

October 7, 2005

Honorable James S. Reinhard, M.D.
Commissioner
Department of Mental Health, Mental Retardation
and Substance Abuse Services
P.O. Box 1797
Richmond, Virginia 23218-2120

Dear Commissioner Reinhard:

The purpose of this letter is to respond to Virginia's March 23, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

OSEP's October 7, 2004 FFY 2002 APR response letter required the State to submit to OSEP, within 60 days of the date of that letter: (1) either documentation that the Part C child count data were consistent with IDEA Section 618 requirements, or the State's plan for ensuring that the child count it would report to OSEP as of December 1, 2004 met those requirements; (2) documentation that the State was ensuring that an initial evaluation and assessment were completed and an initial individualized family service plan (IFSP) meeting was held within 45 days of referral to Part C for all eligible children, as required by 34 CFR §§303.321(e), 303.322(e) and 303.342(a); and (3) data, along with analysis and a determination of compliance or noncompliance with the requirement that all families received all services identified on their IFSPs, as required by 34 CFR §§303.12(a)(3), 303.340(c), and 303.342(e).

In addition, the State was to include in its FFY 2003 APR documentation of progress toward correction of the following areas of noncompliance, and provide a final report, showing correction of the noncompliance, as soon as possible, but no later than 30 days following one year from the date of the October 2004 letter, related to: (1) ensuring that the evaluation and assessment for each child include an evaluation of the child's level of functioning in each of five specified developmental areas and that the IFSP reflects the functioning levels for each of the

areas, as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a); (2) ensuring that, in the case of a child who may be eligible for preschool services under Part B, with the approval of the family of the child, a conference was convened among the lead agency, the family, and the local educational agency (LEA), at least 90 days, and at the discretion of the parties, up to 6 months¹, before the child was eligible for the preschool services, to discuss any services that the child might receive, as required by 34 CFR §303.148(b)(2)(i); and (3) including data indicating the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas, as required by 34 CFR §303.322(c)(3)(ii).

OSEP's July 5, 2005 verification letter to inform Virginia of the results of the OSEP verification visit required the State to submit: (1) a plan to ensure correction of State-identified noncompliance under 34 CFR §303.501(b); and (2) procedures and a plan for ensuring data accuracy by local lead agencies (LLAs) (including settings data).

General Supervision

Identification and timely correction of noncompliance

OSEP's October 2004 FFY 2002 APR letter and its July 5, 2005 verification letter concluded that the State's monitoring documents showed that the lead agency had methods for identifying compliance across the range of Part C requirements and Part C service providers. On page 14 of the FFY 2003 APR, the State provided data from its Monitoring and Measurement Improvement System (MIMS) that showed it had made findings of noncompliance across a broad spectrum of Part C requirements.

At 34 CFR §303.501, Part C requires that the lead agency provide general administration and supervision of programs and activities receiving assistance under Part C and monitoring of programs and activities used by the State to carry out Part C, whether or not these programs or activities are receiving assistance under Part C, to ensure that the State complies with Part C. As part of that responsibility, the lead agency must ensure the correction of any noncompliance, and enforce any obligations imposed, under Part C, on agencies, institutions and organizations used by the State to carry out Part C. As detailed in OSEP's July 2005 verification letter, OSEP found, during the verification visit, that the State was not meeting its responsibility to ensure the timely correction of noncompliance. OSEP's letter directed the State to submit a plan to OSEP, within 60 days of the date of the verification letter, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of State-identified noncompliance consistent with the requirements of 34 CFR §303.501(b), within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. The correction of State-identified noncompliance is Indicator #9 in the SPP. OSEP requests the State's updated data and its plan to ensure correction of State-identified noncompliance in response to this indicator in the SPP.

¹ Section 637(a)(9)(A)(ii)(II) of the IDEA Amendments of 2004 changed the transition conference timeline from "not more than 6 months" to "not more than 9 months" before the child is eligible for preschool services (i.e. before the child's third birthday). 20 U.S.C. §1437(a)(9)(A)(ii)(II).

