



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

DIRECTOR

December 20, 2023

By Email

Honorable Charlie Brereton  
Director  
Montana Department of Public Health and Human Services  
111 North Sanders, Room 301  
P.O. Box 4210  
Helena, Montana 59604

E-mail: [charles.brereton@mt.gov](mailto:charles.brereton@mt.gov)

Dear Director Brereton:

The purpose of this letter is to provide an update on the status of the findings and corrective actions identified by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP) reported in the Differentiated Monitoring and Support (DMS) monitoring report to the Montana Department of Public Health and Human Services (DPHHS) dated January 24, 2023.

Based upon analysis of revised fiscal policies and procedures submitted by DPHHS on October 5, 2023, OSEP cannot determine whether the State treats its early intervention service (EIS) providers as subrecipients or contractors. OSEP is issuing this letter to provide the status of each of the findings that were issued, including findings that are closed and require no additional action, findings that remain open for DPHHS to provide OSEP with evidence of implementation or additional documentation as described in the attached chart.

The summary of monitoring priorities and outcomes chart, included in this letter, describes the monitoring component, finding, required actions, OSEP analysis, and status of findings based on the evidence received by OSEP to date.

OSEP would like to highlight a concern regarding the State's determination of EIS providers as subrecipients or contractors as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200. Historically, DPHHS has reported to OSEP that the State considers its EIS providers to be contractors. In response to OSEP's January 11, 2021, document request, DPHHS submitted fiscal policies and procedures for its procurement process and contract management. The State also provided the contract template and scope of work for its EIS providers and informed OSEP that the Part C Program's contractors were reimbursed using the Agency Wide Accounting and Client System.

During the fiscal virtual visit on June 7, 2022, the fiscal bureau chief explained that the State considers its five EIS providers to be subrecipients, as opposed to contractors. In discussions with the State, OSEP informed the State that if DPHHS is going to treat their EIS providers as subrecipients, the State will be responsible for conducting subrecipient monitoring in accordance with 2 C.F.R. § 200.332, as well as Subpart F. This conversation was also noted in the State's January 24, 2023, monitoring report (p. 11).

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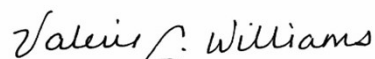
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On August 23, 2023, OSEP held a call with DPHHS staff to obtain clarification on the fiscal policies and procedures submitted to OSEP on June 24, 2023. OSEP expressed concerns that the division's Fiscal Monitoring Policies and Procedures, which ensures consistent monitoring across all programs within the Early Childhood and Family Support Division, did not include citations to IDEA Part C fiscal requirements consistent with 34 C.F.R. §§ 303.120(a) and 303.205, or the OMB Uniform Guidance in 2 C.F.R. Part 200, where applicable, throughout the document. During the call, OSEP informed the State that the document included a subrecipient monitoring and a contract section, but it was not clear which section is used to monitor the IDEA Part C EIS providers. OSEP further notes that if the EIS providers are considered subrecipients, additional requirements for fiscal monitoring apply, and OSEP is concerned about the State's ability to meet these requirements.

We appreciate your efforts to ensure compliance and improve results for children with disabilities. If you have any questions, please contact your OSEP State Lead, Vinetta Freeman at [vinetta.freeman@ed.gov](mailto:vinetta.freeman@ed.gov).

Sincerely,

A handwritten signature in cursive script that reads "Valerie C. Williams".

Valerie C. Williams  
Director  
Office of Special Education Programs

cc: Part C Coordinator

SUMMARY OF MONITORING PRIORITIES AND OUTCOMES			
MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
<p><b>Monitoring and Improvement</b></p> <p>1.1 OSEP finds that DPHSS does not have a system reasonably designed to monitor its EIS providers to ensure compliance with IDEA Part C requirements, such as timely service provision to ensure there are no waitlists for services, as required under IDEA 34 C.F.R. §§ 303.120(a) and 303.700.</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>Updated policies and procedures documenting its process for monitoring its EIS providers on key IDEA Part C requirements such as ensuring timely IFSP service provision requirements based on a review of child records and all other relevant available data (once the State has resolved its data finding below). These policies must reflect that all services (not just service coordination) that are identified on the IFSP must be timely initiated and provided.</p>	<p>DPHHS submitted to OSEP on June 24, 2023, the following document: Montana Milestones Comprehensive Monitoring Manual.</p> <p>Based upon analysis of the Montana Milestones Comprehensive Monitoring Manual, OSEP has determined that the State has taken the necessary steps to address and resolve the policy and procedure required corrective action outlined in OSEP's January 24, 2023, monitoring report. The manual includes information on the steps the DPHHS takes to validate data, delineates the monitoring process of SPP/APR indicators versus the comprehensive monitoring process, and lists priority indicators that cover essential IDEA Part C requirements, including timely IFSP service.</p>	<p><b>CLOSED</b></p>
<p>1.1 OSEP finds that DPHSS does not have a system reasonably designed to monitor its EIS providers to ensure compliance with IDEA Part C requirements, such as timely service</p>	<p><b>Evidence of Implementation</b>—as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>The State LA must submit evidence that all five EIS providers were monitored for IDEA Part C</p>	<p>The State has not submitted evidence of implementation to OSEP for analysis.</p>	<p><b>OPEN</b></p>

