



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Roger Sampson
Commissioner
Alaska Department of Education and Early Development
801 West Tenth Street, Suite 200
Juneau, Alaska 99801-1894

JUL 23 2004

Dear Commissioner Sampson:

The purpose of this letter is to respond to the Alaska Department of Education and Early Development's (AKEED) March 31, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part B APRs directed States to address five Part B cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

Background

In a March 20, 2003 letter, OSEP responded to Alaska's Self-Assessment, indicating that it was OSEP's expectation that, as part of the State's improvement planning efforts, the State would collect and analyze relevant data, and make data based determinations, regarding several areas of concern outlined by OSEP. AKEED used the information outlined by OSEP to write its Improvement Plan, which AKEED submitted to OSEP on June 30, 2003. In a letter dated December 24, 2003, OSEP responded to AKEED's Improvement Plan with specific direction to revise its Improvement Plan and resubmit the Improvement Plan within 60 days of that letter. AKEED and OSEP agreed, via a telephone call between the State's Special Education Director, Art Arnold, and OSEP's Alaska State Contact, Ellen Safranek, that AKEED could include its Improvement Plan response as part of its APR because the 60-day due date and the APR due date were so close together.

In OSEP's December 24, 2003 letter, OSEP stated that the State must address the noncompliance with the following three areas in its revised Improvement Plan/APR: (1) a

child with a disability who is placed in, or referred to, out of district/out of State placements by a public agency is provided special education services in conformance with the student's IEP, at no cost to the parents, and has all the rights of a child with a disability who is served by the public agency, 34 CFR §300.401; (2) free appropriate public education for students with disabilities in adult prisons, 34 CFR §§300.311, and methods for ensuring services, 34 CFR §300.142; and (3) alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children with disabilities who cannot participate in State-wide and district-wide assessment programs, 34 CFR §300.138.

OSEP also conducted an on-site verification review in August 2003 and issued a letter addressing that visit on December 30, 2003. In its December 30, 2003 verification letter, OSEP required that the State address the identified areas of noncompliance in its revised Improvement Plan/APR. The letter included only a discussion of two of the three areas of noncompliance: the State's inability to track and ensure services to children with disabilities placed in out-of-district/out-of-State placements and its failure to develop and pilot its alternate assessment for grades 4,5,7, and 9.

In addition to the noncompliance mentioned above, OSEP identified four areas of concern in its December 24, 2003 letter that the State did not address in the Improvement Plan. On pages one and two of the December 24, 2003 letter, the letter stated that Part B regulations require that the SEA ensure that each educational program for children with disabilities administered within the State meets the standards of the SEA. 34 CFR §300.600. OSEP identified the following four areas of concern: (1) Absence of data detailing how many children with disabilities who exit Part C are actually enrolled in preschool special education; (2) Lack of data regarding children with disabilities' participation in non-academic and extracurricular activities; (3) Lack of data regarding parent participation and its impact; and (4) The State's inability to report suspension and expulsion rates and examine the rates for significant discrepancies among local education agencies.

OSEP also addressed the issue of disproportionality in its December 24, 2003 letter. On page three, OSEP stated, "The proposed Improvement Plan describes several performance targets in terms of Alaska Native students in various categories 'comparing appropriately' to the percentage of these students in the State population. The proposed use of numerical goals 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." After further explanation of that issue in the December 24, 2003 letter, OSEP specified that the State must revise the section of the proposed Improvement Plan that addressed disproportionality consistent with the guidelines and recommendations set out in that letter.

OSEP's July 1, 2003 Grant Award to Alaska carried a special condition stating, "Alaska must demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments," 34 CFR §300.139(a). While AKEED stated that the State would be able to meet this requirement by October 31, 2003, the State did not report data by that date. In June 2004, Alaska resolved this

issue by reporting data regarding the participation and performance of students with disabilities on the alternate assessment, and demonstrated that the State made those reports available to the public.

Alaska designed its general supervision systems with the goal of ensuring both compliance and improved performance for students with disabilities. AKEED's monitoring process included a five-year cycle in which the State monitored approximately ten districts a year. Alaska used the data collected from two consecutive years of monitoring as the basis for the majority of its APR data. AKEED collected the data during the 2001-2002 and the 2002-2003 school years from 20 different districts. The analysis reflected in the AKEED APR compared the monitoring results from ten schools monitored during 2001-2002 with monitoring results from ten schools monitored during 2002-2003.

