

DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT OFFICE OF SPECIAL EDUCATION PROGRAMS U.S. DEPARTMENT OF EDUCATION

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

September 11, 2020

Honorable Alissa Trollinger
Deputy Associate Superintendent
Exceptional Student Services
Arizona Department of Education
1535 W. Jefferson, Bin #24
Phoenix, Arizona 85007
Alissa.Trollinger@azed.gov

Dear Deputy Associate Superintendent Trollinger:

The purpose of this letter is to follow up on the technical assistance (TA) visit conducted by the U.S. Department of Education's (Department) Office of Special Education Programs (OSEP) with the Arizona Department of Education (ADE) on April 10–11, 2019. The goal of the visit was for OSEP to obtain information from ADE regarding the State's implementation of requirements related to early childhood transition to preschool services under the Individuals with Disabilities Education Act (IDEA) and the State's monitoring of preschool programs under Section 619 of IDEA, and to verify the status of corrective actions required of ADE to resolve prior findings of fiscal noncompliance.¹ This letter addresses only ADE's implementation of requirements related to IDEA Section 619 and early childhood transition to preschool services only, as OSEP will address ADE's correction of the fiscal noncompliance under separate cover.

In the week prior to the TA visit with ADE, OSEP conducted a differentiated monitoring and support (DMS) on-site visit with the Arizona Early Intervention Program (AzeIP), the lead agency responsible for implementing the IDEA Part C early intervention program in Arizona. OSEP's DMS visit with AzeIP focused primarily on early childhood transition from IDEA Part

¹ Arizona's IDEA Part B DMS report, dated July 3, 2018, can be found at <https://www2.ed.gov/fund/data/report/idea/dmsrpts/index.html#b-az>. During the April 10, 2019 technical assistance visit, OSEP specifically addressed several findings of fiscal noncompliance originally identified in OSEP's May 5, 2016, fiscal monitoring letter, and for which ADE had not yet demonstrated correction. Since that visit, ADE demonstrated correction of several of those findings. ADE has submitted documents to OSEP to resolve two remaining corrective actions, as required by the July 3, 2018 DMS report. Those documents are currently under review by OSEP, and OSEP will respond to that submission under separate cover. One corrective action still needs to be completed by ADE prior to a closeout letter being issued.

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

C to IDEA Part B preschool programs.² During the DMS visit, in an effort to obtain complete information about the State's comprehensive system of early intervention services and early childhood transition for infants and toddlers with disabilities, OSEP met with representatives from ADE's Office of Exceptional Student Services (ESS), and staff from the Section 619 office, which is a part of the Early Childhood Education (ECE) unit of ADE, to discuss the State's policies and procedures to ensure a smooth and effective transition to IDEA Part B preschool programs for children participating in IDEA Part C early intervention programs and found to be potentially eligible for IDEA Part B services, as required by IDEA Section 612(a)(9) and 34 C.F.R. § 300.124.

The enclosure describes the: 1) background; 2) requirements related to transition from IDEA Part C early intervention programs to IDEA Part B preschool programs; 3) the State educational agency's obligation to monitor preschool programs under IDEA Part B; and 4) OSEP's conclusions including Next Steps and Required Actions. It also provides the specific details pertaining to each determined finding of noncompliance, along with the respective citation(s); and the corrective actions required to address the identified findings of noncompliance.

We appreciate your efforts to improve results for infants and toddlers with disabilities. If you have any questions, please contact Kathleen Heck, your OSEP State Lead, at 202-245-6465.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs

Enclosure

² Arizona's IDEA Part C DMS report, dated January 13, 2020, can be found at <https://www2.ed.gov/fund/data/report/idea/dmsrpts/index.html#c-az>.

ENCLOSURE

Background

During the on-site technical assistance (TA) visit, Arizona Department of Education (ADE) staff clarified the organizational structure and role of ADE in the State's comprehensive system of early intervention services and early childhood transition for infants and toddlers with disabilities. ADE staff reported that both Exceptional Student Services (ESS) and Early Childhood Education (ECE) fall under ADE, but ESS is housed within the Division of Highly Effective Schools, and the ECE unit is under the Division of High Academic Standards. ADE staff explained that the monitoring, TA and training activities related to Individuals with Disabilities Education Act (IDEA) Part B Section 619 fall under ECE's scope of work. Furthermore, ADE staff reported that although ESS is the ADE unit responsible for ensuring that all public educational agencies (PEAs)³ in the State meet the program requirements under IDEA Part B, ESS is minimally involved in how ECE carries out its duties related to monitoring, technical assistance, and training activities under IDEA Section 619. ADE staff indicated that this organizational structure has created challenges and has been a barrier to ESS's ability to provide effective oversight of the IDEA Part B Section 619 programs.

