

November 19, 2004

Dr. David P. Driscoll  
Commissioner of Education  
Massachusetts Department of Education  
350 Main Street  
Malden, Massachusetts 02148-5023

Dear Commissioner Driscoll:

The purpose of this letter is to respond to Massachusetts' April 1, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part B 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 B APRs directed States to address five cluster areas: General Supervision; Early Childhood Transition; Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; and Secondary Transition.

### ***Background***

OSEP monitored Massachusetts during the weeks of November 30, 1998, February 22, 1999 and April 6-8, 1999 and issued a monitoring report on June 21, 2000 that contained the following findings of noncompliance: (1) parents were denied the right to participate in the decision-making process regarding their children; (2) the individualized education program (IEP) development process resulted in delays in services and in children with disabilities not receiving services agreed to in IEP meetings; (3) psychological counseling was not always provided as a part of a free appropriate public education (FAPE) when needed to enable children with disabilities to benefit from special education; (4) extended school year services were not always available; (5) children with disabilities placed in substantially separate educational environments did not have opportunities for

participation with nondisabled children in nonacademic and extracurricular services and activities; (6) the lack of opportunity for children with disabilities to be involved and progress in the general curriculum; (7) the lack of opportunity for involvement of children with disabilities in regular vocational education programs with appropriate supports as determined by an IEP team; (8) outcome-oriented statements of transition services for students with disabilities who were age 16 or older were missing; (9) districts did not have a method for ensuring that outside agencies likely to be providing or paying for transition services were invited to the IEP meeting and that there was a method for obtaining their input if they do not attend; (10) students with disabilities were not always invited to meetings if transition planning was a purpose of the meeting; (11) IEPs did not always include a statement of transition services needs for students with disabilities beginning at age 14; (12) the Massachusetts Department of Education (MASSDE) did not have effective methods for identifying and correcting deficiencies in programs providing services to children with disabilities; (13) MASSDE did not have an effective system for resolving complaints regarding violations of Part B; and (14) MASSDE did not ensure that children with disabilities, receiving services through charter schools, received FAPE.

MASSDE's Improvement Plan was submitted to OSEP on June 21, 2001 and was developed to respond to the findings of noncompliance in OSEP's Monitoring Report. MASSDE's Improvement Plan was approved by OSEP in a letter dated May 23, 2002. MASSDE submitted Progress Reports on July 31, 2002, February 28, 2003 and July 31, 2003. This letter responds to MASSDE's FFY 2002 APR and the three Progress Reports submitted by MASSDE.

In addition, during the week of July 14, 2003, OSEP visited Massachusetts to verify the effectiveness of Massachusetts systems for general supervision of Part B programs, collection of data under section 618 of IDEA, and State-wide assessment. OSEP summarized the results of this visit in a letter to the State on October 29, 2003. OSEP's letter reported that MASSDE was not ensuring that not later than 45 days after the receipt of a request for a due process hearing, a final decision was reached and a copy mailed to each of the parties, unless the hearing officer, at the request of either party, grants a specific extension of time. OSEP also requested that MASSDE keep OSEP informed concerning progress in ensuring compliance with the 60-day complaint timeline, and provide an analysis of its 618 data regarding personnel, discipline, and placement data for private/public school special education placements in its 2002 APR.

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 regarding MASSDE's three Progress Reports, and the APR are listed by cluster area.

### ***General Supervision***

OSEP's June 2000 Monitoring Report identified that MASSDE was not in compliance with the requirement to ensure that children with disabilities, receiving services through charter schools, received a free appropriate public education. See 34 CFR §§300.241 and 300.312. In its July 31, 2002 Progress Report on page 12, MASSDE reported that it has completed the activities identified in its Improvement Plan regarding this issue and that it has ongoing methods of identifying and correcting deficiencies in all charter schools in the Commonwealth.

Timely Identification and Correction of Noncompliance.

