

Virginia Part C 2009 Verification Visit Letter

Enclosure

Virginia's Part C program, the Infant and Toddler Connection of Virginia (ITCV), is a component of the Department of Behavioral Health and Developmental Services (DBHDS), the State lead agency under Part C of the Individuals with Disabilities Education Act (IDEA). ITCV State staff includes the Part C Coordinator, three monitoring consultants, four technical assistance consultants who manage various program areas, and two administrative staff. ITCV staff is supported by State staff from DBHDS's Grants Management Office and Information Technology Department.

DBHDS delivers Part C services through contracts with 39 local systems, which are the early intervention service (EIS) programs in Virginia. Thirty of the local systems are Community Service Boards, and the other nine are local education agencies (LEAs), universities, or other local governmental entities. Each local system has a system manager who is responsible for local Part C services, and who is the lead agency's primary contact for that system. A local interagency coordinating council (LICC) advises each local system. The lead agency holds local systems accountable for ensuring compliance with all Federal and State regulations through the State's policies and procedures and contracts with each local system.

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

The lead agency enters into a contract with each local system annually. These contracts include extensive, detailed provisions that require the local systems to comply with the requirements of Part C and of State law. The contract requires the submission of timely and accurate data by the local systems to the lead agency. These local contracts also require local systems to be in compliance with all State and Federal Part C requirements, including the identification and correction of noncompliance with Part C requirements.

Identifying Noncompliance through General Supervision Components

The State reported that DBHDS uses its general supervision system to identify local system noncompliance and assess technical assistance and training needs. The major components of the general supervision system that DBHDS uses to monitor local system compliance are the: statewide data system; annual local record reviews; data verification process; dispute resolution; focused monitoring; and, starting in 2010, quality management reviews. The State indicated that while it identifies noncompliance primarily through the above-described components of its general supervision system, if it finds evidence of noncompliance through any of its interactions with local systems, it issues a written finding of noncompliance.

Notification of Finding and One-year Timeline

OSEP reviewed the written notification document that DBHDS sent to each of six local systems informing them of noncompliance. OSEP verified that, for each compliance indicator for which a local system's compliance was less than 100%, the DBHDS notification included a finding of noncompliance, the level of compliance and the specific legal requirement with which the local

system had not complied, and required correction as soon as possible, and no later than one year from the date of the notification.

Statewide Data System

DBHDS utilizes the Infant and Toddler Online Tracking System (ITOTS) for a number of purposes outlined in the Data System section of this Enclosure. One of these purposes is to collect data for reporting on Indicator 7 in the Annual Performance Report (APR), and to determine compliance with the 45-day timeline requirements of 34 CFR §§303.321(e), 303.322(e) and 303.342(a).

DBHDS uses data from a specified three-month period during each APR reporting year to report the State's data in the APR and determine compliance. The State used data for the period April 1- June 30, 2008 to make findings during FFY 2007, but utilized an earlier period (October 1- December 31, 2008) for FFY 2008, so that it could make findings of noncompliance based on data that reflect noncompliance within the same FFY reporting period.

Annual Local Record Reviews

DBHDS requires each local system to complete and submit an annual local record review, using the State's Annual Local Record Review Verification Form. DBHDS uses the data from the annual local record reviews to report in its APR for Indicators 1, 8A, 8B, and 8C. The lead agency specifies the number of records that each local system must review, and randomly selects the specific children whose records the local system must review, taking into account race, ethnicity, gender, age, and disability type. Each local system must include documentation to support the local system's compliance determinations and any findings of noncompliance with the Annual Local Record Review Form that it submits to DBHDS. As with APR Indicator 7, DBHDS changed the monitoring timeframes for Indicators 1, 8A, 8B, and 8C, to ensure a shorter time span between identification of noncompliance by the lead agency and notification to local systems.

Data Verification Process

DBHDS staff informed OSEP that after it receives annual local record reviews and supporting documentation from local systems, DBHDS staff reviews a sample of the same folders that the local system reviewed to verify the local system's accuracy in making compliance decisions. If DBHDS finds that data submitted from annual local record reviews are not accurate, it makes a finding that the local system's data were not valid and reliable.

