



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

Honorable Patricia Harrington
Superintendent of Public Instruction
Utah State Office of Education
250 East 500 South
Salt Lake City, Utah 84111

SEP - 1 2005

Dear Superintendent Harrington:

The purpose of this letter is to respond to Utah'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) of OSEP.

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 August 19, 2004 FFY 2002 APR response letter required the State to provide evidence of progress in correcting noncompliance in the FFY 2003 APR, including current data and analysis to ensure:

- Correction of all noncompliance, including noncompliance it considers non-systemic, within one year of identification, as required by 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3)(E), including the noncompliance discussed in the parent involvement section;
- That all complaints were resolved within the required timelines at 34 CFR §300.661; and
- That a free appropriate public education (FAPE) was available by the third birthdays of Part B-eligible children leaving the Part C program as required by 34 CFR §300.132(a) and (b).

OSEP also required the State to include in its FFY 2003 APR:

- Data and its analysis, along with a determination of compliance or noncompliance regarding Part B eligibility determinations for children leaving the Part C program. If the data showed evidence of noncompliance, the Utah State Office of Education (USOE) was required to submit a plan for correcting that noncompliance, including strategies, proposed evidence of change and timelines designed to achieve compliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan;
- An analysis of compliance data related to the participation of children with disabilities in statewide assessments, consistent with regulations at 34 CFR §300.138; and
- Either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

USOE submitted plans to ensure the correction of non-systemic noncompliance and to meet complaint investigation timelines, required by 34 CFR §300.661, to OSEP on July 19, 2004. OSEP responded to this submission in a letter dated November 2, 2004. Further comment on this submission will be included in the appropriate sections below.

General Supervision

Identification and timely correction of noncompliance

OSEP's May 20, 2004, verification letter explained that OSEP believed that USOE's system for general supervision constituted a reasonable approach to the identification and correction of noncompliance. However, USOE's FFY 2002 APR did not address the extent to which it ensured correction of non-systemic noncompliance identified through the monitoring process. OSEP's verification letter required USOE to submit, by July 19, 2004, either documentation that it had already ensured the correction of non-systemic noncompliance that it identified through monitoring, or a plan for correcting noncompliance within one year of identification as soon as possible, but no later than one year from the date when OSEP accepted the plan. On July 19, 2004, USOE submitted a plan for correcting non-systemic noncompliance. In its November, 2004 letter, OSEP accepted that plan and directed USOE to report on its progress in the FFY 2003 APR and provide a final report demonstrating full compliance not later than December 2, 2005 (in the State Performance Plan (SPP)).

On pages 1 through 10 of the FFY 2003 APR, USOE provided evidence that strategies were implemented to ensure that general supervision procedures identified and corrected systemic noncompliance issues and that all non-systemic noncompliance issues identified by USOE were corrected within one year of identification. USOE reported that the Utah Program Improvement Planning System (UPIPS) has been effective in identifying and correcting noncompliance in a timely manner. USOE reported that some apparent slippages in local compliance were due to improved UPIPS data collection procedures.

USOE also included strategies to continue to improve tracking systems for systemic and non-systemic noncompliance and to conduct an annual evaluation of the UPIPS with stakeholders. In addition, on page 3 of the FFY 2003 APR, USOE provided evidence that private schools are included in the State's monitoring schedule. OSEP appreciates the work of the State and looks forward to reviewing the State's final report demonstrating full compliance in this area as part of the SPP due December 2, 2005.

Formal written complaints

In its August 2004 APR letter, OSEP directed the State to provide evidence of progress in ensuring that all complaints are resolved within the required timelines at 34 CFR §300.661, including supporting data and analysis, and provide a final report to OSEP, with data and analysis demonstrating compliance, no later than 30 days following one year from the August 2004 letter.

