

July 23, 2004

Honorable Douglas D. Christensen  
Commissioner of Education  
Nebraska Department of Education  
301 Centennial Mall South  
P.O. Box 94987  
Lincoln, Nebraska 68509-4987

Dear Commissioner Christensen:

The purpose of this letter is to respond to the Nebraska's Department of Education (NDE)<sup>1</sup> and Department of Health and Human Services (DHHS) April 1, 2004 submission of their Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C 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 C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

### ***Background***

On February 24, 2004, OSEP responded to Nebraska's FFY 2001 APR. In the letter, OSEP did not identify systemic noncompliance. However, OSEP made several suggestions about information it expected in the FFY 2002 APR. The information requested is identified in the clusters below.

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.

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<sup>1</sup> Because NDE is the fiscal Lead Agency for Part C, OSEP refers to NDE as the lead agency under Part C throughout this letter, although OSEP recognizes that the two State agencies, NDE and DHHS, are co-lead agencies for implementation of the Part C program in Nebraska.

### ***General Supervision***

In its February 24, 2004 letter, OSEP requested that NDE provide samples of monitoring reports, corrective action plans, and follow-up verification information in the FFY 2002 APR to demonstrate the lead agency's ability to identify, correct, and ensure correction of noncompliance, including continuous service requirements, using the revised monitoring process. In response to the request, NDE submitted information and data on pages four through seven of the APR from file and outcome reviews, focus groups, narratives about training and technical assistance, and descriptions of the corrective action plan procedures. Attachment 1 to the APR also provided a summary and analysis of systemic issues identified and corrected<sup>2</sup> through general supervision activities.

NDE did not identify systemic noncompliance in this cluster. On pages one through 15 of the APR, NDE also reported the following general supervision data and information: the Quality Improvement (QI) process was used to identify and correct noncompliance; identified noncompliance was corrected in all locations within a six-month timeframe; regionally assigned staff and the co-lead agencies monitored the timeliness of corrective actions; the State had procedures in place to link complaint investigations with corrective action plans; no formal complaints or due process requests were filed during the reporting period; the co-lead agencies worked with Part B to link the monitoring systems across both programs; the monitoring system (Improving Learning for Children with Disabilities – ILCD) moved from an emphasis on procedural compliance and quality improvement to an emphasis on improved and sustained functional outcomes; the revised ILCD included a local self-assessment and file reviews; training for the revised ILCD was implemented in the Fall of 2002; one-third of the Planning Region Teams, school districts, and service coordination contracting agencies had planned implementation of the ILCD during the reporting period for the FFY 2003 APR; data and information were collected from all available sources to identify systemic issues; the lead agencies collaborated with the Medicaid Home and Community-Based Waiver program to provide early intervention services to eligible infants and toddlers and their families; guidelines were used to develop corrective action plans; no formal complaints or requests for due process hearings were received; two mediations were completed (open an average of 26.6 days); descriptions of training and technical assistance, specifically for procedural safeguards; sufficient staff members were available to provide all identified early intervention services (surveys were conducted three times during the year); service coordination standards for employment; descriptions of collaborative relationships with institutions of higher education; efforts were made to prevent shortages in future staffing (knowledge of the current workforce; limited numbers of students in pre-service training; support for paraprofessional training programs; professional training for low-incidence disability services; on-line training options); and descriptions of the data-system, Coordinating Options in Nebraska's Network through Effective Communications and Technology (CONNECT) system. The CONNECT system was developed by the co-lead agencies and child information was entered as of September 1, 2002.

NDE reported in the FFY 2002 APR that the State has mechanisms or systems in place to meet its general supervision responsibilities through monitoring processes and procedures, correction of noncompliance, providing technical assistance, ensuring staff meet identified early

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<sup>2</sup> NDE used the term "reedited" instead of corrected

intervention service needs, having policies and procedures in place to ensure complaints are resolved in a timely manner, and reporting of accurate and timely data.

