



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

Honorable Edward Parisian  
Director  
Office of Indian Education Programs  
Bureau of Indian Affairs  
MS-3512, MIB  
1849 C Street, NW  
Washington, DC 20240-0001

DEC 22 2004

Dear Director Parisian:

The purpose of this letter is to respond to the Bureau of Indian Affairs' (BIA's) 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 BIA 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 cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

### **Background**

OSEP monitored BIA during 1998 and 1999 for the purpose of assessing compliance with IDEA. The organizational structure and geographic distribution of the BIA-operated or funded schools included 23 area and agency offices in 23 States. In the Monitoring Report, dated April 20, 2000, OSEP identified the following areas of noncompliance: (1) system-wide service coordination plan required by 34 CFR §300.263 did not exist (page 10); (2) rather than placing children with disabilities in classes that represent the least restrictive environment (LRE) based on their individualized education programs (IEP), many IEP teams were basing decisions to remove children from regular education classes solely on factors such as service availability or the need for modifications in the general curriculum. In addition, BIA did not ensure the funding formula was implemented in a manner to ensure that funding did not impact placement decisions [(page 11) (34 CFR §§300.550(b) and 300.552(a)(2))]; (3) extended school year services were

not available for all students who needed those services in order to benefit from the provision of a free appropriate public education (FAPE) [(page 12) (34 CFR §300.309)]; (4) children with disabilities were not allowed to participate in State-wide and district-wide assessment programs to the maximum extent appropriate [(page 13) (34 CFR §§300.138 and 300.347(a)(5))]; (5) meeting notices and invitations to required IEP team participants did not always include that transition was a purpose of the meetings or that the student and other agencies, when appropriate, were invited (34 CFR §§ 300.344(b) and 300.345(b)(2)-(3)). Students aged 16 and older (younger, if appropriate) and representatives of other agencies likely to pay for or provide services were not invited and often did not attend the meetings where transition services were discussed and decisions were made [(page 15) (34 CFR §300.344(b))]; (6) transition service statements did not represent a coordinated set of activities for each student with a disability aged 16 years or older (younger, if appropriate), designed within an outcome-oriented process that promoted movement from school to post-school activities [(page 16) (34 CFR §§300.347(b)(2) and 300.29)]; (7) complaint and due process hearing procedures were not carried out in manner that ensured the resolution of disputes in a timely manner [(page 20) (34 CFR §§300.660-300.662 and 300.511)]; and (8) BIA closed corrective action plans for agencies that OSEP visited in 1994, but OSEP found that some of the same deficiencies remained during OSEP's 1998/1999 review [(page 21) (34 CFR §300.600)]. BIA was required to address the identified areas of noncompliance in an Improvement Plan (IP) that was initially submitted to OSEP in September 2000. OSEP approved the IP on January 16, 2002, with the requirement that Progress Reports be submitted to OSEP on June 30, 2002, December 31, 2002, and June 30, 2003. The BIA submitted Progress Reports in December 2002 and June 2003.

BIA'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. OSEP's comments on BIA's FFY 2002 APR, and its December 2002 and June 2003 IP Progress Reports are listed by cluster area.

### **General Supervision**

In its April 20, 2000 Monitoring Report, OSEP identified three areas of noncompliance related to the General Supervision cluster: (1) BIA did not ensure the timely resolution of disputes through the implementation of due process and complaint resolution procedures (34 CFR §§300.511 and 300.660-300.662); (2) BIA did not ensure correction of all deficiencies identified in OSEP's 1994 Monitoring Report (34 CFR §300.600); and (3) BIA did not develop and implement the required system-wide Coordinated Services Plan as required by 34 CFR §300.263.

Dispute Resolution On page 7 of the APR, BIA reported, for FFY 2002, six formal complaints filed, all of which were completed/addressed within the required timelines. There were five due process hearing requests. One due process hearing was held and the decision was issued within required timelines. No explanation was given for the four due process hearings not held. BIA reported that three mediations were held, all of which resulted in mediation agreements.