On pages 11 and 12 of the FFY 2003 APR, the State included data and information indicating progress in the timely resolution of formal written complaints. Seven formal written complaints were filed during the 2003-2004 reporting period, and four final decisions were issued within the 60-day timeline required by 34 CFR §300.661(a). This rate of 57% of the decisions being issued within the timeline is an improvement over the 2002-2003 reporting period, during which 38% of decisions were issued within the timeline. USOE reported that the improvement was due to significant efforts to reduce the workload on the Compliance Officer. One of the late decisions was due to a late appeal by the parents in that case, and another was due to lack of availability of staff for interviews. No explanation was provided for the third late decision. USOE included strategies to correct the noncompliance, including conducting quarterly meetings with the Protection and Advocacy agency to coordinate efforts in meeting deadlines and allocating adequate staff time to meet deadlines. As stated above, USOE must submit a final report to OSEP no later than 30 days following one year from the August 19, 2004 letter, demonstrating compliance. In addition, the State must include data and analysis demonstrating continued compliance with this requirement in the SPP, due December 2, 2005.

Mediation

On pages 11 and 12 of the FFY 2003 APR, USOE reported that one mediation request, related to a hearing, was made during the reporting period and that one mediation agreement was reached. OSEP looks forward to reviewing the State's data and information in this area in the SPP.

Due process hearings and reviews

On pages 11 and 12 of the FFY 2003 APR, USOE reported three due process hearing requests were received during the reporting period compared to seven in the FFY 2002 reporting period. All hearings requested were settled prior to a hearing being held. OSEP looks forward to reviewing the State's data and information in this area in the SPP.

Personnel

On pages 13 through 22 of the FFY 2003 APR, USOE included data and information regarding special education personnel, reported that there are critical shortages of special education personnel, and indicated an increase in the number of teachers leaving special education. USOE included strategies to improve performance including continuing to fund partnerships with institutions of higher education (IHEs) that train special education personnel and implementing effective induction and mentoring practices to retain highly qualified special education teachers through the State Improvement Grant. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

On pages 23 and 24 of the FFY 2003 APR, USOE included information regarding the collection and timely reporting of accurate data indicating progress in increasing access to data. During OSEP's verification visit in April, 2004, OSEP learned that USOE collects, stores, and reviews IDEA section 618 data through a data warehouse that audits data for accuracy against specific protocol. OSEP reported in its May 2004 letter that it believed USOE's system for collecting and reporting data was reasonably calculated to ensure the accuracy of section 618 data. During the reporting period, training was provided to special education personnel to enable them to better access the data warehouse to ensure accurate and timely data. USOE also reported that IDEA discretionary funding was used to fund needed changes in the UIPS compliance monitoring software to facilitate more timely and accurate data collection and reporting. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information in the SPP.

Early Childhood Transition

In the FFY 2002 APR letter, OSEP required the State to provide evidence of progress, including current data and analysis, in correcting noncompliance related to children experiencing a smooth early childhood transition as required by 34 CFR §300.132(b) and (c), and demonstrate correction not later than 30 days after August 19, 2005. On pages 29 and 30 of the APR, the State reported on the steps it was taking during the 2004-2005 year to ensure that LEAs participate in transition planning conferences as required by 34 CFR §300.132(c).

Additionally, the August 2004 letter questioned whether there was also a compliance problem regarding delayed eligibility determinations for children leaving the Part C program and directed the State to report on that issue in the next APR. On pages 25 through 29 of the APR, the State reported that there had been a decrease in the reported number of children exiting the Part C program whose eligibility for Part B had not been determined, and indicated that the progress may have been attributed to better reporting of exiting data by the Part C program. However, for the 2003-2004 period, the State indicated that the system could not account for the eligibility of 11% of the children exiting Part C. The State also reported that transition from early childhood intervention

to Part B has not been an issue raised in parent interviews, LEA self-assessments, or parent complaint mechanisms.

Utah also included strategies, proposed evidence of change, targets, and timelines designed to ensure compliance within a reasonable period of time, not to exceed one year from the date of this letter. OSEP accepts this plan. OSEP looks forward to reviewing the State's data and analysis demonstrating progress toward compliance with these requirements in the SPP.

