

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument (FMI): FFY 2018

New Jersey Department of Health (DOH)

Please note the following abbreviations are used in the Fiscal Monitoring Instrument (FMI):

EI – early intervention

EIS provider – early intervention service provider

FFY – Federal fiscal year

IDEA – Individuals with Disabilities Education Act

IFSP- individualized family service plan

LA – lead agency

SoP –System of Payments

Scope of Monitoring:

OSEP's IDEA Part C Fiscal Monitoring in 2018 examined implementation by the State lead agency (LA) of the State's System of Payments (SoP) as funding sources to pay for the provision of IDEA Part C early intervention (EI) services.

Regarding the New Jersey's SoP, OSEP examined how the State LA ensures compliance with IDEA Part C if the State uses one or more of the following three sources of funding to pay for IDEA Part C services:

- (I) Private health insurance;
- (II) Public health insurance benefits; and
- (III) Family Fees.

In conducting the monitoring, OSEP reviewed the State's SoP policies and procedures and other related State-submitted documentation. OSEP also conducted onsite monitoring with State LA staff on May 29, 2018.

**IDEA Part C
Summary of Monitoring Criteria**

Monitoring Area 1, IDEA Part C: System of Payments (SoP)

Under IDEA Part C, a State may adopt SoP policies to fund early intervention (EI) services consistent with 34 CFR §§303.13(a)(3) and 303.203(b). The SoP can include cost participation fees consistent with 34 CFR §§303.520 and 303.521. States must also demonstrate compliance with the requirements regarding the use of IDEA Part C funds. The focus of this monitoring activity is to examine New Jersey's implementation of its SoP policies and procedures.

I. Description of New Jersey's Early Intervention System

The New Jersey Department of Health (DOH) is the lead agency (LA) responsible for the development and implementation of the New Jersey Early Intervention System (NJEIS). According to the State's Federal fiscal year (FFY) 2018 IDEA Part C grant application, the LA allocates a portion of its IDEA Part C grant funds to contract with four Regional Early Intervention Collaboratives (REICs) and with 13 Service Coordinator Units (SCUs). The REICs are responsible for: 1) regional system point of entry for referral to the NJEIS; 2) facilitating access and availability of EI services; and 3) assisting the LA with data collection, child find/public awareness, family support and personnel development. The SCUs are responsible for ensuring that service coordinators are accurately completing family cost share and income verification forms and for maintaining and updating IFSP's and income forms and submitting them to the REIC's in a timely manner. Under its SoP, the LA utilizes public insurance, and family cost participation to support its NJEIS program. According to its SoP, there are no costs associated with the use of public benefits in NJ and NJEIS does not include the use of private insurance. Family cost participation is based on family size, income and federal poverty level guidelines. In addition to utilizing IDEA Part C funds, a State appropriation, public insurance and family cost participation fund EI services to infants, toddlers and their families. During monitoring discussions, the LA reported that NJEIS has established billing rates for EI services and the services provided to each child on the IFSP must be authorized by NJEIS to be provided and billed. The LA also reported that it has a centralized management office that provides payments to local early intervention service providers and collects reimbursements from public insurance sources. The LA described its model as a "pay and chase" system and funds that are collected from payor sources are reallocated back into the program.

During fiscal monitoring discussions with OSEP, the LA reported that it had not conducted fiscal monitoring of the REICs or other NJEIS contractors since 2009. The LA stated that it has a desk audit and risk assessment process and that those processes primarily focus on programmatic indicators such as IDEA's State Performance Plan indicators. When OSEP asked the LA if there were any oversight mechanisms in addition to the programmatic monitoring, the LA reported that it meets with REICs monthly and

conducts onsite monitoring of its local EI provider agencies when there is an issue that needs to be addressed. The LA reported it is still working with its new data system¹ to produce more local level reporting and SoP implementation accountability. This concern is addressed in the findings and corrective actions below.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
I. General Requirements:			
Criterion 1.1	The State is implementing its SoP policies and procedures consistently with the payor of last resort requirements for the use of IDEA Part C funds, including ensuring that IDEA Part C funds are not used for services that would have been otherwise paid for from another public or private source.	No	34 CFR §303.510(a) and (b).
Criterion 1.2	If families are charged out of pocket costs such as copayments, deductibles, or family fees, the State is implementing its SoP policies and procedures consistently with the State's: <ul style="list-style-type: none"> • definition of inability to pay/ability to pay; • definition of income, family expenses, and extraordinary medical expenses; and • process for determining ability or inability to pay. 	Yes	34 CFR §303.521(a)(3)
Criterion 1.3	The State is implementing its SoP policies and procedures consistently with the requirement that fees will not be charged to parents for the following services that a child is entitled to receive at no cost including; <ul style="list-style-type: none"> • child find, evaluations and assessments, service coordination services, administrative and coordinative activities related to procedural safeguards, and the development, review and evaluation of IFSPs and interim IFSPs. 	No	34 CFR §§303.521(a)(4)(i) and 303.521(b)