Dispute resolution

On pages 18 and 19 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and performance in this area. Attachment 1 of the FFY 2003 APR indicated that the State: (1) received three complaints from July 1, 2003 through June 30, 2004; (2) issued its decision for one of those complaints within 60 calendar days, and extended the timeline for the other two; and (3) had received no mediation or due process hearing requests. As noted in OSEP's July 5, 2005 letter, OSEP verified the timely resolution of complaints during its verification visit. OSEP appreciates the work of the State in ensuring compliance with these requirements and looks forward to reviewing the State's data in this area in the State Performance Plan (SPP), due December 2, 2005.

Personnel

On pages 27 through 31 of the FFY 2003 APR, the State included data and analysis demonstrating compliance and performance in this area. Record reviews conducted during the State Review Team process for the MIMS 2000 cycle revealed that 65/69 records (94%) had identified a permanent service coordinator for families receiving early intervention services upon referral to Part C. One hundred percent of MIMS sites in 2001-2003 reported that service coordination was available for eligible children and families in accordance with the current IFSP. OSEP appreciates the State's efforts in this area.

Collection and timely reporting of accurate data

(See *Comprehensive Public Awareness and Child Find System* below.)

Comprehensive Public Awareness and Child Find System

OSEP's October 2004 letter directed the State to submit, within 60 days of the date of the letter, either: (1) documentation that the Part C child count data were consistent with IDEA Section 618 requirements; or (2) its plan to ensure that its December 1, 2004 child count data under section 618 of the IDEA would include all children birth to age three who had IFSPs in effect on December 1st. In its December 10, 2004 Progress Report, the State acknowledged that the Part C child count data that it submitted was consistent with OSEP's instructions. During OSEP's April 2005 verification visit, the lead agency acknowledged that: (1) it had no systematic procedures for monitoring the accuracy of data reporting (such as comparing, as part of an on-site visit, the data in a child's IFSP against the data reported in the Infant and Toddler On-line Tracking System (ITOTS) for that child); (2) while there were procedures that each LLA could choose to use to review the accuracy of its data, the State did not require LLAs to implement such procedures or to certify the accuracy of their data; and (3) the lead agency had no way to determine the extent of inaccurate copying of data from hard documents into ITOTS, or other data-entry errors (beyond the edit checks for illogical data that it built into the ITOTS software). OSEP's July 2005 verification letter directed the lead agency to: (1) closely examine its procedures for reviewing data accuracy to determine what, if any, changes were needed to ensure that the data submitted to OSEP were accurate; (2) submit procedures for reviewing and

requiring data accuracy by LLAs to ensure that the data collected, analyzed, and submitted were accurate and confirm in the SPP, due December 2, 2005, the accuracy of the data the State reports in the SPP and will report in the Section 618 data report; and (3) submit a plan for ensuring that the State's next submission of services and settings data consist of current, accurate data for each child.

OSEP's looks forward to reviewing the results of the State's examination of its procedures and its plan to ensure data accuracy (including settings data for children after the initial IFSP) in the SPP, due December 2, 2005.

Family Centered Services

On pages 45 through 47 of the FFY 2003 APR, the State included data and analysis demonstrating continued compliance and performance in this area. The response percentages to the Family Survey questions continued to be maintained at high levels, from 90% to 96%. Chart reviews indicated that the percentage of IFSPs that included outcomes reflecting family priorities and activities/settings that were important to the family was maintained and that there was an increase in the percentage of IFSPs that included outcomes related to actual daily functional activities of the child from, 58% to 73%.

The SPP instructions establish a new indicator in this area (#4), for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. The indicator states: the percent of families participating in Part C who report that early intervention services have helped the family: (a) know their rights; (b) effectively communicate their children's needs; and (c) help their children develop and learn. OSEP looks forward to reviewing the State's plan to collect this data, in the SPP.

