



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 20 2004

Honorable Richard P. Mills  
Commissioner of Education  
New York State Department of Education  
11 Education Building  
89 Washington Avenue  
Albany, New York 11234

Dear Commissioner Mills:

The purpose of this letter is to respond to the New York State Education Department's (NYSED) April 5, 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***

New York State focused on four areas in the New York State Continuous Improvement Plan (Improvement Plan) of 2002 for Part B of the IDEA, specifically: General Supervision; Least Restrictive Environment; Parent Involvement; and Secondary Transition. On October 24, 2002 OSEP issued a letter to NYSED responding to the State's Improvement Plan. The letter noted that, at the request of the State, OSEP agreed to identify technical assistance experts from five OSEP-funded National Centers to assist the State's efforts to move forward on the issues of mutual concern. It was agreed that the strategies developed by NYSED and the National Centers would be incorporated into the Improvement Plan. OSEP's reply letter informed the State that the Improvement Plan had to be revised to show how the State would provide evidence of full compliance regarding the 45-day timeline for the due process hearings and the 60-day timeline for

complaint investigations by October 24, 2003. NYSED submitted a copy of the revised Improvement Plan in its November 14, 2002 letter to OSEP, addressing these two issues.

OSEP conducted a visit to verify the effectiveness of the State's systems for general supervision, data collection under section 618 of IDEA, and State-wide assessment. OSEP conducted its visit to New York during the week of November 17, 2003. On March 24, 2004, OSEP issued a letter to inform the State of the results of the verification visit. In the verification letter, OSEP informed NYSED that: (1) NYSED's systems for general supervision constituted a reasonable approach to the identification and correction of noncompliance. However, OSEP could not, without also collecting data at the local level, determine whether the systems were fully effective in identifying and correcting noncompliance; (2) NYSED's system for data collection and reporting was designed in a manner consistent with the requirements of section 618 of the IDEA; (3) the State's written procedures for State-wide assessments and the State's reports to the public and the Secretary on the participation and performance of children with disabilities on such assessments were consistent with Part B requirements. OSEP identified one area of noncompliance at the time of the visit. NYSED was unable to complete second level complaint reviews in a timely manner resulting in a backlog. In a letter dated April 23, 2004, NYSED submitted documentation indicating that the backlog had been eliminated in December 2003 and the strategies used to maintain 100% compliance with the required timelines.

In the March 2004 verification letter, OSEP required NYSED to submit documentation in the APR on the State's progress addressing the delays in appointing Impartial Hearing Officers and delays in issuing final decisions, as well as an updated status of State-level complaint timelines.

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***

In the FFY 2002 APR, NYSED reported that 89% of the complaints were completed within the 60-day timeline. As of July 1, 2003, NYSED reported that 100% of the complaint investigations were completed on time.

On page 2 of the General Supervision Executive Summary, NYSED reported that in December 2002, only 36% of the due process hearings were held within the timelines. As of September 2003, 95.5% of the hearings were held within required timelines. The State attributed the dramatic change to the technical assistance provided to hearing officers, improved informational materials for parents, and the ability to track timelines on a real-time, Web-based system. NYSED reported that it involved parents in the development, implementation and evaluation of State policies related to hearing officer training and procedural safeguards. NYSED must continue to report on its progress in ensuring compliance with due process hearing timelines in the next APR.

Probe GS.II in the APR asks States to determine whether systemic issues are identified through analysis of findings from information and data collected from all available sources, including monitoring, complaint investigations and hearing resolutions. The GAO Report “Numbers of Formal Disputes are Generally Low and States are Using Mediation and Other Strategies to Resolve Conflicts,” September 2003<sup>1</sup>, identifies New York as having high numbers of requests for due process hearings, based on data from 2000. While the State reported its progress with implementing its new database, the FFY 2002 APR does not include an analysis of hearing requests by issue or locality. NYSED should examine whether there are certain districts with concentrations of requests or if there are certain issues for which hearings are most frequently requested. We encourage NYSED to use the FFY 2003 APR to address this issue and identify appropriate strategies to address the results of that analysis.

