

DMS REPORT

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

STATE **FLORIDA**

DATE JANUARY 19, 2021

IDEA PART C

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

January 19, 2021

Honorable Scott Rivkees, M.D.
Surgeon General
Florida Department of Health
Children's Medical Services
4052 Bald Cypress Way, Bin A00
Tallahassee, Florida 32339

Scott.Rivkees@flhealth.gov

Dear Surgeon General Rivkees:

The purpose of this letter is to provide a summary of the results of the differentiated monitoring and support (DMS) activities conducted by the U.S. Department of Education's (Department), Office of Special Education Programs (OSEP) during an on-site monitoring visit to the Florida Department of Health's (FDOH), Early Steps program on December 11–13, 2019 and post-visit monitoring interviews with select Local Early Steps (LES) programs in Florida during December 2019 and January 2020.

As part of the DMS process, OSEP conducts an organizational assessment (OA) of factors to identify States' progress in meeting performance standards and compliance with applicable requirements. These requirements are reflected in Part C of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, the Education Department General Administrative Regulations and the Office of Management and Budget's (OMB), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). OSEP uses the information from the OA and an Engagement Decision Tree to make decisions about how it will engage with States over the course of the Federal fiscal year (FFY). The FFY 2018 DMS areas were: 1) Results; 2) Compliance; 3) State Systemic Improvement Plan (SSIP); and 4) Fiscal Accountability.

On August 26, 2019, OSEP sent Florida's IDEA Part C DMS Notice to Renee Jenkins, FDOH's Early Steps Part C Coordinator. The DMS Notice indicated that FDOH was designated as needing "intensive" engagement under Part C of IDEA for results and "targeted" for Compliance and Fiscal Accountability. OSEP did not engage the Early Steps program regarding its SSIP, for which the level of engagement was determined to be "universal." For this area OSEP will continue to provide the State ongoing technical assistance. We have attached a copy of the DMS Notice for your convenience.

The results of OSEP's monitoring were gathered from:

- Interviews with representatives from FDOH (including staff from its Quality Assurance Accountability and Monitoring Unit, Policy and Professional Development Unit, its Special Projects Coordinator, State Parent Consultant and Early Steps State Office staff

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including, the Early Steps Part C Coordinator, Contract Manager, Data Manager, Fiscal, Policy and SSIP personnel).

- Interviews with local LES program representatives.
- Review of publicly available information, policies and procedures and other related documents submitted to OSEP from FDOH, which is the State lead agency responsible for implementing IDEA Part C requirements in Florida.
- Review of the State's systems for collecting and reporting its IDEA Part C data the State submitted for selected indicators in the State's State Performance Plan/Annual Performance Report.

As a result of the monitoring activities, OSEP identified one concern in the results area of early childhood outcomes and three findings of noncompliance with FDOH's implementation of its Early Steps IDEA Part C program. OSEP attributes the root causes of its concern and findings to FDOH's structure of the Early Steps program which has delegated its authority of various IDEA Part C requirements to its LES, early intervention service (EIS) programs, providers and other agencies, and organizations without maintaining its general supervisory responsibilities over the implementation of those requirements as the designated State lead agency.

Specifically, OSEP finds that FDOH has failed to:

1. Provide all early intervention services identified on the individualized family services plan (IFSP) of infants and toddlers with disabilities in a timely manner and ensure early intervention services are individualized to meet the needs of the child and family as determined by the IFSP team as required by IDEA Sections 635 and 636, as well as 34 C.F.R. §§ 303.12, 303.342, 303.343, and 303.344(d);
2. Monitor its LES/EIS programs for compliance as required by IDEA Section 635(a)(10) and 34 C.F.R. § 303.120(a) for fiscal requirements including the statewide system of payments policy and payor of last resort requirements in IDEA Section 640 and 34 C.F.R. §§ 303.510(b), 303.520, and 303.521; and
3. Ensure that the State has a methodology, including policies and procedures, to track all State and local funding sources to enable it to ensure compliance with the IDEA Part C Maintenance of Effort (MOE) requirements in 34 C.F.R. § 303.225(b).

The following enclosure provides a detailed description of the results of OSEP's monitoring, a detailed analysis of the findings of noncompliance and the required corrective actions FDOH will be required to implement as a result of the findings of noncompliance identified above.

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We appreciate your efforts to improve results for infants and toddlers with disabilities. If you have any questions, please contact Susan Kauffman, your OSEP State Lead, at 202-245-6432.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs

cc: Renee Jenkins, Part C Coordinator
Renee.Jenkins@flhealth.gov

Attachments:

Enclosure
DMS Notice
OSEP's June 23, 2020, Stop the Clock Memorandum

ENCLOSURE

The Office of Special Education Programs' (OSEP) differentiated monitoring and support (DMS) system is a component of Results Driven Accountability (RDA) to improve results for children with disabilities under the Individuals with Disabilities Education Act (IDEA). DMS is designed to help the U.S. Department of Education (Department) identify potential grantee risk and to assist OSEP, in effectively using its resources to monitor State grantees as they implement the IDEA. DMS addresses State-specific and Entity-specific needs in the areas of results, compliance, State Systemic Improvement Plan (SSIP), and fiscal accountability by differentiating levels and types of monitoring and support based on each State's and Entity's unique strengths, progress, and challenges in each area.

