

New York Part C Verification Visit Letter Enclosure

Background: The New York State Department of Health (NYDOH) is the State lead agency responsible for administering Part C of the IDEA in New York and the Bureau of Early Intervention is the entity within NYDOH that administers Part C. Early intervention services in New York are provided through early intervention service (EIS) programs, which are referred to by NYDOH as municipalities. NYDOH reported in its Part C FFY 2006 annual performance report (APR) that it served 30,988 infants and toddlers with disabilities as of October 1, 2006, which number represents 4.24% of New York's birth-to-age-three population. NYDOH has adopted a State system of payments under Part C of the IDEA and has adopted the Part C due process hearing procedures under 34 CFR §303.420 to resolve individual child disputes under Part C.

I. General Supervision

Critical Element 1: Identification of Noncompliance

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

Verification Visit Details and Analysis

Components of System: NYDOH staff identified five major components of its general supervision system, which includes dispute resolution processes, customer service reports, data submission reports, self-assessments, and on-site monitoring of its 58 municipalities (EIS programs) and 2000 EIS providers to ensure the timely identification of noncompliance.

On-site monitoring of EIS programs: Through its contractor, the Island Peer Review Organization (IPRO), NYDOH conducts comprehensive on-site monitoring of its 58 municipalities on a three-to-five year cycle. Within this cycle, NYDOH's priority monitoring schedule is based on six criteria: (1) the percentage of State and IDEA regulatory findings of non-compliance; (2) the presence of any health and safety findings of noncompliance; (3) the use of unqualified personnel; (4) the date NYDOH accepted the municipality's corrective action plan (CAP); (5) local determinations data and; (6) the amount of time since the last monitoring visit. In addition, NYDOH receives data submissions from the targeted municipalities on a quarterly basis and analyzes these data using trend analysis and other statistical methods to identify areas of inquiry that need to be explored during on-site monitoring visits. The municipality monitoring visits include the review of the municipality's completed self-assessment; interviews with key municipal staff; review of child records, written policies and other documents, including training materials, contracts, memorandums, personnel records and data system records.

On-site monitoring of EIS providers: Through IPRO, NYDOH conducts comprehensive on-site monitoring of its approximately 2,000 approved providers during a two-to-three year cycle. NYDOH staff develop a quarterly priority monitoring schedule based on five criteria, which are: (1) the volume of services provided by an agency provider; (2) the

volume of services provided by an individual provider; (3) the type of approval issued to the provider; (4) whether or not the provider has been reviewed before; and (5) when the last monitoring visit occurred. Provider monitoring visits include the review of the provider's completed self-assessment, review of surveys completed by municipalities, and the review of child records.

Thresholds for Issuing Findings: NYDOH's written on-site monitoring protocols indicate "if more than 90% of child records for a particular indicator are correct (Met), there will be no calculation for a finding" for EIS providers. A similar threshold referred to as a "trip-point" of 95% is established in the written monitoring protocols for municipalities. These calculations are based on not only IDEA requirements, but also quality, health and safety standards that would not be considered violations under IDEA. NYDOH staff informed OSEP that contrary to their written protocol, the trip points do not preclude NYDOH from requiring full correction for all violations identified related to the IDEA. NYDOH, following the on-site verification visit provided OSEP with a copy of the State's revised monitoring protocols to be consistent with IDEA's monitoring and correction requirements in IDEA section 635(a)(10)(A) and 34 CFR §303.50. NYDOH's revised monitoring protocols clarify that if any level of noncompliance is identified a written notification of a finding is issued to the EIS provider or the municipality within 90 days from the date of identification of the noncompliance.

OSEP's review of four comprehensive on-site monitoring reports confirmed that, in those reports, findings were issued for all IDEA violations identified regardless of the level of noncompliance.

How Findings are Issued: At the conclusion of each monitoring visit, IPRO staff conduct an exit interview and discuss anticipated findings. Following the visit, NYDOH formally notifies the municipalities or providers of findings of noncompliance in a written report. The report outlines the findings of noncompliance, identifies the relevant legal requirements, and indicates how long the municipality or provider has to submit a corrective action plan.

