



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

AUG 31 2005

Dr. Veronica C. Garcia
New Mexico Public Education Department
300 Don Gaspar Avenue
Santa Fe, New Mexico 87501-2786

Dear Secretary Garcia:

The purpose of this letter is to respond to New Mexico's April 18, 2005 and June 7, 2005 submissions of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

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

Background

The conclusion of OSEP's December 21, 2004 FFY 2002 APR response letter required that by the FFY 2003 APR, the New Mexico Public Education Department (NMPED) submit the following:

1. Data documenting:
 - (a) that it is conforming to the one-year timeline for the correction of noncompliance identified through the monitoring process (General Supervision); and
 - (b) that it reviewed and approved all LEA policies and procedures (General Supervision).

2. Data and analysis demonstrating continued compliance with:
 - (a) timelines for resolving formal written complaints (General Supervision); and
 - (b) placement in the LRE including:
 - (1) that the removal of a child with disabilities from the regular education environment occurred only when the nature and severity of the disability was

- such that education in regular classes, with the use of supplementary aids and services, could not be achieved satisfactorily; and
- (2) that the educational placement of each child with a disability was based on his or her individualized education program (IEP) (Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)).

The State was also required to submit maintenance strategies designed to maintain compliance with the requirements for: (a) timelines for resolving formal written complaints; and (b) placement in the LRE.

Not later than 30 days following one year of the date of the December 2004 letter, the State was required to demonstrate compliance with the requirements to ensure:

- (a) the timely implementation of complaint decisions within a reasonable period of time (General Supervision); and
- (b) a smooth and effective transition from Part C to Part B, including development and implementation of an IEP (or IFSP) by the third birthday for each eligible child with a disability (Early Childhood Transition).

The State was directed to include data and analysis demonstrating progress toward compliance regarding timely implementation of complaint decisions and transition from Part C to Part B in the FFY 2003 APR.

The State was also directed to include in the FFY 2003 APR:

1. Data and analysis, along with a determination of compliance or noncompliance with the requirements of the Parent Involvement cluster. If the data demonstrated noncompliance, the State was required to include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan. If data were not available, the State was required to include a plan that describes how the State will collect data to enable it to determine performance and compliance by the FFY 2004 APR (Parent Involvement);
2. Information required by the instructions related to:
 - (a) significant disproportionality (FAPE in the LRE). If the 2003 APR does not include information indicating that the State, when it identifies significant disproportionality, has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities or otherwise ensured that such a review was done, OSEP would conclude that the State is not complying with the regulation; and
 - (b) suspension and expulsion (FAPE in the LRE). If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above (see page 12 of this letter), and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices

consistent with 34 CFR §300.146, then OSEP would conclude that the State is not complying with the regulation (FAPE in the LRE cluster); and

3. Documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for the area of preschool outcomes, or a plan to collect the data for the FFY 2004 APR (FAPE in the LRE cluster).

NMPED submitted its FFY 2003 APR on April 18, 2005. Due to a significant amount of missing information in the April submission, OSEP contacted NMPED to request a revised submission. NMPED resubmitted the APR on June 7, 2005. The April submission did not include page numbers; however, there was information included in the submission that was not included in the June submission. Both submissions will be referred to in the comments below.

General Supervision

Identification and timely correction of noncompliance

The conclusion of OSEP's December 21, 2004 APR response letter required that, in the FFY 2003 APR, NMPED submit data documenting that it is conforming with the one-year timeline for the correction of noncompliance identified through the monitoring process (General Supervision), and data documenting that the State reviewed and approved all LEA policies and procedures.

On pages 2 and 3 in the June FFY 2003 APR, NMPED reported that 15 local educational agencies (LEAs) were monitored in 2002-2003; 13 had findings of noncompliance and 11 of the 13 districts with findings corrected their noncompliance within one year. Of the two remaining LEAs, one did not correct its noncompliance and level one sanctions were applied by the State. The other LEA was given an extended timeline due to extenuating circumstances and was scheduled for an evidence of change review (correction verification visit) in April 2005. NMPED reported that 14 LEAs were monitored in 2003-2004 and were scheduled for evidence of change reviews in April-June 2005. OSEP looks forward to reviewing data and information in this area in the SPP, due December 2, 2005.