This enclosure provides a detailed description of OSEP's results from the DMS activities it conducted to review the Florida Department of Health's (FDOH's), Early Steps program implementation of IDEA Part C, during December 11–13, 2019, and monitoring interviews with select Local Early Steps (LES) programs in Florida. This enclosure also describes the one concern in the area of results and the three findings of noncompliance with IDEA Part C requirements and the corrective actions that FDOH must take to address those findings of noncompliance.

Background

FDOH is the State lead agency (LA) designated under IDEA Section 635(a)(10) that administers Florida's IDEA Part C program, Early Steps, in the State of Florida through its Children's Medical Services, Early Steps State Office. According to its December 1, 2020, Early Steps Program Annual Report,¹ FDOH is "responsible for program oversight, which includes, but is not limited to: administrative functions, Federal reporting, Federal grant management, fiscal accountability and the monitoring of contract compliance." Early Steps State staff consist of a Program Administrator (Part C Coordinator), two-unit supervisors, and a data analyst, programmatic, budgetary and contract management staff.

FDOH contracts with 14 LES programs that are the State's early intervention service (EIS) programs and which provide early intervention services directly or through subcontracts with other community EIS providers in 15 geographic regions throughout the State. The 14 LES/EIS programs consist of hospitals, universities, non-profit, private, and for-profit organizations. FDOH's EIS program contracts are structured around programmatic and fiscal deliverables such as:

- Child Find Plans;
- Business Continuation Response Plans;
- Funding Resource Plans; and
- Performance Improvement Plans.

¹ The December 1, 2020 Early Steps Program Annual Report, can be accessed at: http://www.cms-kids.com/providers/early_steps/reports/Earllystepsannualreport.pdf

According to FDOH's Early Steps Policy Handbook² "LES programs may hire direct staff or contract with enrolled individuals or agencies that employ enrolled individuals in each service area." LES programs are held responsible by the LA for:

- Providing professional development to staff;
- Making timely payments to community service providers for early intervention service claims;
- Developing policies and procedures for timely data collection, and database entry; and
- Providing oversight of its contracted staff and the agencies that employ its service providers.

The State indicated in its FFY 2020 IDEA Part C grant application that FDOH provides approximately \$20 million of its IDEA Part C funds to its LES programs for the provision of direct early intervention services.³ Through its statewide System of Payments (SoP) policy,⁴ FDOH utilizes public insurance, private insurance, State General Revenue (GR), and IDEA Part C funds to support its LES/EIS programs in funding the provision of early intervention services. The Early Steps State appropriation (including Medicaid match dollars) is approximately \$43 million⁵ and FDOH reported that approximately 70% of funding for the IDEA Part C Early Steps program is supported by Medicaid dollars.

Additionally, in 2014–2015 some early intervention services provided by Early Steps began to transition from a "fee-for service" model to Medicaid Managed Care.⁶ In December 2018, as part of Florida's Statewide Medicaid Managed Care (SMMC) expansion plan, additional early intervention services⁷ previously provided by Early Steps transitioned into Medicaid Managed Care, "to facilitate an integrated health care delivery system wherein the health plan is responsible for coordinating and paying for all of the services that the child needs."⁸ Although FDOH made efforts to support its LES/EIS programs, the impact of this transition on Early Steps EIS programs has been a contributing factor to FDOH's noncompliance with IDEA Part C requirements. The three areas of noncompliance are discussed in greater detail in subsequent sections of this enclosure.

² All references, including section numbers and quotations, to the Early Steps Policy Handbook in this memorandum refer to the document, dated January 1, 2018, unless otherwise noted because that is the version that FDOH provided to OSEP in November 2019, for this monitoring activity.

³ In FFY 2020, Florida's IDEA Part C grant was \$26,088,064.

⁴ Under IDEA Part C, a State may adopt SoP policies to fund early intervention services consistent with 34 C.F.R. §§ 303.13(a)(3) and 303.203(b) and meet the requirements under 34 C.F.R. §§ 303.520. and 303.521.

⁵ The 2019-2020 State appropriation was \$43,145,063. See pg. 9, http://www.cms-kids.com/providers/early_steps/reports/Earlystepsannualreport.pdf.

⁶ The Agency for Health Care Administration (AHCA) is the State agency responsible for administering Medicaid in Florida.

⁷ These services include developmental screening, evaluation, early intervention sessions, and Targeted Case Management.

⁸ See pg. 3, https://ahca.myflorida.com/Medicaid/statewide_mc/pdf/EIS_FAQs_Final.pdf.

Results from OSEP's Monitoring

As a result of OSEP's visit, OSEP identified one concern in the results area of early childhood outcomes and the following three findings of noncompliance that are discussed in further detail below. Specifically, OSEP finds that FDOH failed to:

1. Provide all early intervention services as identified on the individualized family service plan (IFSP) of infants and toddlers with disabilities in a timely manner and ensure early intervention services are individualized to meet the needs of the child and family as determined by the IFSP team as required by IDEA Sections 635 and 636, as well as 34 C.F.R. §§ 303.12, 303.342, 303.343, and 303.344(d);
2. Monitor its LES/EIS programs for compliance as required by IDEA Section 635(a)(10) and 34 C.F.R. § 303.120(a) for the fiscal requirements including the statewide system of payments policy and payor of last resort requirements in IDEA Section 640 and 34 C.F.R. §§ 303.510(b), 303.520, and 303.521; and
3. Ensure that the State has a methodology, including policies and procedures, to track all State and local public funding sources to enable the State to ensure compliance with the IDEA Part C Maintenance of Effort (MOE) requirements in 34 C.F.R. § 303.225(b).