Timeline for Issuing Findings: For health or safety violations, including service delivery by unqualified personnel, NYDOH staff reported that the contractor notifies the municipality of noncompliance within 36 hours of the review, or sooner. NYDOH stated that their policy is to send written reports to municipalities or providers within 90 days following the monitoring visit. OSEP's review of the State's data, however, demonstrated that NYDOH does not consistently notify municipalities and providers of noncompliance in a timely manner. Further, review of the State's data indicated that written notification of noncompliance ranged from 57 to 479 days, with only 7% of notifications occurring within 90 days.¹ This practice is not consistent with NYDOH's stated policy or OSEP's guidance, "Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR)," provided to all States on September 3,

¹ This data is from noncompliance NYDOH identified in FFY 2005, with notification made in FFY 2005 or FFY 2006, and is the most recent data available by federal fiscal year from NYDOH.

2008 that “written notification of findings are issued as soon as possible after the State concludes that the LEA or the EIS program has noncompliance. Generally, we would expect that written findings be issued less than three months from discovery.” OSEP reviewed updated data from October 1, 2007 through March 31, 2008, which reflected improvement in the issuance of findings with approximately 78% issued within 90 days.

OSEP Conclusions

In order to effectively monitor the implementation of Part C of the IDEA by EIS programs in the State under IDEA sections 616(a), 635(a)(10)(A) and 642 and 34 CFR §303.501(a) and (b)(1), NYDOH must identify noncompliance by issuing findings of noncompliance when NYDOH obtains reliable data reflecting noncompliance with Part C requirements through NYDOH self-assessments, on-site monitoring visits, and dispute resolution procedures. Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP has determined that NYDOH has components of its general supervision system that are reasonably designed to identify noncompliance. However in some instances NYDOH did not issue findings consistent with the State’s 90-day timeline. Without collecting data at the local level, OSEP cannot determine whether NYDOH’s procedures are fully effective in identifying noncompliance.

Required Actions/Next Steps

With the FFY 2008 APR due February 1, 2010, NYDOH must provide FFY 2008 data on the percentage of findings that NYDOH issued within its 90-day timeline.

Critical Element 2: Correction of Noncompliance

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

Verification Visit Details and Analysis

NYDOH policy requires all identified noncompliance to be corrected as soon as possible, but in no case later than one year after written notification. Once NYDOH issues the written finding of noncompliance, the municipality or EIS provider must describe its strategies for correction of the State and IDEA findings in a corrective action plan (CAP). For health or safety violations, a CAP must be submitted to NYDOH within 10 days after written notification. For all other violations, municipalities have 60 days and providers have 45 days after receipt of notification to submit a CAP.

The CAP must include action steps, including steps taken or that will be taken to ensure that noncompliance will not recur, training the municipality or provider will attend or training materials the municipality or provider will acquire and use to remedy the deficiency or noncompliance, supervision of the practices of employees, and monitoring of services; a timeline for each action step; persons responsible to carry out each step; and a description of how each action step will be evaluated to determine if it is successful. NYDOH reported that it accepts the CAP from the municipality or provider when its proposed strategies are determined sufficient to correct the noncompliance. If the strategies proposed in the CAP are determined insufficient to correct the

noncompliance, NYDOH requires the municipality or EIS provider to submit a modified CAP before NYDOH will approve the CAP. NYDOH staff reported, however, that the one-year timeline for timely correction begins with the written notification of findings to the municipality or the provider regardless of the amount of time required to approve the CAP.

NYDCH staff reported that, following acceptance of the CAP by NYDOH, IPRO staff conducts focused reviews of approximately 25% of those municipalities and EIS providers against which findings of noncompliance were made during the previous comprehensive monitoring visits. During the focused reviews, IPRO verifies whether correction of noncompliance has occurred. For the other municipalities and EIS providers that do not receive an on-site focused review, NYDOH reviews subsequent data submissions by these entities to demonstrate improvement, correction and verification, if possible.

