

## **Montana Part C 2009 Verification Visit Letter Enclosure**

### **Background**

The Montana Department of Public Health and Human Services (DPHHS) is the lead agency responsible for administering Part C of the Individuals with Disabilities Education Act (IDEA) in Montana. The Developmental Disabilities Program (DDP) within DPHHS has administrative responsibility for implementing the Part C program. Early intervention services in Montana are provided by seven early intervention service providers located in five Part C service regions administered by DDP. DDP reported in its Part C FFY 2007 annual performance report (APR) that it served 633 infants and toddlers with disabilities, which represent 2.26% of the State's population from birth to three. DDP has adopted a State system of payments under IDEA and has also developed due process procedures, in accordance with 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 the State's Monitoring System: OSEP learned through a review of Montana's State Performance Plan (SPP) and its Comprehensive Evaluation Process for Family Education and Support Services (Comprehensive Evaluation Process), and confirmed through interviews with DDP officials and members of the Family Support Services Advisory Council (FSSAC), that the State's general supervision system consists of the following components to identify noncompliance in a timely manner:

- 1) Annual on-site monitoring - Using a State-developed monitoring tool, DDP's Quality Improvement Specialists (QIS) conduct annual on-site monitoring of each of the seven regional early intervention services (EIS) programs with which the State contracts. QIS reported gathering and reviewing quality assurance documentation, which includes consumer satisfaction surveys (State and local), information gathered at home visits with families, documentation of praise or complaints, licensing information, financial audits, certification documentation for Family Support Specialists (FSS), other staff training records, verification of annual child-count data, and policies and procedures.
- 2) Part C Annual Performance Report - The State's Part C Coordinator reported that the Part C Annual Performance Report is sent out quarterly to QIS and is designed to gather data on selected APR compliance indicators that are not reviewed during on-site monitoring.
- 3) Dispute Resolution System - Although the State reported that no written complaints were filed and no requests for due process hearings or mediation were made in FFY 2007, the Part C Coordinator indicated that the dispute resolution system is a component used to identify noncompliance. The State clarified that it documents the complaints made and resolved in provider agencies through an informal complaint resolution process.

When and How Findings are Issued: Based on its review of DDP's "Technical Assistance Document for Quality Improvement Specialists and Family Education and Support Services Provider Agencies" (Technical Assistance Document) and interviews with DDP officials, OSEP learned that, although noncompliance can be identified through any of the components of general supervision, annual on-site monitoring is the primary component for identifying noncompliance. QIS use the Quality Assurance Observation Sheets (QAOS) to record "deficiencies" identified from a review of individual child records (including the IFSP, evaluation information, and prior written notice), and interviews with EIS personnel. The QIS issue the QAOS to respective EIS provider agencies' executive directors, or designees, at the conclusion of the on-site visit. In addition to regularly scheduled on-site monitoring visits, QIS use QAOS to investigate issues raised by parents or providers. According to DDP policy, EIS providers have ten calendar days to address any deficiencies identified in the QAOS. This could include providing additional data to demonstrate that a deficiency was incorrectly identified or demonstrating that the deficiency has been corrected. The QIS explained that they will issue a finding of noncompliance and request a corrective action plan (CAP) if, at ten days, the EIS provider's response to the QAOS is insufficient to demonstrate that there is no deficiency, or if the deficiency is not corrected. The Technical Assistance Document indicated, and DDP officials confirmed, that QIS may also issue a CAP immediately if "a review reveals a systemic/pervasive deficiency."

According to the FFY 2007 APR, DDP issued no findings of noncompliance with APR compliance indicators or related requirements through any of the State's mechanisms. The Part C Coordinator and the QIS reported that they are engaged in continuous monitoring of EIS programs and work with them proactively to ensure compliance with Part C requirements.

Although the State reported in the 2007 APR that no noncompliance was identified during the 2007-2008 reporting year, OSEP reviewed fifteen IFSPs from all seven EIS provider agencies and found that those IFSPs did not consistently include the frequency and intensity of delivering services and justification for services not provided in the natural environments, as required by 34 CFR §303.344 (d)(1)(i) and (d)(1)(ii), respectively.

