



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

MAR 2 2012

Honorable Albert A. Delia
Acting Secretary
North Carolina Department of Health and Human Services
2001 Mail Service Center
Raleigh, North Carolina 27699-2001

Dear Secretary Delia:

This letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) Continuous Improvement Visit (CIV) to the North Carolina Department of Health and Human Services (NCDHHS) during the week of November 14, 2011. As indicated in our letter to the State dated March 29, 2011, the visit consisted of two components: (1) the verification of State systems for implementing key requirements of Part C of the Individuals with Disabilities Education Act (IDEA); and (2) a collaborative focus on improving results.¹ The CIV is designed to ensure compliance and improve performance with Part C of the IDEA, consistent with sections 616 and 642 of the IDEA.

The purpose of the verification component of the visit is to review the State's systems for general supervision and fiscal management. OSEP developed critical elements that were used to guide its evaluation of North Carolina's general supervision (including data) and fiscal systems. The Enclosure to this letter describes the scope of OSEP's review of the State's systems and briefly outlines relevant statutory and regulatory requirements for each critical element.

OSEP is currently in the process of conducting a comprehensive review of States' systems for implementing the fiscal requirements of the IDEA and related statutes and regulations, through the CIVs and other mechanisms, including the desk audits that OSEP's Recovery Act Facilitators are conducting with all States. In order to provide each State with a comprehensive, integrated response based on its review of States' fiscal systems, OSEP will be sending the State a separate letter addressing any fiscal issues, and has not included a fiscal section in the Enclosure.

During the verification component of the visit, OSEP found noncompliance, and has required corrective action, in the following areas: (1) the State complaint procedures in 34 CFR §§303.510 through 303.512;² and (2) the mediation requirements in 34 CFR §303.419 (as modified by IDEA sections 615(e) and 639(a)(8)).

As stated in the Enclosure to this letter, North Carolina must review and determine if it will update its interagency agreement and any other written method, to ensure financial responsibility for IDEA Part C services provided, or paid for, by other State-level agencies. If the State elects

¹ During the week of November 14, 2011, OSEP also conducted its Part B CIV to the North Carolina Department of Public Instruction.

² The IDEA Part C regulations cited in this letter are to the regulations with which States must comply during FFY 2011 and which were in effect prior to the publication of the new IDEA Part C regulations published in 76 Federal Register 60140 on September 28, 2011, unless otherwise noted.

to update its method, the State must submit such method with its FFY 2012 IDEA Part C grant application; otherwise, the State must indicate "No" and provide a date in the appropriate responses to Section II.A.3 of the FFY 2012 IDEA Part C grant application.

Generally, the Enclosure to this letter does not include descriptions of the State's systems because this information is available on the State's Web site in North Carolina's State Performance Plan. OSEP's analysis of each critical element and any required actions, if noncompliance was identified during the visit, are provided in the Enclosure to this letter.

During the CIV, North Carolina also focused on improving early intervention results and functional outcomes for infants and toddlers with disabilities. Prior to the visit, North Carolina participated in a process with OSEP to focus its efforts on State Performance Plan/Annual Performance Report Indicator 4A, the percent of families participating in Part C who report that early intervention services have helped the family know their rights. With OSEP's participation, NCDHHS and stakeholders engaged in a facilitated process to examine the data, as well as current and past efforts to improve results in the Family Outcomes area, and formulate strategies that North Carolina will employ to improve results for children with disabilities in its selected area. The stakeholders included participants from the Early Intervention Central Office, Children's Developmental Services Agency staff, parents, the State Interagency Coordinating Council (SICC), the Exceptional Children's Assistance Center, the Autism Society of North Carolina, the Early Childhood Outcomes Center, the National Early Childhood Technical Assistance Center, the Mid-South Regional Resource Center, and the Data Accountability Center. North Carolina is developing a plan that includes specific benchmarks for improvement, as well as, timelines, resources, and measurements for NCDHHS to improve results. NCDHHS will publish this plan with updates on the State lead agency's Web site at <http://www.beearly.nc.gov/>.

OSEP appreciates the cooperation and assistance provided by your State staff and others, including staff from the North Carolina Parent Training and Information Center, the SICC, and parents of infants and toddlers with disabilities in providing feedback and input on the State's systems for providing early intervention services to infants and toddlers with disabilities. We look forward to collaborating with all stakeholders and actively working with the State to improve results for infants and toddlers with disabilities and their families. If you have any questions or wish to request technical assistance, please do not hesitate to call your OSEP State Contact, Danny Rice, at 202-245-7888.