NYDOH's FFY 2006 APR data on the timely correction of noncompliance for Indicator C-9 was 75%, representing three findings of noncompliance in Indicator C-8C not corrected within one year. Following the visit, NYDOH provided subsequent data for FFY 2007, which showed that NYDOH conducted follow-up monitoring of the three municipalities that were the source of these findings, but the municipalities had not fully corrected the findings.

NYDOH staff reported that NYDOH verifies correction for some of the remaining findings of noncompliance during the next comprehensive monitoring review cycle, which may delay verification of correction beyond one year. During OSEP's verification visit, OSEP staff discussed with NYDOH staff OSEP's guidance, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act," issued October 17, 2008, regarding verification of correction in a timely manner. Pursuant to this guidance, the State must verify correction of noncompliance within one year from the date of written notification.

OSEP learned during the verification visit that the implementation of a New York Regulation Section 69-4.11(a)(2)(ii) may impede NYDOH's ability to meet Part C's 45-day timeline requirement. Section 69-4.11(a)(2)(ii), requires an early intervention official (EIO), as a representative of the municipality, to attend IFSP meetings. NYDOH indicated this requirement exists in part because municipalities share the costs of the early intervention program and are required to administer the program in their localities. OSEP suggests that NYDOH examine its policy and procedures requiring the EIO to attend all initial IFSP meetings.

NYDOH staff reported that sanctions are imposed if a municipality or provider refuses to be monitored, fails to provide a CAP, or fails to demonstrate satisfactory or timely correction. Sanctions include providing targeted technical assistance, requiring training, requiring revision of written policies and procedures, requiring enhanced reporting requirements to include data or conference calls, withdrawing or not providing provider

approval, withholding payment of vouchers, recovering funds, and referring providers for fiscal audits. For example, NYDOH reported that it has recovered funds from EIS providers who were not qualified and revoked provider approval when providers failed to demonstrate satisfactory correction.

OSEP Conclusions

Based on review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that NYDOH has components of its general supervision system, including its focused reviews and data submission analysis, to ensure correction of some findings in a timely manner. However, NYDOH is not verifying correction of all identified noncompliance in a timely manner, specifically correction of those findings that are not verified through focused reviews or data submissions analysis. In addition, NYDOH's FFY 2006 data indicate that it has not timely corrected all findings of noncompliance identified.

Required Actions/Next Steps

With the FFY 2008 APR, due February 1, 2010, NYDOH must provide information demonstrating that it has timely corrected and verified correction as specified in OSEP's October 2008 guidance within the one-year timeline and data demonstrating timely correction of all identified noncompliance as soon as possible but not later than one year from the date of written notification.

Critical Element 3: Dispute Resolution

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

Verification Visit Details and Analysis

NYDOH staff reported that NYDOH ensures that parents are aware of their rights to due process, including mediation, complaint and impartial hearing, by requiring that service coordinators, evaluators and early intervention officials inform parents of their rights when required. NYDOH makes available, in hard copy and on its Web site, a Parent's Guide, which provides detailed information about and examples of how to pursue an impartial due process hearing, file a complaint or request mediation. NYDOH staff reported that this guide is available in 20 languages and that service coordinators and state and municipality staff provide parents with a mediation brochure when there is a potential dispute so that parents are aware of their right to request mediation.

Mediation

Mediation is available and offered whenever there is a dispute. NYDOH contracts with the New York State Dispute Resolution Association, Incorporation to provide mediation services through community dispute resolution centers. NYDOH requires mediation be convened within two weeks after the request is made, unless a parent requests additional time. NYDOH indicated that translators are available during mediation at no cost to parents. NYDOH staff reported that it received 45 requests for mediation and held 43 mediation sessions. Of these 43 sessions, 20 resulted in full agreements and nine in partial agreements.

