



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

Mr. Nicholas C. Donohue
Commissioner of Education
New Hampshire Department of Education
101 Pleasant Street
State Office Park South
Concord, NH 03301

NOV 10 2004

Dear Commissioner Donohue:

The purpose of this letter is to respond to the New Hampshire Department of Education's (NHDOE's) August 9, 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 cluster areas: General Supervision, Early Childhood Transition, Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment, and Secondary Transition.

Background

In OSEP's December 23, 2003 letter regarding the NHDOE October 30, 2003 Improvement Plan Progress Report, OSEP stated that data and information provided in the Progress Report corrected three of the four areas of noncompliance identified in the Self-Assessment. The three areas corrected were timeliness of due process hearings, placement of children with disabilities in private (non-public) programs by public agencies, and the provision of assistive technology devices and services. OSEP suggested that NHDOE provide an update in these areas when New Hampshire submitted the State's FFY 2002 Part B APR, specifically, any lack of progress, or regression, that occurred and how the State planned to address the slippage through adjustments or improvement made in State programs, policies, or practices. If the baseline/trend data showed that an area continued to

be in compliance and performance was acceptable, OSEP asked the State to list resources needed to maintain full compliance and continued acceptable performance. In the fourth area of noncompliance identified by New Hampshire in its Self-Assessment, OSEP's December 23, 2003 letter recognized that the State had completed the improvement strategies identified in the Improvement Plan to ensure the use of qualified examiners at the local level, but OSEP continued to ask for further information based on the findings of the State work group regarding the timeliness of evaluations and reevaluations. OSEP stated that New Hampshire must include the following information in its FFY 2002 APR: the strategies it developed to address timeliness of evaluations, any baseline information collected by the State, and a description of how the State tracked improvement over time. See 34 CFR 300.343(b).

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 improvement). OSEP's comments are listed by cluster area.

General Supervision

The State provided data and information regarding general supervision, on pages three through 44 of the APR. On pages seven and eight of the APR, NHDOE described the State's monitoring process. The process is cyclical with the length of the cycle based on how well the program met IDEA requirements and State special education requirements during the on-site review process. The maximum time between on-site monitoring reviews was five years. The NHDOE designated a consultant within the Bureau of Special Education to monitor and ensure compliance with any corrective actions ordered in the complaint process, a hearing officer's order from a due process hearing, or an order that resulted from a program approval monitoring corrective action.

In its December 2003 letter, OSEP found that the State had corrected the prior noncompliance issue regarding the provision of special education to children placed in or referred to private schools by a public agency. In response to OSEP's December 2003 letter suggesting that the State include in its APR additional information regarding this issue, NHDOE reported data from monitoring visits at private (nonpublic) facilities (page 14 of the APR) (34 CFR §300.600). During the 2002-2003 school year, NHDOE monitored seven nonpublic schools, reviewing 25 case studies. Nineteen of the 25 children had full access to the general curriculum and the remaining six children had partial access. Ten of the 25 children should have had a transition plan in place but only eight (80%) had the plan. In the nonpublic schools, there were 17 case studies in which children should have had access to participation in the State-wide assessment. Of the 17, 12 children had complete or formal documentation that they had participated in the State-wide assessment. Three children had partial or informal documentation and two children had no documentation they had participated in the State-wide assessment. Results of the visits were shared with Bureau staff, special education technical assistance consultants, monitoring personnel, State Improvement Grant (SIG) personnel and the State Advisory Committee. The APR did not report that the State ensured correction of these findings at

nonpublic schools. In the next APR, the State must provide documentation of correction in those situations.

The timeliness of due process hearings was a prior noncompliance issue in the State Improvement Plan and Progress Reports to OSEP. In its December 2003 letter, OSEP found that the State had corrected this issue, but suggested that NHDOE should report in its APR on the State's continued compliance with meeting IDEA timelines for due process hearings (34 CFR §300.511). On pages five through six of the APR (Attachment 1), NHDOE reported on the timeliness of due process hearings, mediations, and complaint investigations. For due process hearings during the period of July 1, 2002 through June 30, 2003, the State received 111 hearing requests; 29 of the 111 had hearings and were fully adjudicated while 20 decisions were issued after timelines and extensions expired. Of the 111 requests, none were pending as of August 30, 2003. The State included data for a supplemental reporting period of June 1, 2003 through September 1, 2003. During the supplemental reporting period, the State received 37 hearing requests and held three fully-adjudicated hearings. The State reported that during this supplemental reporting period, no decisions were issued after timelines and extensions had expired and that nine hearings were pending as of October 10, 2003.

