

**New Mexico**  
**Table B Chart – Part B**  
**Previously-Identified Issues**

Issue	State Submission	OSEP Analysis	Required Action
<p><b>Indicator 4</b></p> <p>OSEP’s December 21, 2004 letter responding to the State’s FFY 2002 APR, noted that NMPED had not demonstrated that the State was in compliance with the requirements of 34 CFR §300.146, requiring that the State determine whether 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 children without disabilities within the agencies, and if so, that it review and, if appropriate, revise (or require the affected State agency or LEA to revise) 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 of IDEA. The letter required that the State’s FFY 2003 submission address this requirement and provided notice that a failure to submit this documentation would result in a finding of noncompliance.</p> <p>OSEP’s August 31, 2005 response to NMPED’s FFY 2003 APR concluded that the data submitted did not demonstrate compliance</p>	<p>In its October 31, 2005 submission, NMPED submitted a plan to identify LEAs with significant discrepancies in rates of suspensions and expulsions and review and, if appropriate, revise policies, procedures and practices.</p> <p>In its December 2, 2005 SPP submission under Indicator 4, NMPED reported that 7.9% of LEAs were determined to have significant discrepancies in their rates of suspensions and expulsions. The State also reiterated its plan for review and, if appropriate, revision of policies, procedures and practices.</p>	<p>The State’s plan addresses the previously identified noncompliance. In December 2005, OSEP notified NMPED that its plan was acceptable and to begin implementation. In implementing this plan, the State must ensure that policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, comply with Part B of IDEA.</p>	<p>The State must review and, if necessary, revise its improvement strategies to ensure they will enable the State to include data in the APR, due February 1, 2007, that demonstrate full compliance with this requirement. Failure to demonstrate compliance at that time may affect OSEP’s determination of the State’s status under section 616(d) of the IDEA.</p>

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<p>and required that, within 60 days of the date of that letter, NMPED submit a plan including strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance.</p>			
<p><b>Indicators 9 &amp; 10</b></p> <p>OSEP's December 2004 letter noted that NMPED had not demonstrated compliance with the requirements of 34 CFR §300.755, requiring that when the State determines significant disproportionality, on the basis of race, in the identification or placement of children with disabilities (including identification within particular categories of disability), it must provide for the review and, if appropriate, revision of the policies, procedures and practices used in identification or placement, to ensure that they comply with Part B of IDEA. OSEP also noted that the proposed targets raised serious concerns. In the letter, OSEP required that the FFY 2003 APR include revised targets and updated data and information demonstrating compliance with this requirement. OSEP provided notice that a failure to submit this documentation would result in a finding of noncompliance.</p> <p>OSEP's August 31, 2005 letter noted that the State's selected targets remained a concern and, based upon the failure to demonstrate compliance, OSEP found that the State was not meeting the requirements of 34 CFR §300.755.</p>	<p>In its October 31, 2005 submission, NMPED submitted a plan to determine significant disproportionality in identification, based on race and ethnicity and, where significant disproportionality is determined, to review and, if appropriate, revise policies, procedures and practices.</p> <p>In its December 2, 2005 SPP submission under Indicators 9 and 10, NMPED reiterated its plan and reported its method for determining significant disproportionality in identification, including identification of a particular disability.</p>	<p>The State's proposed plan includes an analysis of child count data related to the identification of children with disabilities to determine significant disproportionality and provides for the review and, if appropriate, revision of policies, procedures and practices. In December 2005, OSEP notified NMPED that its plan related to significant disproportionality in identification was accepted and instructed the State to begin implementation.</p>	<p>The State must review and, if necessary, revise its improvement strategies to ensure they will enable it to include data in the APR, due February 1, 2007, that demonstrate full compliance with the requirements of 34 CFR §300.755 (20 U.S.C. 1418(d)). Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the IDEA.</p>