On page 3 of the June FFY 2003 APR, the State included information regarding the review of local-level policies and procedures. However, the State did not include information demonstrating that it has reviewed all LEA policies and procedures to ensure consistency with IDEA, as directed by OSEP's December 2004 letter. Under 34 CFR §§300.180 and 300.220 an SEA must determine whether an LEA's policies and procedures are consistent with State policies and IDEA requirements. NMPED indicated that policies and procedures were provided by the State to LEAs, and that LEAs were required to provide assurances that they had incorporated these policies and procedures into local policies. However, the State also indicated that "any local practices above the State-sanctioned version could be incorporated." NMPED also stated that, "[LEAs had] a specified time of one year for full compliance for the incorporation of Policy and Procedures into district practices." OSEP is

unable to determine from the information presented whether LEAs incorporated their own local practices into the State-sanctioned policies and procedures or whether they incorporated the State-sanctioned policies and procedures into the local practices. While NMPED indicated that LEAs must submit their policies and procedures for “physical review” as part of its focused monitoring process, it remains unclear to OSEP whether the State has, in fact, reviewed the policies and procedures for all LEAs to ensure that they comply with the requirements of Part B of IDEA. Whether LEAs incorporated local practices into the State-sanctioned version or vice versa, there clearly is opportunity for LEAs to implement practices outside of the State-sanctioned procedures and the State has not provided information to OSEP that ensures these practices (or additional policies and procedures) are compliant with Part B.

Within 60 days of the date of this letter, NMPED must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines to ensure that all policies and procedures for all public agencies under its General Supervision are in compliance with Part B of IDEA. 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.

Formal written complaints

The conclusion of OSEP’s December 2004 letter required that in the FFY 2003 APR, NMPED provide data and analysis demonstrating continued compliance with timelines for resolving formal written complaints and submit strategies to maintain compliance with this requirement.

On pages 3 and 27 in the June FFY 2003 APR, NMPED included data and information that indicated compliance with the 60-day timeline for investigation of complaints and issuance of complaint decisions. In the General Supervision section of the April submission, under “explanation of progress or slippage for GS-III,” NMPED reported that there were only two cases during 2003-2004 that were not completed within timelines. In July 2003, one complaint was not completed within timelines due to a backlog from the previous year. In early September 2003, a second complaint was not completed within timelines; the decision was due on a Friday but was not issued until the following Monday. On page 2 of the June FFY 2003 APR, NMPED reported data indicating that all complaints investigated were within timelines. NMPED included strategies to maintain compliance, as required in OSEP’s December 2004 letter. OSEP appreciates the State’s efforts in this area and looks forward to reviewing data and information in this area in the SPP.

OSEP’s December 2004 letter required NMPED to demonstrate, not later than 30 days after one year from the date of that letter, compliance with the requirement to ensure the timely implementation of complaint decisions. On page 2 of the June FFY 2003 APR, NMPED submitted data showing that during 2002-2003, 30% of complaints were closed (corrective action plan completed) within one year of the issuance of the complaint decisions; during 2003-2004, 31% were closed within one year. These data indicated continued noncompliance

with the requirement that noncompliance be corrected within one year. Complaint decisions must be implemented within the timeframes stipulated by the decision and, in no case, later than one year following the decision. Failure to demonstrate compliance by January 21, 2006, may affect the State's next grant award.

Mediation

In Attachment 1 on page 27 of the June FFY 2003 APR, NMPED included data indicating that 25 mediations were held related to hearing requests. No mediations were held that were not related to hearing requests. Twenty-three of the 25 mediations resulted in agreements. There were six mediations pending as of August 2004. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in this area in the SPP.

Due process hearings and reviews

In Attachment 1 on page 27 of the June FFY 2003 APR and Attachment 1 of the April submission, NMPED indicated that all of the hearing decisions were issued within 45 days of receipt of the request and none were issued within extended timelines. However, contradictory information was included in the comments of the General Supervision section in the April FFY 2003 APR, indicating that all ten hearing decisions were issued within extended timelines properly granted, and that no hearing decisions were issued within 45 days of the request for a hearing. In the SPP, NMPED must submit a clarification to OSEP regarding the time in which due process hearing decisions are issued, consistent with timelines required by 34 CFR §300.511.

