



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

Dr. Lana Seivers
Commissioner of Education
Tennessee Department of Education
Sixth Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, TN 37243-0375

AUG 29 2005

Dear Commissioner Seivers:

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

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific, data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to TDE's FFY 2003 APR and to the February 3, 2005 submission regarding the resolution of Part B complaints within 60 days. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's October 25, 2004 FFY 2002 APR response letter required the Tennessee Department of Education (TDE) to:

- (1) submit to OSEP by December 25, 2004 either: (a) documentation that TDE's monitoring findings regarding initial evaluations and reevaluations, extended school year (ESY) services, early childhood transition, parent involvement, suspension and expulsion, and least restrictive environment did not indicate noncompliance with requirements of the IDEA and its regulations; (b) documentation that the State ensured the correction of noncompliance that it identified regarding the above issues, within a year of identification; or (c) a plan that included strategies, proposed evidence of change, targets and timelines to ensure correction of identified noncompliance, consistent with regulations at 34 CFR §300.600, §616(a)(1)(C) of the IDEA and 20 U.S.C. 1232d(b)(3), regarding the above issues within a reasonable period of time, not to exceed one year from when OSEP accepted the plan;

- (2) submit a plan by December 25, 2004 to ensure the correction of noncompliance for identified deficiencies in the State agencies, private schools and State-operated programs, and provide an interim Progress Report in the FFY 2003 APR regarding the adaptation of the interagency agreement, consistent with 34 CFR §300.142, with the Department of Corrections;
- (3) provide by February 6, 2005, data and analysis demonstrating compliance consistent with 34 CFR §300.661 regarding the resolution of Part B complaints within required timelines;
- (4) include in the FFY 2003 APR:
 - (a) an interim Progress Report, regarding compliance with 34 CFR §300.132 (an IEP is developed and implemented for children exiting Part C services who require Part B services by their third birthday and an LEA representative participates in transition planning meetings);
 - (b) information indicating that TDE, 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 is done as required by 34 CFR §300.755(b);
 - (c) information that TDE has examined all data for all LEAs to determine whether significant discrepancies in the rate of long-term suspension or expulsion are occurring in the LEAs, 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; and
 - (d) targets for improved performance and strategies to achieve those targets for skills of preschool children with disabilities, or a plan to collect the data, for demonstrating that early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services as required by the Government Performance and Results Act of 1993, 31 U.S.C. 1116.

General Supervision

Other: Funding Formula

OSEP did not identify noncompliance in this area; however, the State expressed concerns with the impact on placements of their existing formula. IDEA 2004 at §612(a)(5)(B)(i) requires that a State's funding mechanism not result in placements that violate the least restrictive environment requirements of 34 CFR §§300.550-300.556. On pages 34-37 of the APR, TDE addressed the influence of the funding formula on the placement of children with disabilities. TDE presented some placement data and factors, such as mandated class loads that may or may not be contributing to restrictive placements of children with disabilities. TDE concluded that it needed to collect further information and placement data, while continuing activities designed to reduce restrictive placements. OSEP appreciates TDE's concerns and attention to this issue.

Identification and timely correction of noncompliance

In the FFY 2002 APR, OSEP required TDE to submit by December 25, 2004 either: (1) documentation that the monitoring findings for initial evaluations and reevaluations, ESY services, early childhood transition, parent involvement, suspension and expulsion, and least restrictive environment did not indicate noncompliance with requirements of the IDEA and its regulations; (2) documentation that TDE ensured the correction of noncompliance that it identified, within a year of identification; or (3) a plan that included strategies, proposed evidence of change, targets and timelines that ensured correction of identified noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepted the plan. TDE submitted a Progress Report regarding the above issues on December 21, 2004 and OSEP responded in a letter on February 3, 2005. OSEP reviewed the information TDE provided, and concluded that TDE provided data to demonstrate that the noncompliance TDE identified through its monitoring system was corrected for the above issues within one year of identification. OSEP's February 2005 letter directed TDE to continue to report on its data and strategies to maintain compliance with monitoring requirements and report any modifications to its system in the FFY 2003 APR.

