



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

Honorable Elizabeth Burmaster
Superintendent of Public Instruction
Wisconsin Department of Public Instruction
Post Office Box 7841
125 South Webster Street
Madison, Wisconsin 53707

OCT 13 2005

Dear Superintendent Burmaster:

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

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR and the March 18, 2005 revision to the proposed plan in the FFY 2002 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's December 8, 2004 FFY 2002 APR response letter required the State to submit to OSEP, no more than 60 days from the date of OSEP's letter¹:

1. Documentation that the State had, for two consecutive months, resolved all complaints within 60 calendar days unless the timeline was extended for resolving the complaint due to exceptional circumstances with respect to a particular complaint;
2. Documentation that the State ensured correction of noncompliance with the Part B requirements related to: (1) psychological counseling (34 CFR §§300.24(a) and (b)(9) and 300.300); (2) speech and language pathology (34 CFR §§300.24 (a) and (b)(14) and 300.300); (3) provision of supplementary aids and services and placement in the least

¹ On December 15, 2004, OSEP approved the State's request for an extension of this 60-day timeline to allow the State to submit the required documentation as part of its FFY 2003 APR.

restrictive environment (34 CFR §§300.550(b) and 300.347(a)(3)); and (4) the transition-related content of individualized education program (IEP) meeting notices (34 CFR §300.345(b)(3)) (including specific monitoring data regarding each of those requirements); and

3. Regarding nine areas of potential noncompliance identified in the general supervision section of OSEP's response, either: (a) documentation that the State ensured the correction of Part B noncompliance that it identified, within one year of identification; or (b) a plan that included strategies, proposed evidence of change, targets and timelines to ensure correction of identified noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepted the plan.

Because the State determined that there was significant disproportionality with respect to the identification of children as children with disabilities and the placement in particular educational settings of these children, the State was required to include, in the FFY 2003 APR, the results of the State's review of policies, practices, and procedures used in the identification and placement of children with disabilities to ensure that they are consistent with the requirements of Part B.

Further, the State was required to include in the FFY 2003 APR either documentation of data regarding the early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities, targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data, including a detailed timeline of the activities necessary to implement that plan.

General Supervision

Identification and timely correction of noncompliance

As noted above, OSEP's December 2004 letter directed the State to submit, regarding nine areas of potential noncompliance identified in the general supervision section of OSEP's letter, either: (1) documentation that the State ensured the correction of Part B noncompliance that it identified, within a year of identification; or (2) a plan that included strategies, proposed evidence of change, targets and timelines to ensure correction of identified noncompliance within a reasonable period of time, not to exceed one year from when OSEP accepted the plan. In Attachment B of the FFY 2003 APR, the State provided the following data regarding identification and correction of noncompliance in the 238 local educational agencies (LEAs) that it monitored from 2000-2001 through 2003-2004:

1. Accepting and processing referrals (34 CFR §300.300): WDPI closed the corrective action plan (CAP) in 48 of the 56 LEAs in which it found noncompliance.
2. Timely notice to parents; review of existing data prior to evaluation (34 CFR §300.503(a)(1)(i)): WDPI closed the CAP in 99 of the 157 LEAs in which it found noncompliance.

3. Review of effects of previous interventions at evaluation meetings (the State cited to State provision 115.782(b)(1)): WDPI closed the CAP in 68 of the 90 LEAs in which it found noncompliance.
4. Present levels of educational performance (34 CFR §300.347(a)(1)(i) and (ii)): WDPI closed the CAP in 128 of the 200 LEAs in which it found noncompliance.
5. Measurable annual goals, benchmarks, and short-term objectives (34 CFR §300.347(a)(2)): WDPI closed the CAP in 94 of the 111 LEAs in which it found noncompliance.
6. IEP services sufficiently clear (34 CFR §300.300): WDPI closed the CAP in 84 of the 102 LEAs in which it found noncompliance.
7. Participation in the regular education environment and the general curriculum (34 CFR §300.347(a)(4)): WDPI closed the CAP in 100 of the 141 LEAs in which it found noncompliance.
8. Transition statements and service needs in IEP (34 CFR §300.347(b)(1)): WDPI closed the CAP in 143 of the 178 LEAs in which it found noncompliance.
9. Reporting progress to parents (34 CFR §300.347(a)(7)(ii)): WDPI closed the CAP in 68 of the 80 LEAs in which it found noncompliance.