Dispute Resolution: State Complaints, Due Process Hearing Requests, and Mediation

DBHDS reported to OSEP that while the State has not issued findings of noncompliance through its Part C dispute resolution system, DBHDS would notify local systems if there was noncompliance identified through the dispute resolution system.

Focused Monitoring

DBHDS conducted focused monitoring visits to four local systems that were "needs intervention" in FFY 2006 and six local systems in "needs intervention" in FFY 2007. The State explained that its intention in focused monitoring has not been to identify new areas of noncompliance, but rather to help diagnose the causes of previously-identified noncompliance and to develop strategies to correct it. DBHDS staff further reported, however, that if it found any new noncompliance during an on-site visit, it would issue a new written finding of noncompliance. In FFY 2008, DBHDS identified no systems as "needs intervention," and used that year to work closely with the Data Accountability Center (DAC), with input from the Virginia Interagency Coordinating Council (VICC), to begin a reevaluation of its approach to focused monitoring.

Quality Management Reviews

Beginning in 2010, DBHDS will, as a part of the State's new Medicaid Initiative and in collaboration with the Department of Medical Assistance Services (DMAS), conduct quality management reviews of Part C providers to ensure compliance with both Federal and State requirements.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different general supervision components: the statewide data system, its annual local record reviews, the data verification process, the dispute resolution processes, and through focused monitoring. Without collecting data at the local level, OSEP cannot determine whether DBHDS's procedures are fully effective in identifying compliance in a timely manner.

Required Actions/Next Steps

No action is required.

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

APR Data

Virginia's Part C FFY 2007 APR timely correction data in SPP/APR Indicator C-9 reflect that the State had not ensured timely correction of all findings of noncompliance. Specifically, the State reported in that APR that 75 of 98 (or 77%) findings of noncompliance identified in FFY 2006 had been corrected by the State in a timely manner, and that the 23 remaining findings were corrected beyond one year from notification, but by December 1, 2008. DBHDS staff informed OSEP during the verification visit that it expected its FFY 2008 data for SPP/APR Indicator C-9 to be much higher.

Correction Timeline and Tracking

During OSEP's verification visit, DBHDS staff confirmed that, in order for the State to consider a finding to have been timely corrected, the State must have verified correction no later than one year from the date on which the State notified the local system in writing of the finding of the noncompliance. As noted above, OSEP confirmed that each written notification of the finding of noncompliance specified that the noncompliance be corrected within one year from notification. Local systems submit Corrective Action Plans (CAPs) to address the findings of noncompliance.

DBHDS reported that it makes a finding of noncompliance and requires correction to 100% compliance whenever a local system has less than 100% compliance for an SPP/APR compliance indicator. If a local system is below 93%, DBHDS also requires the local system to submit a CAP. DBHDS' collaboration with local systems in developing individualized CAPs was well-documented in DBHDS' monitoring records. In working with local systems to develop CAPs, DBHDS considers the history, nature, and length of time of the identified noncompliance. DBHDS provided documentation of how it works with local systems through the CAP process to ensure effective strategies have been identified to ensure the timely correction of noncompliance. DBHDS monitors

the progress of the local system's correction of noncompliance by tracking the specific areas of noncompliance and required due dates within the CAP.

Verification of Correction

In verifying correction, OSEP reviewed CAPs and CAP close-out letters from six local systems, and confirmed that DBHDS had maintained clear documentation of the basis on which the State determined that the local system had corrected the noncompliance. Specifically, OSEP Memorandum 09-02 (OSEP Memo 09-02), entitled, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the [IDEA]," and dated October 17, 2008, provides that "[f]or any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, the State must ensure that the LEA [or EIS program] has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the [EIS program]." OSEP Memo 09-02 clarifies that, for any noncompliance concerning a child-specific timeline requirement, the State must ensure that the EIS program has completed the required action (e.g., the evaluation or initiation of services, though late), unless the child is no longer within the jurisdiction of the LEA. This Memorandum further requires that the State verify that through the use of updated data that the EIS program is in compliance with the specific regulatory requirement that was the basis for the noncompliance finding.