On pages 3-10 of the FFY 2003 APR, TDE reported on the progress and future activities for its complaint, due process, mediation, and monitoring systems. On page 4, TDE stated that there were "no decisions issued after timelines and extensions expired" for complaints. Data for due process hearings from Attachment 1 indicated that all nine fully adjudicated hearings were reached within timelines (or with timelines appropriately extended) as required at 34 CFR §300.511. On pages 6-10 of the APR, TDE reported that all LEAs, State agencies, and County Juvenile Detention Centers monitored during 2002-2003 had corrected their noncompliance through Improvement Plans that were validated through on-site visits, interviews and documentation reviews. In addition, TDE reported on its monitoring activities for 2003-2004. OSEP looks forward to reviewing TDE's data in this area in the State Performance Plan (SPP), due December 2, 2005.

OSEP's October 2004 letter required TDE to provide, by December 25, 2004, a plan to demonstrate the correction of identified noncompliance in the State agencies, private schools and State-operated programs, and provide an interim Progress Report in the FFY 2003 APR regarding the adoption of the interagency agreement with the Department of Corrections. TDE submitted its Progress Report on December 21, 2004. TDE provided a list of State agencies, private schools and State-operated programs that it had monitored during the 2002-2003 school year and when it verified the correction of each agency's noncompliance. In its letter of February 3, 2003, OSEP instructed TDE to continue to report data and strategies to maintain compliance with monitoring requirements in the above agencies and report any modifications to its system in the FFY 2003 APR.

On pages 11-14 of the FFY 2003 APR, TDE reported on its targets for the adoption of the interagency agreement with the Department of Corrections, improvement in the participation of children with disabilities in the general curriculum, and the correction of identified

noncompliance in the State agencies, private schools and State-operated programs, and County Juvenile Detention Centers. TDE reported progress in reaching all of these targets, including the Interagency Agreement with Department of Corrections that was reviewed and completed in September 2004. OSEP appreciates TDE's efforts in this area.

Dispute resolution: formal written complaints, mediations, and due process hearings and reviews

OSEP's October 2004 letter required TDE to continue to report on its progress for ensuring compliance with due process hearing timelines (34 CFR §300.511) in its FFY 2003 APR. On pages 15-16 of the FFY 2003 APR, TDE reported that all 16 adjudicated due process hearings during 2003-2004 were completed within timelines. TDE also reported that all of its complaint investigations were completed within timelines during 2003-2004. TDE noted that this was an improvement over 2002-2003 for complaints when 40% of all complaints with findings exceeded the timeline. On page 16, TDE reported that there were 45 mediation requests during 2003-2004 with agreements reached for 28 of the mediations. OSEP looks forward to reviewing TDE's data and information in this area in the SPP.

Personnel

On pages 19-25 of the FFY 2003 APR, TDE reported its efforts to ensure that there were sufficient numbers of professional staff to meet the educational needs of children with disabilities. TDE reported that the number of teachers serving children with disabilities increased by approximately 1,500 from 2000-2001 to 2003-2004. TDE's analysis of the qualification levels of special education teachers showed an 18% decrease in the use of waivers for 2002-2003 and a 12% decrease in the use of waivers for 2003-2004. TDE also reported its activities to recruit and retain special education personnel, including expanded opportunities for teachers on waivers to receive full certification, increasing the means to make available in-service and pre-service opportunities, and a careful review of staffing numbers during State monitoring. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 26-28 of the FFY 2003 APR, TDE reported that it utilized its General Supervision Enhancement Grant (GSEG) to develop a "new, integrated, student-level, locally-entered, web-based and state-wide" database for all eligible children with disabilities in Tennessee. TDE reported its progress and activities regarding the GSEG. However, TDE did not include data in the FFY 2003 APR addressing: "State procedures and practices ensure collection and reporting of accurate and timely data." 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 data describing how it ensures that the

State reported data are timely and accurate. The absence of data in this area will be considered in OSEP's decision about approval of the State's SPP.

Early Childhood Transition

OSEP's October 2004 letter required TDE to submit data and analysis to demonstrate compliance with 34 CFR §300.132(b)-(c). Regulations at 34 CFR §300.132(b) require that an IEP (or IFSP, if appropriate) be developed by the third birthday of a child with a disability eligible for Part B services. On pages 38-40, TDE reported on the delays in implementing IEPs for eligible children by their third birthdays. Through State monitoring, TDE found seven of 34 (21%) of LEAs out of compliance during 2002-2003. All seven LEAs had demonstrated correction by Spring 2004. TDE reported three out of 31 (10%) LEAs were out of compliance in this area during 2003-2004.