On pages 1 and 2 of the General Supervision Executive Summary of the APR, NYSED reported that the core function of its General Supervision system was program monitoring. It described NYSED’s Special Education Quality Assurance (SEQA) system as designed to maximize the impact of program reviews by focusing on the most critical key performance indicators (KPIs) including Achievement, Least Restrictive Environment (LRE), and Student Exiting/Transition (disproportionality was addressed within the Achievement and LRE protocols). As indicated on page 3 of Table GS.I, II, and III of the APR, 143 reviews were conducted from July 2002 through June 2003, with an additional 117 reviews projected for the 2003-2004 School Year (SY).

As noted on page 3 of Table GS.I, II, and III of the APR, all complaint data were entered into the Quality Assurance Information System (QAIS) database, including data from the preschool System to Track and Account for Children (STAC) system. All data entries would be completed by June 2004. As noted on page 4 of Table GS.I, II, and III of the APR, by 2005, the State’s Comprehensive Special Education Information System (CSEIS) will fully integrate both the QAIS and the preschool STAC system to ensure timeliness for complaint, monitoring, due process and mediation reporting.

Although NYSED provided data regarding monitoring undertaken and information pertaining to complaint resolution, it did not provide information concerning whether it is requiring correction of noncompliance in a timely manner. NYSED must include data and analysis in the next APR on the extent to which it is requiring correction of identified noncompliance and the extent to which it is ensuring correction of identified noncompliance as soon as possible but not later than one year from identification.

On pages 5 through 7 of Table GS.I, II, and III of the APR and Table GS.VI, NYSED reported on its efforts to provide a framework (annual submission of local space plans) for the allocation of instructional space to ensure that students with disabilities State-wide have greater meaningful access to the general education curriculum, increased opportunities to be integrated with nondisabled peers, and increased opportunities for independence. On page 6, NYSED reported trend data showing steady progress toward decreasing the percentage of students with disabilities who were provided special

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<sup>1</sup> The report is available at <http://www.gao.gov/cgi-bin/getrpt?GAO-03-897>.

education services in separate educational settings (see Appendices 16, 17a, and 17b). During the verification visit, NYSED also provided information about its continuum of technical assistance (i.e., a matrix of overlapping combinations of resources designed to target specific systemic issues identified through data analysis) that focuses on reaching special education and regular education teachers directly to improve results for students with disabilities. OSEP looks forward to reviewing the State's FFY 2003 APR data addressing its progress in ensuring students with disabilities have equal educational opportunities, including full access to and progress in the general curriculum.

On pages 1- 4, Table GS.IV of the APR, the State acknowledged significant shortages in special education teachers and providers, primarily in the New York City schools, and growing shortages of qualified personnel to provide services within the State's preschool special education programs. As noted on page 3 of Table GS.IV of the APR, future activities to address these shortages were included in the State Improvement Grant and other State improvement initiatives. Other activities included the development of a credentialing program that involved aggressive recruitment and advertising, as well as working with in- and out-of-State institutions of higher education for capacity building, which may require tuition assistance and other supports (see Appendix 12 of APR). OSEP looks forward to reviewing the State's FFY 2003 APR regarding its progress in addressing staff shortages.

On page 1 of Table GS.V of the APR, the State indicated that data was a key component of the General Supervision system. A key piece of the data system was the ultimate inclusion of all tracking in the real-time, Web-based system. NYSED anticipated full implementation of this system by 2005. Efforts to establish individual, student-level data to track the student's entire educational experience were ongoing. Page 2 of 5 of Table GS.V indicated that during the 2002-2003 School Year (SY), 95% of school districts submitted data electronically, either through the web-based data entry system or through a File Transfer Protocol. Measures were undertaken to ensure accuracy of reporting to include annual review of directions from OSEP, revising procedures as needed, attending annual data managers meetings, limiting the number of changes, on-site visits to target sites for technical assistance and training, and consistently using edit checks. On page 4 of 5 of Table GS.V of the APR, it was projected that 100% of school districts would submit data electronically by the next APR reporting period and efforts to ensure accuracy would be expanded. OSEP looks forward to reviewing the State's next APR to determine its progress in the development and full implementation of its new database.