### ***Child Find and Public Awareness System***

In its February 24, 2004 letter, OSEP asked NDE to provide data from the CONNECT tracking system in the FFY 2002 APR that reflected the trend data regarding the number of infants under age 1 who were being referred for Part C services. In response to the request, NDE submitted the following data and information specific to infants on pages 17 through 32 of the APR:<sup>3</sup> since 1998, the number of infants identified increased 163% (from 70 to 184); from 2001 to 2002, the increase in infants identified was 13%; 0.75% of the population of infants were served in Nebraska during the reporting period (the National average was 1.03%); 22,809 newborns had hearing screenings during the reporting period and 40 were identified with hearing loss or middle ear dysfunction; neonatal intensive care unit follow-up generated referrals to early intervention; categorical eligibility criteria was tracked and reported; and referral sources were tracked and the State determined that medical professionals and parents were the primary referral sources.

In addition, OSEP requested that NDE continue to report on child identification and public awareness efforts and provide monitoring data to demonstrate that the State was maintaining compliance with evaluations in all five developmental domains. In response to the request, NDE submitted the following data and information: 90.65% of Medicaid waiver files reviewed showed that children were assessed in each area of development (p. 42); files from hospitals, Head Start, Health Departments, Community Action Agencies, Educational Services Units, and Public Schools were reviewed for the completion of assessments in each developmental area (p. 5); revisions were made to regulations clarifying that evaluations and assessments must be completed in all five developmental domains (p. 45); an Interagency Memorandum of Agreement was developed with Head Start and Education to ensure all community partners understand all requirements for evaluation and assessment (page 45); the new monitoring process included questions to ensure all developmental areas were evaluated and new baseline data will be available September 2004 (p. 47); training and technical assistance was provided to ensure professionals could appropriately implement mental health evaluations and assessments (p. 46); and 97% of responding families (N=440) reported that the initial evaluation addressed all child concerns (p. 45).

NDE described its child find and public awareness system on pages 16 through 32 and in Appendix 1 of the APR as follows: families were surveyed about entry experiences in early intervention and analyses of the data were provided; Nebraska ranks 15<sup>th</sup> best in the nation on the eight measures that reflect a healthy start to life for newborns (as reported in KIDSCOUNT 2003, published by the Annie E. Casey Foundation); numerous collaborative relationships with community partners were briefly described and outcomes were reported; Nebraska has increased the identification number and percentage of infants and toddlers with disabilities and their families by 40% since 1998; the percentage of infants and toddlers with disabilities and their families who received early intervention services was presented by county; public awareness materials were provided in English and Spanish (written material and videos with captioning); Planning Region Team members reported that public awareness and child find efforts were

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<sup>3</sup> “Infants” refers to children under the age of one year old.

collaborative; referral sources were tracked and reported; and referral processes will be reviewed with the Child Welfare Unit to ensure compliance with the Child Abuse Prevention and Treatment Act.

NDE did not identify systemic noncompliance in this cluster and concluded that it implemented a comprehensive, coordinated Child Find system that resulted in the identification, evaluation, and assessment of all eligible infants and toddlers (page 21). Through the data provided and the performance described, it appears NDE is implementing a comprehensive, coordinated child find system that results in the identification of eligible infants and toddlers.

### ***Family Centered Services***

NDE described its Family Centered Services on pages 33 through 38 of the FFY 2002 APR. During the reporting period, focus groups were conducted and a survey was sent to 1700 families (return rate was 26%; N=440). Service providers and coordinators also responded to the survey (N=380). All cluster areas were surveyed. Families reported that early intervention services resulted in improved child development and increased the family's capacity to enhance the child's development. Family partners were employed by the co-lead agencies to ensure family concerns and priorities across the State were identified and addressed. All monitoring tools included indicators to determine if family-centered practices were embedded in all aspects of early intervention services, the stakeholders were informed about monitoring results, and child care providers were given information about caring for children with disabilities (to increase the options for families to have safe, developmentally-appropriate child care). Data from all information sources were presented, analyzed, and NDE demonstrated evidence that the data were going to be used to inform and influence program decisions.

NDE did not identify systemic noncompliance in this cluster and concluded that 100% of families received family-centered services. The information provided in the FFY 2002 APR documents that NDE has processes and procedures in place for evaluating family-centered services.

