



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

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**Contact Persons**

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OSEP 12-5

**MEMORANDUM**

**TO:** Lead Agency Directors, Part C Coordinators, State Interagency Coordinating Council Chairpersons, and State Data Managers

**FROM:** Melody Musgrove, Ed.D., Director *Musgrove*  
Office of Special Education Programs (OSEP)

**SUBJECT:** Part C State Performance Plan (Part C – SPP) and Part C Annual Performance Report (Part C – APR)

**ACTION**

**REQUIRED:** Submission of Part C Annual Performance Report and Revisions to the Part C State Performance Plan by February 1, 2012

In accordance with 20 U.S.C. 1416(b)(2)(C)(ii)(II) and 1442 of the Individuals with Disabilities Education Act (IDEA), each State lead agency must report annually through the Part C Annual Performance Report (Part C – APR) to the Secretary on the State's performance under its Part C State Performance Plan (Part C – SPP). The Part C – SPP evaluates the State's efforts to implement the requirements and purposes of Part C and describes how the State will improve such implementation. In accordance with 20 U.S.C. 1416(b)(2)(C)(ii)(I) and 1442 and 34 CFR §303.702, each Lead Agency must also report annually to the public on the performance of each early intervention service (EIS) program located in the State on the targets in its Part C – SPP.

The enclosed Information Collection 1820-0578, *Part C State Performance Plan (Part C – SPP) and Annual Performance Report (Part C – APR)*, contains both SPP and APR instructions.

The instruction sheet in the enclosed Information Collection is divided into four sections: 1) General Instructions; 2) State Performance Plan; 3) Annual Performance Report; and 4) Related Requirements. States are encouraged to make note of the following due dates and implement a development schedule accordingly.

**By February 1, 2012**, States must submit:

- 1) A description of where, on its Web site, a complete copy of the State's SPP, including any revisions, is available as well as where the State has reported to the public on the performance of each EIS program in the State against the State's targets in its SPP.

- 2) The State's FFY 2010 Part C APR, which must contain actual target data from FFY 2010 and other responsive APR information for all indicators.
- 3) Information to address any deficiencies identified in OSEP's June 2010 letter responding to the State's February 1, 2011 submission of its FFY 2009 SPP/APR.
- 4) The attached Interagency Coordinating Council (ICC) Certification of Annual Report (ICC Certification), if the State's ICC is jointly submitting the APR as part of the ICC's annual reporting requirement under IDEA section 641(e)(1)(D). An original signature of the ICC Chairperson(s) is required on the attached ICC Certification.

When completing the SPP and APR, Lead Agencies will need to use the following parts of Information Collection 1820-0578.

SPP Materials (if the State has revised its SPP since the SPP that it submitted with its FFY 2009 APR in 2011) –

- SPP Instructions (See Section II of the enclosed Instructions.)
- Part C Indicator Measurement Table with Instructions<sup>1</sup>
- SPP Template

APR Materials –

- APR Instructions (See Section III of the enclosed Instructions.)
- Part C Indicator Measurement Table with Instructions
- APR Template

Please note that the final IDEA Part C Regulations that were published in the *Federal Register* on September 28, 2011 (IDEA Part C Final Regulations) reflect changes in the requirements to three compliance indicators in the IDEA Part C SPP/APR: Indicators 8 (early childhood transition), 10 (timeliness of State complaint resolution), and 11 (timeliness of due process hearing resolution). Because States are not required to implement the changes in each of these areas until FFY 2012, the following sections describe the timeline for States to report on each of these indicators.