Area of Concern: Results – Child Outcomes Measurement System

Based on the State's FFY 2017 State Performance Plan (SPP)/Annual Performance Report (APR) Indicator 3 (child outcomes) data, Florida's results score was 60.10% as reported in OSEP's FFY 2019 IDEA Part C RDA Matrix.⁹ Under IDEA Sections 616, 635(a)(14), and 642 and 34 C.F.R. §§ 303.124 and 303.701(c), FDOH must have a system for compiling and reporting timely and accurate data that are valid and reliable and reflect its performance.

For child outcomes, FDOH reported that the quality of its data reported under SPP/APR Indicator 3 has been impacted by challenges with:

- inconsistent implementation of the Battelle Developmental Inventory, Second Edition, (BDI-2)¹⁰ throughout the State;
- its ability to collect and analyze accurate child outcomes data;
- State rules around the child outcomes progress categories, which are conservative and rigorous;
- limited access to coaches with expertise in evidence-based practices;
- inadequate screening and assessment tools; and
- limited resources and professional development.

FDOH staff indicated it has delegated the responsibility of training and effective implementation of its child outcomes measurement tools to its EIS programs. Additionally, to improve data and program performance, FDOH shared that it was piloting the Child Outcomes Summary (COS)

⁹ The State's FFY 2018 SPP/APR data demonstrated an approximate 10% decrease (49.42%) in the results of its child outcomes data.

¹⁰ The BDI-2 is a standardized, individually administered assessment battery of key developmental skills in children from birth through seven years of age.

tool with three of its LES programs. In its 2020-2021 State Plan,¹¹ FDOH also reported that it plans to implement use of the COS statewide through a three year “phased approach” in conjunction with the BDI-2 and “support local programs to provide effective professional development to support fidelity of implementation of the COS process” and “develop policies and procedures for implementation of the COS to ensure clear and consistent statewide practices.”

OSEP acknowledges that the State has begun to address the significant barriers that it has identified in collecting and reporting its child outcomes data. We expect that the State will continue its efforts towards both improving its early outcome data and improving results for infants and toddlers with disabilities and their families. OSEP looks forward to reviewing (in the State’s FFY 2019 SPP/APR, due February 1, 2021) updated information around the State’s implementation of the COS, technical assistance and professional development, and FFY 2019 early childhood outcome data reflecting improved results for Florida’s infants and toddlers with disabilities and their families.

Findings

Finding 1: Provide timely and individualized early intervention services.

Under IDEA Section 635(a) and 34 C.F.R. § 303.342(a) and (e), each State must ensure that Part C services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner. Additionally, States must also ensure that each eligible infant and toddler with a disability has available early intervention services that are designed to meet his or her unique individual needs as identified by the IFSP team as required by IDEA Sections 635 and 636, as well as 34 C.F.R. §§ 303.12, 303.342, 303.343, and 303.344(d).

OSEP notes that the State’s data for SPP/APR Indicator 1 (timely service provision) for FFY 2017 was 88.67% and for FFY 2018 was 89.39% and while these data appear to indicate that services are timely initiated, during OSEP’s visit, OSEP learned that the Part C services needed may not be identified on the IFSP at the initial meeting and that there are other concerns with the provision of appropriate services despite relatively strong data reported under SPP/APR Indicator 1.

During interviews with LES staff, OSEP consistently heard that the State’s transition to a Medicaid Managed Care model, in which Managed Medical Assistance (MMA) programs provide early intervention service delivery and billing, has negatively impacted Part C service provision due to:

1. provider shortages;
2. untimely payments to providers for Part C service delivery; and
3. long wait times for EIS providers to get credentialed which has resulted in service delays, staff leaving, and providers not being credentialed in the system while sometimes providing services.

¹¹ See http://www.cms-kids.com/providers/early_steps/reports/20_21StatePlan.2020.pdf.

This information was also consistent with information from the State's FFY 2018 APR in which FDOH reported that the following factors impacted its SPP/APR Indicator 1 data:

- Provider availability in rural counties;
- Provider shortages of discipline-specific therapists to provide Part C services;
- Shortages of staff available to schedule initial evaluations with a multidisciplinary team;
- Limited access to high-quality, real-time data; and
- Local program processes that caused late eligibility and IFSP development.

During monitoring interviews LES staff reported that Part C EIS provider shortages and high caseloads have not only impacted the ability to provide Part C services in a timely manner but have also influenced individualized early intervention service decisions for the type, time, frequency, and duration of Part C services for eligible infants and toddlers with disabilities and their families. Program staff also shared examples of children and families experiencing long wait times in between service sessions and second IFSP meetings being held after the initial IFSP meeting to amend the Part C services on the IFSP based on provider availability and case load capacity. During monitoring FDOH staff also discussed the use of a second IFSP meeting as a mechanism to identify and provide early intervention services for which the State had limited providers.