In the June 2003 IP Progress Report, BIA reported that it had entered into a formal contract with the Mountain Plains Regional Resource Center (MPRRC) to conduct all due process investigations. BIA provided training for teachers, local administrators, parents, tribal

representatives, agency staff, school board members, and advocacy groups on IDEA and due process hearing requirements. As of June 2003, the Center for School Improvement (CSI) records indicated that all complaints adhered to timelines, and the BIA reported that all due process hearings were handled within the required timeframe.

Activities included to maintain compliance were: (1) the ongoing contract with the Mountain Plains Regional Resource Center (MPRRC) for recruiting, hiring, training and assigning due process hearing officers; and (2) the provision of training on dispute resolution and due process at special education institutes. On page seven of the APR, BIA included data and analysis that demonstrated it had corrected noncompliance, as identified in OSEP's monitoring report, with complaint and due process requirements. OSEP looks forward to reviewing the data in this area in the next APR.

Correction of Identified Deficiencies In the April 2000 Monitoring Report, OSEP found that deficiencies it had identified in 1994 continued to exist, even though BIA had closed corrective action plans for those agencies. The BIA IP included strategies to ensure correction of all deficiencies identified through its monitoring process. The June 2003 Progress Report on pages 3-5 indicated that the BIA had completed all of the strategies identified to ensure correction of this area of noncompliance. On page 3 of the June 2003 Progress Report and page two of the APR, BIA reported on the development and implementation of a Continuous Improvement Monitoring Process (CIMP) that includes on-site visits to schools/agencies, issuance of a monitoring report, development by the school/agency of an action plan to address any identified noncompliance, approval of the plan by CSI, and follow-up by agency and CSI staff to ensure the plan results in correction. On page 3 of the FFY 2002 APR, BIA reported that 32 schools (17.39%) and four agencies (12.5%) were visited as part of CIMP in school year 2002-2003. The BIA reported the following as the five most often identified areas of noncompliance in the CIMP process: (1) content of IEP; (2) content of notice; (3) determination of eligibility; (4) extended school year; and (5) progress on goals. No data were reported on the percentages of schools and agencies out of compliance in these areas. BIA reported that 26 of the 32 schools completed the action plan in a "timely manner;" BIA did not specify this timeframe. Four schools received more follow-up during the 2002-2003 school year due to the serious nature of concerns identified.

As part of the BIA's "second-tier" monitoring process, special education coordinators complete a yearly monitoring of each school, as well as provide technical assistance and follow-up based on monitoring results. In addition, each special education coordinator was required to review at least 10% of the student records in all schools within an agency. For both CIMP and the second-tier review, a record review checklist was used to ensure consistency between reviewers and review sites. The areas of the second-tier review were determined by system-wide concerns identified through previous monitoring results, OSEP visits, observations, and numbers of requests for technical assistance. On page 3 of the APR, the BIA reported the following as the five most identified areas of noncompliance resulting from second-tier monitoring during school year 2002-2003: (1) content of IEP; (2) content of parent notice; (3) IEP development, review, and revision; (4) determination of needed evaluations; and (5) written reports. On page 5 of the APR, the BIA reported that special education coordinators reviewed 1,403 (16.9%) student records out of a total of 8,323. Of the 1,403 student records reviewed, BIA identified the

following concerns: content of IEP, 455 (32%); content of parent notice, 445 (31%); development, review, and revision of IEPs, 353 (25%); determination of needed evaluation, 293 (21%); and written report, 247 (18%). Within 30 days of the second-tier process being completed at each school, a written monitoring report with documented findings, recommendations and identified technical assistance was submitted to the CSI. After receiving the monitoring report, each school was required to develop an Action Plan to address identified areas of noncompliance.

While the BIA has completed the strategies identified in the IP, OSEP is unable to determine whether the BIA has ensured correction of identified deficiencies because the data provided does not demonstrate that the noncompliance identified during school year 2002-2003 in the CIMP process and second tier monitoring has been corrected in a timely manner. From the information provided, OSEP cannot determine which specific requirements of Part B of IDEA were identified as noncompliant or the percentage of schools/agencies found out of compliance. In the next APR, the BIA must submit to OSEP data and analysis demonstrating what specific requirements of Part B were identified as noncompliant and documentation that any noncompliance identified in school year 2002-2003 through the CIMP process and second tier monitoring has been corrected in a timely manner.