Early Intervention Services (EIS) in Natural Environments (NE)

Service coordination

On pages 48 through 50 of the FFY 2003 APR, the State included data and analysis demonstrating continued performance in this area. Family satisfaction with service coordination, as measured by the Family Survey, remained high over time, from 92% in 2001 to 96% in 2004. For those survey questions related to service coordination activities, the percentage of positive responses increased over time, from 88% in 2001 to 96% in 2004. OSEP appreciates the State's efforts to improve performance in this area.

Evaluation and identification of needs

OSEP's October 2004 letter directed the State to include, in its FFY 2003 APR:

1. 45-day timeline: Documentation that the State was ensuring that an initial evaluation and assessment were completed and an initial IFSP meeting held within 45 days of referral to Part C for all eligible children; and

2. *Comprehensive Evaluation and related IFSP content:* Progress data on ensuring that the evaluation and assessment for each child include an evaluation of the child's level of functioning in each of five specified developmental areas and that the IFSP reflects the functioning levels for each of the areas, as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a).

Regarding Part C's 45-day timeline requirement, the State reported, on page 49 of the FFY 2003 APR, data from ITOTS showing that the State exceeded the 45-day timeline for "system reasons" for: (1) 50 children in April 2004; (2) 47 children in May 2004; (3) 33 children in June 2004; (4) 26 children in July 2004; (5) 18 children in August 2004; and (6) two children in September 2004. The State further indicated that it reviewed ITOTS data for each of the local Part C systems for the period of August 1 through October 31, 2004, and found that 16 of the 40 local systems were out of compliance with the 45-day timeline. The State indicated that nine of those 16 systems had exceeded the timeline for system reasons for only one child. The State did not include any data for the period after October 31, 2004, or indicate the number of children for whom the other seven systems exceeded the 45-day timeline or the number of days by which they exceeded that timeline for each of those children. Further, because the State did not include the number of children referred during each period, OSEP could not determine the percentage of children whose initial IFSP meetings were delayed beyond 45 days from referral.

On page 50 of the 2003 APR, the State indicated that it continued to make progress toward compliance², but acknowledged that data that it gathered in December 2004 indicated that Virginia was not yet in full compliance with the 45-day timeline. The State included a general statement that, "throughout the 6-month period and in all areas of the State the primary system reason cited when the timeline had been exceeded was provider unavailability," but did not otherwise include in the FFY 2003 APR (as directed in OSEP's October 2004 letter): (1) an analysis of the factors that impeded correction; (2) documentation of the specific steps, including any enforcement actions that it took to ensure correction, and the impact of those actions; or (3) if the State determined that additional strategies were needed or that existing strategies required modification, its strategies, proposed evidence of change, targets and timelines to ensure compliance as soon as possible. Virginia must submit data to OSEP in the SPP demonstrating compliance with the 45-day timeline. OSEP will review the information submitted and determine what, if any, further action may be required.

Regarding the comprehensive evaluation requirements, OSEP's October 2004 letter requested the State provide, in the FFY 2003 APR, progress data on ensuring that the evaluation and assessment for each child include an evaluation of the child's level of functioning in each of five

² On pages 49 through 51, the State included data reflecting that the number of children for whom the 45-day timeline had been exceeded over the period April through September 2004 decreased from 50 children to 2 children. The State also made the following general statements regarding its progress in correcting the noncompliance: (1) the number of children for whom the 45-day timeline was exceeded due to systems reasons declined each month from April through September 2004; (2) the number of local Part C systems not in compliance with the 45-day timeline declined over the six-month period from April through September 2004; and (3) the local Part C systems that were not in full compliance with the 45-day timeline requirement increasingly tended to have exceeded the timeline for only 1 or 2 children, rather than for 5-10 children as was seen a few months prior.

specified developmental areas and that the IFSP reflects the functioning levels for each of the areas as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a). On pages 54 through 56 of the FFY 2003 APR, the State reported that data from 4 sites demonstrated that 38% of IFSPs and child records reflected that the child was evaluated in all required developmental areas. The State reported further analysis that data from 70 follow-up record reviews reflected greater than 90% with respect to the five developmental areas, except in the areas of vision and hearing, which were documented at 86% and 88% respectively. The State must include in its final progress report, due November 6, 2005, data demonstrating correction with the requirements for a comprehensive evaluation and assessment and IFSPs containing present levels of developmental functioning, as required by 34 CFR §§303.322(c)(3)(ii) and 303.344(a), including correction data from the four sites (identified in the FFY 2003 APR) in noncompliance with these requirements.