Parent Involvement

On pages 31 through 34 of the FFY 2003 APR, USOE reported its progress toward meeting the target of maintaining parent involvement in all IEP requirements. USOE included data and an analysis from a written parent survey used during UPIPS monitoring from 2001-2004. The data indicated an increase in the percentage of parents reporting notification of special education meetings and a decrease in parents describing their role as a contributing team member in the IEP process. USOE reported that an indicator would be added to UPIPS compliance monitoring to monitor the provision of required documentation to parents such as prior notices and progress reports. 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.

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

Disproportionality

On pages 35 through 41 of the APR, USOE reported data and analysis that identified over- and under-representation by race/ethnicity in disability and settings categories. USOE provided several explanations for over- and under-representation by race/ethnicity, including that the child count of American Indians in two school districts makes up 85% of Utah's total American Indian population, affecting disproportionality significantly in those districts. Also, Utah's Hispanic population was growing rapidly. USOE reported that statewide monitoring identified no noncompliant policies, procedures, or practices in the identification, determination of eligibility, or placement of children with disabilities, regardless of race/ethnicity, including those districts with high rates of disproportionality.

USOE reported strategies to align Utah's education environment definitions more closely with Federal settings definitions and to continue to include disproportionality data in annual district-level data profiles used for UPIPS monitoring. OSEP appreciates the State's efforts in this area and looks forward to reviewing information in this area in the SPP.

Graduation and drop-out rates

On pages 41 through 43 of the FFY 2003 APR, USOE reported an increase in the percentage of students with and without disabilities who graduated with a regular high

school diploma as well as an increase in the drop-out rates for both groups. USOE's analysis showed improvement in closing the gap between the rates of students with disabilities and nondisabled students graduating with a diploma. USOE's proposed activities included identifying LEAs with high graduation rates and low-drop out rates and sharing promising practices with LEAs. OSEP appreciates the State's efforts in this area and looks forward to reviewing the information demonstrating continued improvement in this area in the SPP.

Suspension and expulsion

On pages 44 through 45 of the FFY 2003 APR, the State included data and information regarding suspension and expulsion rates indicating that the gap between the number of children with and without disabilities removed from school was slightly less than the year before and that the suspension and expulsion rates for children with disabilities (2.85%) were comparable to rates for children without disabilities (2.51%). USOE will continue to enhance the efforts of Utah's Behavior Initiative, which focuses on positive behavior supports, school-wide management, and systematic reporting of suspension data. OSEP appreciates the State's efforts in this area and looks forward to reviewing further data in the SPP, due December 2, 2005.

Statewide and districtwide assessment

On pages 47 through 69 of the FFY 2003 APR, USOE reported on the participation of children with disabilities in the Utah Performance Assessment System for Students (U-PASS) assessments. The discrepancies between the numbers of children with disabilities enrolled in grades eight and ten and the number of children who participated in the statewide assessments in math for those grades were significant. In Attachment 3, USOE reported that the State collected assessment data using an indicator in the general assessment reporting system. This assessment data was collected by grade level, while enrollment, or child count, data was collected by birth date, which partly explains the discrepancy. In addition, USOE reported that beginning in grade six, math assessments were course-related and not grade-related and that some course offerings were not associated with a statewide assessment. USOE included strategies to address participation on assessments, including continuing to provide on-going training to all assessment and curriculum directors on the participation of all children in U-PASS assessments, as well as on-going training to all special education directors on participation of students with disabilities in U-PASS assessments.

OSEP's August 2004 letter requested USOE to include information on the reasons why children with disabilities were exempted from assessments as requested by the Attachment 3 instructions. On page 61 of the FFY 2003 APR, USOE reported that Utah currently groups all exemptions and excusals under "Excused – Special Circumstances" on grade level assessments. U-PASS requirements state that "students may be excused from participating in statewide assessments in the event of an emergency or if the student is suffering extreme distress, such as a medical or physical crisis. The reason for the exemption must be documented in the student's cumulative record."