Personnel

On page 4 of the June FFY 2003 APR, NMPED included trend data indicating that the percentages of all teachers, and special education teachers, not fully certified is decreasing. However, the percentages of related services providers and special education aides not fully certified are going up. The State included a target to reduce by 25% the percentage of related services providers and special education aides not fully licensed by December 2005. NMPED included activities on page 9 to build capacity as it relates to the three-tiered licensing process in New Mexico and coordinate with the No Child Left Behind (NCLB) effort to ensure that all teachers are highly qualified.

Collection and timely reporting of accurate data

On page 7 of the June FFY 2003 APR, NMPED included a target to include data verification as part of all focused monitoring visits. Activities were included on page 9, including the creation of unique identifiers for all students to track individual information, the continuation of technical support to LEAs and the reporting of a variety of data on the NMPED web site. The SPP must include baseline data regarding the extent to which the State ensures that data collected and reported is timely and accurate. OSEP looks forward to reviewing the State's data and information in this area in the SPP, due December 2, 2005.

Early Childhood Transition

The conclusion of OSEP's December 2004 letter required that NMPED demonstrate compliance with the requirements to ensure a smooth and effective transition from Part C to Part B, including development and implementation of an IEP (or IFSP) by the third birthday for each eligible child with a disability (34 CFR §300.132(a)-(b)), within a reasonable period of time, not to exceed one year from the date of that letter. OSEP's December 2004 letter required NMPED to submit data and analysis demonstrating progress toward compliance with these requirements in the FFY 2003 APR, and ensure compliance not later than 30 days after one year from the December 2004 letter.

On page 11 in the June FFY 2003 APR, the State included data from parent surveys demonstrating satisfaction with the transition process and data comparing for 2002-2003 and 2003-2004, the percentage of children who started school on the first day of school (using the start date for all children) and the number of children who started school on the first day of preschool (usually one to three weeks later). NMPED did not submit any data that showed the percentage or number of children who, by their third birthdays, had an IEP (or IFSP) that was developed and implemented as required by 34 CFR §300.132(b).

Regulations at 34 CFR §300.132(a)-(b) require that children participating in early intervention programs assisted under Part C and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to those preschool programs and that by the third birthday of such a child, an IEP or, if consistent with 34 CFR §300.342(c) and §636(d), an IFSP, has been developed and is being implemented for the child. Data describing compliance with these requirements may include: (1) the number of children exiting Part C during the reporting period who might have been eligible for services under Part B; (2) the number of those children found eligible for Part B services during the reporting period; (3) the number of eligible children for whom an IEP (or IFSP) was developed and implemented by the child's third birthday; and (4) an explanation for any eligible children who did not have IEPs (or IFSPs) developed and implemented by their third birthdays.

This is an indicator in the State Performance Plan (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 in the SPP regarding the percentage of children referred by Part C prior to age 3, who are found eligible for Part B and have an IEP in place by their third birthday. The absence of baseline data in this area will be considered in OSEP's decision about approval of the SPP.

In addition, the State must demonstrate compliance with these requirements not later than January 21, 2006. Failure to demonstrate compliance by that date may affect the State's next grant award.

Parent Involvement

The conclusion of OSEP's December 2004 letter required that in the FFY 2003 APR, NMPED submit data and its analysis, along with a determination of performance and compliance with the requirements of the Parent Involvement cluster. If the data demonstrate noncompliance, the State was to include a plan with strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepted the plan. If data were not available, the State was to include a plan that described how the State would collect data to enable it to determine performance and compliance.

On page 14 of the June 2003 APR, NMPED reported that the New Mexico Parent Training and Information Center (NMPTI) and the National Center for Special Education Accountability Monitoring (NCSEAM) had piloted a "Parent Involvement Survey," and that NMPED had helped to support the completion of approximately 1200 surveys. NMPED stated that it anticipated feedback as to the efficacy of the survey and its implementation during the 2005-2006 school year. In preparation for submission of the SPP on December 2, 2005, the State should carefully consider data and information collected for the APRs, along with OSEP's responses, against the requirements related to this indicator in the SPP packet. The State must make a determination whether plans currently in place to collect data related to this area will be responsive to those requirements.