Additionally, as part of Florida's SMMC expansion plan, Early Steps required its local programs to implement new billing systems and have agreements in place with local MMA programs¹² and third-party payor sources that are responsible for coordinating and paying for early intervention services. Although FDOH requires that its LES programs have agreements in place with managed care organizations, during monitoring interviews LES/EIS program staff reported that untimely payments and time spent on financial disputes has directly impacted the timing of early intervention service delivery and that the burden of resolving financial disputes for payment of early intervention services has been assigned as the responsibility of LES/EIS programs. LES/EIS program staff shared examples of EIS providers selecting infants and toddlers for early intervention service provision based on the child's or family's insurance plan in order to receive timely payments and satisfactory reimbursement rates from insurance. Finally, LES/EIS program staff shared that because the credentialing process for EIS providers enrolling in MMA plans is lengthy, it can result in staff leaving or in some cases, providing Part C services without being fully credentialed in order for the LES/EIS programs to avoid service disruptions or untimely service delivery.

The above information indicates that in many cases, although infants and toddler with disabilities and their families may have an initial IFSP in place and receive services within the State's 30-day timeline under SPP/APR Indicator 1, the services identified on the initial IFSP do not reflect the services necessary to meet the unique needs of the child and family as required under 34 C.F.R. § 303.344(d). Rather the initial IFSP identifies only the services with providers readily available to the LES/EIS program or for which timely reimbursement is likely.

In its June 1, 2019 State Plan,¹³ FDOH reported that it depends on its LES/EIS programs to ensure compliance with State and Federal policies but acknowledged that some LES/EIS programs are not in compliance with those policies. FDOH also discussed that its Early Steps

¹² MMA programs are one of three programs that make up Florida's Statewide Medicaid Managed Care.

¹³ See pg. 5, http://www.cms-kids.com/providers/early_steps/reports/2019StatePlanFinal.pdf.

data system is outdated and does not allow access to high-quality, real-time data and prevents the State from aggregating its data to conduct a root cause analysis of factors that have caused programmatic noncompliance. In the June 1, 2019 State Plan, FDOH also reported that “an assessment of the existing number of providers and provider types is needed to ensure an adequate network of providers in the Early Steps Program for timely service provision” and, overall, the demand for services is greater than the number of qualified and credentialed providers.

In response to its transition to SMMC, FDOH reported that it has encouraged its local LES/EIS programs to reach out to the MMA programs to collaborate in assigning providers and has encouraged managed care plan providers that are not credentialed by Early Steps to complete Early Steps training and enroll with Early Steps, to expand the Early Steps provider network. The State reported that it also works with Agency for Health Care Administration (AHCA), to assist with provider shortages. Further, FDOH’s 2019 State Plan reported that “new contracts and billing processes are being developed” and “establishing these expanded relationships during this transition period creates a potential barrier to meeting performance measures related to timely service provision.”

Although the State has apparently identified some factors contributing to the finding, FDOH has not provided OSEP with sufficient information to establish that the issues have been corrected and that IFSPs and the service made available to infants and toddlers with disabilities and their families are in compliance with the IDEA Part C requirements.

Finding 2: Monitor its LES/EIS programs to ensure fiscal compliance with its system of payment policy and Part C payor of last resort requirements.

Under IDEA Section 635(a)(10) and 34 C.F.R. § 303.120(a)(2), the State LA must monitor and enforce the implementation of Part C of the IDEA by its local LES/EIS programs and providers, to ensure statewide compliance. This includes ensuring that its LES/EIS programs are implementing and complying with fiscal requirements including the State’s SoP policies and procedures and IDEA Part C’s payor of last resort requirements. If the State LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA’s identification of the noncompliance consistent with 34 C.F.R. § 303.120(a)(2)(iv). Additionally, under 34 C.F.R. §§ 303.520 and 300.521, of the IDEA Part C regulations, a State must adopt a written SoP policy if the State uses public insurance or benefits, private insurance, or family fees, such as a sliding scale, to pay for IDEA Part C services. Lastly, under IDEA Section 640(a) and 34 C.F.R. § 303.510(a), Federal funds under IDEA Part C may be used only to pay for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source.

During monitoring discussions, FDOH staff described its fiscal monitoring process which is conducted through Contract Monitoring. Although FDOH was able to demonstrate that it has a process in place to oversee its contracts, it was unable to provide OSEP with any examples of IDEA fiscal noncompliance that had been identified or evidence of fiscal monitoring that had occurred prior to 2017. Additionally, in OSEP’s review of the Monitoring Tool that is used by FDOH Contract Monitoring staff for fiscal monitoring, OSEP noted various SoP requirements were not included as part of the monitoring criteria and FDOH was unable to provide evidence of

another mechanism or tool that would oversee the implementation of those requirements by its LES/EIS programs.