During the verification visit, NYDOH staff reported that it is the State's practice that when a request for mediation is made, the EIO informs parents of their procedural rights. Within two days of receiving a mediation request, the EIO notifies the community dispute resolution center, parent and service coordinator in writing about the request for mediation. The community dispute resolution center then contacts the parent and the EIO to discuss the process, as well as parent's rights. Despite the voluntary nature of mediation, NYDOH reported that it reviews the results of mediation and ensures through monitoring that the resolution from the mediation is incorporated into IFSPs and is implemented. NYDOH reported that its mediation procedures have been successful at resolving disputes, thereby reducing the amount of complaint and due process requests that have required investigation or hearing.

Complaints

The FFY 2005 Response Table identified that during FFY 2004 and FFY 2005, no written decisions from complaints were issued within the required 60-day timeline. Of 13 FFY 2005 complaints, the average number of days from receipt of the complaint to completion of the investigation and issuance of the report was 421 days. NYDOH staff told OSEP that in order to address NYDOH's difficulty in meeting the timeline requirements during FFY 2005 and previous years, as well as to correct the backlog of complaints, NYDOH implemented numerous systemic changes beginning in November 2006. For example, NYDOH established a bar-coded tracking system to facilitate the timeliness of State complaint decisions and due process hearings. NYDOH conducted an analysis of the complaint process to allocate time for each step and to establish internal deadlines. NYDOH allocated additional staff to the complaint process, and created template language to standardize the system complaint CAP requirements, to ensure consistency among complaint investigators and to reduce the amount of time necessary to draft complaint reports.

NYDOH streamlined its procedures for receiving complaint requests. NYDOH staff reported that in the past, requests often were directed to the Commissioner of Health, which delayed initiation of the investigation by an average of five days. NYDOH modified its procedure so that complaint requests go directly to the Director of the Bureau of Early Intervention (BEI). If requests are sent to anyone else, they are immediately forwarded to the Director, or in his absence, an internally assigned individual. NYDOH staff further reported that within two days of receipt of the complaint, the parent is contacted and informed about other possible resolution routes, including impartial due process hearings and mediation. Additionally, NYDOH provided training and guidance to EIOs and other municipal staff to increase their awareness of dispute resolution requirements and parent rights. NYDOH reported that as a result of these measures, it experienced an increase in the number of complaint requests, which NYDOH attributed to an increased awareness of parent rights. NYDOH reported that one staff member is designated responsible for ensuring implementation of complaint decision CAPs.

NYDOH provided updated data that indicate that following implementation of these systemic changes, during FFY 2007, 22 of 23 or 95% of the complaint requests resulted in a written decision within the required 60 days, demonstrating progress from 82% in FFY 2006.² While NYDOH has had difficulty meeting the required timelines in complaint resolution, it has taken numerous steps to address this problem and has shown significant improvement in its ability to implement the timeline requirements related to complaint resolution under the IDEA.

Due Process Hearing Requests

The Bureau of Adjudication is responsible for managing and conducting due process hearings. Administrative Law Judges (ALJs) act as hearing officers for the hearings. NYDOH provides the ALJs with applicable regulations and guidance letters, and the Bureau of Adjudication with clarification when needed. NYDOH reported that when the State receives a due process hearing request, a complaint investigator from NYDOH's Provider Approval and Due Process Unit informs the requestor of his right to mediation, and also monitors the process to ensure timelines are being met. Due process decisions are sent to the service coordinator, the parents and the BEI. NYDOH staff reported that the service coordinator is responsible for modifying the child's IFSP in accordance with the decision within five days. The State receives very few requests for impartial due process hearings, many of which are resolved through mediation. During FFY 2006, NYDOH staff reported there were 17 requests for due process hearings; of those requests, 16 were resolved prior to hearing through other means, with seven resolved within the 30-day timeline. To increase awareness about impartial due process, NYDOH provided training regarding due process to municipalities.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes NYDOH has procedures and practices that are reasonably designed to implement mediation and the complaint process. While the procedures and practices appear to be reasonably designed to implement due process hearings, because there have been so few due process hearings, OSEP cannot determine whether due process hearings would be timely issued.