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MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
<p>provision to ensure there are no waitlists for services, as required under IDEA 34 C.F.R. §§ 303.120(a) and 303.700.</p>	<p>requirements, including timely service provision and, if a finding was issued, a copy of the monitoring report which identifies the findings of noncompliance with IDEA Part C requirements, and include the one-year timeline for correction.</p>		
<p><b>Data</b></p> <p>2.1 OSEP finds that DPHSS does not have a system reasonably designed to collect valid and reliable data as needed to report annually to the Secretary under 34 C.F.R § 303.702(b)(2) on three of the indicators established by the Secretary for the State performance plans, as required under IDEA 34 C.F.R. §§ 303.124, 303.224, and 303.701(c).</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>The procedures the State uses to verify the SPP/APR data for Indicators C-1, C-2 and C-7 that are submitted by its EIS providers to the LA as required under IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224, 303.701(c), and 303.720 through 303.724.</p>	<p>DPHHS submitted to OSEP on June 24, 2023, the following documents: Montana Milestones Comprehensive Monitoring Manual, Montana Milestones Data Validation Procedures, and Montana Milestones Monitoring Record Selection Methodology.</p> <p>Based on OSEP’s review of the documents submitted by DPHHS, OSEP has determined that the State has taken the necessary steps to address and resolve the policy and procedure required corrective action outlined in OSEP’s January 24, 2023, monitoring report. The documents include information on the DPHHS methodology for selecting, reviewing, and validating data from its Med Compass data system. Moreover, the Montana Milestones Comprehensive Monitoring Manual (pp. 14-16) outline the data validation process for SPP/APR</p>	<p><b>CLOSED</b></p>

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MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
		Indicators C-1, C-2, and C-7.	
<p>2.1 OSEP finds that DPHSS does not have a system reasonably designed to collect valid and reliable data as needed to report annually to the Secretary under 34 C.F.R § 303.702(b)(2) on three of the indicators established by the Secretary for the State performance plans, as required under IDEA 34 C.F.R. §§ 303.124, 303.224, and 303.701(c).</p>	<p><b>Evidence of Implementation</b>—as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>The State will provide with its FFY 2022 SPP/APR an explanation of how its data for Indicators C-1, C-2, and C-7 are valid and reliable and reflect the measurement. The explanation should include a discussion of the methodology used by the State to verify the validity and reliability of the data for C-1 (the percentage of infants and toddlers with IFSPs who receive all early intervention services on their IFSPs in a timely manner); C-2 (the percentage of infants and toddlers with IFSPs who primarily receive early intervention services in the home or community-based settings); and C-7 (the percentage of infants and toddlers with IFSPs for whom an evaluation and initial assessment and an initial IFSP meeting were conducted within Part C’s 45-day timeline).</p>	<p>The State has not submitted evidence of implementation to OSEP for analysis.</p>	<p><b>OPEN</b></p>
<p><b>Fiscal</b></p> <p>3.1 OSEP finds that DPHSS does not have a general supervision system reasonably designed to</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p>	<p>DPHHS submitted to OSEP on June 24, 2023, the following document: Montana Milestones Fiscal Program Monitoring.</p> <p>While DPHHS's Montana</p>	<p><b>OPEN</b></p> <p>The State must resubmit fiscal policies and procedures to comply with IDEA Part C, as required</p>