For each compliance issue, the State identified the remaining LEAs as engaged in corrective action plans. OSEP could not determine whether the State was ensuring that all LEAs correct noncompliance within one year of identification, because the State did not specify the extent to which, in LEAs whose CAPs had not been closed, WDPI had identified the relevant noncompliance more than one year prior to the March 30, 2005 submission of its FFY 2003 APR. On pages 3 and 4 of the FFY 2003 APR, the State set forth its plan, including strategies it would implement to ensure that LEAs corrected identified noncompliance, and indicated as its target, "All CAPs closed. Correction of identified noncompliance by June 1, 2005, or no later than one year from [when] OSEP accepts the plan." The plan did not specify that noncompliance must be corrected within one year from identification, and OSEP has no data from which to determine the extent to which, since the March 2005 submission of its FFY 2003 APR, the State ensured the correction of all noncompliance within one year from the date on which WDPI identified it. With the State Performance Plan (SPP), due December 2, 2005, the State must submit data and analysis demonstrating that noncompliance it identified during the FFY 2003 reporting period (July 1, 2003 through June 30, 2004) was corrected within one year of its identification. OSEP looks forward to reviewing the State's data and analysis demonstrating full compliance with this requirement in the SPP.

Formal written complaints

On page 20, in Attachment 1 of the FFY 2003 APR, the State included data showing that, for the period July 1, 2003-June 30, 2004, the State: (1) received 61 complaints, of which four were not

investigated; and (2) issued a decision within 60 calendar days for 56 of those complaints, and issued none beyond 60 days with a documented extension. On page 2, the State explained that the remaining complaint decision was issued one day beyond the 60-day timeline. 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 in the SPP.

Mediation

On page 20, in Attachment 1 of the FFY 2003 APR, the State included data showing that, for the period July 1, 2003- June 30, 2004: (1) there were 29 mediation requests not related to hearing requests, all resulting in mediation agreements; and (2) 12 that were related to hearing requests, nine of which resulted in mediation agreements. OSEP looks forward to reviewing the State's data in this area in the SPP.

Due process hearings

The State included data in its FFY 2003 APR, that demonstrated continued compliance in this area. On page 20, in Attachment 1 of the FFY 2003 APR, the State included data showing that, for the period July 1, 2003- June 30, 2004, the State: (1) received 34 hearing requests; (2) five hearings were held; and (3) the decision for all five was reached within 45 days or an extended timeline. OSEP looks forward to reviewing the State's data in this area in the SPP.

Personnel

On page 13 through 16 of the FFY 2003 APR, the State reported that visual impairment and hearing impairment continued to be the areas of greatest shortage, and described its efforts to address those shortages. The State also reported that teachers for children with emotional/behavioral disorders were no longer an area of shortage.

Collection and timely reporting of accurate data

On pages 16 through 19 of the FFY 2003 APR, the State reported that its data reports were all timely, and reported on the actions it took to ensure the accuracy of all data. For example, the State described the actions it took to ensure that its environment data were accurate. OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Early Childhood Transition

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) of the Act, an individualized family service plan (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 an IEP (or IFSP) developed and implemented by the child's third birthday.

On pages 21 and 22 of the FFY 2003 APR, the State included data showing that the following percentages of all three-year-old children exiting Part C for whom eligibility for Part B services was not determined by their third birthdays: (1) 2002 – 16%; (2) 2003 – 15%; and (3) 2004 – 15%. On pages 21 and 22, the State described its efforts to determine why eligibility was not determined by children's third birthdays, particularly in counties where the percentage without an eligibility determination by age 3 exceeded 10%. Among the factors the State identified as affecting these numbers were parent refusals for referrals, agency determinations that referrals were not appropriate, late referrals for evaluation, and delays in the IEP process. OSEP could not determine from the data, information, and analysis in the FFY 2003 APR whether all children exiting Part C, who were eligible for Part B services, had an IEP or IFSP in effect by their third birthdays. The percentage of children referred by Part C prior to age 3, who are found eligible for Part B and who have an IEP developed and implemented by their third birthdays, is an indicator in the SPP under §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.