Individualized family service plans (IFSPs)

The Part C regulations require, at 34 CFR §§303.12(a)(3), 303.340(c), and 303.342(e), that early intervention services are provided in conformity with an IFSP. OSEP's October 2004 letter directed the State to submit, within 60 days of the date of OSEP's letter: (1) data, along with analysis and a determination of compliance or noncompliance; (2) if the data demonstrated noncompliance, a plan with strategies, proposed evidence of change, targets and timelines to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepted the plan; and (3) if data were not available to support such a determination, a plan describing how the State would collect data to enable it to determine compliance or noncompliance in the FFY 2003 APR.

On page 56 of the FFY 2003 APR, the State included data from its MIMS, Family Surveys³, and chart reviews showing that: (1) a consistently high percentage of respondents to the Family Survey between 2000 and 2003 said the goals/outcomes written on the IFSP are things they want for their child and family (96%-97%); (2) chart reviews from 2000 to 2003 found that the percentage of IFSPs that included outcomes related to the family's resources, priorities and concerns and outcomes related to the child's and family's daily routines and activities increased dramatically, although there was still room for improvement with those percentages (67% and 70%, respectively); (3) an increasing percentage of respondents to the Family Survey from 2000 to 2003 said they helped decide where their child would receive early intervention services (from 90% in 2000 to 97% in 2003); (4) 92% of Family Survey respondents in 2003 said the services provided to their child and family helped them to reach the outcomes/goals they had set (an increase from 89% in 2000); and (5) a consistently high percentage of respondents to the Family Survey (92% in each year from 2001 through 2003) said their early intervention experience made them feel more confident in finding ways to meet their child's needs. The State further indicated that as of 2003, it was difficult to determine, based on available data, whether all families received all supports and services identified on their IFSPs. Although the MIMS data seemed to indicate that this might be an area needing improvement, there were no data to indicate exactly how many families did not receive all supports and services listed on their IFSPs or to delineate why some supports and services were not provided.

³ Family Surveys are a part of the State of Virginia's identified monitoring procedures.

In the State's submission of its SPP on December 2, 2005, the State s must provide data in response to Indicator #1 regarding the percent of infants and toddlers with IFSPs who receive the early intervention services on their IFSPs in a timely manner.

Natural environments

On pages 60 through 63 of the FFY 2003 APR, the State included data and analysis regarding its compliance and performance in this area. From 2000 to 2003, the percentage of sites that reported that all early intervention supports and services were provided in natural environments unless appropriate justifications were included in the IFSP increased from 50% to 77%. The State reported that chart review data documented that 92% of records reviewed in 2003 (compared with 83% in 2000) contained IFSPs in which all supports and services were to be provided in natural environments or appropriate justification was provided. In addition, at least 75% of Family Survey respondents in 2003 listed a natural environment as the location in which their early intervention supports and services were provided. OSEP looks forward to reviewing the State's data in response to Indicator #2 in the SPP, due December 2, 2005.

Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional and adaptive developmental areas. The Part C FFY 2001, 2002 and 2003 APRs requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities in the developmental areas listed in 34 CFR §303.322(c)(3)(ii). On pages 64 and 65 of the FFY 2003 APR, the State provided data and information as follows. Although Virginia does not have a mechanism in place to specifically measure the extent to which children demonstrate improved and sustained functional abilities statewide, results from the Family Survey between 2000 and 2003 indicated the following with regard to impact of supports and services: (1) an increasing percentage of respondents said the services provided to their child and family help them to reach the outcomes/goals they had set (from 89% in 2000 to 92% in 2003); (2) each year since 2001, 92% of respondents said their early intervention experience made them feel more confident in finding ways to meet their child's needs; (3) a high percentage of respondents each year (95% from 2001 to 2003) felt their child was better off because of getting early intervention services; (4) a consistently high percentage of respondents (93%-95%) felt good about the progress their child made; and (5) there was a significant decrease in the percentage of respondents who felt their child continued to need services after early intervention (from 54% in 2001 to 3% in 2003). These family survey data were supported by ITOTS data for the same period, which showed the percentage of children who were discharged from the Part C system because they had completed their IFSP increased from 8% in 2001 to almost 19% in 2003.