### ***Early Childhood Transition***

NYSED reports that it used a broad cross-section of stakeholders to serve in an advisory capacity to the State Early Intervention Coordinating Council. NYSED reported that the shared membership promoted a systemic approach to improving results for children with disabilities. As indicated on page 3 of 4 of Table ECT.I of the APR, Local Early Intervention Coordinating Council Intergovernmental Committee members met regularly to examine transition issues and recommend solutions.

On page 1 of 4 of Table ECT.I of the APR, the State reported baseline data showing a decrease in the number of toddlers in Part C who were referred to Part B programs; however, as indicated by trend data available in Appendix 13a, the percentages of preschool students with disabilities who received special educational and related services in integrated settings steadily increased, with percentages higher in the State than the national average during the 2002-2003 SY. The State reported that the vast majority of children who transition to Part B services were receiving the required services by their third birthday. It projected that by the next APR reporting period, 100% of eligible children will receive services by their third birthday.

NYSED identified a specific school district whose data indicated that some of the children exiting early intervention services were not receiving related services required by their IEPs and described its activities to ensure that the requirements of 34 CFR §§300.132 and 300.342(c) are met. The State identified joint (SEA and other public agencies) on-site monitoring<sup>2</sup>, guidance, technical assistance, training, continued data collection and analysis, corrective action plans coupled with policy and procedure revisions as activities to ensure compliance in this district. OSEP accepts the State's strategies and timelines to address the self-identified noncompliance. NYSED 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 30 days following one year after the date of this letter.

The State also reported that it is conducting a seven-year Preschool Longitudinal Study, which is designed to track students leaving early intervention services and will inform the State of the effect of specific services and programs on student outcomes.

### ***Parent Involvement***

On page 2 of Table PI.1 of the APR, NYSED reported that its targets for the 2002-2003 reporting period were met. NYSED developed and disseminated information to parents and programs (while being responsive to diverse cultures and languages) and funded parent centers to provide outreach, training and additional information. NYSED targeted, for the next APR reporting period, increased information available to parents and promoting their involvement in an evaluative, advisory capacity. On pages 3-6 of the PI.1 Table, NYSED's targets also focused on greater involvement of parents in the monitoring process, increased professional development and opportunities to build capacity with parents and families, including partnerships with parents and the State agency to ensure that leadership and key personnel have the knowledge and skills necessary to effectively involve parents at all levels. OSEP looks forward to reviewing the State's FFY 2003 APR, and its continued progress in promoting parental involvement.

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<sup>2</sup> NYSED monitored 20 of 80 agencies during this APR reporting period using the jointly agreed upon preschool monitoring protocol with an additional 25-30 additional reviews slated for the next reporting period.

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

In the FAPE/LRE Cluster Executive Summary of the APR, NYSED provided a description of the State's school reform initiatives over an extended period of time focusing on both providing access for students with disabilities and improving the results for all students in the general curriculum as well as integration with their nondisabled peers throughout their educational experience. As noted throughout the FAPE/LRE Cluster of the APR, to address the disparate experiences of students in high-need and low-resource school districts, the State focused its resources on targeted school districts.