Additionally, during monitoring, FDOH reported that LES/EIS programs are required to use IDEA Part C funds as the payor of last resort, and that providers are responsible for documenting payor sources on IFSPs. FDOH reported that it verifies payor of last resort through its Contract Monitoring and that the process involves the review of billing records, Medicaid denials, and IFSPs. Information from document reviews is tracked with criteria on the fiscal monitoring tool. However, OSEP did not locate specific criteria or evidence supporting FDOH's oversight of the IDEA Part C payor of last resort requirements. Additionally, as part of the monitoring activity, OSEP reviewed three Funding Resource Plans submitted by FDOH. During that review OSEP identified various funding sources and the State was unable to demonstrate oversight of those sources. From discussions with FDOH about these funding sources, OSEP learned that not only does the State not have access to the data from payor sources being accessed at the local level but some LES/EIS programs may not have access to that information when it involves contracts between LES/EIS programs and certain community programs. In fact, FDOH staff indicated that there is limited documentation of any kind related to provision, frequency, intensity, or cost of any early intervention services being provided by these outside community programs. Since FDOH is unable to access information on all eligible children receiving early intervention services, it is unable to determine that all available payor sources were accessed prior to LES programs accessing IDEA Part C dollars. This information is consistent with information included in its 2020-2021 State Plan in which FDOH acknowledged that the Early Steps Program relies on multiple funding streams at the Federal, State, and local level and "the current data system does not permit tracking of local resources and funding streams to ensure that Part C of the IDEA is the payor of last resort."¹⁴

OSEP also identified policies and procedures within the Early Steps SoP policy that were inconsistent with the IDEA requirements for obtaining parental consent for the use of public benefits or insurance as required by 34 C.F.R. § 303.520(a)(2)(i). The State was notified of this noncompliance in response to its FFY 2020 IDEA Part C grant application through OSEP's June 23, 2020, Stop the Clock Memorandum (Memo).¹⁵ FDOH is addressing the noncompliance identified in OSEP's June 23, 2020 Stop the Clock Memo through a separate corrective action process from the noncompliance identified within this enclosure and OSEP will respond to FDOH's SoP revised policies through the FFY 2020 and 2021 IDEA Part C grant applications.

Finding 3: Methodology, including policies and procedures to ensure the tracking of all funding sources to determine compliance with IDEA Part C's Maintenance of Effort requirements.

Under 34 C.F.R. § 303.225(b), each State lead agency must have a methodology to calculate the total amount of State and local funds budgeted for expenditures, and actually expended, for early intervention services for eligible children and their families. The State lead agency must have this methodology to ensure that "the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds

¹⁴ See pg. 12, http://www.cms-kids.com/providers/early_steps/reports/20_21StatePlan.2020.pdf.

¹⁵ See Attachment 1.

actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available.”

From monitoring discussions with FDOH and LES staff, OSEP learned of local level public funding sources that are utilized for early intervention services including the State contributions made under the Children’s Health Insurance Program (CHIP) and county and local educational agency (LEA) funds. FDOH staff reported to OSEP that the Early Steps Program relies on multiple funding streams at the Federal, State, and local level and “the current data system does not permit tracking of local resources and funding streams...”¹⁶ During discussions with OSEP staff about these funding dollars, FDOH staff reported that local level funding sources vary across its regions and although its LES/EIS programs depend on local funding to sustain early intervention services, the State cannot account for all local level funding sources including county and public State level funds for CHIP; and that its Early Steps data system does not provide information that is sufficient in detail to allow FDOH to determine the total amounts of State and local funds budgeted and expended specifically for the purposes of providing Part C early intervention services.

Additionally, although OSEP did not review the total amount of expenditures for the Early Steps program from State fiscal years (SFY) 2016 through 2020, according to the Early Steps budget that was presented to OSEP during monitoring and which is presented in its December 1, 2020 Annual Report, IDEA Part C funds and State General Revenue funds are listed as the payor sources for the Early Steps program and the budgeted amounts of State General Revenue funds from SFYs 2016 through 2020 demonstrates a slight decrease.¹⁷

Based on the information provided by FDOH, OSEP has determined that the State does not have a system in place to track and be able to calculate the total amount of State and local funds budgeted for expenditures, and actually expended, for early intervention services for children eligible under Part C of IDEA and their families. Further, the State is unable to ensure that the level of State and local funding for the provision of early interventions services complies with the IDEA Part C MOE requirements in 34 C.F.R. § 303.225(b).

Required Actions/Next Steps

OSEP finds that FDOH has failed to:

1. Provide all early intervention services identified on the IFSPs of infants and toddlers with disabilities in a timely manner as required by IDEA Sections 635 and 34 C.F.R. § 303.342(a) and (e) and ensure early intervention services are individualized to meet the needs of the child and family as determined by the IFSP team as required by IDEA Sections 635 and 636 and 34 C.F.R. §§ 303.12, 303.342, 303.343, and 303.344(d);
2. Monitor its EIS/LES programs for compliance as required by IDEA Section 635(a)(10) and 34 C.F.R. § 303.120(a) for two fiscal requirements: (1) the statewide system of payments policy; and (2) payor of last resort requirements in IDEA Section 640 and 34 C.F.R. §§ 303.510(b), 303.520, and 303.521; and

¹⁶ See pg. 12, http://www.cms-kids.com/providers/early_steps/reports/20_21StatePlan.2020.pdf.

¹⁷ See pg. 9, http://www.cms-kids.com/providers/early_steps/reports/Earlystepsannualreport.pdf.

3. Ensure that the State has a methodology, including any policies and procedures, to track all state and local public funding sources to enable it to ensure compliance with the IDEA Part C Maintenance of Effort (MOE) requirements in 34 C.F.R. § 303.225(b).

As a result, the State will be required to implement the following corrective actions to address the three findings of noncompliance identified above.

With its FFY 2021 IDEA Part C application, the State must submit for OSEP approval its revised SoP policies identified in OSEP's June 23, 2020 Stop the Clock Memo.