¹ In 2017 the State began updating its NJEIS data system in order to account for more data and oversight of the Part C program.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.4	The State ensures that the inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of Part C services.	No	34 CFR §303.521(a)(4)(ii)
Criterion 1.5	The State ensures that Part C services are not delayed or denied to parents or families determined unable to pay under the State’s definition of inability to pay.	No	34 CFR §303.520(c)
Criterion 1.6	The State ensures that parents are provided with documentation that identifies their procedural safeguard options with regard to any disputes for payment for Part C services under the State’s SoP.	Yes	34 CFR §303.521(e)
<p><u>II. Use of Public Benefits or Public Health Insurance:</u> A State may use public health benefits or public insurance to pay for IDEA Part C services. If the State uses such public benefits or insurance, it must: (1) obtain prior written parental consent for the use of public benefits or insurance if the child or parent is not already enrolled in the program, or if the use of public insurance or benefits would result in certain specified costs; and (2) provide written notification to parents prior to using a child’s or parent’s public benefits or insurance, regardless of whether or not parental consent is required.</p>			
Criterion 1.7	The State ensures compliance with the requirement that parents cannot be required to sign up for public benefits or insurance as a condition of receiving IDEA Part C EI services.	No	34 CFR §303.520(a)(2)(i)
Criterion 1.7.1	The State ensures compliance with the requirement that consent must be 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.	No	34 CFR §303.520(a)(2)(i)

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7.2</p>	<p>The State ensures compliance with consent requirements when the use of public insurance or benefits to pay for Part C services would result in specified costs such as:</p> <ul style="list-style-type: none"> • A decrease in the available lifetime coverage or any other insured benefit for that child or parent under that program; • The child's parents paying for services that would otherwise be covered by the public benefits or insurance program; • Any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or risk of loss of eligibility for the child or that child's parents; or • Loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures). 	<p>No</p>	<p>34 CFR §303.520(a)(2)(ii).</p>

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<p>Criterion 1.7.3</p>	<p>The State ensures that, prior to using a child’s or parent’s public insurance to pay for EI services, parents are provided with written notification that includes:</p> <ul style="list-style-type: none"> • The requirement that parental consent must be obtained (where applicable) before the State lead agency 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; • Information about IDEA Part C public benefits/insurance no-cost protection provisions; • Information about the parent’s right to withdraw consent for sharing PII (where such consent is required); and • Categories of costs that parents might incur as a result of participating in a public benefits or insurance program. 	<p>Yes</p>	<p>34 CFR §303.520(a)(3) and 34 CFR §303.414</p>

Finding:

Criteria 1.2, 1.6 and 1.7.3: Based on OSEP’s interviews with LA staff, a review of documents submitted by the LA including but not limited to: the *New Jersey Early Intervention System, System of Payments and Family Cost Participation Handbook*, NJEIS cost participation forms and an onsite demonstration of its web-based Early Intervention Information Management System, the State was unable to demonstrate that it has a monitoring system or effective controls in place to ensure compliance with the following requirements:

1.2: *Implementing its SoP policies and procedures consistently with the State’s process for determining ability or inability to pay as required when the State charges out of pocket costs to families such as family fees (34 CFR §303.521(a)(3)).* During monitoring discussions with OSEP, the LA reported that service coordinators are responsible for collecting family income documentation, filling out the family cost participation form and having the family attest to its accuracy. Income information is entered into an electronic database to generate the family cost share or determine a family’s ability or inability to pay. Under the State’s SoP, SCUs are responsible for “ensuring that the individual service coordinator accurately completes the *Family Cost Participation Income*

Verification Form, reviews and verifies supporting documentation, and maintains appropriate documents in the child's early intervention service coordination file". The LA reported that SCUs do not retain supporting income documents from service coordinators aside from the NJEIS family cost share forms, and the LA relies on families to report billing mistakes that arise from an incorrect determination of a family's ability to pay for EI services. The LA acknowledged that it has had concerns with the accuracy of the information entered into its data base to calculate family cost share and determine ability to pay. The LA told OSEP that a decision not to keep the supporting income documentation was made in 2010 and the current data system does not allow for documents to be uploaded at this time.² The LA reported that although SCUs maintain family cost share documentation including a family's attestation of income, it does not have a process of monitoring or adequate controls in place to determine the accuracy of the documents to ensure that the family cost share is performed correctly.

1.6: *Parents are informed of their procedural safeguard options with regard to payment for Part C as required by 34 CFR §303.521(e)*. During monitoring discussions, the LA explained that parents are informed of their rights through various methods. Specifically, the LA reported that service coordinators are responsible for providing parents with the *Family Cost Participation Handbook* at intake. Once found eligible for services the NJEIS *Family Cost Participation Income Documentation* form which contains information related to family's rights around payment for Part C services is signed by parents. As part of the monitoring process the LA provided OSEP with evidence of two family cost share income documentation forms. One form that OSEP reviewed was signed and dated while the other form was filled out but not signed or dated by the family demonstrating inconsistent practices within the program. When OSEP asked if the LA reviewed local level information to ensure parents receive their procedural safeguard options with regard to payment for Part C services, the LA reported that it does not have a system in place that would require this information to be reviewed unless a problem was brought to their attention.