NHDOE's data showed that for the reporting period July 1, 2002 through June 30, 2003, 107 complaints were received, 75 complaints were resolved with findings or with no findings, 32 complaints were withdrawn or no jurisdiction, 53 complaints were completed/addressed within timelines, and no complaints were pending as of August 30, 2003. This data indicates noncompliance because only 53 of the 75 complaints that were resolved during this time were completed/addressed within the required timelines. NHDOE must submit to OSEP within 60 days of the date of this letter, a plan, including 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 accepts the plan. In the next APR, the State must include current data and analysis demonstrating progress toward compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepts the plan.

As of August 30, 2003 there were no mediations pending. OSEP looks forward to reviewing data regarding mediations in the State's next APR

In its FFY 2002 APR, the State provided an overview of professional development activities during 2004. On pages 27 through 33 of the APR, NHDOE discussed the status of qualified personnel to meet the educational needs of all children with disabilities in the State (34 CFR §300.380). NHDOE identified the strengths and challenges of ensuring an adequate supply of special education administrators, teachers and related services personnel. The NHDOE surveyed local districts to determine personnel shortages. The APR reported that the results were similar to previous years: there were shortages in general special education and special education categorical areas. To fill the shortage, the State used its State Improvement Grant (SIG) to establish a Faculty-in-Residence Initiative to expand the pool of qualified educators in New Hampshire for special education. In

addition to this program, the College for Life- Long Living offered a transition to teaching program for special education paraprofessionals who want to become teachers. NHDOE required all districts and approved non-public programs to submit master plans for professional development.

The number of qualified examiners was a prior noncompliance issue in the State's Improvement Plan and Progress Reports. OSEP's December 23, 2003 letter recognized that the State had completed the improvement strategies identified in the Improvement Plan to ensure the use of qualified examiners at the local level, but OSEP continued to ask for further information based on the findings of the State work group regarding the timeliness of evaluations and reevaluations. OSEP stated that New Hampshire must include the following information in its FFY 2002 APR: the strategies it developed to address timeliness of evaluations, any baseline information collected by the State, and a description of how the State tracked improvement over time. On pages 19 through 26 of the FFY 2002 APR, the State presented baseline data and an analysis of the data to explain the status of the State's efforts to increase the number of qualified examiners. The State continued to identify the need for an adequate number of qualified examiners and attributed the inadequacy as a reason for evaluations not meeting the State's 45-day timeline requirement. The APR clearly identified the timeliness of evaluations as a continuing area of concern. Pages 19 and 20 and 23 – 26 of the APR included, in response to OSEP's December 23, 2003 letter, the State's strategies to address this concern. In the next APR, due March 31, 2005, the State must include current data and analysis demonstrating progress toward compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after the date of this letter.

On pages 34 through 44 of the APR, the State identified its efforts to collect accurate and timely data to use in reports and decision-making (34 CFR §300.750-300.756). The APR indicated that the State is in the process of revising its data system to be more accessible at both the State and local levels. New Hampshire has utilized its SIG grant to retain an external evaluator to assess the effectiveness of all discretionary projects. The State planned to expand the work of the evaluators beyond projects to the work of State and regional staff to connect their work more directly with student performance. OSEP looks forward to reviewing the results of the external evaluator's work in the next APR.

Early Childhood Transition

On page 58 of the APR, the chart indicated that only 54.79% of the Part B-eligible children who received Part C services had an IEP in place at age three (for the 7/1/02-6/30/03 reporting period). The federal regulations require that an IEP or IFSP be in effect for each eligible child no later than the child's third birthday. 34 CFR § 300.121(c). The State's data indicates noncompliance with this requirement.

