children with and without disabilities who had a broad variety of school issues. MDE explained that some school districts were inaccurately reporting children with disabilities who were educated with nondisabled children at area learning centers as being served in a separate facility for children with disabilities. In its September 2004 letter, MDE indicated that it would provide training to special education directors and State-Approved Alternative Programs (SAAPs), which included Area Learning Centers, about how to report settings data for children with disabilities in SAAPs. OSEP's verification letter directed the State to report, in its FFY 2003 APR, on its progress in ensuring that its Part B educational environment data are accurate.

On page 53 of the FFY 2003 APR, the State reported that, prior to the reporting period, it implemented strategies to improve the quality of early childhood settings data by providing direct training and written guidance to local data reporters that resulted in a high level of confidence in the accuracy of the data now reported. On page 55, the State further indicated it served 26.7 percent of children with disabilities, aged 3 and 4, in early childhood education programs designed for children without disabilities, compared to the 2003-2004 national rate of 33.98 percent. The State indicated that data on five-year-olds were not included in the analysis of trends over time due to the inaccuracy of the data in prior reporting years.

On page 56 of the FFY 2003 APR, the State reported data showing that 61.40 percent of children with disabilities, aged 6-21, were served in general education classes for more than 80 percent of the day. The trend data showed a slight reduction in the percentage of children who were served outside the regular classroom for less than 21 percent of the day and a slight increase in the percentage of children served outside the regular classroom more than 60 percent of the day. MDE indicated that it expected future data would more accurately reflect MDE's system of educating children with disabilities in the least restrictive environment for this age population. OSEP look forward to reviewing the data in this area, in the SPP.

Preschool performance outcomes

OSEP's August 2004 letter required the State to submit either documentation of data, targets for improved performance and strategies to achieve those targets regarding early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education, or a plan to collect the data, including a detailed timeline of the activities necessary to implement the plan.

On page 58 of the FFY 2003 APR, the State reported the results of a pilot survey of randomly-selected schools on kindergarten readiness⁴. The data showed that a greater proportion of

⁴ For each developmental indicator, kindergarten teachers assigned a rating to reflect the degree to which children had acquired the skill or behavior. Ratings included three levels: Not yet—indicating that the child could not perform the indicator; In process—implying that the skill or behavior was intermittently demonstrated or emergent; and Proficient—meaning the child was able to reliably demonstrate the skill or behavior.

children with disabilities did not demonstrate the target skills compared to children without disabilities especially in the area of language and literacy. Additionally, the data showed that there were fewer children with disabilities rated as proficient in each area when compared to their peers without disabilities. The data indicated that these differences were most notable in pre-academic areas of language and literacy and mathematical thinking. The State indicated that it planned to revise and disseminate the *Indicators of Progress*, Minnesota's early learning standards document, to early care and education programs, including early childhood special education programs. MDE further indicated that some of its sponsored activities included Early Literacy, an Early Childhood Assessment Symposium, and a DEC Practitioner's Conference.

The SPP instructions establish a new indicator in this area (#7), for which States must provide entry 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

OSEP's August 2004 letter directed the State to submit documentation that it ensured the correction of its findings of noncompliance related to secondary transition and transfer of rights; or a plan, that included strategies, proposed evidence of change, targets and timelines that will ensure compliance within a reasonable period of time. In the FFY 2003 APR, the State did not include either the required information or a plan to collect it. Within 60 days of the date of this letter, the State must submit a plan that includes strategies, proposed evidence of change, targets and timelines that will ensure compliance with 34 CFR §§300.347(c) and 300.517, as soon as possible and not more than one year after 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.

On page 60 of the APR, the State indicated that follow-up data were no longer systematically gathered on post-secondary outcomes for nondisabled students and so a comparison could not be made. The State further reported that MDE created the Minnesota Post-School Follow-up System to collect information about former special education students and their post-school experiences and that the new system was designed to improve methods for identifying service needs of young adults with disabilities. The State provided data from a very small, random sample of students who were one year post-high school, after exiting special education. The data showed that of 193 students interviewed, 42 percent held full-time jobs and 31 percent held part-time jobs. Additionally, the data showed that only six percent completed post-secondary degree programs and ten percent attended post-secondary education programs, but later dropped out. MDE reported that of 193 students it interviewed, 55 percent were living at home and 24 percent were living independently.

Conclusion

As noted above, in the SPP, the State must provide:

1. In response to Indicator #15, data reflecting timely correction of all noncompliance, and if it cannot provide such data or the data indicate noncompliance, the State must also submit with the SPP, a plan, including strategies, proposed evidence of change, targets and timelines, designed to ensure compliance with this requirement within one year of OSEP's acceptance of the plan.
2. The percent of mediations held that resulted in mediation agreements. OSEP looks forward to reviewing the State's data in the SPP.
3. Either:
 - a. Data and analysis demonstrating that it is meeting the requirements at 34 CFR §300.146(b) that MDE examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (i) among LEAs in the State; or (ii) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, MDE 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 these policies, procedures and practices comply with IDEA; or
 - b. A plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance as soon as possible and not more than one year after 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.

Within 60 days of the date of this letter, the State must provide:

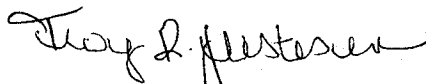
1. Either:
 - a. (i) Documentation that it ensured the review of policies, procedures, and practices used in the identification and placement of children with disabilities to ensure consistency with the requirements of Part B and are race-neutral, for those districts with data showing significant disproportionality in the identification of children as disabled and in specific disability categories and the placement of children in particular educational settings, as required by 34 CFR §300.755; and (ii) the results of such review or

- b. Specify what steps the State will take to implement its plan to report on the results of its review of policies, procedures, and practices, as outlined above, and to ensure correction of the noncompliance as soon as possible, not to exceed one year from the date of this letter; and
2. A plan that includes strategies, proposed evidence of change, targets and timelines that will ensure compliance with 34 CFR §§300.347(c) and 300.517, as soon as possible and not more than one year after 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.

IDEA 2004, section 616, requires each State to submit an SPP that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, the same as 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 Angela McCaskill at (202) 245-7435.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Barbara Case