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

Disproportionality

The conclusion of OSEP's December 2004 letter required that, in the FFY 2003 APR, NMPED must include the information required by the instructions related to significant disproportionality. If the 2003 APR did not include information indicating that when the State identifies significant disproportionality, it has either conducted a review of policies, procedures or practices used in identification or placement of children with disabilities, or otherwise ensured that such a review was done, OSEP would conclude that the State is not complying with the regulation.

On page 20 of the June FFY 2003 APR, NMPED reported the overidentification of African-American children with disabilities in special education. NMPED did not report any review of policies, practices or procedures, nor did it include any plan for such review. On page 21, NMPED included a plan to train staff with a stated outcome for "ongoing awareness of the over-identification and over-segregation of African-American Students." OSEP concludes that the State has not met the requirements of 34 CFR §300.755(b).

Regulations at 34 CFR §300.755(a) require that each State provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State with respect to: (1) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in §602(3) of IDEA; and (2) the placement in particular

educational settings of these children. The regulations also 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.

The proposed use of numerical goals (on pages 20 and 21 of the June FFY 2003 APR) 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.

It is appropriate to look at policies, procedures and practices in the referral, evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B, and race-neutral. Such an examination generally would include a review of the availability and use of intervention strategies prior to referral for special education evaluation, the selection and use of evaluation instruments and materials, the selection and use of evaluation criteria, and the reasons for referral for special education evaluation.

Data and information describing compliance with these requirements may include: (1) data and the resulting analysis identifying significant disproportionality, whether statewide or by district; (2) a description of the procedures for conducting a review of policies, procedures and practices; (3) a description of the decision-making process for determining whether existing policies, procedures and practices contributed to, or were the cause of, the identified disproportionality; (4) a description of steps taken to revise any policies, procedures and practices determined to contribute to the disproportionality; (5) a description of other steps taken to identify the causes if it is determined that policies, procedures or practices did not cause, or contribute to, the identified disproportionality; (6) the results of implementation of those steps; and (7) the resulting explanation for the causes of existing disproportionality.

Within 60 days of the date of this letter, NMPED must submit a plan, including strategies, proposed evidence of change, targets and timelines to ensure that, wherever the State identifies significant disproportionality, it reviews (and revises, when necessary) or causes to be reviewed (and revised, when necessary) policies, procedures and practices to ensure that they comply with Part B, and are race-neutral. 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.

The SPP instructions establish new indicators in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's

performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions for Indicators 9 and 10 in the SPP in developing its plans for this collection.

Graduation and drop-out rates

On page 17 of the June FFY 2003 APR, NMPED reported a 2002-2003 graduation rate of 82% for all students and 71.1% for students with disabilities. In 2003-2004, the rate for all students was 78.7% and 72.6% for students with disabilities. While the gap between students with and without disabilities decreased between 2002-2003 and 2003-2004, and there was a slight increase in the graduation rate for students without disabilities, the major factor in the gap reduction appeared to be a drop of 3.3% in the rate of all students graduating. NMPED did not include any explanation for the change in these numbers, nor did it include any planned activities to improve graduation rates. There was also no analysis of the reasons for the graduation rates, as they currently exist. In the SPP, due December 2, 2005, as required by the instructions, the State must provide a description of how it will improve performance for this indicator, including activities, timelines and resources.

On page 18 of the June FFY 2003 APR, NMPED reported three-year trend data for drop-out rates, as follows: (1) 2001-2002, all students – 5.6% and students with disabilities – 3.6%; (2) 2002-2003, all students – 6.3% and students with disabilities – 3.4%; and (3) 2003-2004, all students – 4.9% and students with disabilities – 3.4%. The State did not include any analysis of these data or any proposed activities to improve performance in this area. In the SPP, due December 2, 2005, as required by the instructions, the State must provide a description of how it will improve performance for this indicator, including activities, timelines and resources.

Suspension and expulsion

The conclusion of OSEP's December 2004 letter required that in the FFY 2003 APR, NMPED must include the information required by the instructions related to suspension and expulsion. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of the comparisons described in 34 CFR §300.146(a), and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146(b), then OSEP would conclude that the State is not complying with the regulation.