### **OSEP Conclusions**

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), DDP must ensure that EIS programs comply with related requirements and identify noncompliance as it occurs. Based on its review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that the State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components. IFSPs reviewed prior to the visit and while on-site did not consistently include all the required content, as required by 34 CFR §303.344 (d)(1)(i) and (ii). The Montana Part C coordinator reported that DDP officials are working to create a uniform IFSP form that includes this information, which each EIS provider will be required to use.

### **Required Actions/Next Steps**

Within 90 days of this letter, DDP must submit: (1) evidence that the IFSPs reviewed in the seven programs where OSEP identified noncompliance have been corrected; (2) a sample of subsequent IFSPs that will be developed and used and that contain the required information; (3) revised

monitoring procedures for ensuring compliance with IFSP content requirements under 34 CFR §303.344; and (4) training activities on the new procedures with a schedule for implementation.

***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**

Procedures for Correction/Enforcement: DDP defined "timely correction of noncompliance" as "correction no later than one year from notification of the finding," which occurs if a CAP is required to correct a deficiency identified in the QAOS. The EIS provider must develop and submit a CAP within ten calendar days of the receipt of the notice of finding. According to the Technical Assistance Document and confirmed in interviews with DDP officials, the CAP must include the action to be taken to ensure correction of the deficiency (or noncompliance), the timeline for correction, and the steps necessary to ensure that noncompliance will not reoccur.

Upon successful completion of the CAP, the QIS notify the EIS provider agency in writing of the completion of the plan. Failure to complete or implement the CAP could result in serious sanctions against the EIS provider agency, including fiscal consequences or notification of termination of the contract with the EIS provider.

Although the State reported no findings of noncompliance in the last three APRs, DDP officials reported issuing findings of noncompliance related to its other programs, such as Supported Living and Community Supports programs, using the same monitoring system. In these instances, DDP required a CAP and tracked the program's progress in correcting the specific areas of noncompliance, ensuring that the required activities were completed by the due dates specified within the CAP. DDP verified the correction of noncompliance through on-site observation and interviews, and a review of documentation.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP has determined that DDP has a general supervision system that appears to be reasonably designed to ensure correction of identified noncompliance in a timely manner. However, without State-level data on findings requiring correction and collecting data at the local level, OSEP cannot determine whether the system is fully effective in correcting noncompliance in a timely manner.

**Required Actions/Next Steps**

No action is required.

***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**

State Complaints: In FFY 2007, DDP reported that no written complaints were filed. DDP reported that it has provided training and disseminated information to EIS providers about methods available

to resolve disputes concerning early intervention services, including filing a written complaint to the State. Parents are provided notice of procedural safeguards through the State's publication, *First Steps A Parent Information Handbook: Infant and Toddler Programs –Preschool Special Education*, along with local agency procedural safeguards brochures.

The State has an informal complaint process outlined in its "Part C Early Intervention Services Dispute Resolution Handbook" (Handbook).<sup>1</sup> Although this document is still in draft form, DDP officials indicated that DDP follows the procedures outlined in the Handbook. DDP officials reported that they utilize an informal complaint process at the local level to more quickly respond to issues and prevent any potential escalation of problems that could result in a more lengthy resolution process. DDP documents informal complaints and includes the agency name, who handled the complaint, the reason for the complaint, how and when it was resolved, and any relevant supporting documentation. In the FFY 2007 APR, the State reported that six informal complaints were documented in three Part C agencies. DDP also documented how each informal complaint was resolved. DDP officials informed OSEP that parents may file, at any time, a written signed complaint under 34 CFR §303.510.

Due Process Hearings: In FFY 2007, DDP reported that no due process hearings were requested. According to procedures in the Handbook, a parent, legal guardian, or surrogate parent of an infant or toddler with a disability may request an impartial due process hearing if the individual disagrees with a decision of a Part C agency. The Handbook also provides procedures and timelines in the event that a request for a hearing is made. According to the Handbook, the director of DDP promptly notifies affected parties of the request for a due process hearing and sends them a list of five impartial hearing officers. Each party has five business days to respond to the list during which time they may cross off any two names and rank the remaining names in order of preference. If the parties cannot come to agreement on an impartial hearing officer, the director of DDP makes the selection. The impartial hearing officer must render a decision within thirty days. During this time, the director of DDP will provide for mediation, if all parties agree to it.