OSEP's June 2000 Monitoring Report found MASSDE was not in compliance with ensuring that each educational program for children with disabilities in the State meets the requirements of IDEA because it did not have effective methods for identifying and correcting deficiencies in programs providing services to children with disabilities. See 34 CFR §300.600. Specifically, OSEP found that MASSDE had not monitored some districts in over 10 years and that MASSDE's monitoring procedures were not effective in identifying noncompliance with Part B requirements in areas where OSEP had found systematic noncompliance. In its July 2002 Progress Report, MASSDE demonstrated that it had revised its monitoring standards and its monitoring cycle to address the noncompliance in this area. In its October 2003 verification letter, OSEP concluded that MASSDE's monitoring system "constituted a reasonable approach to the identification and correction of noncompliance."

On page two of the General Supervision section of the APR, MASSDE included activities for maintaining identification and correction of noncompliance including continuing its Coordinated Program Reviews and mid-cycle reviews on a six-year and three-year cycle, respectively, and piloting a Focused Monitoring process. On page two of the General Supervision section of the APR, MASSDE included data based upon 50 final reports identifying the level of noncompliance with 57 special education criteria from its 2002-2003 Coordinated Program Review Findings. During the verification visit conducted during the week of July 14, 2003, OSEP reviewed samples of MASSDE's monitoring files and found documentation that corrective action plans were implemented and MASSDE was following-up to ensure the effectiveness of the plan. However, MASSDE did not address in the APR the extent to which it is ensuring that all identified noncompliance is corrected in a timely way. In the next APR, MASSDE must submit data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE has identified through monitoring, complaints and hearing resolutions has been corrected in a timely manner.

Identification and Remediation of Systemic Issues through the Analysis of Data from all Available Sources, including Monitoring

On pages two through three of the General Supervision section of the APR, MASSDE reported that it was able to identify systemic issues and described how it used analysis of its monitoring data, due process hearings, and complaints to identify areas for systemic change activities. The State included strategies and benchmarks designed to maintain compliance in this area. In the next APR, MASSDE must report on the specific systemic change activities it undertook in the 2003-2004 school year, including its analysis of the impact of those activities on performance and compliance.

Dispute Resolution System Ensures that Complaint Investigations, Mediations, and Due Process Hearings and Reviews are Completed in a Timely Manner

OSEP's June 2000 Monitoring Report identified that MASSDE was not in compliance with the requirement to resolve complaints regarding violations of Part B. See 34 CFR §§300.660-300.662. MASSDE documented progress in meeting the Federal requirements regarding the 60-day timeline in its Progress Report submitted to OSEP in July 2002. In OSEP's October 2003 verification letter, OSEP reported 82% of special education complaints sent to MASSDE during the first nine months of the 2002-2003 school year received a written decision or letter of closure within 60 days. MASSDE reported on page four of the General Supervision section of the APR that during 2002-2003, 96% of written complaints received a response within timelines. MASSDE also included specific strategies it would undertake to improve timely complaint resolutions. MASSDE must continue to include strategies and data to demonstrate its performance in this area in the FFY 2003 APR, due March 31, 2005.

OSEP's October 2003 verification letter reported that MASSDE was not in compliance with 34 CFR §300.511 regarding the 45-day timeline for issuing a written decision from the date of a request for a due process hearing. On page three of the General Supervision section of the APR, MASSDE acknowledged that only 26% of due process hearing decisions were issued within the required timelines during 2002-2003. MASSDE provided a corrective action plan that was approved by OSEP in December 2003 to correct the noncompliance in this area. MASSDE must provide a report on its progress by December 2004 and evidence of correction of the noncompliance, including supporting data and its analysis, in the next APR.