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MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
<p>monitor its EIS providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b). Specifically, the DPHSS monitoring system is not reasonably designed to identify and verify correction of fiscal noncompliance.</p>	<p>1. Revised fiscal monitoring policies and procedures to ensure that the LA has a system in place to identify and verify the correction of noncompliance (such as coordination of all available funding sources and payor of last resort) as soon as possible and in no case later than one year after the LA's notification of the noncompliance as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b).</p>	<p>Milestones Fiscal Program Monitoring policy addresses how the State monitors its EIS providers for compliance with the statewide system of payments requirements, the document does not address all the required information under 34 C.F.R. §§ 303.120(a)(1) and (2). Specifically, it is unclear what actions DPHSS takes to monitor the use of funds (i.e., allowable expenditures and compliance with the terms and conditions of EIS provider awards).</p>	<p>under 34 C.F.R. §§ 303.120(a)(1) and (2).</p>
<p>3.1 OSEP finds that DPHSS does not have a general supervision system reasonably designed to monitor its EIS providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b). Specifically, the DPHSS monitoring system is not reasonably designed to identify and verify correction of fiscal noncompliance.</p>	<p><b>Evidence of Implementation</b>—as soon as possible, but no later than one year from the date of the DMS monitoring report, the State must submit to OSEP:</p> <p>1. Evidence of the State’s implementation of its fiscal monitoring policies and procedures such as, notification letters, monitoring reports, letters of findings, examples of fiscal finding close-out and verification of correction, or other supporting documentation demonstrating oversight of the State’s fiscal monitoring as required under</p>	<p>The State has not submitted evidence of implementation to OSEP for analysis.</p>	<p><b>OPEN</b></p>

SUMMARY OF MONITORING PRIORITIES AND OUTCOMES			
MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
	34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b).		
3.2 OSEP finds that DPHHS has failed to monitor its EIS providers for compliance as required under 34 C.F.R. § 303.120(a) for the statewide system of payments policy requirements in 34 C.F.R. §§ 303.520 and 303.521.	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>2. Revised fiscal monitoring policies that demonstrate how the LA will provide oversight of the State’s system of payments as required under 34 C.F.R. §§ 303.120(a), 303.520, and 303.521.</p>	<p>DPHHS submitted to OSEP on June 24, 2023, the following document: Montana Milestones Fiscal Program Monitoring.</p> <p>Based upon analysis of the Montana Milestones Fiscal Program Monitoring policy, OSEP has determined that the State has taken the necessary steps to address and resolve the policy and procedure required corrective action outlined in OSEP’s January 24, 2023, monitoring report. The Montana Milestones Fiscal Program Monitoring document outlines how the State will monitor the use of public benefits and private insurance, query and review data related to payor sources, and review documentation demonstrating how consideration is given to funding sources.</p>	<b>CLOSED</b>
3.2 OSEP finds that DPHHS has failed to monitor its EIS providers for compliance as required under 34 C.F.R. § 303.120(a) for the statewide system of	<p><b>Evidence of Implementation</b>—as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>2. Evidence of the State’s system of payments practices such as, the</p>	The State has not submitted evidence of implementation to OSEP for analysis.	<b>OPEN</b>

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MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
<p>payments policy requirements in 34 C.F.R. §§ 303.520 and 303.521.</p>	<p>process for evaluating the payor source, evidence of training to EIS providers, access to insurance, interim payments, or other supporting documentation demonstrating oversight of the State’s system of payments as required under 34 C.F.R. §§ 303.120(a), 303.520, and 303.521. In addition, the State must provide evidence that families have been provided a copy of the State’s system of payments policy and have consented, as appropriate, for the use of public and/or private insurance.</p>		
<p>3.3 OSEP finds that DPHHS does not have procedures and practices that are reasonably designed to ensure the appropriate use of IDEA Part C funds as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>3. Revised fiscal monitoring policies and procedures that demonstrate how the LA will provide oversight of the EIS providers use of IDEA Part C funds (including internal controls) as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.</p>	<p>DPHHS submitted to OSEP on June 24, 2023, the following documents: Fiscal Monitoring Policies and Procedures, Fiscal Monitoring Part C Annex, and Montana Milestones Internal Controls and Fiscal Monitoring.</p> <p>OSEP conducted a follow-up conversation with DPHHS staff on August 23, 2023, to further clarify OSEP's expectations regarding the required actions. On October 5, 2023, the State resubmitted its Fiscal Monitoring Part C Annex document.</p>	<p><b>OPEN</b></p> <p>The State must submit revised fiscal monitoring policies and procedures demonstrating how DPHHS ensures compliance with appropriate IDEA Part C fiscal requirements including use of funds requirements consistent with 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200. The policies and procedures must include the applicable</p>



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		In the State's Fiscal Monitoring Policies and Procedures, there are references to 45 C.F.R. § 75, which are not the federal regulations that govern the U.S. Department of Education Federal Awards. The policy also includes subrecipient and contractor monitoring procedures; OSEP could not determine which monitoring method is used with DPHHS's EIS providers. Additionally, the Fiscal Monitoring Part C Annex policy (p. 9) states, "In January 2021...For Part C Regional Providers, they were considered Subrecipients..." yet in this same policy (p. 10), it states, "As of September 2023:" which is followed with the Early Childhood Technical Assistance Center Finance definitions for contractor and subrecipient. The State has not yet fully addressed the required action for this finding.	citations from IDEA Part C and OMB Uniform Guidance in 2 C.F.R. Part 200, which are associated with Sections II of the State's FFY 2022 and 2023 grant applications. Additionally, the State must explicitly state if its EIS providers are subrecipients or contractors as defined by OMB Uniform Guidance 2 C.F.R. § 200.331.
3.3 OSEP finds that DPHHS does not have procedures and practices that are reasonably designed to ensure the appropriate use of IDEA Part C funds as required under 34 C.F.R. §§ 303.120(a) and	<p><b>Evidence of Implementation</b>—as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>3. Evidence of the State’s monitoring of its EIS providers use of IDEA Part C funds such as, fiscal monitoring reports, and local EIS</p>	The State has not submitted evidence of implementation to OSEP for analysis.	<b>OPEN</b>