DBHDS staff reported that, after receipt of OSEP Memorandum 09-02, DBHDS began to require both that each individual case of noncompliance be corrected and that the local system be in current compliance with the specific regulatory requirement. DBHDS reported that it provided guidance to local systems through written documents, phone conferences, State trainings, and other methods to ensure that noncompliance was not considered corrected until a local system had come into 100% compliance.

DBHDS employs a comprehensive process, similar to the previously described Annual Local Record Review and Data Verification Process, in verifying the correction of noncompliance. DBHDS randomly selects an updated representative sample of records for local systems to review. Local systems must complete a local record review and submit documentation to the State, in order for DBHDS to verify whether or not noncompliance has been corrected. OSEP reviewed a random sample of DBHDS' Part C monitoring files, and noted that these records were exceptionally well-organized and provided clear documentation of how DBHDS reached its conclusion as to whether and when a local system had corrected noncompliance and of any action that DBHDS took if a local system had not corrected noncompliance in a timely manner.

Enforcement

DBHDS staff reported the use of a number of enforcement actions taken with local systems connected to local determinations or findings of noncompliance. Enforcement actions in FFY 2005 through FFY 2008 included increased frequency of CAP check-ins, targeted technical assistance, on-site visits and activities with local system managers. DBHDS reported to OSEP that, beginning in FFY 2008, it had also directed local systems to use specified amounts of American Recovery and Reinvestment Act of 2009 (ARRA) funds to address longstanding noncompliance. All possible enforcement actions are detailed in DBHDS's *System of Enforcements* document, which the DBHDS Commissioner signed.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has a general supervision system that has components that are reasonably

designed to ensure correction of identified noncompliance in a timely manner, but that the State's FFY 2007 SPP/APR Indicator C-9 data on timely correction indicated that the State had not ensured timely correction of all findings of noncompliance. Without collecting data at the local level, OSEP also cannot determine whether DBHDS's procedures are fully effective in correcting noncompliance in a timely manner.

Required Actions/Next Steps

OSEP looks forward, and will respond separately, to the State's FFY 2008 Part C APR, due on February 1, 2010. No further action is required.

Critical Element 3: Dispute Resolution

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

Verification Visit Details and Analysis

DBHDS staff informed OSEP that the State has, pursuant to 34 CFR §303.420(b), chosen to implement due process procedures as set forth in Part C of the IDEA. The State staff described the State's procedures for State complaints, due process hearings and mediation, all of which appear to be consistent with the requirements of Part C. However, because in the four-year period from FFY 2004 through FFY 2007, the State received so few complaints (four) and requests for due process hearings (none) or mediation (two), OSEP cannot determine whether the State is implementing the established procedures in a manner that is consistent with the requirements of Part C.

OSEP Conclusions

As noted above, the State's established procedures for Part C complaints, due process hearings and mediation are, as written, consistent with the requirements of Part C. However, because there have been so few formal requests for dispute resolution, OSEP cannot determine whether the State is implementing those procedures in a manner consistent with the requirements of Part C.

Required Actions/Next Steps

No action is required.

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 infants and toddlers with disabilities?

Verification Visit Details and Analysis

Statewide Public Awareness

DBHDS staff informed OSEP that early identification begins with collaborative interagency child find efforts that are specified in interagency agreements. The statewide public awareness campaign includes radio spots, media kits, posters and collateral materials, media lists, and packets of materials with tactics for reaching traditionally underserved populations. New public service announcements for radio and television were produced and mailed to the major television networks throughout the State. A two-day statewide training for local system managers was held and included information from DBHDS and presentations of promising public awareness and child find practices by local system managers.

Individualized Services

DBHDS staff reported to OSEP that it developed a new practice manual that provides guidance specific to individualized services. The State staff reported comprehensive online and regional training initiatives to improve staff skills in assessment, writing functional goals, and implementing routines-based intervention. The use of a statewide IFSP form supports these initiatives. DBHDS also reported that it uses its monitoring process to review IFSPs to ensure consistency between assessment results, individualized services, and service delivery environments.