Coordinated Service Plan 34 CFR §300.263 requires the Secretary of the Interior to develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under Part B of IDEA. This plan must provide for the coordination of services benefiting these children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and Federal agencies. In the April 20, 2000 monitoring report, OSEP reported that the BIA had not developed and implemented the required system-wide service coordination plan. As part of the IP and its eligibility documents, BIA developed and submitted a Coordinated Service Plan in June 2002. The Coordinated Services Plan met the requirements of 34 CFR §300.263.

Qualified Personnel OSEP's April 2000 Monitoring Report did not identify noncompliance in this area. On page nine of the APR, BIA reported that special education teachers and related service personnel were required to be fully licensed in the State in which they were working and that personnel data was self-reported for each school. BIA reported that 85.4 % of special education teachers were fully certified. The percentage of fully certified teachers decreased by 2% from the previous year. BIA did not provide an explanation for this slippage. BIA reported that there were more teacher aides serving children with disabilities than teachers with or without a license. The BIA has noted this trend and has begun to review more closely the staffing patterns for services to students with disabilities. In the next APR, OSEP looks forward to receiving the results of this review.

Under 34 CFR §§300.135 and 300.380-300.382, the BIA must develop and implement a comprehensive system of personnel development that must include, among other things, relevant information on current and anticipated personnel vacancies and shortages. The BIA indicated, on page 11 of the APR, that it has not collected data regarding vacancies across the system. The BIA did not include any activities to address this issue. Therefore, in the next APR, the BIA must submit a plan to OSEP to collect the information required in 34 CFR §300.381(b), including

relevant information on current and anticipated personnel vacancies and shortages. The plan must include strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approves the plan.

Data Collection. On page 12 of the APR, BIA reported that a system wide integrated data collection system was not currently available. Data are collected at the school level before being forwarded through the agency line offices. The special education coordinator at the agency then reviews the data and forwards it to CSI. At the CSI the information is collated into one BIA report. Starting in the 2002-2003 school year, schools were required to report on numbers of students with disabilities, general assessments with or without accommodations, alternate assessments, out of level assessments, students for whom the results were invalid and students who were not tested. A data manager has been assigned the responsibility of handling the data received at CSI.

As a projected target for the next reporting period (July 1, 2003 through June 30, 2004), BIA indicated that data collections for all needed purposes would be validated as correct and submitted in a timely manner. Among the future activities to achieve the projected target, BIA reported that codes for placement would be added to the Indian Student Equalization Program (ISEP) rosters, facilitating a crosswalk between information submitted on the agency and the verified rosters. In the next APR, BIA should report the progress of code implementation as well as other efforts to develop an integrated data collection system.

### **Early Childhood Transition**

BIA reported that they did not directly serve children with disabilities (ages 3-5), but served as the flow-through agency for money to tribes having BIA schools located on their reservations. Under section 611(i)(3)(A) of IDEA, the Secretary distributes twenty percent of the funds it receives under section 611(c) to tribes and tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the BIA. Under section 611(i)(3)(D), the funds received by a tribe or tribal organization must be used to assist in child find, screening, and other procedures for the early identification of children ages 3 through 5, parent training, and the provision of direct services. On page 14 of the APR, the BIA reported on activities it had carried out that were designed to facilitate better communication between the entities currently serving children with who fall under Part C and Part B of IDEA including: (1) a national conference involving tribal entities, State representatives, and special education coordinators from the BIA; and (2) "Trainer of Trainers" training for special education coordinators involving instruction by the Sky High Institute (AHEAD) which focused on at-home and at-daycare services and intervention.