Parent Involvement

On pages 24 and 25 of the FFY 2003 APR, the State reported that it did not directly survey parents, and described its efforts to ensure that parents were involved in the development of LEAs' special education plans (SEPs) and in decisions regarding their children. 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 §616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

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

OSEP's December 2004 letter required the State to provide documentation that the State ensured correction of noncompliance with the Part B requirements related to: (1) psychological counseling (34 CFR §§300.24(a) and (b)(9) and 300.300); (2) speech and language pathology (34 CFR §§300.24 (a) and (b)(14) and 300.300); and (3) provision of supplementary aids and services and placement in the least restrictive environment (34 CFR §§300.550(b) and 300.347(a)(3)). In Attachment B of the FFY 2003 APR, the State provided the following data showing 100% correction of these areas of noncompliance:

1. Psychological counseling (34 CFR §§300.24(a) and 300.300). WDPI found noncompliance in eight of the 238 LEAs it monitored between 2000-2001 and 2003-2004, all of which corrected the noncompliance.
2. Speech and language (34 CFR §§300.24(a) and (b)(14) and 300.300). WDPI found noncompliance in ten of the 238 LEAs it monitored between 2000-2001 and 2003-2004, all of which corrected the noncompliance.
3. Provision of supplementary aids and services and removal from regular education classes (34 CFR §§300.347(a)(3) and 300.550(b)(2)). WDPI found noncompliance in one of the 238 LEAs it monitored between 2000-2001 and 2003-2004, and the LEA corrected the noncompliance.

OSEP appreciates the work of the State in ensuring compliance with these requirements.

Graduation and drop-out rates

On page 32 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the graduation rate. The State's analysis of those data indicated that the graduation rate for both students with and without disabilities declined slightly during the last three years, due to a change in the method of determining the cohort size. "The most recent statistics show a gap between the nondisabled student rate of 92.38% and the disabled rate of 86.26%. This represents a gap of 6.12%. The target of comparable rates for the disabled and nondisabled populations has not yet been met. A target set by the State is to achieve comparable graduation rates for disabled and nondisabled students. It was noted that the graduation gap has been identified by Stakeholders as a priority area for focused monitoring. The State further indicated LEAs in need of improvement will receive technical assistance and monitoring." OSEP looks forward to reviewing information in the State Performance Plan, including the implementation of strategies and resulting data and analysis.

On page 32 of FFY 2003 APR, the State reported that the target to achieve comparable drop-out rates for students with and without disabilities, was essentially met. It was noted that "The dropout rate has declined for both disabled and nondisabled students over the past three years. The most recent statistics show a 1.94% rate for nondisabled students and a 2.23% rate for disabled students—this is a gap of only .29%." OSEP appreciates the State's efforts in this area and looks forward to reviewing data and information demonstrating continued improvement in this area in the SPP.

Disproportionality

Regulations at 34 CFR §300.755(b) require that when a State determines that there is significant disproportionality regarding the identification or educational placement of children with disabilities, the State must provide for the review and, if appropriate, revision of the policies, procedures, and practices used in identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B. OSEP's December 2004 letter directed the State to report, in its FFY 2003 APR, on the results of the review of policies,

procedures and practices used in the identification and placement of students with disabilities to ensure that they are consistent with the requirements of Part B.

On pages 26 through 30 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the areas of over-representation of African American and American Indian children in the categories of emotional/behavioral disability (EBD), cognitive delay/mental retardation (CD/MR), and specific learning disability (SLD); and over-representation of African American children in the other health impairment (OHI) category. On page 28, the State concluded that, "the same racial/ethnic groups continue to be overrepresented in the same impairment categories over time." Regarding significant disproportionality in educational environments, the State noted that "[u]sing the new risk ratio formula, there appears to [be] some slippage from the previous year. The risk ratio of African American students outside the regular classroom more than 60% increased from less than 2 in the 2002 up to 2.71 in 2003."

On page 27, the State indicated that it "will revise its reviews of all LEAs to ensure practices or procedures that may be either discriminatory by race or ethnic group or inconsistent with Part B are identified and changed." Notwithstanding its determination of the areas of significant disproportionality discussed above, the State did not include: (1) any documentation that it had met its responsibility, under 34 CFR §300.755, to provide for the review and, if appropriate, revision of the policies, procedures, and practices used in identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B; or (2) as directed in OSEP's December 2004 letter, the results of such review.

Within 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 that they were race-neutral, for those districts with data showing significant disproportionality in the identification of children with disabilities 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. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collection of this data, in the SPP.

Suspension and expulsion

On page 34 of the FFY 2003 APR, the State reported data and analysis showing that expulsion rates for children with and without disabilities for the 2003-2004 school year were comparable, and that the State met its target to maintain comparability in the expulsion rates for children with and without disabilities.

On pages 34 through 37 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the area of suspension. The State reported that the data for 2003-2004 indicated that “the suspension rate for students with disabilities continues to be more than double the rate of students without disabilities (13.97% compared to 5.70%).” The State also included strategies to improve performance. OSEP looks forward to reviewing information in the SPP, including the implementation of strategies and resulting data and analysis.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rates of long-term suspensions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected LEA to revise) its policies, procedures, and practices related to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that policies, procedures and practices comply with Part B.