1.7.3: *Prior to using a child's or parent's public insurance to pay for EI services, parents are provided with written notification consistent with 34 CFR §303.520(a)(3) and 34 CFR §303.414*. During monitoring discussions, the LA told OSEP that when parents sign up for public insurance the Department of Human Services (DHS), Division of Medical Assistance and Health Services, the State agency that administers Medicaid, provides families with the required written notification. The NJEIS SoP policy on file with OSEP, states that "prior to using a child's or parents' public benefits or insurance to pay for Part C services, the DOH provides written notification to the child's parents." The LA depends on DHS to provide the notice to parents and was unable to produce evidence demonstrating its oversight of this requirement.

Citation:

Criteria 1.2, 1.6, and 1.7.3: Under 34 CFR §303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, "that is responsible for the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under part C of the Act." This

² The LA noted that the State auditor and the New Jersey Office of Management and Budget have recommended that NJEIS keep income information in order to determine accuracy in income reporting.

includes the NJEIS monitoring and enforcing the implementation of Part C of the IDEA by its REICs and SCUs to ensure the State complies with Part C of the Act. If the 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 CFR §303.120(a)(2)(iv). Further under 2 CFR §200.303, the LA must establish internal controls in order to "comply with Federal statutes, regulations, and the terms and conditions of Federal awards," and the LA must monitor its compliance with the requirements of the Federal award.

Specific to criterion 1.2, the LA must also have a system in place to ensure that accurate information is obtained from parents to ensure that family cost share is calculated correctly. Under 34 CFR §303.224(b) the LA must "keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part." Also, under 2 CFR §200.333 of the Office of Management and Budget's Uniform Guidance (OMB Uniform Guidance), "financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report." Under 34 CFR §303.521, a family's supporting documentation of reported income would be relevant if a family wishes to contest the imposition of a fee through the State's due process procedures. Although OSEP does not prescribe specific documents that must be maintained by a State, due to the LA's inability to ensure that it is meeting its monitoring requirements under 34 CFR §303.120(a)(2) to ensure compliance with 34 CFR §303.521(a)(3), OSEP finds that the State is not meeting the Federal record retention requirements as stated above.

Additionally, specific to criterion 1.7.3, based on OSEP's review of documents submitted by the LA including the *NJ Family Care Application, Notice of Privacy Practices* and related documents for public insurance that the LA reported is provided to parents by the NJ DHS, OSEP found that the documentation does not contain all of the required information *consistent with 34 CFR §303.520(a)(3) and 34 CFR §303.414*. Specifically, OSEP found that the *Notice of Privacy Practices* did not include the requirements that: (1) parental consent must be obtained (where applicable) before the State lead agency or EIS provider discloses a child's PII to the State public agency responsible for the administration of the State's public benefits or insurance program for billing purposes; (2) information about IDEA Part C public benefits/insurance no-cost protection provisions and; (3) categories of costs that parents might incur as a result of participating in a public benefits or insurance program. Under 34 CFR §303.520(a)(3) and 34 CFR §303.414, prior to using a child's or parent's public insurance to pay for EI services, the LA must provide parents with written notification that includes: 1) the requirement that parental consent must be obtained (where applicable) before the State lead agency or EIS provider discloses a child's PII to the State public agency responsible for the administration of the State's public benefits or insurance program for billing purposes; 2) information about IDEA Part C public benefits/insurance no-cost protection provisions; 3) information about the parent's right to withdraw consent for sharing PII (where such consent is required); and 4) categories of costs that parents might incur as a result of participating in a public benefits or insurance program. As part of the State's IDEA Part C grant application, the LA also provides an assurance to OSEP that it is meeting this requirement.

Further Action Required:

Within 120 days of receipt of this letter, DOH must:

1. Provide OSEP with a plan outlining how DOH will monitor programs and activities used by the State to carry out the requirements of IDEA Part C consistent with IDEA section 635(a)(10) and 34 CFR §303.120(a)(2). The monitoring of programs and activities must include oversight of the State's SoP including criteria 1.2, 1.6 and 1.7.3.
2. Provide OSEP with policies and/or procedures to ensure that it is keeping the necessary documentation related to a family's ability and inability to pay and family cost participation in order for the LA to meet the requirements listed in corrective action 1, specific to criterion 1.2.
3. Provide OSEP with revised written notification forms consistent with 34 CFR §303.520(a)(3) and 34 CFR §303.414, related to criterion 1.7.3
4. Amend its SoP policy to ensure its practice under 34 CFR §303.520(a)(3) and 34 CFR §303.414 is consistent with its policy on file with OSEP, specific to criterion 1.7.3, or the State will have to respond with "No" and a date for Section II.A.3a in its FFY2019 IDEA Part C grant application.

Additionally, within one year of the receipt of this letter, DOH must provide OSEP with evidence of implementation such as monitoring reports or other supporting documentation demonstrating the State's oversight of the requirements and implementation of internal controls as listed in corrective actions 1, 2 and 3.