A Sufficient Supply of Personnel Available to Meet the Needs of All Children with Disabilities

Under 34 CFR §§300.135 and 300.380-300.382, the State must develop and implement a comprehensive system of personnel development that includes, among other things, relevant information on current and anticipated personnel vacancies and shortages. MASSDE indicated, on page five of the General Supervision section of the APR, that it

does not currently collect data that can effectively be used to evaluate special education licensure and vacancy needs. It indicated that it would begin discussions on how to better collect unified data related to personnel needs in Massachusetts during the 2003-2004 school year. Although the State included some activities to address this issue, those activities are not sufficient to ensure correction within a reasonable period of time not to exceed one year from the date of OSEP's acceptance of the State's plan. Therefore, within 60 days of the date of this letter, the State must submit a plan to collect the information required in 34 CFR §300.381, including relevant information on current and anticipated personnel vacancies and shortages. The plan must include strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approves the plan. In the next APR, the MASSDE must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline.

#### Collection and Reporting of Accurate and Timely Data

OSEP's October 2003 verification letter identified that at least one of the 618 data indicators that OSEP used for ranking Massachusetts' performance in the least restrictive environment was not accurate because of definitional problems. MASSDE reported that it made changes to its data collection for section 618 that will result in more reliable and accurate data. Because of acknowledged problems in collecting personnel and discipline data and issues regarding the placement data for private/public school special education placements, OSEP requested that MASSDE provide an analysis of this data in its APR. On pages six through seven of the General Supervision section of the APR, MASSDE reported on changes to its data collection system and its progress in collecting and reporting data in the above areas. In the next APR, MASSDE must include data and its analysis in this area.

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

On pages one through two of the Early Childhood Transition section of the APR, MASSDE presented data from its monitoring system that indicates inconsistent compliance in the agencies monitored. Compliance ranged from 77% (FY 2001) to 56% (FY 2002) to 87% (FY 2003) in the agencies monitored on indicator SE 17 (initiate services at age three and maintain Part C to B transition procedures). Another indicator measured compliance in a range from 84% (FY 2001) to 65% (FY 2002) to 82% (FY 2003). MASSDE concluded that some of the variations in the data could be explained by the different agencies monitored during each year of its monitoring cycle. A projected activity was for the Steering Committee to consider the data at their next meeting and consider further activities.

MASSDE must ensure that the obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday and an IEP or an

individualized family service plan (IFSP) is in effect for the child by that date in accordance with 34 CFR §300.342(c). See 34 CFR §§300.132 and 300.121(c). Within 60 days of the date of this letter, MASSDE must provide to OSEP either (1) data and analysis demonstrating compliance or (2) a plan that includes strategies, targets, proposed evidence of change, and timelines designed to achieve compliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In the next APR, MASSDE must include data and analysis demonstrating progress toward compliance; and a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

### ***Parent Involvement***

OSEP's June 2000 Monitoring Report identified that MASSDE was out of compliance because parents were denied the right to participate in the decision-making process regarding their children (20 U.S.C. 1415(b)(1) and 34 CFR §300.345(a) & (d)). On page one of the July 2003 Progress Report, MASSDE reported 87% and 94% compliance on its monitoring indicators for this area for 2001-2002. MASSDE's Steering Committee concluded that it was substantially compliant but that MASSDE would continue to monitor the data in this area. On pages one through three of the Parent Involvement section of its APR, MASSDE presented data to demonstrate improved compliance in school year 2002-2003 in this area along with activities and maintenance strategies. MASSDE must continue to report data on its progress in ensuring full compliance with these requirements in the next APR.

### ***Free Appropriate Public Education in the Least Restrictive Environment***

OSEP's June 2000 Monitoring Report identified that MASSDE was out of compliance in the following areas: (1) the IEP development process resulted in delays in services and in children with disabilities not receiving services agreed to in IEP meetings; (2) psychological counseling was not always provided as a part of a free appropriate public education when needed to enable children with disabilities to benefit from special education; (3) extended school year services were not always available; (4) children with disabilities lacked the opportunity for involvement in regular vocational education programs with appropriate supports as determined by an IEP team; and (5) lack of opportunities to be involved and progress in the general curriculum. On page two of its July 2003 Progress Report, MASSDE reported on its progress in correcting noncompliance in these areas. MASSDE provided data to demonstrate compliance at a level of at or above 96% on the indicators it used to determine compliance for the provision of psychological counseling, at or above 93% on the availability of extended school year services, and at or above 90% on opportunities to be involved and progress in the general curriculum. MASSDE must continue to report in the next APR on its progress in ensuring full compliance with these requirements.