Child and Family Outcomes

DBHDS developed a new resource manual to assist providers. This manual includes the instructions for measuring child progress; information about the role of the family indicators; age-expected and immediate foundational skills; and indicator ratings. The Evaluation/Assessment Tools section of the manual includes guiding questions, decision trees and sample scripts. The manual also includes general information about typical development, and examples of typical development organized by indicators for each age or age range. The State's new practice manual also includes information on planning functional outcomes; identifying services to address outcomes within the child's daily activities, routines and environments; and service delivery practices that focus on supporting the family's ability to enhance their child's development throughout daily routines and activities.

OSEP Conclusions

Based on the review of documents, analysis of data and interviews with State and local personnel, OSEP concludes that DBHDS 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 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

Public Reporting and Determinations

As part of its monitoring and enforcement responsibilities under sections 616 and 642 of the IDEA, each State must annually report to the public on the performance of each local EIS program against the State's SPP/APR targets and must make an annual determination for each EIS program. DBHDS staff informed OSEP that it meets this reporting requirement by publishing the performance of each local system against the State's SPP targets on the ITCV website, along with local system annual profiles and the State's APR. OSEP confirmed this information by reviewing the State's website, which included the performance data for each local EIS program. DBHDS also disseminates this information to the public annually by distributing it through other public agencies, advocacy and stakeholder groups, and at VICC quarterly meetings.

To make annual local determinations, DBHDS uses a determination assessment form, which stakeholders and DBHDS staff review on an annual basis. The scoring methodology for the form factors in performance on compliance and results indicators, timely and accurate data, correction of

any other findings made, and correction of ongoing noncompliance. During the visit, OSEP clarified that although to date, there have not been any audit findings for any of the 39 localities, if there are such findings in the future, DBHDS must consider those audit findings and the correction of the findings in making its local determinations.

Interagency Coordination

Under IDEA sections 635(a)(10), 637(a)(2), (6) and (9), and 640, each State lead agency must include in its Part C application: (1) a certification that its methods to ensure service provision and fiscal responsibility for services 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 (CAPTA).

DBHDS provided OSEP with a September 1996 Memorandum of Agreement (MOA) between DBHDS and eight other State agencies for the implementation of Part C services, which includes transition procedures with the SEA, the Virginia Department of Education (VDOE). Although DBHDS and VDOE also released a joint guidance document on transition from Part C to Part B in 2003 addressing the 1997 IDEA amendments, the 1996 MOA does not address the interagency agreement requirements regarding transition between DBHDS as the Part C lead agency and VDOE as the SEA. DBHDS indicated that it had developed guidance documents, updated its IFSP form, and conducted training with local systems, to address changes made to transition policies and procedures in response to amendments to IDEA in 1997 and 2004. DBHDS staff reported, however, that the lead agency and VDOE are currently in the process of developing a new interagency agreement, inclusive of updated transition policies and procedures. The State does not have in place, as required in 34 CFR §303.148(c), a signed, updated interagency agreement between VDOE and DBHDS on the transition requirements in IDEA sections 612(a)(9), 614(d)(2), 636(a)(3) and 637(a)(9) and applicable regulations in 34 CFR §§300.124, 300.321(f), 300.323(b), 303.148, and 303.344(h).

The September 1996 MOA provides that, as the Lead Agency, DBHDS “is ultimately responsible for ensuring the availability of services for which a child and family is entitled, including multidisciplinary evaluation and assessment, development and implementation of the [IFSP], and service coordination.”

While DBHDS serves as the Lead Agency for Part C, other State agencies also have responsibility for the provision and/or payment of Part C services. For example, DMAS pays for medically necessary Part C services to children dually enrolled in Part C and Medicaid, including, but not limited to, service coordination for children eligible for Targeted Case Management, and payment for participation in IFSP meetings. The Virginia Department of Health provides developmental screening, assessment, service coordination, assistive technology, medical evaluations and health services through regional Child Development Clinics and the Children’s Specialty Services program. The Department of Social Services (DSS) provides family training and counseling, social work services, service coordination and transportation. The Department for the Blind and Vision Impaired provides vision screening, assessment, vision services, and assistive technology services and devices.

