

August 12, 2004

Honorable Lana Seivers  
Commissioner of Education  
Tennessee Department of Education  
6<sup>th</sup> Floor, Andrew Johnson Tower  
710 James Robertson Parkway  
Nashville, Tennessee 37243-0375

Dear Commissioner Seivers:

The purpose of this letter is to respond to Tennessee's April 8, 2004 submission of its 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***

OSEP approved the Tennessee Department of Education (TDE) Improvement Plan for Part C in a March 15, 2004 response to the FFY 2001 APR and required that Progress Reports be submitted on March 31, 2004 (with the FFY 2002 APR), September 30, 2004 and March 15, 2005. The FFY 2002 APR was submitted on April 8, 2004 and OSEP received a Progress Report on May 17, 2004, by electronic mail. TDE did not request an extension for the Progress Report submission. 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 on the APR and the Improvement Plan Progress Report of May 17, 2004 are listed by cluster area.

### ***General Supervision***

During its verification visit to the State during the week of August 18, 2003, OSEP determined, through interviews with the Tennessee Department of Education (TDE) staff, that TDE did not require timely correction of identified deficiencies in districts and other programs where the State identified persistent noncompliance. In a letter dated March 15, 2004 regarding Tennessee's FFY 2001 APR, OSEP accepted Tennessee's improvement planning strategies regarding this issue, and indicated that TDE must submit Progress Reports on March 31, 2004, September 30, 2004, and a final Progress Report within one year from the date of that letter. OSEP specified in the March 2004 letter that the Progress Reports must include TDE's monitoring findings, corrective action plans and data showing correction within a one-year timeline.

On page 5 of the FFY 2002 APR, TDE reported State-wide averages for clusters monitored in Tennessee's Early Intervention Service (TEIS) districts. The Corrective Action Plan (CAP) district progress report data, on page 5 of the APR, indicated an average increase across all districts in all clusters monitored. TDE determined average compliance at 90% or better and reported that two districts were not meeting 90%. No data were provided in the May 2004 Progress Report to indicate correction of noncompliance for districts at 90% or higher.<sup>1</sup> Monitoring data and subsequent CAP progress report data indicated improvement; however, the monitoring data provided did not include the date that each local TEIS district was monitored and OSEP cannot determine if correction occurred within one year from the date that TDE identified the noncompliance. On page 7 of the May 2004 Progress Report, the State reported that the State Monitoring Revisions Committee has issued a final draft of new monitoring documents with support from the National Early Childhood Technical Assistance Center (NECTAC) and the Mid-South Regional Resource Center. On page 2 of the APR, TDE stated that "After taking into account progress reported on CAPs, 2 of 6 Districts have [sic] still have an overall average performance of less than 90% for all areas monitored as of June 30, 2003." As indicated in OSEP's March 15, 2004 letter, TDE must submit another progress report regarding this issue by September 30, 2004. The September 2004 progress report must include copies of the two CAPs referenced on page 2 of the FFY 2002 APR, and updated information regarding the status, findings, strategies, and timelines of those two CAPs. TDE must also submit to OSEP a final Progress Report, containing current data and analysis demonstrating that its monitoring system is in full compliance with requiring timely correction of identified deficiencies. The March 15, 2004 letter stated that the final Progress Report is due within one year from the date of that letter, however, because one year from the March 15, 2004 letter will be close to March 31, 2005, when the FFY 2003 APR will be due, OSEP is changing the deadline for the final progress report to March 31, 2005.

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

In its March 15, 2004 letter, OSEP reported that TDE submitted improvement strategies to gather data on the location of various cultural/language groups in the State and data on the impact of

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<sup>1</sup> The State may set 90% as the trigger for requiring the districts to submit CAPs. However, the State must still have monitoring methods and procedures to ensure that all Districts are in full compliance with Part C requirements.

outreach activities. In that letter, OSEP stated its expectation that TDE would provide that data to OSEP in its FFY 2002 APR.

As requested, TDE investigated the languages in the State to better address child find and public awareness activities. TDE is using the U.S. Department of Education's (DOE's) survey of States with Limited English Proficiency Students 2002 data, as well as other data and reports, to understand the languages and location of eligible children in the State. TDE did not provide any data, but stated that the data was specific down to the school district level and can project geographic areas for appropriate child find activities to target these language groups in the future. In the May 2004 Progress Report, TDE indicated they were using the U.S. Census for 2000 Supplemental Survey Summary Tables that provides State-wide sampling data regarding languages spoken in Tennessee and would use the information for specific child find activities in different locations in the State.

On pages 14-24 of the APR, the State included data that demonstrated an increase in referrals of children birth to age one and birth to age three, an increase in the number of eligible children birth to three, and an increase in services for those eligible children. On pages 19-20, TDE provided strategies to increase referrals to the Part C program.

Page 19 of the FFY 2002 APR contains a numerical goal regarding the number of children identified by Part C by stating that "Tennessee's Early Intervention System will maintain comparable percentage of children served with the national baseline." While it is not inconsistent with Part C of the IDEA to include a numerical goal regarding the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal.