NYSED's Chapter 405 of the Laws of 1999 required the State to identify school districts that had one or more of seven problems including disproportionality in: identification of students as disabled or identification by a particular disability; placement of preschool students in separate settings; and in placement of school-aged students in restrictive settings. Once the school districts were identified as having issues under Chapter 405, NYSED reported that it verified the data with the district, determined underlying causes, provided technical assistance and prepared an annual report to the legislature. As noted on page 2 and 3 of Appendix 7, 144 school districts received notification that their data indicated disproportionality, based on race/ethnicity, in the classification of students as disabled or in the identification of students by particular disabilities. During this same reporting period, two school districts were notified that their data indicated disproportionality, based on race/ethnicity, in the placement of preschool students with disabilities in separate settings and 88 school districts received notification regarding placement of school-age students with disabilities in particular settings. Districts with identified significant disproportionality were required to review their policies and procedures regarding classification and placement. NYSED identified strategies in the APR to address disproportionality to include: providing technical assistance; disseminating materials to families; conducting focused reviews; requiring local space plans; providing professional development opportunities; and addressing teacher shortages. In using disproportionality data in monitoring, please keep in mind that a State must provide for the review of policies, procedures and practices in the evaluation and identification process to determine if they are educationally appropriate, consistent with the requirements of Part B, and race neutral if it identifies significant disproportionality in identification (including identification into particular disability categories) or placement into various educational environments, and, if appropriate, require the revision of those policies, procedures and practices 34 CFR §300.755. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities as part of the next APR.

On page 1 of Table FAPE.II of the APR, NYSED reported steady increases in the number of students with disabilities who earned the Regents diploma or a Local High School diploma; however, 65% for the 2002-2003 SY was an increase of less than one percent from the previous year. As cited on page 2 of Appendix 41 of the APR, trend data indicated gradual decreases in drop-out rates since the 1999-2000 SY. During the 2002-2003 SY, the State-wide drop-out rate was 6.7% compared to 4.6% for nondisabled students. As noted on page 3 of Table FAPE II of the APR, the majority of the strategies

and interventions identified and summarized in the Executive Summary for the FAPE/LRE and General Supervision clusters were intended to address graduation and drop-out rates, including focused reviews. The State indicated that the graduation and dropout rates in urban areas associated with New York's Five Big Cities continued to be an area of concern. NYSED reported that its strategic plan and associated key performance indicators, targets and benchmarks would be revised as part of a continuous improvement process and would be reflected in the next APR reporting period. OSEP looks forward to reviewing the results of these improvements in the next APR.

On page 2 of Appendix 23a of the APR, the State reported an increase in the total number of out-of-school suspensions, 33,681 during the 2002-2003 SY, over 2,000 more than the previous school year. The majority, 56.7%, of the out-of-school suspensions were 2-5 days in duration. Less than 10% of the out-of-school suspensions were for over 10 days. Appendix 23b of the APR provided data on out-of-school suspensions of students with disabilities by type of disability. The data indicated that children with emotional disturbance were overrepresented for out-of-school suspensions when compared to their representation in the enrollment of children with disabilities. In Appendix 44 of the APR, NYSED provided a summary analysis of the long-term removal rates for children with disabilities across LEAs in the State. Targeted technical assistance, evidenced-based interventions, collaboration with other agencies, and focused monitoring activities were the primary strategies and interventions to address concerns related to suspensions rates. NYSED reported seeking legislative support to pool dollars from State and Federal funding sources to provide school districts more flexibility in providing and paying for services for children with disabilities, and particularly children with emotional disturbance. In the next APR, NYSED must clarify how it is ensuring, as required by 34 CFR §300.146, the review, and if appropriate revision, of policies, procedures and practices relating to the development of IEP's, use of behavioral interventions and procedural safeguards in districts with identified significant discrepancies.

On page 3 of Table FAPE.IV of the APR, the State reported improvement in the participation and performance levels of children with disabilities on State-wide assessments. The performance of elementary- and middle-level students on the English Language Arts Assessment declined in 2003. The performance of all school-aged students with disabilities on the Mathematics assessments improved in 2003. Technical assistance, reading and math initiatives, research studies and focused reviews were reported as part of the State's future activities to address continued improvement in participation and performance of children with disabilities on State-wide assessments. OSEP looks forward to reviewing the State's data, in the next APR, regarding students with disabilities participation and performance on State-wide assessments.