Sincerely,



Melody Muswe, Ed.D
Director
Office of Special Education Programs

Enclosure

cc: Sherry Franklin
Part C Coordinator

North Carolina Part C Continuous Improvement Visit Letter

Enclosure- Verification Component

Scope of Review

During the verification component of the Continuous Improvement Visit (CIV), OSEP reviewed critical elements of the State's general supervision and fiscal systems,¹ and the State's systems for improving functional outcomes for infants and toddlers with disabilities and protecting child and family rights. We also reviewed the State's policies and procedures for ensuring the appropriate tracking, reporting and use of IDEA funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

Methods

In reviewing the State's systems for general supervision, including the collection of State-reported data,² and fiscal management, and the State's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the State's general supervision and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed the State's systems for collecting and reporting data the State submitted for selected indicators in the State's Federal Fiscal Year (FFY) 2009 State Performance Plan (SPP)/Annual Performance Report (APR)
- Reviewed the following—
 - Previous APRs
 - The State's application for funds under Part C of the IDEA
 - Previous OSEP monitoring reports
 - The State's Web site
 - Other pertinent information related to the State's systems³
- Gathered additional information through surveys, focus groups or interviews with—
 - The Part C Coordinator
 - State personnel responsible for implementing the general supervision, data, and fiscal systems
 - The State Interagency Coordinating Council
 - Parents and Advocates
 - The North Carolina Protection and Advocacy agency

The North Carolina Department of Health and Human Services (NCDHHS) is the North Carolina Part C lead agency. North Carolina's Early Intervention (EI) Program is

¹ As explained in the cover letter, OSEP will respond to the fiscal component of the review under separate cover.

² For a description of the State's general supervision system, including the collection of State reported data, see the State Performance Plan (SPP) on the State's Web site.

³ Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

organizationally located in NCDHHS, in the Division of Public Health (DPH). Within the Women's and Children's Health Section of DPH, the EI Branch manages the program on a statewide level. The State's early intervention service programs are 18 Children's Developmental Services Agencies (CDSAs) that manage the program at the local level. NCDHHS operates 14 (the CDSA staff are NCDHHS employees), while the other four operate under contracts with other State and local agencies. The lead agency reported in its most recent available IDEA section 618 Federal child count submission (for FFY 2010) that 9,842 infants and toddlers with disabilities received early intervention services (EIS).

General Supervision Systems

Critical Element 1: Identification of Noncompliance

Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?

To effectively monitor the implementation of Part C of the IDEA by EIS programs/providers, as required by IDEA sections 616, 635(a)(10)(A), and 642, and 34 CFR §§303.500 and 303.501,⁴ the State must have a general supervision system that identifies noncompliance in a timely manner.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to identify noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 2: Correction of Noncompliance

Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?

To effectively monitor the implementation of Part C of the IDEA by EIS programs/providers, as required by IDEA sections 616, 635(a)(10)(A), and 642, and 34 CFR §§303.500 and 303.501, the State must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act, dated October 17, 2008 (OSEP Memo 09-02), in order to verify that previously-identified noncompliance has been corrected, the State must verify that the EIS program and/or provider: (1) is correctly implementing the specific regulatory requirements (i.e. achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has

⁴ Unless otherwise noted, the IDEA Part C regulations cited in this letter are to the regulations with which States must comply during FFY 2011 and which were in effect prior to the publication of the new IDEA Part C regulations published in 76 *Federal Register* 60140 on September 28, 2011, which are referred to in this Enclosure as the "new" regulations.

corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the EIS program and/or provider.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to correct noncompliance in a timely manner. However, because the State's reported data for timely correction of noncompliance findings in Indicator C9 in the FFY 2009 APR were 88%, OSEP cannot conclude that the State's systems are fully effective in correcting noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 3: Dispute Resolution

Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?

The State must have procedures and practices that are reasonably designed to implement the following IDEA Part C dispute resolution requirements: the State Complaint procedures in 34 CFR §§303.510-303.512; and the mediation and due process procedure requirements in 34 CFR §§303.419 through 303.425 (as modified by IDEA sections 615(e) and 639(a)(8)).

State Complaints

When a complainant alleges noncompliance with Part C in a State complaint, the Part C regulations in 34 CFR §303.512(a)(4) require that the State issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the lead agency's decision. Although the State's Notice of Child and Family Rights notes these requirements for its written complaint decisions, the State did not include the required content in all of its complaint decisions in FFY 2010. OSEP reviewed the decision letters from FFY 2010 that the lead agency sent to the complainants for the two FFY 2010 complaints for which the State issued decisions,⁵ and found that one of the two decision letters did not contain findings of fact and conclusions and the reasons for the lead agency's decision.

Mediation

OSEP reviewed the State's Notice of Child and Family Rights, in which it states that: "Mediation must occur within thirty (30) calendar days of the receipt of a request for mediation." Both the State's Notice of Child and Family Rights, and the State's Policy Bulletin #17, require the 30-day limit on mediation to be applied regardless of whether both parties wish to continue mediation.