In addition, the Handbook includes a procedure permitting a Part C agency's board of directors to initiate a due process hearing "when, after reasonable efforts at mediation, a parent, legal guardian, or surrogate parent either fails to provide a written parental consent for a proposed Part C service action, or provides a formal disapproval of Part C service actions." This procedure is inconsistent with 34 CFR §303.405, which states, "The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part."

Mediation: In FFY 2007, DDP reported that no mediations were requested. According to the Handbook, mediation may be requested by parents, legal guardians, or surrogates of infants and toddlers with disabilities or by EIS providers when an impasse is reached after good faith efforts to resolve disputes or complaints. The State reported that mediation may be used to address any issue considered appropriate for due process, but that mediation is an option, not a necessary step to resolve disputes.

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<sup>1</sup> OSEP will conduct a thorough review of the Montana Part C Early Intervention Services Dispute Resolution Handbook to ensure that all procedures are consistent with Part C regulations and report the results under separate cover.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that the State does not have policies and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. As mentioned above, the Handbook provides a procedure for the board of directors of a local Part C agency to initiate a due process hearing. This procedure is inconsistent with 34 CFR §303.405. Further, because the State has not received any written signed complaints or mediation and due process hearing requests, OSEP cannot determine whether the State's procedures and practices are reasonably designed to implement the dispute resolution requirements of Part C.

### **Required Actions/Next Steps**

The State must submit with its application for a Part C grant award, which is due May 10, 2010, revised procedures for initiating due process hearings to ensure that parents have the right to decline services under 34 CFR §303.405 and training activities for the appropriate personnel with timelines for implementation.

### ***Critical Element 4: Improving Educational Results***

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

### **Verification Visit Details and Analysis**

The State described multiple procedures and practices used to improve educational results and functional outcomes for infants and toddlers with disabilities throughout the State. In addition to the State's general supervision system, these procedures and practices include the Montana Family Support Specialist Comprehensive Certification Process. FSS in each of the EIS programs must complete this certification process over a two-year period after being hired. The ten competencies that comprise the two-year certification process are designed to ensure that FSS have the requisite knowledge and skills to provide IFSP services to infants and toddlers with disabilities and their families to help them achieve improved outcomes.

In addition, DDP officials reported on leading a number of initiatives designed to support improved functional outcomes, including: developing guidance manuals, training, and technical assistance for Part C providers pertaining to the Child Outcomes Summary Form (COSF) developed by the Early Childhood Outcome Center; analyzing COSF data; conducting a summer institute to train FSS on functional outcomes and share information on the Center for Early Literacy Learning and Hopa Mountain Project on incorporating speech and language into daily routines; and training on providing services in the natural environment.

### **OSEP Conclusions**

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

### **Required Actions/Next Steps**

No 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 assurances (i.e., monitoring and enforcement, CSPD and interagency agreements, contracts or other arrangements)?*

**Verification Visit Details and Analysis**

During OSEP's verification visit, the State reported on the implementation of Part C grant application assurances related to monitoring and enforcement (local determinations and public reporting), interagency agreements and the State's system for professional development. The State described the following components designed to implement selected grant application requirements:

Public Reporting and Local Determinations: 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 all of its EIS programs against the State's SPP/APR targets and must make an annual determination for each early intervention service provided. DDP has posted individual local programs' performance on all SPP/APR indicators for the last three years on the DPHHS-DDP website.

The State reported that it made local determinations for EIS programs for 2009 based on FFY 2007 APR data, the timeliness and accuracy of the APR data that was submitted, and EIS program monitoring. DDP reported that no audit findings were issued in FFY 2007. DDP uses the determination categories established under section 616 of the IDEA: (1) meets requirements and purposes of the IDEA; (2) needs assistance in implementing the requirements of the IDEA; (3) needs intervention in implementing the requirements of the IDEA; and (4) needs substantial intervention in implementing the requirements of the IDEA.