Required Actions/Next Steps

OSEP looks forward to reviewing data under Indicator C-10 (Timely Complaint Resolution) of the State's FFY 2008 APR demonstrating compliance.

Critical Element 4: Improving Early Intervention Results

Does the State have procedures and practices that are reasonably designed to improve early intervention results and functional outcomes for all children with disabilities?

Verification Visit Details and Analysis

In 2004, NYDOH received a general supervision enhancement grant that enabled NYDOH to develop a child and family survey, which NYDOH uses in combination with the Child Outcomes Summary Form (COSF) to identify the impact of early intervention

² Additional complaint requests were withdrawn or set aside pending a due process hearing.

on child and family outcomes. Using a sampling methodology, NYDOH collects outcomes data for children within different counties each year. During the first year after receiving the grant, NYDOH gathered data from Suffolk and Nassau counties. NYDOH presented the results to its Core Advisory Group, as well as local programs. This led to in-depth discussions about how to utilize the data to improve child and family outcomes as a county and on an individual basis. NYDOH reported that data for all counties should be available to report in 2011. NYDOH has an ongoing interagency agreement with the State University of New York at Binghamton to assist in analyzing the data that result from the child and family outcomes survey and COSF, and to work with localities with low outcomes on ways to improve work with families.

To help ensure appropriate service delivery, NYDOH developed clinical practice guidelines in a number of areas, including autism/pervasive developmental disorder, communication disorders, down syndrome, motor disorders, vision impairment, and hearing loss. NYDOH reported that these guidelines are requested frequently and have been distributed nationwide. In addition, NYDOH has worked jointly with other agencies, such as the New York Office of Children and Family Services, which administers foster care services, to develop protocols and guidance for children served by multiple agencies.

Additionally, NYDOH maintains an online public awareness system that includes, among other resources, links to regulatory guidance documents and developmental milestones that parents can use to determine how their child is developing.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that NYDOH has procedures and practices that are reasonably designed to improve early intervention results and functional outcomes.

Required Actions/Next Steps

No further action is required.

Critical Element 5: Implementation of Grant Assurances

Does the State have procedures and practices that are reasonably designed to implement selected grant application requirements (i.e., monitoring and enforcement, CSPD, and interagency agreements, contracts or other arrangements)?

Verification Visit Details and Analysis

Determinations and Public Reporting of EIS Programs: As part of its responsibilities under Sections 616 and 642 of the IDEA, each State must annually report to the public on the performance of each early intervention service program against the State's SPP/APR targets and must make an annual determination for each EIS program. NYDOH meets its reporting requirement by publishing a profile for each municipality on its Web site, in which NYDOH reports the municipality's performance. When NYDOH determines that a local program needs assistance, it requires the program to participate in State-provided technical assistance, as well as review its policies and procedures, and take other actions

as determined on a case-by-case basis. OSEP viewed NYDOH's Web site to determine the status of the public reporting information and local determinations. NYDOH staff confirmed that public reporting on municipalities and local determinations had been issued for FFY 2005, but not for FFY 2006. During the verification visit NYDOH told OSEP that FFY 2006 public reporting of each municipality would be posted on the NYDOH's Web site by December 2008 and local determinations would be made by October 31, 2008. Following the on-site verification visit, NYDOH informed OSEP and OSEP confirmed that the public reporting for local municipalities was posted on NYDOH's Web site on January 30, 2009 and that local determinations had been issued.