On page 14 of the APR, the BIA reported that a revised report form and a flow chart were developed to assist in clarifying what tribes receiving funds under section 611(i)(3)(A) must report. In addition, during the 2002-2003 year, the BIA developed a pilot component to be included in the CIMP monitoring process as a way of gaining knowledge about the programs and activities resulting from the funds received by the tribes. In the next APR, the BIA must submit the information that it collects from the revised report form and flow chart and the monitoring

component on programs and activities the tribes are carrying out with the funds received under section 611(i)(3)(A).

### **Parent Involvement**

On page 16 of the APR, BIA reported from second-tier monitoring that the content of parent notice was the second most frequently cited area of concern. From the general supervision cluster on page 5 of the APR, OSEP noted that 31% (445 out of 1,403) of the records reviewed were out of compliance in the area of parent notice. This indicates potential noncompliance with the requirement to provide parents a procedural safeguards notice in accordance with the requirements in 34 CFR §300.504. As discussed in the General Supervision section, if these data indicate noncompliance, in the next APR, the BIA must submit data and analysis demonstrating that it has corrected any noncompliance identified with the requirements concerning the procedural safeguards notice in 34 CFR §300.504.

On page 16 of the APR, BIA reported that it had developed and distributed a Parent Guidance Handbook, which contained information for all parents, including parents of students with disabilities. In addition, the BIA included parent interaction as a part of the CIMP process to assist schools in understanding parents' concerns, through focus groups or individual interviews. BIA listed 11 focus group questions for parents; however, no results were reported. In the next APR, the BIA should include data and analysis on whether the BIA has met its target of ensuring parent notices will be provided for all meetings and actions as required. In addition, OSEP looks forward to receiving the parent concerns that are raised in the response to the focus group questions asked as part of the CIMP process.

### **Free Appropriate Public Education in the Least Restrictive Environment**

The following areas of noncompliance were identified by OSEP in the April 2000 Monitoring Report: (1) children with disabilities were not allowed to participate in State-wide and district-wide assessment programs to the maximum extent appropriate (34 CFR §§300.138 and 300.347(a)(5)); (2) rather than placing students with disabilities in classes that represent the least restrictive environment based on their IEPs, decisions were based on factors such as service availability or the need for modifications in the general classroom (34 CFR §§300.550(b) and 300.552(a)(2)); and (3) BIA did not ensure that FAPE was made available to all children with disabilities who needed extended school year (ESY) services (34 CFR §300.8).

State-wide Assessments In the April 2000 Monitoring Report, OSEP reported that the IEPs of children with disabilities who could participate in assessments lacked information about individual accommodations or modifications, although teachers reported that children needed the same accommodations used in their daily instruction. BIA addressed this identified area of noncompliance in the IP and submitted two subsequent Progress Reports on the IP.

On page 27 of the APR, BIA reported that for the FFY 2002 reporting period, 94.4% of children with IEPs participated in State-wide assessments, as compared with only 80% of the nondisabled children. Participation data showed that BIA was nearing the target participation rate of 95% or higher for children with disabilities on State-wide assessments. On pages 28-34 of the APR, the

BIA reported by grade level and content area (math and reading) on the participation and performance of children with disabilities on the regular and alternate assessments. However, the BIA has not reported publicly on its website on the participation and performance of children with disabilities in alternate assessments and on the number of children with disabilities participating in the regular assessment. (The web site does include the performance results of children with disabilities who participated in the regular assessment.) Therefore, the Department imposed Special Conditions on the BIA's FFY 2004 grant award under Part B of IDEA.

In Attachment 3, BIA did not include Sections E and F for reading; reading data were included in Sections B and C along with math data. Column 10, non-valid scores (366), was not equal to the number of children who did not take a reading assessment plus the children whose regular or alternate assessments scores were invalid (397). In its FFY 2003 APR, the BIA should include information on the reasons why children with disabilities were exempted from assessments as requested by the Attachment 3 instructions.