On pages 47 through 69 of the FFY 2003 APR, USOE reported performance results for children with disabilities in the Utah Performance Assessment System for Students (U-PASS) assessments. Data on pages 66 and 67 demonstrated an increase of the percentage of students who achieved the level of “proficient” from 2003 to 2004 for all grades in language arts and math except for 7th grade language arts. Page 68 of the FFY 2003 APR contained a numerical goal for increasing the percentage of students with disabilities achieving the level of “proficient” by 3% while maintaining the participation rate in Utah’s Alternative Assessment (UAA) at 1-2% of the total population.

Utah’s FFY 2004 Part B Grant Award was released with Special Conditions because Utah had not yet reported to the Secretary and the public on the participation and performance of children with disabilities in alternate assessments, specifically science. As reported in the July 8, 2004 Grant Award letter, the State had informed OSEP that it would provide documentation by the 2005-2006 school year that it reported publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, specifically science, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a)(2). On pages 45-47 of the FFY 2003 APR, USOE projected that by the end of the 2005-2006 school year, Utah will have developed, piloted, trained, and administered the alternate assessment in science. It stated that this will enable the State to report science results for students with disabilities taking the alternate assessment in the same way that assessment results for non-disabled students are reported, in order to fulfill this requirement.

Least restrictive environment (LRE)

On pages 70 through 76 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance in this area. Data indicated that the number of preschool children with disabilities receiving services in typical settings increased. In addition, Utah has made progress in closing the gap between its data and the national averages in all disability categories, indicating that children with disabilities are being served more often with their non-disabled peers. USOE reported that Utah’s definitions for the reporting of educational environments differ from the Federal settings definitions, making it difficult for Utah to compare its data with the national data. USOE reported that the State planned to align its definitions with the Federal definitions, allowing for more accurate data. OSEP looks forward to reviewing the State’s data in this area in the SPP.

Preschool performance outcomes

In its August 2004 letter, OSEP required that USOE submit either documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets on the early language/communication, pre-reading, and social-emotional skills of preschool children, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. On pages 76 and 77 of the FFY 2003 APR, the State included a plan to collect data, as required in the FFY 2002 APR letter. USOE reported that it would collaborate with other agencies to develop statewide preschool standards and design a method to collect and report performance outcomes. Utah contracted with an agency to collect student outcomes from a sample of school districts. The plan included a detailed timeline of the activities and projected resources needed to implement the plan. The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Secondary Transition

On pages 78 through 83 of the FFY 2003 APR, the State included data and information regarding secondary transition indicating slippage in the number of youth with disabilities participating in post-school employment activities compared to the number of youth without disabilities. USOE identified strategies to decrease the gap between employment rates of youth with and without disabilities including increased collaboration with the Division of Workforce Services and increased job development training for educators. On pages 83 through 86 of the APR, USOE reported an increase in the rate of students enrolled in post-secondary education and training programs between the 1990-1991 and 2001-2002 school years. 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.

Conclusion

As OSEP directed in the FFY 2002 APR letter, USOE must provide a final report, as soon as possible, but no later than September 19, 2005, with data and analysis demonstrating:

- (1) That all complaints are resolved within the timelines required by 34 CFR §300.661; and
- (2) Evidence of compliance, including current data and analysis, with the requirement to determine whether a free appropriate public education is made available by the third birthdays of Part B-eligible children leaving the Part C program, as required by 34 CFR §300.132(a) and (b).

In the SPP, due December 2, 2005, USOE must submit to OSEP:

- (1) A final report, with data and analysis demonstrating compliance with the requirement to ensure correction of all noncompliance, including noncompliance it considered non-systemic, within one year of identification.

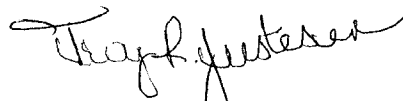
This includes the noncompliance discussed in the parent involvement section of the August 2004 letter;

- (2) Data and analysis demonstrating continued compliance with the timelines for resolving formal written complaints required by 34 CFR §300.661; and
- (3) Data and analysis demonstrating progress toward compliance with the requirement to ensure eligibility determinations for all children with disabilities exiting Part C who may be eligible for services under Part B, as required by 34 CFR §300.132.

IDEA 2004 section 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 Sheila Friedman at (202) 245-7349.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Karl Wilson