CSPD: NYDOH has developed and implemented a CSPD plan that includes a number of training and technical assistance efforts for parents and providers. For example, NYDOH provides free training opportunities for municipal staff, parents and providers throughout New York. NYDOH's training calendar currently includes 21 different curricular training opportunities each year, as well as additional train-the-trainer opportunities. The topics for training were determined based on a statewide needs assessment, and additional training continues to be developed based on needs identified through systems complaints, requests, training evaluations, and dialogue with training providers. NYDOH provided training for approximately 8,000 people in the past year and has received positive feedback regarding the benefits of the trainings. Specifically, after providing training on parent rights, NYDOH reported a subsequent increase in due process complaints, indicating a likely impact from the training regarding understanding of rights. In addition to training initiatives, NYDOH offers targeted technical assistance for municipalities through scheduled conference calls, as well as impromptu guidance and technical assistance to municipalities, providers and parents through NYDOH's customer service providers.

Interagency agreements, contracts, and other methods: NYDOH reported that all early intervention services are administered by the Department of Health, so interagency agreements are not needed to implement Part C requirements. To provide services, NYDOH enters into a contract with the municipalities who contract directly with service providers. Early intervention services are provided by providers, who then submit payment vouchers to the county, thereby ensuring that service delivery is not delayed by payment disputes.

NYDOH has a Memorandum of Understanding with the New York State Education Department (NYSED) regarding early childhood transition that is currently being revised to include the requirements from the IDEA 2004 statutory amendments and final Part B regulations. In addition, NYDOH and NYSED have developed joint guidance documents, including an informative video, concerning transition from Part C to Part B.

OSEP Conclusions

OSEP finds that NYDOH has procedures and practices that are reasonably designed to implement selected grant application requirements regarding determinations and public reporting of EIS program performance, CSPD, and interagency mechanisms.

Required Actions/Next Steps

No further action is required.

II. Data

Critical Element 1: Collecting and Reporting Valid and Reliable Data

Does the State have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner?

Verification Visit Details and Analysis

NYDOH uses four databases to collect, analyze and report on its data, including an integrated data system used to generate 618 data, a fiscal system, a provider approval database, and a monitoring database that is contracted with IPRO.

The current integrated data system, Kids Integrated Data System (KIDS), does not operate in real time. Instead, NYDOH issued guidance to identify the timeline for data submissions, and procedures to down-load, copy and transmit data to NYDOH, as well as procedures to upload any necessary software updates. NYDOH indicated this creates reporting difficulties because of the lag between data collection and NYDOH's access to the data, as well as difficulty in disseminating updates to the system to ensure that municipalities and providers have the most recent software version. To address this concern, NYDOH is currently developing a new database, New York Early Intervention System (NYEIS), which will allow the state to examine real-time data.

NYDOH has procedures in place to review data for efficacy and accuracy, and to correct practices that lead to data anomalies. For example, KIDS contains numerous internal systems checks, including required fields and drop down menus to ensure consistent reporting of data. Once NYDOH receives the KIDS data submissions, staff conducts electronic and manual analysis of the data to identify trends and potential anomalies. Where there are significant changes in data, staff run edits and conduct additional investigation to ensure the data are accurate.

After analyzing data submitted by municipalities for the FFY 2006 APR, submitted February 2008, NYDOH staff expressed concerns about the low percentage of compliance for timely transition conferences in Indicator 8-C, 53.7%.³ To better understand the problem, NYDOH organized discussions with data reporters from the municipalities and learned that the data reporters were interpreting the question from NYDOH's data collection tool in different ways. To correct this ambiguity, NYDOH reworded the question, conducted a pilot of the new tool to ensure that the data reporters understood the new wording and then implemented the new tool. As a result, NYDOH reported that the data it has received indicate a higher percentage of compliance, as well as reflect more valid and reliable data.

During the verification visit, OSEP learned that NYDOH did not utilize the current guidance to calculate the data consistent with the measurement for Indicator C-1.

³ The State originally reported the data for this indicator at 44.6%, however OSEP recalculated the data as 53.7%.