The State's APR should reflect the collection, analysis and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure compliance). OSEP also considers Alaska's FFY 2002 APR submission to be the State's revised Improvement Plan. OSEP's comments regarding each cluster within the State's FFY 2002 APR are set forth below, as well as OSEP's comments regarding the State's revised Improvement Plan that Alaska included in the APR.

General Supervision

On page two of OSEP's December 24, 2003 Improvement Plan letter and on page three of OSEP's December 30, 2003 verification letter noncompliance was identified regarding the oversight of students with disabilities placed by a public agency in out-of-state institutions. 34 CFR §300.401. This area of noncompliance was addressed on page four of the GS. I. Section of the APR. The State outlined immediate action that it would take in this area, including monitoring all out-of-state institutions serving Alaska students with Individualized Education Programs (IEPs). This process would include the collection of relevant documents from these institutions with an emphasis on verifying the existence of current IEPs, as well as ensuring that the services in the IEPs were provided.

Additionally, AKEED would request copies of the relevant compliance reports from the SEAs in the States where the institutions operated as a secondary source of information regarding general compliance with IDEA. Mid-term strategies included, but were not limited to, the implementation of a web-based IEP process. This web-based system would enable the AKEED Department of Special Education to monitor placement decisions and IEP completion electronically from a central location. Long-term strategies involved, but were not limited to, including this population into Alaska's "Bring the Kids Home" initiative. OSEP accepts the State's improvement planning strategies regarding this area of noncompliance. OSEP notes that some of the statements in the APR indicated that the web-based IEP system may not be fully operational for several years.

Notwithstanding when the web-based IEP system is fully implemented, the State must ensure that, within a reasonable period of time, not to exceed one year from the date of this letter, all students with disabilities placed by a public agency in out-of-district and

out-of-State placements have IEPs that are properly developed and implemented. The State must provide evidence of progress in correcting the noncompliance, including supporting data and analysis, in the FFY 2003 APR and, in addition, provide to OSEP a final progress report within thirty days of one year after the date of this letter. The final progress report must contain data and analysis demonstrating full compliance with this area.

On pages one and two of OSEP's December 24, 2003 Improvement Plan letter, OSEP identified the concern that AKEED failed to provide data regarding the participation of children with disabilities in non-academic and extracurricular activities. AKEED addressed this area of concern on page four of the GS. II. Section of the APR. The information and data demonstrated that the State's monitoring system collected data regarding the participation of children with disabilities in non-academic and extracurricular activities. The data that AKEED included in its APR, on page four of the GS. II Section of the APR, indicated that 81% of the IEPs reviewed in 2002-2003 included a reference to participation in extra-curricular and nonacademic activities. IEPs must include "a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child . . . (ii) . . . to participate in extracurricular and other nonacademic activities . . ." 34 CFR §300.347(a)(3)(ii). An IEP must also include "An explanation of the extent, if any, to which the child will not participate with nondisabled children . . . in the activities described in paragraph (a)(3) of this section [which includes extracurricular and other nonacademic activities]." 34 CFR § 300.347(a)(4). It is unclear from the information provided in the APR whether the State is ensuring that all IEPs contain the required content. The State should analyze its data to ensure that these requirements are met, and address this issue in the next APR.¹

On page one of the GS.III. Section of the APR, a table titled "Percent of Formal Complaints Completed or Addressed within the Specified Timelines," showed that 89% of the complaints were completed or addressed within the specified timelines in 2001-2002, and 94% of the complaints were completed or addressed within the specified timelines in 2002-2003. The State included the following type of target in its APR: "90% of formal complaints completed or addressed within the specified timelines" (Page one of the GS.III. section of the APR). The State may not set a target of less than full compliance and must work to ensure full compliance. The targets regarding this issue in the State's next APR must be 100%.