Special Instructions for Revised Indicators 8A (Transition Plans) and 8B (Transition Notification) Based on New IDEA Part C Regulations

The IDEA Part C Final Regulations that were published in the *Federal Register* on September 28, 2011 reflect changes in the requirements related to Indicator 8 regarding early childhood transition. The measurements for Indicators 8A and 8B, as set forth in the attached Indicator Measurement Table, reflect such revisions. Specifically, Indicator 8A now measures timely transition plans in the IFSP that are developed within the new 90-day timeline. (Note that the transition plan must meet the new transition-related content

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<sup>1</sup> Monitoring Priorities, indicators, and measurements included on the *Part C Indicator Measurement Table* are to be used to complete designated sections of the SPP and APR Templates. Templates containing monitoring priorities, indicators, and measurements can be found at [http://therightidea.tadnet.org/assets/browse\\_by\\_folder?folder=56&folder\\_name=Submission+Tools-+Part+C](http://therightidea.tadnet.org/assets/browse_by_folder?folder=56&folder_name=Submission+Tools-+Part+C)

requirements in new 34 CFR §303.344(h).) Indicator 8B now measures the timely transition notification to not only the local educational agency (LEA) but also the State educational agency (SEA) and applies a new 90-day timeline, and applies this measurement for children who received Part C services and who may be potentially eligible for preschool services under Part B. Note also that the language of Indicator 8C, regarding timely transition conferences, has also changed but the underlying requirements for this indicator have not changed. Collecting data on each of these measurements in Indicator 8 is contingent upon the State's implementation of the transition requirements in new 34 CFR §§303.209 and 303.344(h), which do not take effect until FFY 2012, unless the State elects to adopt them in FFY 2011.

**Thus, in reporting in the FFY 2010 APR, due February 1, 2012, States must report data for Indicators 8A and 8B using the previous measurements for those indicators as set forth in the prior Indicator Measurement Table:**

- A. Percent = [(# of children exiting Part C who have an IFSP with transition steps and services) divided by the (# of children exiting Part C)] times 100.
- B. Percent = [(# of children exiting Part C and potentially eligible for Part B where notification to the LEA occurred) divided by the (# of children exiting Part C who were potentially eligible for Part B)] times 100.

**In reporting in the FFY 2011 APR, due February 1, 2013, States may choose whether to:** (1) report data for Indicators 8A and 8B using the measurements for those indicators as set forth in the prior Indicator Measurement Table, as set forth above; or (2) report data for Indicators 8A and 8B using the measurements for those indicators as set forth in the attached Indicator Measurement Table (with the expiration date of August 31, 2014). Whether the State can choose the latter option will depend on whether the State elected to implement during FFY 2011 the early childhood transition requirements in new 34 CFR §§303.209 and 303.344(h), and was able to obtain valid and reliable data from FFY 2011 following implementation.

**In reporting in the FFY 2012 APR, due February 1, 2014, States must report data for Indicators 8A and 8B using the measurements for those indicators as set forth in the attached Indicator Measurement Table (with the expiration date of August 31, 2014).**

Special Instructions for Revised Indicator 10 (Timely Resolution of Complaints) Based on New IDEA Part C Regulations

The Part C Final Regulations that were published in the *Federal Register* on September 28, 2011 reflect changes in the requirements related to State complaints. The indicator language for Indicator 10, as set forth in the attached Indicator Measurement Table, reflects such revisions. Specifically, Indicator 10 now measures the “Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or

individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.”

[Underlined language added to the prior indicator language.]

Collecting data for this revised indicator is contingent upon the State’s implementation of the State complaint requirements in new 34 CFR §303.433(b)(1)(ii), which do not take effect until FFY 2012, unless the State elects to adopt them in FFY 2011.

**Thus, in reporting in the FFY 2010 APR, due February 1, 2012**, States must report data for Indicator 10 using the previous indicator language for that indicator as set forth in the prior Indicator Measurement Table:

Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint.

**In reporting in the FFY 2011 APR, due February 1, 2013**, States may choose whether to: (1) report data for Indicator 10 using the indicator language for that indicator as set forth in the prior Indicator Measurement Table, as set forth above; or (2) report data for Indicator 10 using the indicator language for that indicator as set forth in attached Indicator Measurement Table (with the expiration date of August 31, 2014). Whether the State can choose the latter option will depend on whether the State elected to implement during FFY 2011 the State complaint requirements in new 34 CFR §303.433(b)(1)(ii) and was able to obtain valid and reliable data from FFY 2011 following implementation.