In an effort to strengthen existing agreements with interagency partners, DBHDS is in the process of working with other State agencies to develop new interagency agreements. On October 1, 2009, DBHDS staff reported that it had entered into an interagency agreement with DMAS, the State agency responsible for Medicaid, as part of the State’s Medicaid Initiative. DBHDS staff reported

that key aspects of this new interagency agreement include: (1) addressing provider shortages (i.e., recruitment and retention); (2) creation of a listing of all providers; (3) improved reporting on use of funds; (4) ensuring that Part C is the payor of last resort; (5) a comprehensive system of payments; and (6) a data exchange agreement to ensure appropriate payment amounts of Medicaid reimbursement for Part C services.

Comprehensive System of Personnel Development (CSPD)

DBHDS staff reported to OSEP that, as part of its CSPD training, DBHDS identified personnel needs both formally and informally based on requests, surveys and informal meetings with local systems, monitoring and supervision, proactive efforts by DBHDS to support evidence-based practices, and training specifically around changes to Federal and State requirements. In FFY 2007, DBHDS required all Part C personnel to complete on-line Part C training modules, and all service coordinators to complete two levels of service coordination training. DBHDS delivers training through statewide conference calls, at annual conferences, through online training, and through regional and local meetings. DBHDS has recently developed new comprehensive requirements for Early Intervention certification through four training modules for all providers.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has procedures and practices that are reasonably designed to implement selected grant assurances regarding local determinations and public reporting, interagency fiscal coordination, and CSPD, but the State must update its interagency agreement between VDOE and DBHDS on transition to meet the requirements of 34 CFR §303.148(c).

Required Actions/Next Steps

As soon as possible, but no later than with the State's FFY 2010 Part C application, due May 10, 2010, the State must provide a signed, updated interagency agreement between VDOE and DBHDS that addresses the transition requirements in IDEA sections 612(a)(9), 614(d)(2), 636(a)(3) and 637(a)(9) and applicable regulations in 34 CFR §§300.124, 300.321(f), 300.323(b) 303.148, and 303.344(h). If the State will not be able to submit the signed agreement to meet those statutory and regulatory requirements by the time that the State submits its Part C application by May 10, 2010, the State must indicate the earliest date by which a revised interagency agreement will be submitted to OSEP and will also need to submit a separate signed specific assurance (the language of which will be provided by OSEP).

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

Since 2001, DBHDS has used the ITOTS database system to collect child count, service setting, and exit data that it submits to OSEP annually under IDEA section 618. The State also uses the ITOTS database to collect child outcomes data for SPP/APR Indicator 3 and 45-day timeline data for Indicator 7. As noted above, DBHDS collects information for Indicators 1 and 8 through annual local record reviews, and verifies the accuracy of these data as described in the discussion of General Supervision Critical Element 1.

DBHDS's contract with each local system requires the system to enter accurate and timely data into ITOTS. DBHDS staff described the edit checks built into ITOTS to prevent the entry of illogical or duplicate data. DBHDS also has an ITOTS users group who "tests" new additions to ITOTS to identify any data anomalies, and if any anomalies are identified, the data rules are rewritten to address the data anomaly. DBHDS requires that each local system manager validate all data submissions and review the accuracy of data on a quarterly basis. DBHDS staff reviews the data validity checks that the local system managers submit, through components of its general supervision systems. DBHDS staff further reported that it selects specific data elements and verifies the accuracy of the data in the child's record compared to ITOTS. Areas that DBHDS has verified through on-site visits include transition destination, date of birth, date of IFSP, date of referral, and race.

DBHDS provides opportunities for training and technical assistance in a variety of formats including e-mails, statewide technical assistance calls, guidance documents, and the ITOTS manual located on the ITCV website, to ensure valid, reliable and timely data. DBHDS described the training and support that it has provided to system managers (including an individualized orientation for each new system manager and annual trainings for all system managers) to ensure that they understand the rules and procedures for data reporting. DBHDS requires that individuals have training before they can access the ITOTS system.

As part of the verification visit, OSEP specifically inquired into the State's guidance and data collection methodology for APR Indicators 1, 7, and 8. DBHDS presented information demonstrating that the data it collected for APR Indicators 7 and 8 were consistent with the required measurements.