Interagency Coordination: Under IDEA sections 635(a)(10), 637(a)(2), (6) and (9), each State agency must include in its Part C application: (1) a certification that its methods ensure service provision and fiscal responsibility for services that are current; and (2) its policies and procedures for transition, including an interagency agreement, if the lead agency is not the State Educational Agency (SEA), and potential interagency agreements regarding referrals of children under the Child Abuse and Protection and Treatment Act.

DDP provides all Part C services through contracts. DDP officials confirmed that EIS providers use Federal Part C funds as the payor of last resort and ensure ongoing service provision for IFSP services in a timely manner during any disputes regarding financial responsibilities.

DDP has one joint Interagency Agreement with the Montana Head Start Association, Tribal Head Start and Tribal Early Head Start Programs, Montana Department of Public Health and Human Services-DDP, Region VIII Head Start Bureau, Region XII American Indian/Alaska Native Head Start Branch, and Montana Office of Public Instruction-Division of Special Education. The stated purpose of this Agreement is to: (1) ensure coordination of services, including transition; (2) describe roles and responsibilities of individual agencies; and (3) provide for collaboration among Head Start, Early Head Start, local education agencies, Part C EIS programs, and other local agencies that work with infants and toddlers with disabilities and their families.

Examples of the responsibilities of each of the agencies described in the interagency agreement are as follows:

Early Head Start shall ensure that no less than ten percent of the total number of enrollment opportunities in their programs shall be made available to children with disabilities; shall refer infants and toddlers birth to age three suspected of having a developmental delay to the Part C agency through child find procedures; will offer support to families of children with disabilities through training, information and social support, and assist with development of transition plans as part of the IFSP, as appropriate.

Head Start shall ensure that no less than ten percent of the total number of enrollment opportunities in their programs shall be made available to children with disabilities; shall ensure that health screenings and screenings to identify developmental concerns are completed for children enrolled in Head Start; and participate in local education agency (LEA) Child Study Team to share observations and assessments of performance, developmental needs, and educational goals of children transitioning from Part C services.

LEAs shall ensure smooth transition from Part C services by coordinating efforts with agencies working with infants and toddlers with disabilities.

Personnel Development: DDP reported that it continues to participate in Montana's Comprehensive System of Personnel Development developed under Part B of the IDEA by the Montana Office of Public Instruction. DDP targets pre-service and in-service activities for early intervention professionals in Part C. DDP makes available additional educational opportunities to other professionals, such as child care providers, Early Head Start staff, and preschool staff who provide direct or related early intervention services. DDP provides other educational opportunities based on the results of a "periodic needs survey" sent to FSS and FSS supervisors, trends from annual quality assurance reviews, and training needs related to meeting OSEP requirements.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP finds that the State has policies and practices that are reasonably designed to implement the following selected grant application requirements: interagency agreements, CSPD and contracts or other arrangements.

### **Required Actions/Next Steps**

No further action is required.

## **II. Data System**

### ***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**

The State provided a copy of a recently updated document –"Montana's Developmental Disabilities Program Data Manual"– that DDP reported using to guide data collection and reporting efforts.

According to DDP officials, it has distributed this manual to each of the EIS programs. The State's Part C Coordinator indicated that the manual is used as the basis for training on data collection issues related to section 618 and SPP/APR reporting. According to DDP, training on data collection and reporting is included routinely in quarterly meetings with DDP and EIS program staff to ensure that data are reported accurately and in a timely manner.

Local EIS providers collect data electronically and report to DDP. The Part C Coordinator compiles the information from each of the nine EIS providers by hand and analyzes the data before reporting to DPHHS and OSEP, and later to the public. Data reporting is completed in a timely manner to meet the Part C requirements in sections 616, 618, 635 (a)(14), and 642 of IDEA and 34 CFR §303.540.

EIS program staff indicated that they review reports and verify data at the local level. QIS explained that they corroborate the accuracy of the data entered by EIS programs during desk reviews of files and billing systems. The Part C Coordinator reported reviewing the data from each of the seven EIS programs and conducting data comparisons over the past three years to determine if there were annual variations of 10% or greater to identify potential data anomalies. The Part C Coordinator also reported working directly with each of the EIS programs to review the integrity of the data and to ensure consistency of data collection practices and definition of terms.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that the State has a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public under IDEA sections 616, 618, 635 (a)(14), and 642 and 34 CFR §303.540 in a timely manner.