On pages 44 through 63 of the APR, NHDOE described efforts to ensure children eligible for Part B services would receive special education and related services by their third birthday. NHDOE and the New Hampshire Department of Health and Human Services

(NHDHHS), the Lead Agency for Part C IDEA services, worked in collaboration with the National Early Childhood Technical Assistance Center (NECTAC) and other key stakeholders to develop and implement a comprehensive early childhood transition work plan. The New Hampshire General Supervision Enhancement Grant (GSEG) engaged the stakeholders in the development of an interagency Joint Quality Improvement Plan for services for infants, toddlers, children, youth and young adults with disabilities.

On page 47 of the APR, the State reported that, while collaboration and coordination between the Lead Agency and NHDOE were evident throughout the State, there was variability among the regions of the State. On page 52, patterns were noted that: (a) connections in districts where the special education director had many roles, including preschool coordinator, tended not be as strong; (b) regions with vendors that served several school districts and/or districts that worked with many vendors tended to have more difficulty with transitions; and (c) transitions for the two private schools that house both the NHDHHS Part C programs and preschool special education programs were generally smooth and effective. On page 54 of the APR, the State reported that the monitoring data showed that, in the case studies that included transition from NHDHHS Part C programs to NHDOE Part B programs, transition planning did occur at least 90 days prior to the child's third birthday.

NHDOE must submit to OSEP within 60 days of the date of this letter, a plan, including 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 accepts the plan. In the next APR, the State must include current data and analysis demonstrating progress toward compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepts the plan.

Parent Involvement

On pages 63 through 75 of the APR, NHDOE discussed its progress in reaching its goal that the provision of a free appropriate public education (FAPE) was facilitated by parent involvement. NHDOE identified baseline data, targets, activities, and timelines to improve the existing level of parent involvement. The sources of the data included the results of both monitoring and parent forums. The NHDOE and staff from the National Center on Special Education Accountability Monitoring (NCSEAM) met with parents to support the development of a national survey based on the family involvement model used by Joyce Epstein at Johns Hopkins University. New Hampshire planned to use the results of the survey to improve parent and family involvement in special education. The APR included a description of New Hampshire's collaboration with partners in mental health to promote coordinated services to families and children with intensive-level mental health and education service needs. OSEP looks forward to reviewing the implementation of the State's activities and their impact on children with disabilities in the next APR.

Free Appropriate Public Education in the Least Restrictive Environment

On pages 76 through 108 of the APR, NHDOE provided information about the State's goals that children receive FAPE in the least restrictive environment (LRE) as determined by improved performance on State-wide assessments, early childhood enrollment, suspension and expulsion data, graduation rates, drop-out rates, placement data and preschool outcomes. The State provided an overview of its efforts to examine: (1) State-wide assessment; (2) graduation rates; (3) drop-out rates; (4) incidents of expulsion and suspension; (5) racial and ethnic disproportionality in enrollment, educational environment, and assignment to disability category; and (6) young children's early development skills.

On pages 78 through 80 and Attachment 2 of the APR, the State presented baseline and trend data for racial and ethnic disproportionality in enrollment data, educational environment, and assignment to disability category. The activities in the State's APR for this cluster included examining policies, procedures and practices to determine consistency with Federal laws, as well as guidance practices regarding equal access to classes and programs throughout the State. The State reported that during July 1, 2002 through June 30, 2003, the State collected and reviewed statewide school enrollment data and conducted two civil rights on-site reviews to examine policies, procedures, and practices regarding compliance with federal laws that include race/ethnicity, and gender discrimination, as well as guidance practices regarding equal access to classes and programs throughout the district. The State concluded after examining its data that there was no significant disproportionality.

On pages 81 through 87 of the APR, NHDOE presented information about the graduation and drop-out rates for students with disabilities. The State had a performance indicator that graduation and drop-out rates for students with disabilities would be comparable to graduation and drop-out rates for all students in the general population. The State's analysis revealed that the graduation rates for all students in 2001 was 75% and in 2002 was 76%. The rates for students with disabilities in school year 2001 and 2002 were 78% and 74%, respectively. In the school year 2001-2002, 13% of the dropouts were students with disabilities. Students with disabilities comprised 14% of the general student population. The State included targets, an explanation for progress, activities, timelines and resources to improve performance in these areas.