One of the strategies identified in the IP to address this area of noncompliance was that BIA would use the OIEP monitoring process to analyze the State-wide alternate assessment results, and then, based on those results, provide technical assistance at individual sites. The June 2003 Progress Report on page 10 stated that, "although reports indicated 'needs improvement' or 'non-compliance' for each school, OIEP had yet to analyze all results. This would be done in SY 02-03." In the APR, BIA did not report monitoring data regarding assessment requirements for which noncompliance had been identified in OSEP's April 2000 Monitoring Report. In the next APR, BIA must provide data and analysis demonstrating that the noncompliance identified in the monitoring report has been corrected. To satisfy this requirement, the BIA must include monitoring data on whether the IEPs reviewed included a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that were needed in order for the child to participate in the assessment; and if the IEP team determined that the child would not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), a statement of why that assessment would not be appropriate for the child; and how the child would be assessed, as required by 34 CFR §300.347(a)(5). In addition, if the data indicate noncompliance with 34 CFR §300.347(a)(5), the BIA must provide documentation that it has corrected the noncompliance in the schools/agencies it identified as noncompliant through the CIMP process and second-tier monitoring in school year 2002-2003.

Exiting Data and Suspension/Expulsion Data On page 25 of the APR, BIA reported that 57.7 % of students with disabilities graduated, compared with 69.9% of their nondisabled peers. BIA reported an 8.7% drop-out rate for students with disabilities, and a 10.1% rate for nondisabled students. BIA did not include trend analysis. Further, no targets or explanation of progress or slippage were reported for the reporting period. As a projected target, BIA reported it would increase the graduation rate for all students, including those with disabilities, by 10%. Activities to achieve projected targets/results included a transition initiative and curriculum information/training provided to all schools. For its FFY 2003 APR, BIA should include an analysis of the dropout and graduation performance of students with disabilities, as well as its progress in achieving its target of increasing the graduation rate by 10%.

On page 26 of the APR, BIA reported there were 129 students with disabilities involved in 161 incidents that resulted in suspension. Of these students, 82 were involved in single incidents and 79 in multiple incidents. A hearing officer sent fifteen students to interim alternative education settings (IAES) and 122 were sent home directly from the school. BIA did not include trend analysis. Further, no targets or explanation of progress or slippage were reported for the reporting period. As a projected target, BIA reported it would reduce the number of students with disabilities who are suspended or expelled by 2%. Activities to achieve targets/results included the identification and implementation of a tracking system that could be used system-wide for the identification of suspensions, expulsions, and removals to IAES. However, a tracking system alone would not reduce suspensions and expulsions. BIA did not include additional strategies for reducing suspensions and expulsions.

34 CFR §300.146 requires that States examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities either among LEAs in the State or compared to the rates for nondisabled children within the agencies. Where the State determines that significant discrepancies are occurring, it must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards to ensure that the policies procedures and practices comply with Part B. The instructions to the FFY 2002 APR directed States to describe which of these comparisons it did, as well as the method the State used to determine possible discrepancies, what constitutes a discrepancy, the number of agencies with significant discrepancies, and, if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them. In the next APR, the BIA must include the information required by the instructions. If the 2003 APR does not include information indicating that the BIA has examined all data for all schools/agencies to determine whether significant discrepancies are occurring in the schools/agencies based on either one of the comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected schools/agencies to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the BIA is not complying with the regulation.

In the next APR, the BIA must include data comparing the suspension and expulsion rates of children with disabilities among schools or agencies or compared to the rates for nondisabled children as required in 34 CFR §300.146(a). In addition, if discrepancies are occurring, the BIA must review, and if appropriate, revise its policies. The BIA should also report on its progress in achieving its target of reducing the number of students with disabilities who are suspended or expelled by 2%.

Disproportionality On page 19 of the APR, BIA reported that 100% of the students enrolled were in the race/ethnicity category of American Indian. By definition, BIA is a single ethnic group. Because students attending BIA schools represent a single ethnic group, there has not been a concern relative to differences between ethnic groups in their placement in special education. However, it is important to note that BIA reported 17% placement in special education, compared with a national average of approximately nine percent. Also, BIA reported

that 63% of special education students fall into the category of specific learning disability, which is significantly higher than the national average.