The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Early Childhood Transition

OSEP's October 2004 letter accepted the State's strategies, as set forth in the FFY 2002 APR and July 2004 Plans of Improvement, and informed the State that it must: (1) include data and analysis demonstrating progress toward compliance in its FFY 2003 APR; and (2) provide a report to OSEP, with data and analysis demonstrating compliance with the transition planning requirements at 34 CFR §303.148(b)(2) as soon as possible, but not later than 30 days following one year from the date of OSEP's letter.

On page 68 of the FFY 2003 APR, the State reported that chart reviews completed by the State review teams indicated significant improvement in transition planning, but the chart review data and the MIMS self-assessment information clearly indicated that transition in general remains an area needing improvement in Virginia. Data also indicated that there might be systemic noncompliance with the transition planning conference timelines at 34 CFR §303.148(b)(2). In order to continue addressing this and other transition planning issues, Virginia made the following efforts in 2004:

- Any MIMS site not providing a transition planning conference at least 90 days before a child's third birthday for families transitioning to Part B, on a consistent basis, was required to address this issue in its local plan of improvement.
- Technical assistance and training were provided at the local and regional level, based on local/regional needs as identified through monitoring and supervision activities or by local Part C systems.
- Localities were encouraged to implement a local records review process using a checklist provided by the Virginia Part C office. This checklist prompted the locality to monitor its own compliance by checking each IFSP to ensure that transition planning activities were included and by checking each chart to be sure the transition planning conference occurred, when appropriate.
- Part B staff provided training to all local school divisions about Part B requirements associated with children transitioning from Part C to Part B.
- In February and March 2005, State Part B staff provided information related to transition between Part C and Part B to all local special education directors through regional forums throughout the Commonwealth. The information provided included requirements for Part B participation in the transition planning conference.

In addition, on page 68 of the APR, the State indicated that it had no mechanism in place to specifically measure whether all children eligible under Part B actually received special education and related services by their third birthdays. To address this gap in data, the lead agency was engaged in continuing discussions with the Department of Education regarding a data system linkage that the State was to begin in 2004.

As directed by OSEP's October 2004 letter, the State must submit documentation that it corrected the noncompliance with the transition planning conference timelines at 34 CFR §303.148(b)(2) by November 6, 2005 (30 days after one year from the date of OSEP's letter). OSEP looks forward to reviewing this information and in addition, looks forward to reviewing information in the SPP, due December 2, 2005, regarding transition planning requirements, including the implementation of strategies and resulting data and analysis.

Conclusion

In the SPP, the State must submit data to OSEP demonstrating correction of noncompliance with Part C's 45-day timeline from referral to Part C to convening the initial IFSP meeting. If the data do not indicate full compliance, the State must also submit a list of all LLAs in noncompliance and the State's plan to ensure correction as soon as possible.

The State must by November 6, 2005 submit a final progress report containing data and analysis demonstrating compliance with: (1) the requirements for a comprehensive evaluation and assessment and IFSPs containing present levels of developmental functioning, as required by 34 CFR §303.322(c)(3)(ii) and 303.344(a) (including correction data from the four sites identified in the FFY 2003 APR as being in noncompliance with these requirements); and (2) the early childhood transition planning requirements of 34 CFR §303.148(b)(2).

IDEA 2004, §616, requires each State to submit an SPP that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks 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 Barbara Route at (202) 245-7510.

Sincerely,

/s/Troy R. Justesen

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Shirley Ricks, Director of Children and Family Services
Mary Ann Discenza, Part C Coordinator