Within 90 days from the issuance of this letter, the State must submit for OSEP approval a corrective action plan (including timelines and evidence of implementation) that:

1. Includes revised monitoring procedures to review whether early intervention services on the initial IFSP are individualized and meet the unique needs of the child and family as determined by the IFSP team;
2. Includes revised monitoring procedures to reflect the IDEA Part C fiscal requirements for (a) payor of last resort and (b) system of payments; and
3. Includes revised policies and procedures to ensure that the State has a methodology to track all State and local public funding sources to enable it to ensure compliance with the IDEA Part C MOE requirements.

DMS NOTICE

Differentiated Monitoring and Support Engagement Decisions:

Florida 2018-2019

This year we have selected four States for on-site visits as part of OSEP's Differentiated Monitoring and Support (DMS) system. These selections were based on the relative number of intensive and targeted Levels of Engagement (LOEs) across all states. Your State has been selected for an on-site visit.

OSEP's Differentiated Monitoring and Support (DMS) system is a component of Results Driven Accountability. DMS is designed to identify potential grantee risk to the Department and to assist OSEP in effectively using its resources to monitor grantees. DMS addresses State-specific needs in the areas of results, compliance, State Systemic Improvement Plan (SSIP), and fiscal by differentiating levels and types of monitoring and support based on each State's unique strengths, progress, and challenges in each area.

DMS is a multi-tiered model for monitoring and providing support based on the principle that supports are first provided at a core or universal level to effectively address the needs of all States. Targeted monitoring and support is generally based on OSEP's identification of common needs among multiple States. Intensive monitoring and support is reserved for those States with the most intense or complex challenges to implementation.

OSEP has assessed States' and Entities' progress in meeting performance standards and compliance with the legal requirements of the Individuals with Disabilities Education Act, the Education Department General Administrative Regulations and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This information was used to help OSEP make decisions about a State's or Entities' levels of engagement for monitoring and support.

The charts below specify your State's level of engagement in each area – results, compliance, fiscal and SSIP.

Results | Level of Engagement: *Intensive*

Factors	Existing/Current Engagement
<ul style="list-style-type: none"> Child Performance - Comparing your State's 2017 Outcomes Data to other State's 2017 Outcomes Data Child Performance - Comparing your State's FFY 2017 data to your State's FFY 2016 data 	OSEP continues to make information and technical assistance (TA) resources available and provide universal support to all States.

New Engagement

OSEP will offer to provide the State, in collaboration with OSEP's technical assistance providers, intensive technical assistance and support in its work to improve the State's data quality and child performance outcomes related to positive social relationships, skills, and knowledge. OSEP's support may include establishing a schedule of regular contact, engaging in conversations to explore improvement activities, and discussing the progress and effectiveness of activities currently underway in the State to improve outcomes for students with disabilities. OSEP may also work with the State to conduct a root cause analysis of the factors that contribute to low results outcomes for infants, toddlers, and their families.

Fiscal | Level of Engagement: *Targeted*

Factors	Existing/Current Engagement
<ul style="list-style-type: none"> The State's IDEA Part C award exceeds \$10,000,000. The State has between 15-29 EIS programs. 	OSEP continues to make information and TA resources available and provide universal support to all States.

New Engagement

OSEP has previously provided targeted TA to the State based on the same factors. As a result, no further engagement is necessary.

Compliance | Level of Engagement: *Targeted*

Factors	Existing/Current Engagement
<ul style="list-style-type: none"> Indicator 1: Timely service provision 88.67% Indicator 7: 45-day timeline 84.33 	OSEP continues to make information and TA resources available and provide universal support to all States.

New Engagement

OSEP will gather additional information to determine the scope of engagement necessary to assist the State in improving IDEA compliance. This may include discussions with the State to determine the factors impacting the State's specific area of low compliance and collaboratively working with the State to develop a plan to bring the State into IDEA compliance as soon as possible.

SSIP | Level of Engagement: *Universal*

Factors	Existing/Current Engagement
<ul style="list-style-type: none"> Factors are only listed when the level of engagement is targeted or intensive. 	OSEP continues to make information and TA resources available and provide universal support to all States.

New Engagement

OSEP will provide universal support related to the State's SSIP.



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

June 23, 2020

MEMORANDUM

TO: Renee Jenkins, Part C Coordinator
Florida Department of Health (FDOH)

THROUGH: Angela Tanner-Dean, Associate Division Director
Division of Monitoring and State Improvement Planning (MSIP),
Office of Special Education Programs (OSEP)

FROM: Susan Kauffman, State Lead, Florida Part C / Fiscal Implementation Team
Kathleen Heck, State Lead, Florida Part C

SUBJECT: Stop the Clock for Florida IDEA Part C Grant Application for
Federal Fiscal Year (FFY) 2020

The Office of Special Education Programs (OSEP) has reviewed Florida's FFY 2020 application submitted on April 24, 2020, under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Based on its review of the application and other available information, OSEP has determined that the application is not substantially approvable under IDEA Part C and the Education Department General Administrative Regulations (EDGAR) in 34 CFR §76.703. The State will need to take additional actions, including revising its application and providing a specific, written assurance to make its FFY 2020 application substantially approvable.