Educational Settings OSEP's April 2000 Monitoring Report stated that BIA did not ensure that each child's placement decision was determined on the basis of individual children's needs. On pages 7 and 8 of the June Progress Report, the BIA reported that it had completed all of the improvement strategies it identified as needed to correct this area of noncompliance, including the following: (1) revising the ISEP formula to ensure the funding mechanism does not result in placements that violate the least restrictive environment (LRE) requirements in IDEA; (2) providing all staff with technical assistance and in-service training; and (3) conducting OIEP monitoring focusing on LRE regulations. However, BIA did not report monitoring data on LRE requirements in the Progress Reports or APR, nor was it evident that BIA monitored LRE requirements in its CIMP or second-tier monitoring system. Because of the omission of monitoring data, OSEP could not determine if the area of noncompliance identified in the monitoring report has been corrected. In the next APR, the BIA must submit its monitoring data on the LRE requirements in 34 CFR §§300.550-300.556 and its analysis of that data. In addition, if the data demonstrate noncompliance, the BIA must provide documentation that it has corrected noncompliance in the schools/agencies it identified as noncompliant with LRE requirements through the CIMP process and second-tier monitoring in school year 2002-2003.

On page 21 of the APR, BIA reported 51.9% of children with disabilities in the category "outside regular class < 21%" which is above the national average of 47%. In the category "outside regular class 21% – 60%," BIA reported 36% which is comparable to the national average. BIA reported 21.5% in the category of "outside regular class more than 60%" which is slightly higher than the national average of 20%. In the next APR, the BIA must continue to report on its strategies to ensure compliance and performance in this cluster area.

Extended School Year (ESY) Services In the April 2000 Monitoring Report, OSEP found that extended school year services were not available for all children with disabilities who need such services in order to receive a free appropriate public education in BIA-funded schools. On page 9 of the June Progress Report, BIA reported that it had implemented all of the strategies to ensure that ESY services were made available to all children with disabilities. These strategies included: (1) the development of guidelines and training materials on ESY services; (2) the provision of awareness training for general educators, special educators, and parents on ESY services across all BIA jurisdictions; and (3) the review of ESY services as part of BIA's CIMP. However, BIA did not report monitoring data on ESY services in the Progress Reports or APR, nor was it evident that BIA monitored ESY services in its CIMP or second-tier monitoring system.

Because of the omission of monitoring data, OSEP could not determine if the area of noncompliance identified in the monitoring report has been corrected. In the next APR, the BIA must submit monitoring data on ESY services and its analysis of that data. In addition, if the data demonstrate noncompliance with the ESY requirements in 34 CFR §300.309, the BIA must provide documentation that it has corrected the noncompliance in the schools/agencies it identified as noncompliant through the CIMP process and second-tier monitoring in school year 2002-2003.

## **Secondary Transition**

OSEP's April 2000 Monitoring Report indicated two areas of noncompliance in this cluster: (1) meeting notices and invitations to required IEP team participants did not always include that transition services were a purpose of the meetings or that the student and other agencies, when appropriate, must be invited; and (2) transition service statements did not represent a coordinated set of activities for each student with a disability aged 16 years or older (younger, if appropriate), designed within an outcome-oriented process that promotes movement from school to post-school activities. On pages 12 and 13 of the June Progress Report, BIA reported that it has implemented all of the strategies it identified to ensure the correction of these two areas of noncompliance. These strategies included: (1) the review and revision of the IEP meeting notice and IEP form to include secondary transition requirements; (2) the provision of training to schools, parents, agency providers and others and dissemination of guidance regarding secondary transition requirements; (3) replication of exemplary secondary transition programs through the Transition Outcome Project; and (4) inclusion in the Comprehensive System of Personnel Development (CSPD) initiative. However, BIA did not report monitoring data in the Progress Reports or APR on secondary transition requirements, nor was it evident that BIA monitored for these requirements in its CIMP or second -tier monitoring system.