On page two of the GS.II. Section of the APR, a table titled "Percentage of Students with Appropriate Functional Behavior Profile," showed that only 35% of the student files monitored in 2001-2002 had appropriate functional behavior profiles, and only 71% of the student files monitored in 2002-2003 had appropriate functional behavior profiles. The percentage of students with appropriate functional behavior profiles showed

¹ The State included the following type of target in the GSII section of its APR: "Ninety percent of districts receiving on-site compliance reviews will have IEPs that address extra curricular and non academic activities." The State may not set a target of less than full compliance and must work to ensure full compliance., The targets regarding this issue in the State's next APR must be 100%.

evidence of noncompliance with 34 CFR §300.346(a)(2)(i) and 300.520, which require that the IEP, or a behavior intervention plan, for some students with disabilities contain certain information regarding positive behavior interventions. The State included some strategies to address this area in the APR. However, the State did not include, in the APR, strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the proposed strategies.² Therefore, the State must submit to OSEP, within 60 days of the date of this letter, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date OSEP accepts the plan.

Early Childhood Transition

On pages one and two of OSEP's December 24, 2003 Improvement Plan letter, OSEP identified an area of concern regarding the lack of data detailing how many children with disabilities who exit Part C are actually enrolled in preschool special education. 34 CFR §300.132. On page one of the Early Childhood Transition Section of the APR, AKEED acknowledged the appearance of a systemic problem regarding the ability to ensure that special education students have IEPs in place by their third birthday. However, AKEED also explained that the sample size of the data presented in the APR was very small.

AKEED outlined strategies to address this concern on page one of the Early Childhood Transition section stating that, "The department is instituting a statewide web-based IEP system that will permit simultaneous monitoring of all IEPs in Alaska. This will allow the department to monitor the timeliness of all IEPs in the state. Additionally, negotiations have begun with the Part C program to get them to use student ID numbers generated by the department. This would allow the department to track students leaving the Part C program and entering the Part B program."³ OSEP looks forward to reviewing the implementation of those strategies and the impact on children with disabilities as part of the next APR.

² The State included the following type of target in its APR: "Seventy percent of students whose districts were subjected to a compliance review will have Functional Behavior Profile." GSII, page 2. The State may not set a target of less than full compliance, so the State's plan to ensure correction of the noncompliance must ensure full compliance.

³ OSEP assumes that Alaska's Part C to Part B tracking system does not involve the disclosure of personally identifiable information from student's education records or, if it does, that it is consistent with the IDEA and FERPA. OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Elder which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

Parent Involvement

On pages one and two of OSEP's December 24, 2003 Improvement Plan letter, OSEP identified concerns regarding the lack of data about parent participation. AKEED included data regarding parent participation in its APR. AKEED said that it would continue to administer the statewide parent survey and investigate the possibility of developing a more direct measure of parent involvement as it pertained to promoting a free appropriate public education. OSEP looks forward to reviewing the implementation of the survey, and any other strategies developed by AKEED, as part of the State's next APR.

Free Appropriate Public Education in the Least Restrictive Environment

On page two of OSEP's December 24, 2003 Improvement Plan letter, OSEP found Alaska in noncompliance due to its inability to ensure services to incarcerated youth. 34 CFR §300.300, §300.311, and §300.142. OSEP directed the State to address this issue as part of its revised Improvement Plan/APR. However, this area of noncompliance was not addressed in Alaska's APR. The AKEED must submit to OSEP, within 60 days of the date of this letter, a plan, including strategies, targets, proposed evidence of change, and timelines, to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date OSEP accepts the plan.

On page two of OSEP's December 24, 2003 Improvement Plan letter, OSEP identified a concern that Alaska did not have the capacity to accurately report suspension and expulsion rates and examine the data for significant discrepancies among local education agencies. 34 CFR §300.146. The AKEED addressed this concern on page one of the BF.III. Section of the APR. AKEED stated, "Although the department reports suspension and expulsion data to OSEP as required by Section 618, no baseline/trend data are reported because of questions regarding the validity of the data." AKEED surmised that the inaccuracy of the data stemmed from a combination of absence of knowledge and reluctance of districts to be portrayed in a negative light. AKEED provided no projected targets and outlined no strategies, but said that "the special education unit will discuss the issue of data for this Probe during the August 2004 planning meeting." OSEP looks forward to reviewing the results of that meeting, and any strategies implemented after that meeting, as part of the next APR.