OSEP has reviewed Section II.A.3a of the State's FFY 2020 IDEA Part C grant application, which indicates that the State's System of Payments (SoP) policies and procedures are "on file" and thus were previously approved by OSEP. OSEP last approved the State's SoP policies under Section II.A.3a as part of the State's FFY 2012 grant application. However, OSEP learned through its December 2019 Part C fiscal monitoring process and visit to the State,¹⁸ that the State has implemented policies that were neither submitted to nor approved by OSEP; and furthermore, are inconsistent with the IDEA Part C SoP requirements. Therefore, the State must revise Section II.A.3a of its application to indicate "No" and a date by which the State will submit its revised SoP policies and provide a specific written assurance as explained further below. During the monitoring process, FDOH presented its SoP policies to OSEP in a document entitled, Early Steps Policy Handbook, dated January 1, 2018¹⁹. This version of the State's SoP and the one on FDOH's public facing website, both differ from the SoP policy approved by OSEP in 2012. OSEP did not approve either SoP for implementation under,

¹⁸ The results of OSEP's Differentiated Monitoring and Support visit, including fiscal monitoring will be addressed under separate cover. This memorandum addresses only the information generated during the visit that effect whether the State's FFY 2020 IDEA Part-C grant application is substantially approvable.

¹⁹ Although the State has posted an Early Steps Policy Handbook dated, January 1, 2020 to its website, all references, including section numbers and quotations, to the Early Steps Policy Handbook in this memorandum refer to the document, dated January 1, 2018, unless otherwise noted because that is the version that ESSO provided to OSEP.

34 C.F.R. § 303101(c), and both contain new provisions that conflict with IDEA Part C requirements in 34 C.F.R. §§ 303.520 and 303.521.²⁰

OSEP has identified noncompliance with the following three IDEA Part C requirements:

- 1. Consent is obtained for the use of private insurance when private insurance is a prerequisite for the use of public benefits or insurance.**
- 2. Consent is obtained prior to using a child’s or parent’s public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance programs.**
- 3. Consent is obtained prior to disclosing a child’s personally identifiable information to the State public agency responsible for the administration of the State’s public benefits or insurance program for billing.**

The IDEA Part C final regulations establish protections for parents of infants and toddlers with disabilities around the State’s use of public benefits or public insurance to pay for Part C services while also taking into account the privacy of parents and the need for States to have access to public benefits to finance Part C programs.²¹

Under 34 C.F.R. § 303.520(b)(1)(i), the LA must obtain consent for the use of private insurance when private insurance is a prerequisite for the use of public benefits. The State’s 2012 SoP, approved by OSEP, included the correct requirements for this provision under section 1.7.0 (Use of Private Insurance) at 1.7.1(B). However, the revised Early Steps Policy Handbook at Section 1.7.1(C), states that “parental consent to use private insurance **is not** required when both Medicaid and private insurance coverage are available since existing private insurance is a prerequisite for the use of Medicaid.” This policy change conflicts with the IDEA requirements under 34 C.F.R. § 303.520(b)(1)(i) and is inconsistent with the State’s SoP policies approved in 2012.²²

Under 34 C.F.R. § 303.520(a), when accessing public benefits or insurance Florida must:

1. Obtain parental consent prior to using a child’s or parent’s public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance program consistent with 34 C.F.R. § 303.520(a)(2)(i); and
2. Must provide written notice that parental consent must be obtained consistent with 34 C.F.R. § 303.520(a)(3) and 34 C.F.R. § 303.414 before the lead agency or EIS provider discloses a child’s personally identifiable information (PII) to the State

²⁰ The public participation requirements in 34 CFR § 303.208 apply to all new or revised policies and not just those required to be submitted under Section II.A. of the IDEA Part C grant application. Under 34 C.F.R. § 303.208(b), FDOH must: (1) provide an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention service providers, and members of the State Interagency Coordinating Council, to comment on the new or revised policy for at least 30 days; and (2) hold public hearings on the new or revised policy (with a 30-day notice of the hearings to enable public participation). OSEP has no information on whether the State completed require public participation procedures before implementing revisions to its SoP.

²¹ Federal Register, 34 Part 303, Vol. 76, No. 188. Subpart F—Use of Funds and Payor of Last Resort, https://sites.ed.gov/idea/files/20110925-Final_Regulations-Part_C.pdf

²² The language that OSEP approved for Section 1.7.1 (C) in 2012 was moved to 1.7.1(D) in the revised handbook, a section that did not previously exist.

public agency responsible for the administration of the State's public benefits or insurance program for billing purposes.²³

The Early Steps Policy Handbook indicates at Section 1.8.2 that “the Florida Agency for Healthcare Administration has given the Florida Department of Health, Early Steps and Medicaid providers authority via the Florida Medicaid Provider General Handbook and the Florida Medicaid Early Intervention Services Coverage and Limitations Handbook to:

1. Exchange information that is necessary for Medicaid applicants and recipients to receive services or benefits;
2. Release information to authorized representative of the Medicaid program;
3. Bill another insurance carrier;
4. Release information to the billing agent; and
5. Provide information to the Department of Health, Division of Children's Medical Services, Early Steps office or targeted case manager.

Further, at Section 1.8.3(2) of the Early Steps Policy Handbook, it states that IDEA Part C requirements related to parental consent to use Medicaid are met via the provisions of policy 1.8.2 and “no additional consent is required:

1. Prior to use of Medicaid benefits whether enrollment in Medicaid occurs before or after referral to Early Steps; and
2. Before a child's PII information is disclosed to the Medicaid fiscal agent for billing purposes.”