### ***Early Intervention Services in the Natural Environment (EIS-NE)***

In its February 24, 2004 letter, OSEP requested that NDE report in its FFY 2002 APR:

(1) the number or percentage of children receiving early intervention services in natural environments and those for whom IFSPs include an appropriate (child-need or outcome-based) justification when services are not provided in the natural environment; (2) data generated from monitoring activities (audit tools, surveys, and interviews) to demonstrate compliance with the year-round service requirements of Part C; and (3) examples of performance information the State collected to document improved outcomes for eligible infants, toddlers, and their families.

In response to the request for natural environment information, NDE submitted the following: program setting data (approximately 82% of children received services in the home or programs for typically developing children); survey data documenting the program setting data; and a statement of the strategy and timeline that NDE used to ensure it had data for the next APR that documented a justification statement in the IFSP if a child cannot be served in the natural environment (page 51). The Part C regulations, at 34 CFR §303.12(b), require that “[t]o the maximum extent appropriate to the needs of the child, early intervention services must be

provided in natural environments, including the home and community settings in which children without disabilities participate.” The IFSP must include a statement of the natural environments in which early intervention services will be provided, and “a justification of the extent, if any, to which the services will not be provided in a natural environment.” See 34 CFR §303.344(d)(1)(ii). The use of settings data, while a helpful indicator, does not establish compliance with Part C’s natural environments requirements because the appropriateness of a service setting is determined based on an individual child’s IFSP not on aggregate setting data (which can serve as an indicator but does not determine compliance with Part C’s requirements). In the next APR, NDE should submit information that includes both implementation of the file reviews and the resulting data.

For the second request, regarding year-round services, NDE submitted the following data and information on pages 40 through 43 and Attachment 1 of the APR: survey data from service providers and coordinators agreed that services were coordinated effectively at the local level to meet the needs of children; families who chose to use service coordinators reported that the service coordinator helped the family get needed services; and services were provided year-round at the same regularity for 83% of respondents. NDE did not identify systemic noncompliance, but in the Attachment, NDE concluded that data indicated a continued need to focus on year-round services as a performance outcome. NDE did not provide an explanation for why 17% of respondents did not report that services were provided year-round at the same regularity. While NDE did not identify systemic noncompliance and the IFSP team determines the frequency and intensity of services, OSEP recommends that NDE report in its next APR whether changes in year-round services occur due to IFSP team recommendations or a lack of availability of services (or for other reasons).

The third request asked for examples of performance information that was collected to demonstrate improved outcomes for eligible infants, toddlers, and their families. In response, NDE submitted the following, on page 52 of the APR: survey data indicated that 85% of families and 90% of professionals agreed that children demonstrated improved and sustained functional abilities; Early Head Start performance standards were reviewed; and training was provided to ensure service providers were developing functional outcomes. NDE will be reviewing one-third of all IFSP files during the FFY 2003 reporting period and will include additional data on outcomes in the FFY 2004 APR. In addition, NDE will review information from the OSEP sponsored Early Childhood Outcome Center.

NDE reported on page 48 of the FFY 2002 APR that “of the 113 infants and toddlers with medically complex conditions, 74% of the files reviewed included the services necessary to meet the needs of the child and the family.” Part C regulations at 34 CFR §303.344 require that each child’s IFSP list the early intervention and other services to meet the needs of the child and the family. OSEP cannot determine if NDE’s review of the 113 files resulted in determining that 26% of the files did not list the services necessary to meet the child and family’s needs and whether the services not listed were early intervention services or “other services”. OSEP requests that within 60 days of the date of this letter, NDE provide OSEP with clarification of this data to confirm whether it is noncompliance and, if it is noncompliance, NDE submit its proposed timelines and targets, and activities to ensure correction of the noncompliance within a reasonable period of time (not to exceed one year from when OSEP accepts the strategies).

NDE also reported in this cluster that: referrals were timely; families reported higher awareness

of services available within the community as a result of early intervention; survey data were analyzed by region; periodic and annual reviews were occurring on time; additional data will be available in the next APR because the new monitoring system was not implemented until after the current reporting period; child and family needs were identified; and collaborative partnerships were established through an Interagency Memorandum of Agreement and by utilizing Federal and State technical assistance partners.