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<p>OSEP required NMPED to submit a plan to correct the noncompliance within 60 days.</p>			
<p><b>Indicator 12</b></p> <p>OSEP's December 2004 letter noted the following reported data: "of 722 children exiting Part C who qualified for Part B services: (1) 16% of children with disabilities received services on the first day of school (using the start date for all children); (2) 44% received services on the first day of the preschool program (typically 2-3 weeks later); (3) 19% received services 2 to 43 days later than the first day of school or the first day of preschool; (4) 16% were not receiving services, were not located, their parents chose not to enroll them, or they did not qualify; and (5) for 5% no data were available." OSEP required NMPED to ensure compliance with 34 CFR §300.132 within one year of OSEP's letter and report on its correction in the FFY 2003 APR.</p> <p>OSEP's August 31, 2005 letter concluded that NMPED did not submit any data that showed the percentage or number of children who, by their third birthdays, had IEPs (or IFSPs) developed and implemented as required by 34 CFR §300.132(b). OSEP required that the State demonstrate full compliance by no later than January 2006.</p>	<p>On page 64 of the SPP, the State reported that, during the 2004-2005 school year: 770 children were referred from Part C to Part B; 104 did not qualify for Part B services; 450 children were found eligible for Part B services and had IEPs developed and implemented by their third birthdays; 99 children had an IEP in place 2-43 days after their third birthdays; and NMPED was unable to locate 16 children.</p> <p>In its January 21, 2006 submission, NMPED reported the following updated data: of the 826 students who had been served in Part C and referred to Part B for eligibility determinations, 19 children were referred and determined not eligible; 574 children had IEPs or IFSPs in place by their third birthdays; 122 children were determined eligible and IEPs were developed after the third birthday; and, for 111 children, NMPED does not have current data.</p>	<p>In both the SPP and the January 2006 submission, the State has reported continued noncompliance with the requirement at 34 CFR §300.132(b). The most recent submission also did not address the timely implementation of IEPs or IFSPs. This is an area of longstanding noncompliance that must be addressed.</p>	<p>By June 1, 2006, NMPED must demonstrate full compliance with the requirements at 34 CFR §300.132(b) (20 U.S.C. 1412(a)(9)). Continued failure to comply with this requirement will affect OSEP's determination of the State's status under the IDEA, which may include a designation of high-risk status with Special Conditions and/or other enforcement options provided under law.</p>

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<p><b>Indicator 15:</b></p> <p>OSEP's August 31, 2005 letter noted that, for the 2002-2003 school year, it ensured timely correction of noncompliance in 11 of 13 LEAs (85%). OSEP also noted that 30% of State complaint decisions with findings of noncompliance were implemented in a timely manner. OSEP required that, by January 2006, the State demonstrate that it was ensuring timely correction of findings made under the State complaint system.</p>	<p>In its SPP, under Indicator 15, NMPED reported that it revised its process to determine timeliness of correction from the date that the LEA is notified of noncompliance. The State reported that for findings in the priority areas, it had ensured correction in five of 14 findings (OSEP calculated this as 36%, but the State reported it as 28%). For nonpriority areas, the State reported correction in one of 11 findings (9%). The State reported correction of 52 of 56 findings (92.8%) made through the administrative complaint process (both hearings and State complaints) and also reported that the four agencies with outstanding correction plans were required to provide compensatory services that extended beyond the one-year timeline. In its January 21, 2006 submission, the State reported timely correction of 27 of 30 State complaint findings made between July 1, 2004 and July 1, 2005 and that the one-year timeline had not elapsed for the three remaining findings.</p>	<p>The State recently adopted the proper standard for measuring timeliness under this Indicator. The State reported the timely correction of findings made under the administrative complaint process, including the State complaint system. However, the State also reported significant noncompliance related to the timely correction of monitoring findings related to priority and nonpriority areas. Therefore, the State is not in compliance with the requirements at 34 CFR §300.600.</p>	<p>The State must review and, if necessary, revise its improvement strategies to ensure they will enable the State to include data in the APR, due February 1, 2007, that demonstrate full compliance with the requirements of 34 CFR §300.600. Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the IDEA.</p>

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<p>OSEP's August 2005 letter noted that it was not clear how the State was ensuring that LEA policies and procedures were consistent with the IDEA. OSEP required that the State submit a plan on its review of LEA policies and procedures.</p>	<p>In its October 31, 2005 submission, NMPED submitted a plan to ensure that all LEA policies and procedures were consistent with the IDEA.</p>	<p>Under 20 U.S.C. 1413, LEAs are no longer required to submit their policies and procedures as part of their subgrant application. Instead, the LEA plan may include an assurance. However, the Act still requires the review of policies and procedures in instances where the State has determined significant disproportionality with respect to identification or placement and significant discrepancies in the rates of suspensions and expulsions. Such reviews are discussed under Indicators 4, 9 and 10, above. The State must also ensure review and correction if it finds, or is otherwise on notice, that an LEA's policies and procedures are not consistent with the Act. Therefore, the proposed plan need not be implemented for all LEAs.</p>	<p>See above.</p>