On page 18 of the June FFY 2003 APR, NMPED included data regarding suspension and expulsion for children with and without disabilities in the State, including that, in 2003-2004, the rate of suspensions/expulsions for all children was 1.6% and for children with disabilities, the rate was 3.0%. NMPED included no analysis of this data and included only training as an activity to improve performance (page 21).

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. If the State identifies significant discrepancies, the SEA must review, and if appropriate, 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 the IDEA. The instructions to the FFY 2003 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. In addition, OSEP's December, 2004 letter regarding the FFY 2002 APR specifically directed the State to include this information in the FFY 2003 APR, and noted that failure to do so would result in a finding of noncompliance. The State's FFY 2003 APR, however, did not include any information indicating that the State had examined data from the LEAs that it used in assembling the State level data to determine whether significant discrepancies were occurring in the LEAs based on either one of the comparisons described above. (If a State does not have comparable data for students with and without disabilities, it must determine whether significant discrepancies exist in the rate for children with disabilities across LEAs.) Therefore, OSEP concludes that the State is not complying with 34 CFR §300.146. Within 60 days of the date of this letter, the State must submit a plan to OSEP, 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.

Statewide and districtwide assessment

On pages 19 and 29-46 of the June FFY 2003 APR, NMPED included data regarding statewide assessments in 2003-2004. On page 19, NMPED reported participation trend data for four years, comparing participation rates for children with and without disabilities on math and reading assessments. For the past three years (2001-2002, 2002-2003, 2003-2004) the participation rate for children with disabilities has exceeded the rates for children without disabilities and has been, for each year, respectively, 92.3%, 93.9% and 94.2%. OSEP was unable to confirm these figures using the data on pages 29-33 and 38-42.

On page 19, NMPED included trend data for the past four years regarding the performance of children with and without disabilities on statewide assessments in math and reading. From 2001-2002 to 2003-2004, the percentage of children with disabilities scoring at the proficient level in reading rose from 25.2% to 28.4% while the percentage of children without disabilities fell from 67.3% to 64.9%. In 2003-2004, the performance gap between children with and without disabilities was 36.5%. For the same period, in math, the percentage of children with disabilities scoring at the proficient level fell slightly from 22.9% to 20.5% and the percentage for children without disabilities fell slightly from 64.3% to 62.4%, with a

performance gap of 41.9%. NMPED did not include strategies or activities to decrease the gap and improve the performance of children with disabilities on statewide assessments of student achievement. This information must be included in the SPP, due December 2, 2005.

On pages 34-37 of the June FFY 2003 APR, NMPED included data on the numbers of children with disabilities scoring in the levels of beginning step, near proficient, proficient and advanced on the math assessment and the same type of data for the reading assessment on pages 43-46. OSEP is unable to determine the performance of children with disabilities on statewide assessments from this information or confirm the information reported on page 19. References to columns and page numbers on these pages do not correspond to pages in the FFY 2003 APR. NMPED must clarify performance data in the SPP, due December 2, 2005.

Least restrictive environment (LRE)

The conclusion of OSEP's December 2004 letter required that in the FFY 2003 APR, NMPED must provide data and analysis demonstrating continued compliance with placement in the LRE including that: (1) the removal of a child with disabilities from the regular education environment occurred only when the nature and severity of the disability was such that education in the regular classes, with the use of supplementary aids and services, could not be achieved satisfactorily; and (2) the educational placement of each child with a disability was based on his or her IEP. The State was also required to submit strategies designed to maintain compliance with these requirements.

NMPED did not include any strategies related to LRE in either the April or June FFY 2003 APRs. This information must be included in the SPP, due December 2, 2005.

Preschool performance outcomes

The conclusion of OSEP's December 2004 letter required that in the FFY 2003 APR, NMPED must submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for the area of preschool outcomes, or a plan to collect the data.