OSEP's further discussion with ADE focused on the State's implementation of requirements governing transition from IDEA Part C to IDEA Part B programs and the State educational agency's (SEA) obligation to monitor its preschool programs under IDEA Part B.

Transition from IDEA Part C Early Intervention Programs to IDEA Part B Preschool Programs

Under IDEA Section 612(a)(9) and 34 C.F.R. § 300.124, States are required to have in effect policies and procedures to ensure that children participating in early intervention programs under IDEA Part C, and who will participate in preschool programs under IDEA Part B, experience a smooth and effective transition to those preschool programs in a manner consistent with IDEA Section 637(a)(9). By the child's third birthday, the State must ensure that an individualized education program or, if consistent with IDEA Sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child.

When OSEP requested information regarding the policies and procedures ADE has in effect to ensure a smooth and effective transition from early intervention programs under IDEA Part C to preschool programs under IDEA Part B, the only policy or procedure ADE provided was a document titled, Policies and Procedures for ADE's Early Childhood Unit 619: C to B Transition. That document refers to the State's processes related to the collection and reporting

³ Arizona uses the term "public educational agencies" (PEAs) to refer to their local educational agencies (LEAs), as defined in 34 C.F.R. § 300.28.

of early childhood transition data for IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR) Indicator 12,⁴ as well as related monitoring and TA activities, including correction of noncompliance related to Indicator 12. However, the document does not address other applicable early childhood transition requirements, such as policies and procedures related to participation in transition conferences, as required under IDEA section 612(a)(9) and 34 C.F.R. § 300.124(c), initial individualized education program (IEP) Team meetings, as required under IDEA section 614(d)(1)(D) and 34 C.F.R. §§ 300.321(f) and 300.323(c), and implementation of IEPs consistent with IDEA sections 612(a)(1)(A) and (a)(9) and 614(d)(2)(B) and 34 C.F.R. §§ 300.101(b), 300.124(b), and 300.323(b). The State indicated that, in addition to the SEA policies and procedures it provided (*i.e.*, the aforementioned document), each PEA has its own policies and procedures related to IDEA Part B Section 619 that are used to guide early childhood transition at the local level⁵.

The SEA's Obligation to Monitor Preschool Programs Under IDEA Part B

Under IDEA Sections 612(a)(11) and 616, and 20 U.S.C. 1232d(b)(3)(A) and (E),⁶ in order to effectively monitor the implementation of Part B of the IDEA, the State must have policies and procedures that are reasonably designed to ensure that the State can meet:

1. Its general supervisory responsibility as required in 34 C.F.R. § 300.149;
2. Its monitoring responsibilities in 34 C.F.R. §§ 300.600 through 300.602; and
3. Its responsibility to annually report on performance of the State and of each local educational agency, as provided in 34 C.F.R. § 300.602(b)(1)(i)(A) and (b)(2).

Under 34 C.F.R. § 300.600(a)(1), the State must monitor the implementation of IDEA Part B and under 34 C.F.R. § 300.600(a)(4) must report annually on the performance of the State and each LEA on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the State must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 300.600(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 300.600(c). Section 616(a)(3) of IDEA requires the Secretary to establish indicators as needed to adequately measure performance in the priority areas specified in section 616(a)(3), and SPP/APR Indicator 12 is a longstanding indicator established by the Secretary as one of the measures that assess whether a State is meeting

⁴ IDEA Part B SPP/APR Indicator 12 measures the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.

⁵ OSEP did not require ADE to submit PEA-level documents as part of this TA activity. Therefore, OSEP is unable to determine whether PEA's policies and procedures are consistent with requirements related to transition from IDEA Part C to IDEA Part C preschool programs, consistent with IDEA Section 612(a)(9) and 34 C.F.R. § 300.124.