On page three of OSEP's December 24, 2003 Improvement Plan letter, OSEP identified the following area of concern regarding disproportionality: "The proposed Improvement Plan describes several performance targets in terms of Alaska Native students in various categories 'comparing appropriately' to the percentage of these students in the state population. The proposed use of numerical goals 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.” On page two of the BF.I. section of the APR, AKEED acknowledged the guidance in OSEP’s December 24, 2003 letter, and AKEED did not include numerical goals based on race in its APR. The State indicated that it would conduct focused monitoring targeting, among other things, pre-interventions, referral and evaluation procedures of those ten districts whose disproportionality is the largest in the State. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities as part of the next APR.

Section BF.VI. of the APR contained data regarding speaking skills, emergent reading skills and social development of kindergarten students with disabilities. However, the data did not indicate which children received special education and related services prior to kindergarten. In addition, the State expressed concern regarding the reliability of the data and planned to discuss this topic with the Alaska special education team in August 2004, and the State stakeholder group during the 2004 – 2005 school year. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is measured based on the extent to which early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. OSEP looks forward to reviewing the State’s data regarding this issue, and the effects of its efforts to improve the quality of that data, as part of the next APR.

Secondary Transition

On page two of the GS.I. Section of the APR, a table titled “Percentage of districts found to be out of compliance with Transition Planning,” showed that 49% of the school districts monitored in 2001-2002 were out of compliance, and 32% of the school districts monitored in 2002-2003 were out of compliance. The percent of school districts out of compliance for both school years showed noncompliance in this area. IEPs for students with disabilities beginning at age 14 (or younger, if determined appropriate by the IEP team) must contain certain information regarding transition planning. 34 CFR §300.347(b). The State included some strategies to address this area in the APR, however, the State did not include strategies, proposed evidence of change, targets and timelines that would ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the proposed strategies.⁴ Therefore, the State must submit to OSEP, within 60 days of the date of this letter, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as

⁴ The State included the following type of target in its APR: “Thirty percent of districts audited did not have secondary transition plans for students with disabilities.” GSI, page two. The State may not set a target of less than full compliance, so the State’s plan to ensure correction of the noncompliance must ensure full compliance (100%).

possible, but no later than thirty days following one year after the date OSEP accepts the plan.

On pages one and two of the Secondary Transition Section of the APR, AKEED identified the performance indicator for measuring the quality of post-school activities of students with disabilities. The indicator was the percentage of schools completing the Alaska Transition Outcomes Project (ATOP). AKEED selected this indicator as a proxy for the quality of post-school outcomes because AKEED does not collect post-school information on students with disabilities. For the APR reporting period, no local school districts completed ATOP. AKEED set a projected target that within five years of the 2002-2003 school year; all 54 districts will have completed all three stages of the Set for Life Program. The State also indicated that it would explore collecting further follow up information on students. OSEP looks forward to reviewing further information regarding ATOP, or any other information regarding this issue, that the State includes in its next APR.

Conclusion

As noted above, within 60 days from the date of this letter, Alaska must submit a plan to OSEP that includes the following:

- (1) Strategies, targets, proposed evidence of change, and timelines to ensure correction of the noncompliance with 34 CFR §300.347(b), regarding the inclusion of information regarding transition planning in IEPs, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.
- (2) Strategies, targets, proposed evidence of change, and timelines to ensure correction of the noncompliance with 34 CFR §300.346(a)(2)(i) and 300.520, regarding the inclusion of certain information regarding positive behavior interventions in some IEPs, or behavior intervention plans, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.
- (3) Strategies, targets, proposed evidence of change, and timelines to ensure correction of the noncompliance with 34 CFR §300.300, §300.311, and §300.142, regarding the provision of services to incarcerated youth with disabilities, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

For each of the areas of noncompliance listed above, the State must also provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date OSEP accepts the plan.

In addition, with regard to the noncompliance with 34 CFR §300.401, oversight of students with disabilities placed in out-of-district and out-of-State placements, Alaska must provide to OSEP evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and, in addition, provide to OSEP a final progress report within thirty days of one year after the date of this letter containing data and analysis demonstrating full compliance with this area.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and we look 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 Lois Taylor (202) 245-7541 or Ellen Safranek (202) 245-7515.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education

Programs

cc: Art Arnold