**In reporting in the FFY 2012 APR, due February 1, 2014**, States **must** report data for Indicator 10 using the indicator language for that indicator as set forth in attached Indicator Measurement Table (with the expiration date of August 31, 2014).

Special Instructions for Revised Indicator 11 (Timely Resolution of Due Process Hearings)  
Based on New IDEA Part C Regulations

The Part C Final Regulations that were published in the *Federal Register* on September 28, 2011 reflect changes in the requirements related to due process hearings. For those States that have adopted the IDEA Part C due process hearing procedures (in lieu of the IDEA Part B due process hearing procedures) to resolve individual child disputes under IDEA Part C, the IDEA Part C Final Regulations now permit the hearing officer to grant an extension of the 30-day timeline at the request of either party. This change is similar to the extension authority that had already existed if the State has adopted the IDEA Part B due process hearing procedures. Thus, the indicator language for Indicator 11, as set forth in the attached Indicator Measurement Table, reflects such revisions and applies regardless of whether the State has adopted the IDEA Part B or Part C due process hearing procedures. Specifically, Indicator 11 now measures the “Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline or a timeline that is properly extended”

by the hearing officer at the request of either party.” [Underlined language added to the prior indicator language.]

Collecting data for this revised indicator is contingent upon the State’s implementation of the due process hearing requirements in new 34 CFR §303.437(c), which do not take effect until FFY 2012, unless the State elects to adopt them in FFY 2011.

**Thus, in reporting in the FFY 2010 APR, due February 1, 2012,** States must report data for Indicator 11 using the previous indicator language for that indicator as set forth in the prior Indicator Measurement Table:

Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline.

**In reporting in the FFY 2011 APR, due February 1, 2013,** States may choose whether to: (1) report data for Indicator 11 using the indicator language for that indicator as set forth in the prior Indicator Measurement Table, as set forth above; or (2) report data for Indicator 11 using the indicator language for that indicator as set forth in the attached Indicator Measurement Table (with the expiration date of August 31, 2014). Whether the State can choose the latter option will depend on whether the State elected to implement during FFY 2011 the due process hearing requirements in new 34 CFR §303.437(c) and was able to obtain valid and reliable data from FFY 2011 following implementation.

**In reporting in the FFY 2012 APR, due February 1, 2014,** States must report data for Indicator 11 using the indicator language for that indicator as set forth in the attached Indicator Measurement Table (with the expiration date of August 31, 2014).

As noted in the conference report to HR 1350, it is Congress’ expectation that SPPs, indicators, and targets will be developed with broad stakeholder input and public dissemination. Under Part C, such stakeholder input must minimally include involvement by the State’s ICC, given the ICC’s role in advising the lead agency and its annual reporting requirement under IDEA section 641(e)(1)(D). Therefore, the State is required to provide information in the Overview to State Performance Plan Development section of the SPP template to specify how the State: 1) obtained “broad input” from stakeholders, including the ICC, related to new indicators and revisions to the SPP; and 2) disseminated the SPP to the public. Similarly, in the APR, the State is to provide a description of the process the State used to develop the APR. The description must include how and when the State will report annually to the public on: 1) the State’s progress and/or slippage in meeting the “measurable and rigorous targets” found in the SPP; and 2) the performance of each EIS program located in the State on the targets in the SPP.

The Department will review the information provided in the State’s FFY 2010 APR, other State-reported data, information obtained through monitoring visits, and other public information and will determine, under IDEA sections 616(d) and 642, if the State meets the requirements of Part C of the IDEA or needs assistance, needs intervention or needs substantial intervention in implementing the requirements of Part C of the IDEA. The State should review IDEA section

616(e) regarding the potential enforcement actions required as a result of, and the potential future impact of, the Department's annual determination.