Florida's Agency for Health Care Administration (AHCA) administers Medicaid for the State while FDOH is the designated State LA for implementation of IDEA Part C and has responsibility for ensuring compliance with IDEA Part C requirements under 34 CFR § § 303.120 and 303.201. The State's revised policies at Sections 1.8.2 and 1.8.3 do not provide for appropriate written consent prior to using a child's or parent's public benefits or insurance when that child or parent is not already enrolled in the public benefits or insurance program, or before the LA (FDOH) or EIS provider discloses a child's personally identifiable information (PII) to the State public agency responsible for the administration of the State's public benefits or insurance program for billing purposes (AHCA).

²³ Under 34 C.F.R. § 303.414, the [lead agency](#) and other participating agencies are prohibited from disclosing PII to any party except participating agencies (including the [lead agency](#) and EIS providers) that are part of the State's part C system without parental [consent](#), except under specifically defined circumstances. The term “participating agency” is defined at 34 C.F.R. § 303.403 and includes “any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C of the Act and the regulations in this part with respect to a particular child.” Public agencies (such as the State Medicaid or CHIP program) or private insurance companies that act solely as funding sources for Part C services are expressly excluded from the definition of a participating agency.

In addition to the provisions described above, OSEP also identified additional SoP changes to the Early Steps Policy Handbook since OSEP's FFY 2012 approval.²⁴ Before implementing any revisions to its SOP or other policies, procedures, methods or descriptions required under Section II.A. of the IDEA Part C grant application, then the State must submit revisions to OSEP for review and approval under 34 C.F.R. § 303.101(c). Furthermore, any revision to an existing policy or procedure needed to comply with Part-C must be subjected to the public participation requirements described under 34 C.F.R. § 303.208(b).

OSEP has determined that FDOH's SoP policies are not consistent with the following IDEA Part C requirements to ensure that:

1. Consent is obtained prior to the use of private insurance when private insurance is a prerequisite for the use of public benefits consistent with 34 C.F.R. § 303.520(b)(1)(i);
2. Consent is obtained prior to using a child's or parent's public benefits or insurance when that child or parent is not already enrolled consistent with 34 C.F.R. § 303.520(a)(2)(i); and
3. Consent is obtained prior to disclosing a child's PII to the State public agency (AHCA) responsible for the administration of the State's public benefits or insurance program for billing consistent with 34 C.F.R. § 303.520(a)(3) and 34 C.F.R. § 303.414.

Required Actions/Next Steps:

In order to receive its FFY 2020 IDEA Part C grant award, FDOH must submit:

1. A **revised Section II.A** of its application, with a response under Section II.A.3a indicating "No" and a date not later than June 30, 2021 for completion. FDOH must re-submit its FFY 2020 IDEA Part C grant application, dated and signed with the signature of an official who has authority to ensure compliance with the assurance, as soon possible. Please note that the State will also need to submit a revised Section I and indicate in Section I.A that the State is requesting a conditional approval of its FFY 2020 IDEA Part C grant award; and
- 2. A specific written assurance to OSEP as part of its FFY 2020 IDEA Part C grant application that the State will:
 - a) Use its SoP policies that are on file with OSEP as approved in FFY 2012 until those policies are amended, subject to public participation and approved by OSEP.
 - b) Submit to OSEP, by October 1, 2020, a copy of the draft revisions to its Early Steps Policy Handbook, prior to the public comment period, and submit to OSEP promptly after the public comment period and any subsequent revised drafts of the States SoP policy that are publicly circulated.

²⁴ Changes included portions of the following Sections: 1.4.0 (Financial Policies and procedures), 1.6.0 (Public and Private Insurance), and 1.8.0 (Use of Public Insurance/Medicaid); specifically, policies under Sections: 1.4.4, 1.4.14, 1.6.4, 1.6.6, 1.8.4, and 1.8.10. None of these revisions were submitted to OSEP for approval prior to implementation. Additionally, the State did not provide OSEP with the version of the handbook posted on the State's website, dated January 1, 2020. As a result, OSEP has not conducted a review of that document.

- c) Make all changes necessary to the SoP policies in the Early Steps Policy Handbook to comply with 34 C.F.R. §§ 303.510, 303.520 and 303.521 as required under 34 C.F.R. § 303.203(b)(1)), and submit to OSEP the revised Handbook as soon as it is finalized, but no later than June 30, 2021;
- d) Ensure that, throughout the period that the State uses its IDEA Part C FFY 2020 grant funds, all early intervention service (EIS) providers in the State will comply with all requirements of IDEA Part C, 34 C.F.R. §§ 303.510, 303.520 and 303.521 and specifically the requirements for consent to access public and private insurance and to disclose a child's personally identifiable information for insurance billing; and
- e) Provide OSEP, by August 31, 2020, a copy of a memorandum notifying all EIS providers that are part of the State's IDEA Part C early intervention system of the changes described in (a) and (d) above that affect the use of the SoP under 34 CFR §§ 303.510, 303.520 and 303.521.

The above assurance must be dated and include the signature of an official who has authority to ensure compliance with the assurance.

Please contact Susan Kauffman, at 202-245-6432 or Susan.kauffman@ed.gov if you have any questions or concerns. We look forward to receiving the requested documentation so that we may complete our review of Florida's FFY 2020 IDEA Part C application.

cc: Gregg Corr, Division Director

Kathleen Heck