NYDOH reported the percent of services provided in a timely manner rather than the percent of infants and toddlers with IFSPs who receive the early intervention services on their IFSPs in a timely manner as required by Indicator C-1.⁴

NYDOH confirmed its understanding of the current guidance during OSEP's visit. On-site, OSEP directed NYDOH to submit valid and reliable data consistent with the measurement for Indicator C-1 in the FFY 2007 APR due on February 2, 2009. OSEP also informed NYDOH that it may want to recalculate Indicator C-1 data from the FFY 2006 APR and submit it with the FFY 2007 APR in order to determine progress or slippage when reporting in the FFY 2007 APR.

In Indicator C-9 of the FFY 2006 APR, submitted in February 2008, NYDOH reported findings of noncompliance for Indicators C-1, 2, 7, 8A, 8B, 8C and 10. During the verification visit, OSEP reviewed State monitoring reports and learned that NYDOH made additional findings relative to ensuring parents rights consistent with 34 CFR §303.422, that do not fall within any of the aforementioned priority indicators, yet they were not reported in Indicator C-9 of the FFY 2006 APR, submitted on February 1, 2008. OSEP requires NYDOH to submit valid and reliable data consistent with OSEP's formal guidance, "Identification and Correction of Noncompliance and Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act," issued October 17, 2008, which states, "[a] State must account for all identified noncompliance with a requirement of the IDEA and include the findings in the State's data for Indicator C-9 in the APR." During the visit, OSEP reminded NYDOH to submit all identified areas of noncompliance, including those that do not correspond with the priority Indicators in C-9 of the FFY 2008 APR, due February 1, 2010.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that NYDOH did not, at the time of the verification visit, have a general supervision system that was reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner. Specifically, NYDOH did not collect and report valid and reliable data, consistent with provision of timely services provided under Indicator C-1.

Required Actions/Next Steps

NYDOH must provide valid and reliable data based on the correct measurement in the FFY 2008 APR, due February 1, 2010.

Critical Element 2: Data Reflect Actual Practice and Performance

Does the State have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance?

⁴ OSEP issued updated guidance and clarification on this indicator in an FAQ dated October 13, 2006, on a national technical assistance call, at the 2007 Data Manager's Conference, and in the Indicator Support Grid dated October 17, 2007.

Verification Visit Details and Analysis

NYDOH ensures that data it collects and reports reflect actual practice by using a system of checks and balances, and training personnel. Data reporters at the municipality level participate in bimonthly conference calls to discuss data reporting. In addition, NYDOH uses a database manual and data dictionary to ensure consistency across municipalities for collecting and reporting data. Conference calls are followed by e-mail guidance to put clarification in writing.

Following submission of data by municipalities to be used in the FFY 2006 APR, NYDOH reported that it was concerned about the low level of compliance for Indicator C-7. Through data analysis, NYDOH identified municipalities with missing data. As a result, NYDOH provided technical assistance and e-mail guidance to ensure the data reporters had a consistent understanding of the requirements and how to report under this indicator.

In addition, KIDS includes comment fields so the data reporters can include comments if they have concerns, potentially alerting the State to data anomalies or errors in reporting. NYDOH also provides individual technical assistance, especially for new data reporters, and e-mail guidance as appropriate. Once received, NYDOH analyzes the data using trend analysis and other statistical methods. When NYDOH finds errors, it requires data resubmission to ensure accurate data. As part of on-site monitoring visits, NYDOH staff review the municipalities' records to verify they are reflective of the submitted data.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that NYDOH has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. OSEP cannot, however, without conducting a review of data collection and reporting policies at the local level, determine whether the system is fully effective to verify that the data collected and reported reflect actual practice and performance.

Required Actions/Next Steps

No further action is required.

Critical Element 3: Integrating Data across Systems to Improve Compliance and Results

Does the State compile and integrate data across systems and use the data to inform and focus its improvement activities?