Because of the omission of the monitoring data, OSEP could not determine whether the area of noncompliance identified in the monitoring report has been corrected. No data were reported on the number of schools or IEPs reviewed with compliance concerns in the two areas noted by OSEP: (1) meeting notices and invitations to required participants (34 CFR §§300.344(b) and 300.345(b)(2)-(3)); and (2) transition services statement (34 CFR §§ 300.29 and 300.347(b)(1)). BIA must submit secondary transition monitoring data to OSEP in the next APR, along with its analysis of the data. If the data demonstrate noncompliance, the BIA must provide documentation that it has corrected noncompliance in the schools/agencies it identified as noncompliant with the secondary transition requirements noted above through the CIMP process and second-tier monitoring in school year 2002-2003.

On page 36 of the APR, BIA reported that, during the reporting period, a review of the current status of transition efforts was conducted, along with a review of legal issues and best practices surrounding transition. A distribution of funds plan was developed which included strategies to address transition issues. As a projected target, BIA indicated that all BIA schools would correctly address transition needs on the IEPs of all students who are 13 years old or older. Activities to achieve the projected target included: assignment of a staff person to oversee the transition initiative, training on transition for administrators and staff, and the establishment of an advisory group for BIA transition planning. In the next APR, the BIA must continue to report on its performance and compliance in this cluster area

## **Conclusion**

As noted above, in the next APR, BIA must submit to OSEP:

- (1) data and analysis demonstrating that any noncompliance identified with the requirements of Part B of IDEA in school year 2002-2003 through the CIMP process and second tier monitoring has been corrected in a timely manner.

- (2) a report on the progress of code implementation as well as other efforts to develop an integrated data collection system.
- (3) monitoring data and analysis demonstrating that IEPs include the content concerning assessments required in 34 CFR §300.347(a)(5). In addition, if the data indicate noncompliance with 34 CFR §300.347(a)(5), the BIA must provide documentation that it has corrected the noncompliance in the schools/agencies it identified as noncompliant through the CIMP process and second-tier monitoring in school year 2002-2003;
- (4) monitoring data and analysis demonstrating that each child's placement decision is determined on the basis of individual children's needs. If the data demonstrate noncompliance with the LRE requirements in 34 CFR §§300.550-30.556, the BIA must provide documentation that it has corrected the noncompliance in the schools/agencies identified as noncompliant through the CIMP process and second tier monitoring in school year 2002-2003;
- (5) monitoring data and analysis demonstrating that ESY services are available for all children with disabilities who need such services in order to receive a free appropriate public education. If the data demonstrate noncompliance with the ESY requirements in 34 CFR §300.309, the BIA must provide documentation that it has corrected the noncompliance in the schools/agencies it identified as noncompliant through the CIMP process and second-tier monitoring in school year 2002-2003;
- (6) monitoring data and analysis demonstrating that meeting notices and invitations to required participants meet the requirements in 34 CFR §§300.344(b) and 300.345(b)(2)-(3)); and transition services statements are included in IEPs as required by 34 CFR §§300.29 and 300.347(b)(1). If the data demonstrate noncompliance, the BIA must provide documentation that it has corrected noncompliance in the schools/agencies it identified as noncompliant with the secondary transition requirements noted above through the CIMP process and second-tier monitoring in school year 2002-2003.

As noted above, in the next APR, BIA must also submit to OSEP:

- (1) a plan to collect the information required in 34 CFR §300.381(b), including relevant information on current and anticipated personnel vacancies and shortages;
- (2) information that the BIA collected from the revised report form and flow chart and the monitoring component on programs and activities the tribes are carrying out with the funds received under section 611(i)(3)(A);
- (3) data comparing the suspension and expulsion rates of children with disabilities among schools or agencies or compared to the rates for nondisabled children as required in 34 CFR §300.146(a);
- (4) data and analysis on whether the target was met ensuring parent notices are provided for all meetings and actions as required.

OSEP recognizes that the APR and its related activities represent only a portion BIA's work. 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 Tony G. Williams at (202) 245-7477.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie Smith Lee".

Stephanie Smith Lee  
Director  
Office of Special  
Education Programs

cc: Gloria Yepa  
Director  
Special Education Programs