NDE reported that families had access to a service coordinator; evaluations and the assessment of child and family needs appeared to lead to the identification of all child and family needs; indicators suggested all services identified on the IFSP were provided (although the State will have more conclusive data for the FFY 2004 APR), children were receiving services in natural environments; and the lead agency had outcome data and planned to continue strengthening its ability to gather more data.

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

In its February 24, 2004 letter, OSEP asked NDE to provide monitoring or other data in the FFY 2003 APR to document that transition planning occurred at least 90 days prior to the child's third birthday. In response, NDE provided early childhood transition data and information on pages 53 through 55 of the APR, including: a statement that the eligibility criteria for Part B and C of IDEA were the same; the data collection system (Special Education Student Information System) was being revised to better collect data regarding the placement of children exiting Part C; exit data; and inconclusive survey data (all families were surveyed, not just families with child in the transition age range). Because the State has clarified that its eligibility criteria for Part B and C are the same for children transitioning from Part C to Part B at age three, OSEP expects that all children exiting Part C at age three are automatically or at a minimum presumed eligible under Part B. Thus, the 90-day conference must be conducted for all children exiting Part C under 34 CFR §303.148(b)(2)(i) unless the parents refuse to consent to such a conference. In addition, because Nebraska is a birth-mandate State (i.e., all infants and toddlers with disabilities under the age of three are entitled to a free appropriate public education), OSEP expects that all children under the age of three have in place IFSPs that meet IEP requirements and that by the age of three an IEP is in place, or an IFSP that is prepared under the circumstances allowable under 34 CFR §300.342(c).

NDE reported family survey data on transition-related questions on pages 34 and 37 of the FFY 2002 APR that indicated that families responded that 41.82% knew "what will happen when my child and family leave this program" and that 56.4% "are prepared to coordinate their own services when their child is no longer eligible for early development network services." From data and information provided by the State in the APR, OSEP could not determine compliance or performance in ensuring that all children had a transition planning meeting at least 90 days, but not more than six months, prior to each child's third birthday, even if the child continued to receive Part C early intervention services after the third birthday, as allowable under 34 CFR §§300.342(c) and 303.3(d). However, in a follow-up email submitted by NDE on May 20, 2004, NDE clarified that the State policy for transition meetings is consistent with Part C regulations. The email documented that the lead agency will be collecting and analyzing data through general supervision procedures that will be submitted in the FFY 2004 APR.

The wording used by NDE as the performance indicator on page 53 in the APR is inconsistent

with 34 CFR §303.148 (a)(2)(i) that requires transition planning for children who may be eligible for Part B of IDEA, with the approval of the family of the child, to convene a conference among the lead agency, the family, and the local education agency at least 90 days, and at the discretion of the parties, up to six months before the child is eligible for pre-school services.<sup>4</sup> In the FFY 2004 APR, OSEP requests that NDE revise its performance indicator on page 53 to conform to the Part C timing requirements for transition meetings (at least 90 days, but not more than six months, prior to the child's third birthday).

***Conclusion***

As noted above, within 60 days of the date of this letter, OSEP requests that NDE provide a clarification about the file reviews regarding early intervention and other services necessary to meet the needs of the child and family (see page 6 of this letter). If NDE identifies noncompliance, NDE should also submit proposed timelines and targets, and activities to ensure correction of the noncompliance within a reasonable period of time (not to exceed one year from when OSEP accepts the strategies).

In the next APR, NDE must submit to OSEP data and information documenting that: (1) IFSPs contain a justification statement if services cannot be provided in the natural environment; (2) year-round early intervention services listed on a child's IFSP are provided; (3) early childhood outcome data from the IFSP reviews the State intends to collect; and (4) data and analysis demonstrating the implementation of the early childhood transition requirements under 34 CFR §§300.132, 303.148 and 303.144, including revising the performance indicator on page 53 of the FFY 2002 APR.

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 infants and toddlers with disabilities and their families. If you have questions, please contact Kelly Worthington at (202) 245-7581.

Sincerely,

/s/Patricia J. Guard for

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Barbara Schliesser, Director,  
Federal Programs Special Populations

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<sup>4</sup> A child is eligible for pre-school services on the third birthday.