Verification Visit Details and Analysis

NYDOH uses its data systems for monitoring, technical assistance, fiscal accountability and support for municipalities. The databases allow NYDOH to determine monitoring priorities as well as identify records to be sampled for monitoring. The data systems are used to identify problematic areas for each municipality so that appropriate technical assistance can be provided. NYDOH can identify fiscal problems within its databases,

and retroactively submit Medicaid claims, or adjust other claims to ensure appropriate billing. In addition, NYDOH reported that it is linked into the Medicaid database, which allows NYDOH to analyze its own data, for instance, to ensure equity of services for those in foster care. NYDOH reported that it can also access a Department of Motor Vehicles database to help locate providers' current contact information as necessary. Additionally, NYDOH's data systems allow users at the State, municipal and provider level to analyze local and State data through a variety of reports.

OSEP Conclusions

Based on the review of documents, analysis of data, interviews with the State staff, OSEP believes NYDOH has procedures and practices that are reasonably designed to improve early intervention results and functional outcomes for all infants and toddlers with disabilities.

Required Actions/Next Steps

No further action required.

III. Fiscal

Critical Element 1: Timely Obligation and Liquidation of Funds

Does the State have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds?

Verification Visit Details and Analysis

New York's State Finance Law dictates the State's process for obligating and liquidating funds. NYDOH staff reported that NYDOH's Fiscal Management Group provides notification of grant award to the BEI, while the BEI creates a signature plan, which specifies how the grant will be spent and by when the funds must be obligated. Federal Part C funds are officially obligated when NYDOH signs the contract with municipalities or other contractors (i.e., for training, etc.).

OSEP confirmed through the U.S. Department of Education's Grants Administration and Payment System (GAPS) that New York had spent all of its FFY 2004 and FFY 2005 Part C funds.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds NYDOH has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA Part C funds at the State level. OSEP cannot, however, without collecting data at the State and local levels, determine whether the system is fully effective to ensure the timely obligation and liquidation of IDEA funds.

Required Actions/Next Steps

No further action is required.

Critical Element 2: Appropriate Distribution of IDEA Funds

Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds at the State level?

Verification Visit Details and Analysis

The most recent State Single Audit of the early intervention program was conducted in 2005, and it did not result in any findings regarding inappropriate use of funds.

NYDOH assigns financial responsibility for Part C services through statute and regulation. NYDOH reported that it uses its Federal Part C funds exclusively for administrative purposes, while services are paid for through local and State funds, Medicaid and private insurance. NYDOH ensures that Part C funds are not commingled with State funds by assigning each funding source a separate appropriation and separately coding each cost to a cost center. In addition, the State has checks and balances in place, including four layers of required approvals, to ensure that Federal Part C funds are allocated to and spent on appropriate budget items. For example, municipalities submit vouchers to the BEI for administrative costs under contract. Those reimbursement requests are checked against the approved work plan and budget for the contract prior to being paid by NYDOH. In addition to the Office of Management and Budgets, Circular A-133 (Audits of States, Annual Local Governments and Non-Profit Organizations) audits that are required of every municipality, IPRO audits the municipality contracts every four to five years to ensure that municipalities are using funds appropriately.

NYDOH reported that its Bureau of Budget Management is responsible for ensuring the State uses Part C funds to supplement and not supplant State, local and other Federal funds. NYDOH staff indicated that this Bureau has procedures to track the level of expenditures for Part C to determine maintenance of effort under IDEA Part C. Municipalities submit a work plan and budget to the BEI and Fiscal Units, which entities review the budget. Once the budget is approved, the BEI sends the contract to the Official of State Comptroller, who must approve the contract. After that, the contractor can bill NYDOH; and submit reports to NYDOH BEI and Fiscal Unit to review and ensure appropriate use of funds. NYDOH reported in its FFY 2008 Part C application that it has a restricted indirect cost rate agreement that is approved by its cognizant Federal agency, the U.S. Department of Health and Human Service, which agreement is approved until amended.

NYDOH has a system of payments on file with OSEP, which specifies the use of public benefits and private insurance. NYDOH ensures that services are provided at no cost to parents and NYDOH pays any related fees, including co-payments and deductibles when applicable.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that NYDOH has procedures that are reasonably designed to ensure appropriate use of IDEA funds.

Required Actions/Next Steps
No further action is required.