The July 2003 Progress Report noted that the Steering Committee concluded that the

involvement of children with disabilities in the regular vocational education program needed further improvement and combined strategies in this area with related activities in secondary transition (see Secondary Transition, below).

The State has revised its regulations, as well as its policies and procedures concerning IEP development since the monitoring visit. In accordance with 603 CMR 28.05(7), parents now receive a copy of the proposed IEP immediately following the development of the IEP. The July 2003 Progress Report on page one noted that the Steering Committee designated the IEP development process as a continued priority, because although some indicators had a high level of compliance others did not. MASSDE provided further information about this area in the FFY 2002 APR on page 10 of the FAPE section, which noted that compliance through MASSDE's monitoring system ranged from 74% to 93% during the FFY 2002 on the two indicators in the APR it used to determine compliance regarding IEP development. In addition, on pages 10 and 11 of the FAPE section, MASSDE reported that compliance through MASSDE's monitoring system ranged from 83%-84% during FY 02 on two other indicators regarding IEP development.

While MASSDE has initiated activities in its improvement plan to correct noncompliance in this area, the data provided by MASSDE does not demonstrate that noncompliance has been corrected. MASSDE must submit to OSEP, within 60 days of the date of this letter, data and analysis demonstrating that the noncompliance has been corrected. MASSDE can satisfy this requirement by providing documentation that it has corrected the noncompliance in the districts it identified as noncompliant in FY 02 on the following indicators: (1) SE 18A#1 (If the district chooses to draft any element(s) of the IEP for discussion, the TEAM chairperson ensures that those elements are genuinely considered prior to adoption at the TEAM meeting.); (2) SE 18#2 (The IEP includes specially designed instruction to meet the needs of the individual student and related services that are necessary to allow the student to benefit from the specially designed instruction, or consists solely of related services that are necessary to allow the student to access the general curriculum, consistent with Federal and State requirements.); and (3) SE 49 (For each student with special education needs found to require related services, the school district provides or arranges for the provision of transportation and such developmental, corrective, and other supportive services as are required to assist a student to benefit from special education or to access the general curriculum, and includes psychological services). In addition, MASSDE must continue to report in the next APR on its progress in ensuring full compliance with these requirements.

### Disproportionality

On page two of the FAPE section of the APR, MASSDE reported that over the last three years, it worked to identify a tool for measuring disproportionality. Because the process was in a pilot phase, MASSDE was unable to provide data and analysis of its procedures at this time. 34 CFR §300.755 requires States to examine and collect data to determine if significant disproportionality based on race is occurring in the State with respect to the identification and placement of children with disabilities. MASSDE must, in its FFY 2003 APR, submit baseline data and analysis of disproportionality in the identification and placement of children with disabilities and, if it identifies significant disproportionality, the results of its review (and if appropriate revision) of policies, procedures and practices to ensure that they are race neutral, educationally appropriate and consistent with Part B.

### Graduation and Dropout

On pages three through seven of the FAPE section of the APR, MASSDE reported on the dropout and graduation rates for children with disabilities relative to the State's general school population. Although MASSDE reported data in both of these areas, it indicated it was in the process of revising its data collection system to obtain more valid data. MASSDE stated on page four of the FAPE section that a preliminary analysis of the dropout data indicated similar rates for students with disabilities and students without disabilities. MASSDE stated on page five that, although the "competency determination rate" for students with disabilities was below that for nondisabled students, it believed that the rate was improving. In the next APR, MASSDE must include baseline data and its analysis of the dropout and graduation performance of students with disabilities.