Regarding APR Indicator 1, the State reported that it required local systems to review the records for a sample of infants and toddlers whose initial IFSP meeting occurred in a three-month period, or in the same period in prior years. The State acknowledged that while this methodology allowed the State to collect data regarding the timely initiation of services in children's initial IFSPs and of services added in subsequent IFSPs if the IFSP was developed in the same three-month block of time, it did not include IFSPs revised at other times during the year and thus, may not have been a representative sample. Following the visit, DBHDS submitted a plan to OSEP to revise its annual local record review process to include a process to collect data on the timely initiation of services in initial, periodic and annual IFSPs. The plan, which OSEP approved, will allow DBHDS to identify a representative sample selection criteria, ensuring that the records for each local system to review includes not only age, race/ethnicity, and gender, but also type of IFSP. DBHDS will ensure that each local system provides the State in its sample records that are representative (and include timely initiation of services from initial, periodic and annual IFSPs). The State told OSEP that this revision will be applied to Indicator 1 data submitted for the State's FFY 2008 APR.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has, with the revisions described above regarding how the State collects data for APR Indicator 1, 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. Without conducting a review of data collection and reporting policies at the local level, OSEP cannot determine whether the implementation of the State's data collection and reporting procedures reflects actual practice and performance.

Required Actions/Next Steps

OSEP looks forward to reviewing the State's FFY 2008 APR data for Indicator 1, through the modification of its annual local record review process to include initial, periodic and annual IFSPs.

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

In addition to the guidance, training, and edit checks it provides to assist local systems in collecting and reporting accurate, valid and reliable data described above, DBHDS has implemented a number of monitoring strategies to help ensure that data reported in ITOTS and annual local record reviews are consistent with actual practice and performance. These monitoring activities include: (1) on-site verification of ITOTS data; and (2) a review of child-specific documentation against the compliance conclusions set forth in local systems' annual local record reviews.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has procedures that are reasonably designed to verify that the data collected and reported reflect actual practice and performance. Without conducting a review of data collection and reporting policies at that local level, OSEP cannot determine whether all public agencies in DBHDS implement DBHDS' data collection and reporting procedures in a manner that reflects 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

DBHDS staff 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 identify and determine appropriate improvement activities. DBHDS uses data to develop State and local improvement activities and to direct professional development activities. ITOTS provides functions that allow users to disaggregate, compile, and compare data that are used to analyze and inform decision-making when developing improvement activities and investing in them. DBHDS reported that it uses monitoring data to drill down to statewide, regional and local patterns of noncompliance. In addition to tracking timely correction of all individual student compliance, DBHDS tracks CAPs.

DBHDS reported that it uses its data system to generate statewide priorities to improve programs and system operations. DBHDS will be using ITOTS to identify baseline data to set its State targets for the child outcomes indicator. DBHDS used its data system, through the State's Medicaid initiative, to develop a statewide database to track and manage the process of early intervention provider certification and to support the family choice of providers and service coordinators. DBHDS shared that it uses CAPTA data to assist in working with DSS at the State and local levels

to ensure that DBHDS is receiving appropriate referrals from DSS. DBHDS also holds an annual Early Intervention Conference, TA teleconference calls and regional meetings based on areas of need that they have identified using their data system.

DBHDS reported a long history of providing training to local systems regarding the analysis and use of local data for program improvement. The ITOTS system data analysis informs the local system managers, state monitors and TA consultants in developing appropriate improvement strategies focused on areas that, based on the data, have been identified as being most effective in improving results. DBHDS uses the CAP process to ensure ongoing monitoring of the annual local reviews of appropriate ITOTS reports.

OSEP Conclusions

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

Required Actions/Next Steps

No action is 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 (EDGAR). OSEP confirmed through the U.S. Department of Education's Grant Administration and Payment System (GAPS) that Virginia has timely expended all of its Part C funds for FFY 2005, FFY 2006, FFY 2007, and FFY 2008¹. DBHDS reported to OSEP that it has never had to request GAPS to be re-opened in order to liquidate funds beyond the 30-month period available for liquidation.