⁶ Under 20 U.S.C. 1232d(b)(3)(A) and (E), a State that makes subgrants to LEAs under a Department-administered program must submit an application containing assurances that the State will monitor agencies responsible for carrying out the program, enforce any obligations imposed on those agencies under law, and correct deficiencies in program operations identified through monitoring or evaluation.

program requirements, including effective monitoring and a system of transition services as defined in section 637(a)(9). The State must also collect valid and reliable information as needed to report annually to the Secretary on the SPP/APR indicators, as required under Section 616(b)(2)(B) and 34 C.F.R. § 300.601(b). However, a State's monitoring responsibilities are not limited to only monitoring its LEAs' compliance with SPP/APR indicators, but also include monitoring its LEAs' compliance with the requirements of IDEA Part B that underlie the indicators, in order to ensure that the SEA can effectively carry out its general supervision responsibility under IDEA Part B, consistent with 34 C.F.R. § 300.149(a).

Under 34 C.F.R. § 300.600(b), the State's monitoring activities must primarily focus on:

1. Improving educational results and functional outcomes for all children with disabilities; and
2. Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 300.600(d), the State also must ensure that when it identifies noncompliance with IDEA Part B requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance, as required under 34 C.F.R. § 300.600(e).

Further, under 34 C.F.R. § 300.149(b), the State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 C.F.R. §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

OSEP requested information, including policies and procedures, regarding how ADE fulfills its general supervision responsibility and ensures that all educational programs for children with disabilities administered in the State meet IDEA Part B Section 619 requirements. In addition, OSEP requested to review copies of ADE's monitoring protocols, monitoring reports, letters of finding, and corrective actions, or other evidence that would demonstrate that ADE has exercised oversight of its PEAs, including identifying noncompliance and ensuring timely correction of the noncompliance, consistent with 34 C.F.R. § 300.600(e) and 20 U.S.C. 1232d(b)(3)(A) and (E), OSEP's Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the SPP/APR, dated September 3, 2008, and OSEP Memorandum 09-02 (OSEP Memo 09-02), issued October 17, 2008.

Neither ESS nor ECE staff were able to provide any documentation to demonstrate that the State is exercising oversight over its PEAs to ensure that they meet the program requirements under IDEA Section 619. Specifically, the State was unable to provide monitoring protocols, monitoring reports, letters of finding, or corrective actions related to IDEA section 619 requirements, as requested by OSEP. In discussions with the State during and following the visit,

ESS staff acknowledged that the State has no comprehensive monitoring system in place to ensure PEAs' compliance with the requirements of IDEA Section 619 and, as a result, implementation of IDEA section 619 was inconsistent across the PEAs in the State. Staff also reported there were potential issues related to the collection and reporting of data for IDEA Part B SPP/APR Indicator 12 because there is no mechanism in place to ensure that PEAs are reporting valid and reliable data for the IDEA Section 619 programs.

OSEP Conclusions

Based on interviews with ADE staff and the review of documents, OSEP concludes that the State is not exercising its general supervisory and monitoring responsibilities related to transition from IDEA Part C early intervention programs to IDEA Part B preschool programs, because the State does not have sufficient policies and procedures in place to ensure that children with disabilities participating in early intervention programs under IDEA Part C and who will participate in preschool programs under IDEA Part B experience a smooth and effective transition to those preschool programs in a manner consistent with IDEA Section 637(a)(9), as required by IDEA Sections 612(a)(9) and (11) and 616(a), and 34 C.F.R. §§ 300.124, 300.149, and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E).

Additionally, based on interviews with ADE staff and the review of documents, OSEP concludes that the State is not exercising its general supervisory and monitoring responsibilities related to IDEA Section 619, because the State does not have sufficient policies and procedures for PEAs to follow in implementing the requirements of IDEA Section 619, as required by IDEA Sections 612(a)(11) and 616(a), 34 C.F.R. §§ 300.149 and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E).

OSEP notes that, although for the purpose of this on-site visit, OSEP did not collect additional information regarding data validity, the information that the State provided regarding its Section 619 program raises concerns about the validity and reliability of the State's SPP/APR Indicator 12 data. Due to gaps and inconsistencies in the State's monitoring practices and lack of oversight, the State appears to have no mechanism in place to ensure that it is collecting valid and reliable data related to its Section 619 programs. A key part of a State's monitoring and general supervisory responsibilities under IDEA is the collection and submission of valid and reliable data, as required under IDEA section 616(b) and 34 C.F.R. § 300.601(b). As the SEA, ADE is responsible for the monitoring and general supervision of its Section 619 programs, and must have a system in place to ensure those programs are complying with IDEA Part B requirements, including the submission of valid and reliable data related to the Section 619 programs.