On page 89 of the APR, NHDOE discussed the State's efforts to reduce school expulsions and suspensions. State-wide baseline data was unavailable for the reporting period; however, the State provided some data regarding suspensions from two of the larger high schools in the State. 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 individualized education programs (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 2002 APR direct 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. The State's 2002 APR stated that "data on suspensions and expulsions, by school, is collected by the Department of Education through a safety survey" (page 89). The APR further reported that "current data for suspensions and expulsions for students with disabilities has not been reported consistently for all students and specific data on students with disabilities has not been disaggregated at this time." (page 89). However, the State's 2002 APR did not include any information indicating that the State had examined data from the LEAs to determine whether significant discrepancies were occurring in the LEAs based on either one of comparisons described above. In the next APR, the State must include the information required by the instructions. If the 2003 APR does not include information indicating that the State has examined all data for all LEAs to determine whether significant discrepancies are occurring in the LEAs based on either one of comparisons described above, and that when it identifies significant discrepancies it reviews and, if appropriate, revises (or requires the affected State agency or LEA to revise) its policies, procedures and practices consistent with 34 CFR §300.146, then OSEP will conclude that the State is not complying with the regulation.

On pages 92 through 97 of the APR, NHDOE included a performance indicator to decrease any performance gaps between children with disabilities and their nondisabled peers in the New Hampshire State-wide assessment program. The tables on page 93 of the APR illustrated that for assessed grades (third, sixth, and tenth), there was a performance gap of between 46% and 54% in both math and reading. The APR identified targets, activities, resources and timelines to reduce the performance gap between children with and without disabilities.

On pages 99 through 102 of the APR, NHDOE reported data related to providing FAPE in the LRE. New Hampshire compared the State's enrollment data with national statistics and found that children with disabilities in New Hampshire were more likely to be placed in the regular classroom than children with disabilities in other States. More than 75% of all children with disabilities were in regular classrooms with their nondisabled peers. The State included targets, activities, an explanation for progress, resources and timelines in the APR.

On page 103 of the APR, NHDOE reported that the State did not establish baseline data to determine the early language/communication, pre-reading, and social-emotional skills, of preschool children with disabilities receiving special education and related services. The State reported an analysis of data about outcomes for preschool children with disabilities who have IEPs and are enrolled in Head Start. 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. In the FFY 2003 APR, New Hampshire must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

Secondary Transition

On pages 109 through 122 of the APR, NHDOE reported a State goal and two performance indicators to ensure that the participation of students with disabilities in post-school outcomes was comparable to that of nondisabled students. In data collected by the State during the July 2002 through June 2003 school year, for public school students age 16 or older, 67 of the 69 case studies (97%) had a transition plan in place by age 16. The State should continue to report in the next APR on its strategies to ensure compliance and performance in this cluster area.

Conclusion

Within 60 days of the date of this letter, the State must report to OSEP:

- (1) With regard to complaints, a plan, including 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 accepts the plan; and
- (2) With regard to IEPs or IFSPs being in effect by the child's third birthday, a plan, including 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 accepts the plan.

With regard to the two areas of noncompliance listed above, the State must also include in the FFY 2003 APR, due March 31, 2005, current data and analysis demonstrating progress toward compliance, and the State must provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after OSEP accepts the plans.

In the FFY 2003 APR, the State must also report to OSEP:

- (1) Documentation of correction of the State's findings at nonpublic schools;
- (2) Current data and analysis demonstrating progress toward compliance with timeliness of evaluations;
- (3) Information regarding the comparison the State did to determine whether significant discrepancies are occurring in the rate of long term suspensions or

expulsions, and if significant discrepancies are occurring, a description of those discrepancies and how the State plans to address them; and

(4) Documentation of data regarding preschool outcomes (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

With regard to the timeliness of evaluations, the State must also provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following one year after the date of this letter.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State. We appreciate your work on the APR and we look forward to collaborating with New Hampshire as you continue to improve results for students with disabilities and their families. If you have questions, please contact Marie Mayor at (202) 245-7433.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Virginia Irwin