The Department's determination will be based on the totality of the State's data in its APR and other publicly available information, including any outstanding compliance issues. The factors in each State's FFY 2010 APR submission that the Department will consider in making its determination are whether the State: (1) provided valid and reliable FFY 2010 data that reflect the measurement for each indicator; and (2) for each compliance indicator, whether the State: (a) demonstrated compliance or timely correction of noncompliance, and (b) in instances where it did not demonstrate compliance, had nonetheless made progress in ensuring compliance over prior performance in that area. States should carefully review OSEP Memorandum 09-02: "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA" for detailed information related to reporting on the correction of noncompliance.

When reporting on correction in the APR, include confirmation that: (1) each EIS program has corrected each individual instance of child-specific noncompliance; and (2) the State has verified that the EIS program is currently correctly implementing the specific regulatory requirement. In addition, OSEP Memorandum 09-02 explains how a State can demonstrate timely correction as we will factor this into our analysis of whether the State has demonstrated substantial compliance for compliance indicators for the purposes of the 2012 IDEA Part C determinations under sections 616 and 642 of the IDEA.

We will also consider whether the State has other IDEA compliance issues that were identified previously through the Department's monitoring, audit or other activities, the State's progress in resolving those problems and whether the State provided the additional information requested in OSEP's June, 2011 response table. In addition, we will consider whether the State has reported publicly on the performance of each EIS program on the State's FFY 2009 SPP targets. If we have not been able to locate this public reporting on your Web site, we will contact you during the clarification process, described further below to notify you of this issue.

Prior to finalizing the Department's determination, OSEP will offer the State the opportunity to clarify or correct the data submitted in its FFY 2010 SPP/APR. OSEP will email each Part C Coordinator a summary of the State's February 1, 2012, FFY 2010 APR data that OSEP will consider in making the Department's IDEA Part C determination under IDEA sections 616(d) and 642. The State will have one week to submit to OSEP by e-mail any corrected data and to clarify any misunderstandings by OSEP about the data submitted. In order for the State's clarifications or corrections to data to be considered, the State's response must be received by OSEP no later than close-of-business one week from the issuance of OSEP's e-mail summary. If the State submits clarifications or corrections to data that were in the original FFY 2010 SPP/APR submission, it must also submit a complete revised SPP/APR submission with any changes redlined or highlighted. Any clarifications or corrected FFY 2010 SPP/APRs must be submitted electronically to [OSERS.capr@ed.gov](mailto:OSERS.capr@ed.gov).

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Please note that any State that does not meet the February 1, 2012 timeline for submitting data for each indicator will not be permitted to submit clarifications or corrections for purposes of the Department's determination under IDEA sections 616(d) and 642.

In accordance with sections 616(e) and 642 of the IDEA, in the June 2011 response letters, the Secretary advised States that were needs assistance for two consecutive years of available sources of technical assistance related to the indicator(s) that resulted in the determination of needs assistance. For the indicator(s) that resulted in the determination of needs assistance, the State must report with its FFY 2010 APR submission (due February 1, 2012) on: (1) the technical assistance sources from which the State received assistance; and (2) what actions the State took as a result of that technical assistance. The extent to which your State takes advantage of available technical assistance for these indicators may affect the actions we take under IDEA sections 616 and 642 should your State not be identified as meets requirements next year.

To submit a revised SPP and/or APR:

**Submit a copy of the SPP and/or APR to the following address:**

U.S. Department of Education  
Office of Special Education Programs  
Potomac Center Plaza  
Mail Stop 2600, Room 4166  
550 12<sup>th</sup> St. S.W.  
Washington, D.C. 20202

**If available, a corresponding electronic text file of the SPP and/or APR should be submitted to [OSERS.capr@ed.gov](mailto:OSERS.capr@ed.gov).**

The submission requirements, tables, and templates that should be used to complete the Part C SPP and/or Part C - APR can be accessed electronically at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.

If you have any further questions about the Part C - SPP and/or Part C - APR and/or the submission options listed above, please contact your OSEP Part C State Contact.

Enclosures

cc: Technical Assistance Coordination Center (TACC)  
Regional Resource Centers  
National Early Childhood Technical Assistance Center (NECTAC)