### Suspension and Expulsion

As noted above and on pages seven through nine of the FAPE section of the APR, MASSDE was in the process of revising its suspension/expulsion data collection system. MASSDE concluded on page eight that "since this was the first year of available comparison data, MASSDE cannot yet accurately draw conclusions regarding discrepancies in suspension/expulsion rates between students with disabilities and nondisabled students." In the next APR, MASSDE must include baseline data and provide an analysis of its compliance regarding suspension and expulsion rates for students with disabilities compared among local education agencies (LEAs) in the State or to the rates for nondisabled children within the agencies. See 34 CFR §300.146.

### Participation and Performance of Children with Disabilities on State- and District-Wide Assessments

On pages nine through 12 of the FAPE section of the APR, MASSDE reported on the participation and performance of children with disabilities on Massachusetts' State-wide assessment. MASSDE concluded that it exceeded the State and Federal goal of

participation with 99% of all students with disabilities participating. MASSDE also reported that although students with disabilities made Adequate Yearly Progress (AYP) in English in school year 2002-2003, they did not meet AYP targets in mathematics. MASSDE described a variety of improvement strategies it is using to improve performance of children with disabilities on these assessments. OSEP looks forward to reviewing the implementation of these strategies and the impact on children with disabilities in the next APR.

#### Children with Disabilities Educated with Nondisabled Peers to the Maximum Extent Appropriate

OSEP's June 2000 Monitoring Report identified that MASSDE was out of compliance because children with disabilities placed in substantially separate educational environments did not have opportunities for participation with nondisabled children in nonacademic and extracurricular services and activities. On page 2 of the July 2003 Progress Report, MASSDE reported data from its monitoring system concluding that it was "substantially compliant." The July 2003 Progress Report on page 2, and the APR on page 14 of the FAPE section, identified compliance at 91% in FY 02 on the indicator (SE 1 #2c) it used to determine if the district, in interpreting evaluation data and making decisions, ensures that the placement decision conforms with placements in the least restrictive environment. MASSDE also indicated that the Steering Committee wanted to examine placement data by disability when the data became available. As noted on page 13 of the FAPE section of the APR, MASSDE would have the data available for analysis and reporting from the 2003-2004 school year to review district placement patterns against State patterns and identify benchmarks for each placement type.

In addition, in the July 2003 Progress Report on page 2 and the APR on page 14 of the FAPE section, MASSDE reported compliance at 73% in FY 02 on the indicator (SE20) it used to determine if the least restrictive program was selected. OSEP could not determine whether this indicator demonstrates noncompliance with the least restrictive environment requirements in 34 CFR §§300.550-300.556. Within 60 days of the date of this letter, MASSDE must provide clarification to OSEP, and if this indicator does demonstrate noncompliance, MASSDE must also submit data and analysis demonstrating that the noncompliance has been corrected. MASSDE can satisfy this requirement by providing documentation that it has corrected the noncompliance in the districts it identified as noncompliant on indicator SE 20 in FY 02.

In the next APR, MASSDE must include the results of its review on placement patterns and continue to report on ensuring the requirements regarding placement in the least restrictive environment are met. In the next APR, OSEP looks forward to reviewing data collected based on changes MASSDE is making to its data collection system in order to ensure more reliable and accurate placement data.

#### Early Language/Communication, Pre-Reading, and Social-Emotional Skills of Preschool Children with Disabilities

On pages 14 through 15 of the FAPE section of the APR, MASSDE provided data and information regarding the performance of inclusive early childhood education programs in which children with disabilities are placed. MASSDE reported that over 70% of randomly-sampled preschool programs rated as good overall on the Early Childhood Environmental Rating Scale. Subscale analyses indicated 74% were highly rated in the area of language and reasoning, and 87% positively supported children's socio-emotional development. Data from a national study found that only 10% of the preschool classrooms studied met the benchmark for quality. MASSDE concluded that the quality of its preschool programs was very high based on this comparative data and proposes maintenance strategies to ensure continued quality performance. While MASSDE reported on the quality of its preschool programs, it did not discriminate the performance of children with disabilities from their nondisabled peers. Under 20 U.S.C. 1418(a)(2) States are required to provide information that the Secretary requires. Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA section 619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. In the FFY 2003 APR, Massachusetts must either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for this area, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan.