The Federal Part C regulations do not contain a specific timeline for completing mediation, but specify, in 34 CFR §303.419(b)(4), that each session in the mediation process must be scheduled in a timely manner. Further, under 34 CFR §303.419(b)(1), mediation must be voluntary.

⁵ The State reported in its IDEA section 618 data for dispute resolution that it received a total of four complaints in FFY 2010, two of which were withdrawn or dismissed.

OSEP finds that a 30-day timeline for mediation is inconsistent with the voluntary nature of mediation in 34 CFR §303.419(b)(1) unless the State further clarifies that its 30-day timeline for mediation may be extended if the parties jointly agree to such an extension.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State personnel, as described above, OSEP concludes that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA Part C, except that, as detailed above, the State has: (1) not met the requirement in 34 CFR §303.512(a)(4) to ensure that when a State complaint is filed alleging noncompliance with Part C, the State issues a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the lead agency's decision; and (2) imposed an inflexible 30-day limitation on mediation that is inconsistent with the requirements in 34 CFR §303.419.

Required Actions/Next Steps

Within 90 days from the date of this letter, NCDHHS must: (1) provide to OSEP an assurance that its complaint decisions will contain findings of fact and conclusions and the reasons for the State's final decision, as required by 34 CFR §303.512(a)(4); and (2) provide documentation that it has revised its policies, procedures, and guidance documents (including the State's Notice of Child and Family Rights and the State's Policy Bulletin) to either: (a) clarify that mediation may be extended beyond 30 days at the joint request of the parties; or (b) remove the 30-day limitation on mediation.

With its FFY 2011 Annual Performance Report, due February 1, 2013, NCDHHS must provide: copies of any written complaint decisions issued since OSEP's November 2011 CIV.

Critical Element 4: Data System

Does the State have a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance?

To meet the requirements of IDEA sections 616, 618, 635(a)(14), 642, 34 CFR §303.540, and OSEP Memorandum 10-04: Part C State Performance Plan (Part C – SPP) and Part C Annual Performance Report (Part C – APR), the State must have a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

Required Actions/Next Steps

No action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant application requirements, i.e., monitoring and enforcement related to local determinations and State-level interagency coordination?

The State must have procedures and practices that are reasonably designed to ensure that the State is implementing the following grant application requirements: (1) monitoring and enforcement related to local determinations pursuant to IDEA sections 616 and 642; and (2) State-level interagency fiscal coordination to ensure that methods are in place under IDEA sections 635(a)(10), and 637(a)(2).

State-level Fiscal Interagency Coordination or Methods

With regard to State-level interagency fiscal coordination, in any State or entity that receives IDEA Part C funds where a State-level agency, other than the State lead agency, provides or pays for IDEA Part C services, the lead agency must have a method for ensuring the financial responsibility for those services as required by IDEA sections 635(a)(10), 637(a)(2), and 640. Beginning with the FFY 2012 IDEA Part C grant application, any State that is required to have a method must certify that the State has a method in place, and that method may be a State statute or regulation, interagency agreement, or other appropriate written method. The State may either indicate in Section II.A.3 of its FFY 2012 IDEA Part C grant application that its method meets the requirements of Subpart F of the new IDEA Part C Final Regulations (new 34 CFR §§303.500 through 303.521), which were published on September 28, 2011, or the State may indicate "No" and provide a date not later than July 30, 2013. In addition, if the State's method is an interagency agreement or other written method (i.e., anything other than a State statute or regulation) and the State has updated the agreement or other written method, the State must submit that method with its FFY 2012 IDEA Part C grant application.

During the CIV, the State submitted an inter-agency agreement between NCDHHS and the North Carolina Department of Public Instruction (DPI) from July 1, 2006, which is outdated. State personnel indicated that they were in the process of creating a new interagency agreement with DPI, under which DPI may pay for some services. If the State updates its agreement as its method to ensure the financial responsibility for IDEA Part C services, the State should submit the updated agreement with its FFY 2012 IDEA Part C grant application. State personnel also noted that the State Schools for the Deaf and Blind may be providing some Part C services. To the extent that the Schools are providing Part C services, the State must also have a method in place for ensuring the financial responsibility for those services. In resolving these matters, North Carolina should carefully review OSEP's IDEA Part C Grant Application Technical Assistance Checklist for Fiscal Certification required under new 34 CFR §303.202, at <http://osep-part-c.tad.net.org/materials>. If North Carolina has any questions about updating its methods or this fiscal certification, OSEP remains available to provide technical assistance.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State has procedures and practices that are reasonably designed to implement selected grant application requirements regarding monitoring and enforcement related to local determinations. OSEP will review and respond separately to the State's IDEA Part C grant application.

Required Actions/Next Steps

Through the IDEA Part C grant application process, OSEP will review, and respond to, any methods the State elects to update and submit as part of its FFY 2012 application under IDEA sections 637(a)(2) and 640 to ensure financial responsibility for the provision of Part C services.