On pages 35 and 36 of the FFY 2003 APR, the State indicated that districts with data indicating problems with suspension were required to amend their special education plans, if necessary, to address the problem. The State noted that this provided an opportunity to review and revise policies and procedures. However, the State did not include evidence that it required a review (and, if appropriate, a revision) of the districts’ policies, procedures, and practices related to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that policies, procedures and practices comply with Part B, as required by 34 CFR §300.146, and the directions to the FFY 2003 APR.

Within 60 days of the date of this letter, the State must submit either: (1) evidence demonstrating that it is meeting the requirements of §300.146, as described above; or (2) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible but not later than 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.

Statewide and districtwide assessments

On pages 37 through 40 of the FFY 2003 APR, the State included data and analysis indicating a need to improve performance in the areas of reading and math. For example, the data showed that: The target of 61% proficiency in reading was not met in any group of children with disabilities tested in 4th grade (52%), 8th grade (48%) or 10th grade (31%). The target of 37% proficiency in math was exceeded by 4th graders with disabilities (46%), but was not met by 8th graders (34%) or 10th graders with disabilities (25%). The State included strategies to improve performance. The targets for performance in reading were set at 67.5%; and 47.5% in math. The State reported that, with the awarding of a discretionary grant on assessment of children with disabilities to Cooperative Educational Service Agency (CESA) 6, methods would be explored to narrow the achievement gap and would provide tools to assess and document student

performance as well as worksheets and training materials on accommodations. OSEP looks forward to reviewing information in the SPP, including the implementation of strategies and resulting data and analysis.

Least restrictive environment (LRE)

On page 43 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting potential noncompliance found during monitoring visits with regard to participation in the regular education environment and general curriculum (34 CFR §300.347(a)(4)), as follows: "Of the 238 LEAs monitored between 2000-2001 and 2003-04 school years, 141 LEAs were originally cited for potential violations of this provision. As of March 31, 2005, only 41 LEAs continue to engage in corrective actions. All identified noncompliance will be corrected by June 1, 2005, or no later than one year from the date when OSEP accepts the State's plan proposed in Cluster 1, General Supervision." In the SPP, the State must include data and analysis demonstrating full compliance with this requirement, and, as indicated in the section above, *Identification and timely correction of noncompliance*, WDPI must ensure that all State-identified noncompliance is corrected within one year of its identification of that noncompliance.

Preschool performance outcomes

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 44 through 47 and in Attachments H and I of the FFY 2003 APR, the State provided data and analysis showing that: (1) there had been a reduction in the percentage of children with disabilities retained in kindergarten and first grade; over the past two years; and (2) there had been a slight increase in the percentage of children with disabilities who returned to regular education and exited from special education between December 1, 2002 and December 1, 2003. The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Secondary Transition

OSEP's December 2004 letter directed the State to provide documentation that it ensured correction of noncompliance with Part B requirements related to the transition-related content of IEP meeting notices (34 CFR §300.345(b)(3)). In Attachment A of the FFY 2003 APR, the State provided the following data demonstrating 100% correction of the noncompliance: WDPI found noncompliance in 78 of the 238 LEAs that it monitored between 2000-01 and 2003-04, all of which have corrected the noncompliance. 78 were found noncompliant. OSEP appreciates the work of the State in ensuring compliance with these requirements. The SPP instructions establish two new indicators in this area (#13 and #14), for which States must provide baseline data in the FFY 2006 APR, due February 1, 2008. 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 §616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Conclusion

Within 60 days of the date of this letter, or if the State prefers with the SPP, the State must:

1. Either: (a) provide: (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 that they were race-neutral, for those districts with data showing significant disproportionality in the identification of children with disabilities 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. Submit either: (a) evidence demonstrating that it is meeting the requirements of §300.146, as described above; or (b) a plan, including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance as soon as possible but not later than 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.

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

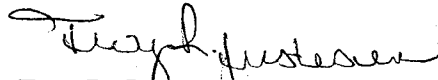
1. Submit data and analysis demonstrating that noncompliance it identified during the FFY 2003 reporting period (July 1, 2003 through June 30, 2004), in the nine areas enumerated on pages 2 and 3 of this letter, was corrected within one year of its identification; and
2. Include data and analysis demonstrating full compliance with the requirements of 34 CFR §300.347(a)(4), and, as indicated in the section above, *Identification and timely correction of noncompliance*.

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 Ms. Delores Barber at (202) 245-7263.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy R. Justesen". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Dr. Stephanie Petska