TDE provided data and analysis that demonstrated the correction of noncompliance through its follow-up activities providing early childhood services to Part B eligible children with disabilities by their third birthday. OSEP appreciates TDE's efforts in this area.

Regulations at 34 CFR §300.132(c) require that each LEA participate in transition planning conferences arranged by the designated lead agency under §637(a)(8) of IDEA. TDE reported that participation of LEA representatives in Early Childhood Conferences increased from 79% during 2002-2003, to 83% during 2003-2004. TDE provided activities and strategies designed to improve performance in these areas, including correcting data errors and facilitating partnerships between LEA and Early Intervention personnel. OSEP appreciates the work of the State in ensuring compliance with these requirements. OSEP looks forward to reviewing the State's data for the implementation of IEPs for children with disabilities by their third birthday in the SPP.

Parent Involvement

On pages 41-51 of the APR, TDE reported data and accomplishments regarding parental involvement in special education. TDE reported on information it collected through parent surveys, contacts with parents, and training activities that were undertaken to increase parental involvement across Tennessee. TDE also reported on data from its monitoring and complaint systems that indicated compliance regarding issues in parental involvement. TDE included strategies to improve performance. OSEP looks forward to reviewing TDE's data and information in this area in the SPP.

Free Appropriate Public Education in the Least Restrictive Environment

Other: Evaluations and ESY

On pages 29 through 31 of the APR, TDE addressed the issue of determining the needs of children with disabilities through appropriate evaluations consistent with the requirements of 34 CFR §§300.532-300.534. On pages 23 through 24, TDE addressed the availability of ESY services across all categories and severities of disability, consistent with the requirements of 34 CFR §300.309. TDE included implementation strategies, activities and resources designed to

ensure compliance in these areas. OSEP appreciates the State's efforts in this area.

Disproportionality

OSEP's October 2004 letter required TDE to include information indicating that, when it identified significant disproportionality, it had 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, in the FFY 2003 APR. On pages 52-64 of the FFY 2003 APR, TDE reported data and strategies for addressing issues of disproportionality. TDE reported State, LEA, and trend data for either over- or under-representation based on a risk factor analysis. On page 53, TDE reported that 43 LEAs were monitored in 2001-2002 and 34 LEAs were monitored in 2002-2003 for disproportionality. Four LEAs (9%) in 2001-2002 and one LEA (3%) in 2002-2003 required correction regarding the identification and assessment of minority children with disabilities. TDE stated that all improvement plans were completed within one year of identification and that the required activities included a review of LEA policies, procedures, and practices for the identification and placement of children with disabilities. Risk ratios were also calculated comparing the risk ratios of children with disabilities by race/ethnicity across disability categories and educational environment. TDE included activities and strategies to ensure that over- or under-representation was identified and corrected in its FFY 2003 APR. OSEP looks forward to reviewing TDE's information regarding identification in this area in the SPP.

Graduation and drop-out rates

On pages 65-71 of the APR, TDE reported data and activities for improving the drop-out and graduation rates of students with disabilities. The percentage of students with disabilities graduating with a regular diploma during 2003-2004 was 35.5%, compared to the graduation rate of all students exiting with a regular diploma of 75.7%. The data demonstrated that the percentage of all students graduating with a high school diploma decreased by 2.4% from 2002-2003 to 2003-2004, while the percentage of students in special education exiting with a regular diploma increased by 1.9%. TDE indicated that the drop-out rate for students with disabilities was 17.67%, which was approximately .5% higher than the previous year. TDE noted that Tennessee ranked 6th among the 52 states and territories for its drop-out rate. TDE presented data demonstrating that districts monitored and required to submit improvement plans showed a higher percentage of improvement than the State average. OSEP looks forward to reviewing the data and implementation of its improvement strategies in the SPP.