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

Prior to its March 2004 letter, OSEP requested that Tennessee include the following information in the Improvement Plan based on "concerns" TDE identified in the Self-Assessment: (1) strategies to ensure that families are receiving adequate supports, services and resources; and (2) evaluation of outreach activities and materials designed for parents to increase parent participation in State and Local Interagency Coordinating Councils (LICC) including planning and training activities. OSEP's March 2004 letter noted that TDE's FFY 2001 APR indicated that the State's future activities were to include trainings for service coordinators, providers and families, revisions to the monitoring process and procedures, and a Service Coordinator Study from the University of Tennessee.

On pages 24 – 27 of the FFY 2002 APR, TDE provided further information regarding the training the State provides, the monitoring the State conducts, and the study that is to be conducted by the University of Tennessee. On page 24 of the FFY 2002 APR, TDE also provided monitoring data from six TEIS districts that 33% of the Individualized Family Service Plans (IFSPs) indicated that the provision of services resulted in progress toward achieving outcomes. The TDE CAPs data system reported a 34% increase in achieving IFSP outcomes to

67%. Additional data included family surveys indicating high satisfaction with the role of the service coordinator, State-wide resources available to families, and other supports that assist the family.

TDE addressed family centered services in the APR and was making data-based compliance and performance decisions in this area.

### ***Early Intervention Services in Natural Environments***

The FFY 2002 APR included data and information that indicated noncompliance in this cluster area. TDE's Quantitative Data from 2003 indicated that of 2,914 IFSPs developed in 2003, only 31% met the 45-day timeline from referral to initial IFSP meeting as required by 34 CFR §303.321(e). On page 35 of the APR, the State indicated that it would continue to monitor regarding this issue. However, the APR does not include strategies for determining the cause of the noncompliance and does not include strategies to ensure that TDE will correct the noncompliance within a reasonable period of time, not to exceed one year from the date that OSEP accepts the State's strategies. Therefore, within 60 days from the date of this letter, TDE must submit to OSEP a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The plan that TDE submits to OSEP must include information regarding the State's monitoring activities to ensure correction of this area, the findings the State has made, and what the State is doing to ensure correction of those findings. The State 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 thirty days following one year after the date OSEP accepts the plan.

The Part C FFY 2001 and 2002 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the development areas listed in 34 CFR §303.322(c)(3)(ii)). On pages 49 – 51 of the FFY 2002 APR, the State provided data and analysis regarding performance for improved and sustained functional abilities and included strategies designed to maintain compliance and performance in this area. They included: family survey data indicating children are progressing in Part C, monitoring data that indicated an increase in eligible infants and toddlers who were achieving outcomes, data on progress across all five developmental domains, increased exiting due to the completion of the IFSP, and increased data on children not eligible for Part B. As part of the FFY 2003 APR, OSEP looks forward to reviewing the State's continued reporting of data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

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

Prior to the March 15, 2004 letter, OSEP requested that Tennessee include the following information in the Improvement Plan based on "concerns" in the Self Assessment: (1)

improvement strategies to address transition planning, including the necessary steps in the IFSP for all children receiving Part C services, including those children who are not referred for Part B services; and (2) a description of training for service coordinators on their role and responsibilities regarding transition planning. The State's FFY 2001 APR included data from monitoring and corrective action plans indicating an increase in timely transition planning from 64% to 79% over the period of 2000 to 2003, and future activities regarding timely transition conferences.

Page 53 of the FFY 2002 APR states that "Part C monitoring for compliance with transition reflected that the compiled state average for Transition, according to data gathered during the Part C monitoring cycle FY 00-03, is 59%, and the TEIS state average, based on data from 9 districts, is 66%." No information was provided in the May 2004 Progress Report on timely transitions. In the next APR, TDE must provide further clarification regarding its monitoring findings on transition conferences, including how many districts were found to be in noncompliance for the 90-day transition conference, how many districts have CAPs for that issue, and the status of those CAPs.

### ***Conclusion***

In the next Progress Report, due September 30, 2004, TDE must continue to report on its monitoring efforts to ensure timely correction of identified deficiencies, including copies of the two CAPs referenced on page 2 of the FFY 2002 APR, and updated information regarding the status, findings, strategies, and timelines of those two CAPs. In addition, by March 31, 2005, TDE must submit to OSEP a final Progress Report, containing current data and analysis demonstrating that its monitoring system is in full compliance with requiring timely correction of identified deficiencies.

Based on the FFY 2002 APR, OSEP identified noncompliance in the early intervention services in natural environment cluster with regard to the 45-day timeline from referral to initial IFSP meeting required by 34 CFR §303.321(e). Therefore, the State must submit to OSEP, within 60 days of the date of this letter, a plan, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The plan that TDE submits to OSEP must include information regarding the State's monitoring activities to ensure correction of this area, the findings the State has made, and what the State is doing to ensure correction of those findings. The State must provide evidence of progress in correcting the noncompliance, including current supporting data and analysis, in the FFY 2003 APR and provide a final progress report to OSEP with data and analysis demonstrating compliance, as soon as possible, but no later than thirty days following one year after the date OSEP accepts the plan.

In the FFY 2003 APR, TDE must also provide further clarification regarding its monitoring findings on transition conferences, including how many districts were found to be in noncompliance for the 90-day transition conference, how many districts have CAPs for that issue, and the status of those CAPs.

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 Julia Martin at (202) 245-7431.

Sincerely,

/s/Patricia J Guard for

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Brenda Bledsoe  
Part C Coordinator