### **Required Actions/Next Steps**

No action is required.

### ***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?*

### **Verification Visit Details and Analysis**

Each lead agency must have procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance to meet requirements of Part C in IDEA sections 616, 618, 635(a)(14), and 642 and 34 CFR §303.540.

DDP reported that the data it collects and reports reflect actual practice by using a system of checks and balances at the local and State levels. EIS program administrators reported that data entered into the system comes from the service coordinators and providers who are actually developing and implementing IFSPs and, as a result, data pulled from the system is more likely to reflect actual practices.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and reviews with State and early intervention program personnel, OSEP has determined that the State has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance.

**Required Actions/Next Steps**

No 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**

The State reported that data from all components of the State’s general supervision system, including its data system, APR process, monitoring, professional development, policy audit, technical assistance, training, and dispute resolution processes are used to determine appropriate improvement activities. The State reported that data from each of these mechanisms has the potential of resulting in revisions to the improvement activities included in the State’s SPP/APR to OSEP. For example, DDP reported that data collected from the APR may result in training and technical assistance, revision of interagency agreements, or changes in existing support documents used to inform parents of their rights. Additionally, QIS highlighted the importance of the quarterly meetings with the State’s Part C Coordinator to discuss improvement activities in the context of what seems to be working and what changes or improvements need to be made based on the data.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that DDP compiles and integrates data across its systems and uses the data to inform and focus its improvement activities.

**Required Actions/Next Steps**

No further action required.

**III. Fiscal System**

***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**

Each lead agency must ensure that IDEA Part C funds are timely obligated and liquidated in accordance with the requirements in the Education Department General Administrative Regulations. During the verification visit, DPHHS finance staff presented the OSEP staff with the procedures DPHHS-DDP uses for obligating and liquidating Federal IDEA Part C funds in a timely manner.

OSEP confirmed through the U.S. Department of Education’s Grant Administration and Payment System that Montana has expended all of its Part C funds between FFY 2005 and FFY 2007. DPHHS utilizes the Agency Wide Accounting Client System (AWACS) to manage and track the flow of Part C funds. According to DPHHS finance staff, AWACS tracks the amount that is spent on a monthly basis and how the funds are spent by program. DDP receives quarterly reports to assist in ensuring timely liquidation of funds. DPHHS fiscal staff reported that funds may be reallocated if a specific region does not draw down funds in a timely manner.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and early intervention program personnel, OSEP concludes that DPHHS-DDP has procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds.

**Required Actions/Next Steps**

No action is required.

***Critical Element 2: Appropriate Distribution of IDEA Funds***

*Does the State have procedures that are reasonably designed to ensure appropriate distribution of IDEA funds within the State?*

**Verification Visit Details and Analysis**

DPHHS fiscal staff reported that the Montana legislature provides an allocation from the State's General Fund to provide services to infants and toddlers with disabilities and their families. Localities do not provide funds to support Part C services and no other agency provides funding to support Part C services.

Procedures for Appropriate Use of IDEA Part C Funds at the State Level: The State reported that contracts with EIS service providers permit the use of Federal Part C funds only for allowable costs. Contract compliance is monitored by DDP quality assurance staff and the independent DPHHS audit bureau. DPHHS codes State and Federal IDEA funds used to support Part C programs separately and audits all programs annually.

Nonsupplanting Requirements: DPHHS-DDP has a specific method in place to calculate the amount of State funds actually expended for early intervention services for Part C children and their families (local funds are not used to support Part C services). DPHHS finance staff provided annual State budget allocation documentation for the last three fiscal years to demonstrate that State support for Part C programs has remained stable with a modest increase in FFY 2006.

Payor of Last Resort/System of Payments: Contracts with EIS providers require that Federal Part C funds may be used only as the payor of last resort. EIS program administrators indicated that they work with parents of infants and toddlers receiving Part C services to access private insurance and Medicaid funds before accessing Part C funds. Contract compliance is monitored by DDP quality assurance staff and the independent DPHHS audit bureau.

**OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DPHHS-DDP has procedures that are reasonably designed to ensure the appropriate use of IDEA Part C funds at the State level.

**Required Actions/Next Steps**

No action is required.