Suspension and expulsion

OSEP's October 2004 letter required TDE to include information that TDE has examined all data for all LEAs to determine whether significant discrepancies in the rate of long-term suspension or expulsion are occurring in the LEAs, and that when it identified significant discrepancies it reviewed and, if appropriate, revised (or required the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, in the FFY 2003 APR. On

pages 72-76 of the FFY 2003 APR, TDE completed a comparison of the rates of suspension for more than 10 days, or expulsions, for each LEA in the State. A review was conducted in the LEA with the highest rate, and corrective action was implemented. OSEP appreciates TDE's efforts in this area and looks forward to reviewing data and information demonstrating continued performance in this area in the SPP.

Statewide and districtwide assessment

On pages 77-109 in the FFY 2003 APR, TDE reported on the performance and participation of children with disabilities on Tennessee's statewide assessments. TDE presented trend data, as well as predicted performance in the various testing areas. The participation rate for children with disabilities on statewide assessments was 1% or less. Comparison data were reported from 2002-2003 and 2003-2004 for grades 3, 5, 8, and 10. There were gains from 5%-8% for proficient or above scores for children with disabilities in mathematics, and 8%-25% for children with disabilities in reading. TDE concluded that the performance of children with disabilities who took regular assessments was higher in all areas and for all grades in 2003-2004 than predicted. TDE continued its activities for increasing the number of children with disabilities assessed, with appropriate accommodations, when necessary, and indicated that the State would provide technical assistance on decision-making and use of accommodations, and the appropriate use of the alternate assessment (pages 104-109 of the FFY 2003 APR).

On pages 116-120 of the FFY 2003 APR, TDE established goals to increase the number of children with disabilities receiving appropriate accommodations on the statewide and districtwide assessments and to ensure that children with disabilities taking the statewide alternate assessment meet State Participation Guidelines. TDE presented data to show gains in the use of accommodations from year to year. OSEP appreciates TDE's efforts in these areas and looks forward to reviewing data and information demonstrating continued performance in this area in the SPP.

Least restrictive environment (LRE)

On pages 110-113 of the FFY 2003 APR, TDE reported data on the educational environment in which children with disabilities were educated during 2003-2004, and trend data from the four previous school years. TDE reported that 36% of children with disabilities were out of the regular education environment between 21-60% of the time, as compared to a national average of 29%. TDE concluded that the "State percentage of students ages 6-21 being served outside the regular setting between 21-60% is significantly higher (a gap of 8%) than the National Baseline." TDE also presented data for children with disabilities, ages three through five, demonstrating that 46% were served in Early Childhood Settings, as compared to a National Baseline of 37% for 2001-2002. TDE presented targets, strategies, resources, and timelines to improve student performance and technical assistance in this area. OSEP looks forward to reviewing the results of TDE's strategies and activities in the SPP.

Preschool performance outcomes

OSEP's October 2004 letter required TDE to submit targets for improved performance and strategies to achieve targets in early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services or a plan to collect the data in the FFY 2003 APR. On pages 114-115 of the FFY 2003 APR, TDE provided a plan to collect data and information in this area including convening a taskforce to obtain current and promising best practices for collecting data in this area, and aligning a system of measuring child outcomes with Tennessee Standards for Early Learning. TDE projected establishing preliminary plans for piloting a prototype for collection and reporting of data in March 2005. 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 121-124 of the FFY 2003 APR, TDE reported its goal for all high school students, including those with disabilities, "to achieve world class standards and leave school prepared for post-secondary education, work, and citizenship." TDE indicated that 51% of LEAs monitored during 2001-2002 and 50% of LEAs monitored during 2002-2003 required improvement in the participation of students with disabilities in post-school activities compared to nondisabled students. TDE stated that all improvement plans initiated in 2001-2002 and 2002-2003 were successfully implemented. In the FFY 2002 APR, TDE acknowledged that exiting and outcome data were minimal. TDE reported that a post-school exit survey was finalized for obtaining information from exiting students with disabilities and distributed for use in Spring 2004. TDE also reported on its continuing activities to provide better transition services to students with disabilities, including awarding contracts for promising practices in secondary transition, trainings, and projects to work with children with disabilities. 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.

Conclusions

In the State's Performance Plan, due December 2, 2005, TDE must submit to OSEP data and analysis demonstrating its ability to ensure that TDE is able to collect and report accurate and timely data as required by §618 of IDEA.

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

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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 Dr. Ken Kienas at (202) 245-7621.

Sincerely,



Troy R. Justesen
Acting Director

Office of Special Education Programs

cc: Mr. Joseph Fisher