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MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/REQUIRED ACTIONS/STATUS
303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.	provider budgets, and fiscal data system procedures/screenshots, demonstrating the system’s capacity for oversight of Federal IDEA Part C funds.		
<p><b>Dispute Resolution</b></p> <p>4.1 OSEP finds that Montana Milestones’ State complaint policies and procedures are inconsistent with 34 C.F.R. § 303.434(a). Specifically, publicly available documents indicate that families must engage in an informal process prior to filing a formal State complaint.</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>1. For State complaints:</p> <ul style="list-style-type: none"> <li>a. Revised procedural safeguards documents to ensure compliance with Part C requirements regarding complaints, under 34 C.F.R. § 303.434(a);</li> <li>b. A copy of the memo sent to all EIS providers explaining the revised complaint procedures; and</li> <li>c. A training schedule for its EIS providers on implementing the revised Montana Milestones complaint procedures.</li> </ul>	<p>DPHHS submitted to OSEP on June 24, 2023, the following documents: Montana Milestones Part C of IDEA Procedural Safeguards Dispute Resolution, Montana Milestones Dispute Resolution Memo, and Montana Milestones Dispute Resolution Training Schedule.</p> <p>Based on OSEP’s review of the documents submitted by DPHHS, OSEP has determined that the State has taken the necessary steps to address and resolve the findings of noncompliance and the required corrective actions outlined in OSEP's January 24, 2023, monitoring report.</p>	<b>CLOSED</b>
4.2 OSEP finds that the State does not maintain a list of trained mediators as required under 34 C.F.R. § 303.431(a)(2).	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>2. For Qualified Mediators:</p>	DPHHS submitted to OSEP on June 24, 2023, the following documents: Montana Milestones Dispute Resolution Training Schedule, ATTACHMENT I Dispute Resolution Presentation	<b>CLOSED</b>

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	<ul style="list-style-type: none"> <li>a. Policies and procedures that detail the State’s training activities and assurance that their mediators are knowledgeable on the Part C IDEA regulations relating to the provision of early intervention services.</li> <li>b. A list of individuals who are qualified mediators in the State and available on a random, rotational, or other impartial basis.</li> </ul>	<p>2023, and Montana Milestones Part C Mediator List 2023.</p> <p>Based on OSEP’s review of the documents submitted by DPHHS, OSEP has determined that the State has taken the necessary steps to address and resolve the findings of noncompliance and the required corrective actions outlined in OSEP's January 24, 2023, monitoring report.</p>	
<p>4.3 OSEP finds that the State does not ensure hearing officers possess knowledge of IDEA Part C consistent with 34 C.F.R. § 303.435(a).</p>	<p><b>Policies and Procedures</b>—within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>3. For Hearing Officers:</p> <ul style="list-style-type: none"> <li>a. Policies and procedures that demonstrate that the State trains its hearing officers on IDEA Part C requirements and the early intervention services available to infants and toddlers with disabilities and their families.</li> <li>b. Policies and procedures that demonstrate that the State ensures its hearing officers listen to the presentation of relevant viewpoints about the</li> </ul>	<p>DPHHS submitted to OSEP on June 24, 2023, the following document: Montana Milestones Dispute Resolution Training Schedule.</p> <p>Based on OSEP’s review of the documents submitted by DPHHS, OSEP has determined that the State has taken the necessary steps to address and resolve the findings of noncompliance and the required corrective actions outlined in OSEP's January 24, 2023, monitoring report.</p>	<p><b>CLOSED</b></p>

<b>SUMMARY OF MONITORING PRIORITIES AND OUTCOMES</b>			
<b>MONITORING COMPONENT &amp; FINDING</b>	<b>REQUIRED ACTIONS</b>	<b>OSEP ANALYSIS AND COMMENTS</b>	<b>NEXT STEPS/REQUIRED ACTIONS/STATUS</b>
	<p>due process complaint, will examine all information relevant to the issues, will seek to reach a timely resolution of due process complaints and provide a record of the proceedings, including a written decision to the LA and parties involved in the due process hearing.</p>		