In the April FFY 2003 APR, under FAPE in the LRE, BV.VI, NMPED submitted a plan to collect the data as required in OSEP's December 2004 letter. NMPED reported that it will establish a pilot assessment of preschool children's performance on early language/communication, pre-reading and social and emotional skills, as a result of receiving special education and related services. It is to be implemented in all school districts in 2004-2005 and 2005-2006. Ten percent of three to five year old children receiving services will be randomly selected. LEAs will rate the progress on those three elements in the children's IEPs. Data will be aggregated and analyzed over two collection periods. During this time, an Early Childhood Assessment Task Force will be convened to develop an ongoing assessment system. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of

the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Secondary Transition

On pages 23 and 24 of the June FFY 2003 APR under baseline and trend data, NMPED reported the same data that was reported in the FFY 2002 APR to address whether or not the percentage of youth with disabilities participating in post-school activities (e.g., employment, education, etc.) is comparable to that of youth without disabilities. In the FFY 2002 APR, NMPED reported that the data were collected in 2000-2001. Under the explanation of progress or slippage, NMPED reported on the activities that occurred during the 2003-2004 and the 2004-2005 school years. During 2003-2004, 30 LEAs were trained to facilitate student self-determination. During 2004-2005, NMPED partnered with the Division of Vocational Rehabilitation and other State agencies and conducted six regional Transition Action Planning Workshops for schools, families, community partners, and State agencies. The purpose of the workshops was to bring key stakeholders together to build a local transition team, identify barriers, and develop action plans to overcome those barriers. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for data collection on post-school outcomes.

Conclusion

Within 60 days of the date of this letter, NMPED must submit a plan to OSEP, including strategies, proposed evidence of change, targets and timelines to ensure the correction of the noncompliance in the areas identified below, as soon as possible, not to exceed one year from the date OSEP accepts the plan. No later than six months from the date of this letter, the State must submit a Progress Report including data and analysis demonstrating progress toward compliance, and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

- (1) All policies and procedures for all public agencies under its General Supervision are in compliance with Part B of IDEA. 34 CFR §§300.180 and 300.220.
- (2) When the State identifies significant disproportionality on the basis of race in identification or placement of children with disabilities, it provides for the review, and if appropriate, revision of the policies, procedures and practices used in the identification or placement to ensure that they comply with the requirements of IDEA. 34 CFR §300.755.

- (3) The SEA examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsion of children with disabilities either among LEAS in the State, or compared to the rates for nondisabled children in the agencies. If discrepancies are occurring, the SEA reviews, and if appropriate revises (or causes to be revised) policies, procedures or practices relating to the development and implementation of IEPs, use of behavioral interventions, and procedural safeguards to ensure compliance with the IDEA. 34 CFR §300.146.

No later than January 21, 2006, NMPED must submit to OSEP:

- (1) Data demonstrating that complaint decisions are implemented in a timely manner. (34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)); and
- (2) Data demonstrating compliance with the requirement that by the third birthday of children transitioning from Part C services to Part B services an IEP or IFSP, if consistent with section 636(d) of the IDEA, has been developed and is being implemented, consistent with 34 CFR §300.132(b).

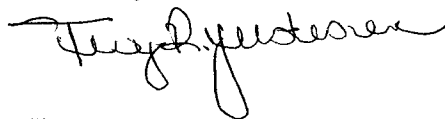
In the SPP, due December 2, 2005, NMPED must:

- (1) Submit a clarification regarding the time in which due process hearing decisions are issued, consistent with timelines as required by 34 CFR §300.511, and the SPP instructions;
- (2) Include baseline data regarding the extent to which the State ensures that data collected and reported is timely and accurate;
- (3) Submit responsive baseline data in the SPP regarding the percentage of children referred by Part C prior to age 3, who are found eligible for Part B and have an IEP in place by their third birthday;
- (4) As required by the SPP instructions, the State must provide a description of how it will improve performance in graduation rates, including activities, timelines and resources;
- (5) As required by the SPP instructions, the State must provide a description of how it will improve performance for drop-out rates, including activities, timelines and resources;
- (6) Include strategies or activities to decrease the gap and improve the performance of children with disabilities on statewide assessments of student achievement;
- (7) Clarify data regarding the performance of children with disabilities on State assessments; and
- (8) Include strategies related to LRE.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the 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 Linda Whitsett at (202) 245-7573.

Sincerely,

A handwritten signature in cursive script, appearing to read "Troy R. Justesen".

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Denise Koscielniak