OSEP acknowledges the work that the State has done since the visit, including the changes it has made to its organizational structure to ensure that it is meeting the requirements of IDEA. As of July 1, 2020, the Section 619 office is no longer a part of the ECE unit, but now falls under the

authority of ESS. The State reported that this change is in response to the feedback OSEP has provided over the past year and will enable ESS leadership to implement changes to address issues related to general supervision and monitoring, TA, and training activities under IDEA. The State also reported that it is working on revising its policies and procedures accordingly to ensure comprehensive fulfillment of statutory and regulatory requirements to ensure a smooth and effective transition to IDEA Part B preschool programs for children participating in IDEA Part C early intervention programs and found eligible for IDEA Part B services.

Required Actions/Next Steps

- A. Within 90 days from the receipt of this letter, ADE must submit a written plan to OSEP that includes a timeline, as well as steps it will take, to:
1. Develop and adopt final written policies and procedures that are reasonably designed:
 - a. To ensure a smooth and effective transition to IDEA Part B preschool programs for children with disabilities who are participating in IDEA Part C early intervention programs and found eligible for IDEA Part B services, in a manner consistent with IDEA Section 637(a)(9), as required by IDEA Section 612(a)(9) and 34 C.F.R. § 300.124; and
 - b. To ensure the State monitors PEAs' implementation of all of the requirements related to transition from IDEA Part C early intervention programs to IDEA Part B preschool programs, including identifying noncompliance and ensuring timely correction of any identified noncompliance in accordance with the requirements in 34 C.F.R. § 300.600(e) and OSEP Memo 09-02⁷, as required by IDEA Sections 612(a)(11) and 616(a), 34 C.F.R. §§ 300.149 and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E);
 2. Develop and adopt final written policies and procedures that are reasonably designed:
 - a. To ensure PEAs carry out the requirements of IDEA Section 619 consistent with IDEA and its implementing regulations, including policies and procedures related to transition conferences as required in IDEA section 612(a)(9) and § 34 C.F.R. 300.124(c), initial IEP Team meetings as required in IDEA section 614(d)(1)(D) and 34 C.F.R. §§ 300.321(f) and 300.323(c), and implementation of IEPs as required in IDEA sections 612(a)(1)(A) and (a)(9) and 614(d)(2)(B) and 34 C.F.R. §§ 300.101(b), 300.124(b), and 300.323(b); and

⁷ Consistent with OSEP Memo 09-02, the policies and procedures must ensure the State will verify that previously identified noncompliance in a PEA has been corrected by verifying that the PEA: (1) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the PEA; and (2) 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.

- b. To ensure the State monitors PEAs' implementation of IDEA Section 619, including identifying noncompliance and ensuring timely correction of any identified noncompliance in accordance with the requirements in 34 C.F.R. § 300.600(e) and OSEP Memo 09-02⁸, as required by IDEA Sections 612(a)(11) and 616(a), 34 C.F.R. §§ 300.149 and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E); and
 3. Implement the final policies and procedures described in Required Actions A.1 and A.2 above, including:
 - a. Ensuring that educators who provide services in IDEA Section 619 programs are trained and aware of their responsibilities under the State's policies and procedures, consistent with the transition requirements in IDEA Sections 612(a)(9) and 637(a)(9), and 34 C.F.R. § 300.124, and IDEA Section 619 requirements; and
 - b. Notifying all PEAs, parent advocacy groups, and other interested parties that the State has developed and adopted written policies and procedures consistent with the required actions above.
- B. Within 120 days from the receipt of this letter, ADE must provide OSEP:
 1. The final written policies and procedures related to transition from IDEA Part C early intervention programs to IDEA Part B preschool programs, as detailed in Required Action A.1 above;
 2. The final written policies and procedures related to implementation of IDEA Section 619, as detailed in Required Action A.2 above;
 3. Documentation that demonstrates that the State is implementing the new policies and procedures; and
 4. Evidence that the State has disseminated the new policies and procedures to PEAs in the State, and that educators who provide services in IDEA Section 619 programs in Arizona are trained and aware of their responsibilities under those policies and procedures, consistent with IDEA requirements.
- C. By April 1, 2021, the State is required to provide evidence (e.g., monitoring protocols and reports) that it is exercising its responsibility to monitor PEAs' implementation of requirements related to transition from IDEA Part C early intervention programs to IDEA Part B preschool programs and requirements related to IDEA 619, including identifying noncompliance and ensuring timely correction of any identified noncompliance in accordance with the requirements in 34 C.F.R. § 300.600(e) and OSEP Memo 09-02.

⁸ See footnote 5.