As noted on page 3 of Table FAPE.V, the State exceeded the national average for both preschool children with disabilities placed in integrated settings (58.7% as opposed to 54.9%) and school-aged students with disabilities in general education programs for 80% or more of the school day (51.8% as opposed to 48.2%). The State identified school districts whose data indicated large percentages of preschool children with disabilities who were placed in separate educational environments. As noted on page 3 of Table

FAPE.V and Appendix 16a of the APR, the State's rate of school-aged students with disabilities in separate settings is reported as substantially higher than the national rate (7.4% compared to 4% during the 2002-2003 SY). The State has identified districts that have large percentage rates of students who have been removed from general education programs for most of the school day. On page 6 of Table FAPE.V of the APR, the State identified strategies to demonstrate continuous improvement in this area to include (but not limited to) technical assistance, disseminating information and guidance, pre-service training and professional development activities, focused monitoring, data collection, and collaboration. OSEP looks forward to reviewing the State's progress in ensuring students with disabilities are educated with their nondisabled peer, as reported in the next APR.

On page 1 of Table FAPE.VI of the APR, NYSED reported that the State has not developed performance indicators regarding the early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities. On page 2 of Table FAPE.VI of the APR, NYSED's explanation of progress notes development of materials on learning outcomes and indicators for successful kindergarten participation as well as the development of a preschool program self-assessment and quality improvement guide for preschool special education programs. These materials were generated from the State's preschool special education quality indicators study. Grants were to be awarded to approximately 50 preschool special education programs to support program self-assessment activities during the 2003-2004 SY. An additional 50 preschool programs will be provided opportunities to respond to a request for proposals for future grants. 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 socio-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, OSEP expects States to include either 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 1-13 of the Table ST.I of the APR, the State described the targets for this reporting period to maintain and enhance transition resources and strategies to continue improving the transition system, including: integrating career learning opportunities with credentials available for students obtaining high school diplomas; providing technical assistance; disseminating information to all stakeholders; using all transition-related data for continuous improvement; continuing funding for school reform initiatives; and modifying quality assurance review protocols as needed to ensure compliance. Progression towards these targets was reported as largely contingent on the targeted use of capacity-building resources. Additional activities included providing incentives for the development of model preservice programs; developing model programs to address the transition needs of the emotionally disturbed population; posting effective practices on the State's website for use by stakeholders; and supporting the efforts of local

programs to implement the transition requirements activities. OSEP looks forward to reviewing the State's continued progress in improving its transition system as demonstrated in the next APR.

### *Conclusion*

New York provided the necessary data and information to document NYSED's ability to ensure compliance and gather performance outcome data. As previously stated, NYSED reports that by 2005, the State's web-based data collection system will fully integrate both quality assurance and preschool data to be used as a tool to monitor the timeliness for complaints, quality assurance reviews, due process and mediation reporting. The State's web-based data collection system will greatly advance the State's capacity to fulfill its general supervision obligation under IDEA. The results of the State's plan to revise its strategic plan and associated key performance indicators (to include the development of preschool performance indicators), and targets as part of a continuous improvement process should be reflected in the FFY 2003 APR, due March 15, 2005.

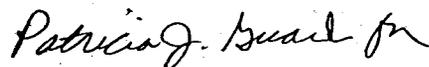
In addition, in the next APR, the State must include:

- Data and analysis on its continuing efforts to ensure compliance with due process hearing timelines, consistent with 34 CFR §300.511;
- Data and analysis on the extent to which it is requiring correction of identified noncompliance and the extent to which it is ensuring correction of identified noncompliance as soon as possible but not later than one year from identification;
- Either data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan; and
- Evidence of progress in correcting the noncompliance regarding the requirements of 34 CFR §§300.132 and 300.342(c) of IDEA including current supporting data and analysis.

The State must also provide a final progress report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but no later than 30 days following one year after the data of this letter regarding early childhood transition and the requirements of 34 CFR §§300.132 and 300.342(c).

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 Michael F. Slade at (202) 245-7527.

Sincerely,

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

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Dr. Rebecca Cort