### ***Secondary Transition***

OSEP's June 2000 Monitoring Report identified that MASSDE was out of compliance in the following areas for secondary transition: (1) outcome-oriented statements of transition services for students with disabilities who are age 16 or older were missing; (2) districts did not have a method for ensuring that outside agencies likely to be providing or paying for post-school activities were invited to the IEP meeting and that there was a method for obtaining their input if they did not attend; (3) students with disabilities were not always invited to meetings if transition planning is a purpose of the meeting; and (4) IEPs did not always include a statement of transition service course of study for students with disabilities beginning at age 14. In the July 2003 Progress Report, MASSDE reported decreases in some indicators of compliance with transition requirements through its monitoring and reported an 87%-91% level of compliance rate for inviting students with disabilities to transition meetings. The APR on page five of the Secondary Transition section indicated a 93% compliance level for the indicators on students being invited to participate in IEP meetings where transition planning is a purpose of the meeting.

MASSDE must continue to report on its progress in ensuring that students are invited to meetings about transition services in the next APR.

In the other three areas of noncompliance indicated above, the APR on pages one through three of the Secondary Transition section indicated that compliance through MASSDE's monitoring system ranged from 75-98% during FY 2001 and 71-95% during the FY 2002 on the eight indicators it used to determine compliance regarding secondary transition, with some areas showing a decline in compliance. While MASSDE has initiated activities in its improvement plan to correct noncompliance in this area, the data provided by MASSDE does not demonstrate that noncompliance has been corrected. The APR, on page 4 of the Secondary Transition section, states that MASSDE's FY 04 Continuous Improvement Plan (CIP) will focus on transition in a number of ways at the level of the IEP meeting, through planning discussions, and through data gathering. In addition, in school year 2003-2004 MASSDE applied for and received a State Improvement Grant (SIG) with a focus on secondary transition. The APR identified some of the SIG/Project FOCUS activities that MASSDE is implementing to improve compliance in this area. OSEP accepts the revised strategies submitted as part of MASSDE's FFY 2002 APR to address this area of noncompliance. MASSDE must submit an interim progress report in the next APR (due on March 31, 2005) and a final progress report by June 1, 2005 containing data and analysis demonstrating full compliance in this area. Failure to demonstrate correction of the noncompliance within required timelines may impact MASSDE's FFY 2005 grant award under Part B of IDEA.

### ***Conclusion***

Regarding the issues identified in our 2000 monitoring report, MASSDE has completed all activities for issue 14 (ensuring that children with disabilities attending charter schools receive FAPE) and we are closing this issue. MASSDE must continue to report in the next APR on ensuring full compliance with issues #1 (parent involvement), #3 (psychological counseling), #4 (extended school year services), #6 (opportunity to be involved and progress in the general curriculum), #7 (opportunity for involvement in regular vocational education programs), #10 (invite student to IEP meeting if transition planning is a purpose of the meeting), #12 (monitoring to ensure timely identification and correction of noncompliance), and #13 (timely complaint resolutions). The data in the July 2003 Progress Report and the FFY 2002 APR do not demonstrate compliance with issues #2 (IEP development), #5 (opportunities for children with disabilities placed in substantially separate educational environments to participate with nondisabled children in nonacademic and extracurricular services and activities), and #8, #9, and #11 (secondary transition requirements).

By December 2004, MASSDE must provide a report on its progress of changes to its due process system to ensure that decisions are issued within required timelines. (34 CFR

§300.511). In addition, in the next APR, MASSDE must provide evidence of correction of the noncompliance, including supporting data and its analysis.

Within 60 days of the date of this letter, MASSDE must:

(a) submit data and analysis demonstrating that the noncompliance regarding issue #2 (IEP development) has been corrected. MASSDE can satisfy this requirement by providing documentation that it has corrected the noncompliance for districts identified as noncompliant during MASSDE's FY 2002 monitoring on indicator SE 18A#1, SE 18#2 and SE 49. In addition, MASSDE must continue to report in the next APR on its progress in ensuring full compliance with this issue;

(b) provide clarification on SE 20 (least restrictive program selected), and if this indicator does demonstrate noncompliance with the least restrictive environment requirements in 34 CFR §§300.350-300.356, MASSDE must also submit data and analysis demonstrating that the noncompliance has been corrected. MASSDE can satisfy this requirement by providing documentation that it has corrected the noncompliance in the districts it identified as noncompliant on indicator SE 20 in FY 02;

(c) submit a plan to collect data required in 34 CFR §300.381, including data that can effectively be used to evaluate special education and licensure and vacancy needs. The plan must include strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approves the plan. In the next APR, MASSDE must include data and analysis demonstrating progress toward compliance and provide a report to OSEP, with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one-year timeline; and

(d) provide either: (1) data and analysis demonstrating compliance with the early childhood transition requirements in 34 CFR §§300.132 and 300.121(c); or (2) a plan that includes strategies, targets, proposed evidence of change, and timelines designed to achieve compliance within a reasonable period of time, not to exceed one year from when OSEP accepts the plan. In the next APR, MASSDE must include data and analysis demonstrating progress toward compliance, and a report to OSEP with data and analysis demonstrating compliance, as soon as possible, but not later than 30 days following the end of the one year timeline.

In the FFY 2003 APR, due on March 31, 2005, MASSDE must:

(a) submit data and analysis, rather than just procedure, on the extent to which specific noncompliance that MASSDE has identified through monitoring, complaints and hearing resolutions has been corrected in a timely manner;

(b) report on the specific systemic change activities it undertook in the 2003-2004 school year, including its analysis of the impact of those activities on performance and compliance;

(c) continue to include strategies and data to demonstrate improvement in timely

complaint resolutions;

(d) provide data and analysis on changes to its data collection system and its progress in collecting and reporting data on personnel, discipline, and private/public school special education placements;

(e) submit an interim progress report on its compliance with the following secondary transition requirements: 34 CFR §§300.29 and 300.347(b)(2) (outcome-oriented statements of transition services for students with disabilities who were age 16 or older); 34 CFR §300.344(b)(3) (method for ensuring that outside agencies likely to be providing or paying for transition services were invited to the IEP meeting and that there was a method for obtaining their input if they do not attend); and 34 CFR §300.347(b) (1) (a statement of transition services needs for students with disabilities beginning at age 14). In addition, MASSDE must submit a final progress report by June 1, 2005 containing data and analysis demonstrating full compliance regarding the issues # 8, # 9, and # 11;

(f) either submit documentation of data (whether collected through sampling, monitoring, individual IEP review, or other methods), targets for improved performance and strategies to achieve those targets for skills of preschool children with disabilities, or a plan to collect the data for the FFY 2004 APR, including a detailed timeline of the activities necessary to implement that plan, for demonstrating that early language/communication, pre-reading, and socio-emotional skills of preschool children with disabilities receiving special education and related services are improving;

(g) submit baseline data and analysis of disproportionality in the identification and placement of children with disabilities and, if it identifies significant disproportionality, the results of its review (and if appropriate revision) of policies, procedures and practices to ensure that they are race neutral, educationally appropriate and consistent with Part B;

(h) include baseline data and its analysis of the dropout and graduation performance of students with disabilities; and

(i) include baseline data and provide an analysis of its compliance regarding suspension and expulsion rates for students with disabilities compared among local education agencies (LEAs) in the State or to the rates for nondisabled children within the agencies.

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 children and youth with disabilities and their families. If you have questions, please contact Dr. Ken Kienas at (202) 245-7621.

Sincerely,

Page 14 – Commissioner David P. Driscoll

/s/Patricia J. Guard for

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Ms. Marcia Mitnacht