DBHDS staff reported to OSEP that DBHDS sets up a Part C budget that is separate from other State funds, and that it assigns, for each grant, separate project codes for each program (e.g., Part C) and for each grant year. DBHDS tracks the funds for each project and year through expenditure reports, and monitors these reports to ensure that funds from older grants are spent first. DBHDS fiscal staff works closely with the Part C Coordinator, providing her with monthly reports to track local system contracts, log-in payments, and make adjustments when necessary.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that DBHDS has procedures that are reasonably designed to ensure timely obligation and liquidation of IDEA Part C funds.

¹ Although FFY 2008 Part C funds are available for obligation through September 30, 2010 and liquidation through December 30, 2010, the State had already drawn down all of its FFY 2008 Part C funds as of November 4, 2009.

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

DBHDS has established separate cost centers for State and Federal early intervention funds. DBHDS ensures that Federal Part C funds are separately accounted for and not commingled with State funds by ensuring that each grant award is designated as its own project. DBHDS requires local systems to submit quarterly expense reports, and to report by revenue sources, and to keep separate source codes. DBHDS has designed expenditure reports to have separate columns for Federal, State, and local expenses. DBHDS requires all local systems to complete a single audit annually by an independent auditing firm. DBHDS reviews the results of these audits. DBHDS also undergoes an annual audit. As noted above in the discussion regarding local determinations, to date there have been no State or local audit findings of noncompliance related to Part C.

DBHDS staff reported to OSEP that it requires local systems to submit annual budgets for review and approval. It also requires local systems to submit two quarterly expense reports to DBHDS, one for ARRA Part C funds, and the other for non-ARRA Part C funds. DBHDS utilizes contracts with local systems to ensure Federal and State dollars are used on allowable costs under EDGAR and OMB cost principles. DBHDS technical assistance consultants annually review an early intervention local budget for each local system to ensure that funds are used for allowable costs, consistent with Federal and State requirements. DBHDS staff looks at such factors as trend data and the size of local systems when considering if projected costs appear reasonable and reflect necessary expenditures.

Payor of Last Resort

DBHDS reported that it ensures that Part C is the payor of last resort by building assurances into contracts with local systems that stipulate that DBHDS holds each local system accountable for making every effort to access private and public insurance and other funding sources before using Federal Part C funds. DBHDS requires local systems to develop and implement mechanisms to meet those assurances. DBHDS requires local systems to maintain a list of potential resources and supports in their local community in order to demonstrate their attempt to comply with payor of last resort requirements. Local system managers also receive annual training on this Part C requirement.

The September 1996 Memorandum of Agreement between DBHDS and eight other State agencies includes specific language ensuring that Part H (now Part C) is the payor of last resort. As noted earlier in this letter, DBHDS is in the process of revising interagency agreements with its partner State agencies to continue to define financial responsibility. DBHDS's recent Medicaid initiative and interagency agreement with DMAS have further strengthened DBHDS's system of payments and Virginia's ability to continue to ensure that Part C is the payor of last resort.

System of Payments

DBHDS has a system of payments on file that has been approved by OSEP. As part of its Part C system of payments, DBHDS has a statewide family cost share process. Local systems must ensure that there is a process for billing and collecting family fees. There is a sliding fee-scale based on

family size and income. DBHDS requires local systems to provide families with a list of chargeable services as well as a list of those services that must be provided at no cost to families. Family fees must be reported to DBHDS on a quarterly basis. Families fill out a family cost share agreement form and a consent form if they want to have their private insurance billed. DBHDS staff reported that it requires that no child be denied service based on an inability of the parent to pay.

Nonsupplanting Requirements

DBHDS staff informed OSEP that, in determining whether the State is meeting the nonsupplanting requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.124, DBHDS includes State funds allocated by the State Legislature to DBHDS and funds from local sources, but does not include all in-kind contributions from other State agencies for providing early intervention services to infants and toddlers with disabilities. This is inconsistent with the requirements of IDEA section 637(b)(5)(B) and 34 CFR §303.124, which require the State to ensure that Part C funds are not used to supplant State (including those from State sources other than the Lead Agency for Part C) and local funds. OSEP has received and reviewed DBHDS's January 4, 2010 memo to OSEP in which DBHDS indicates its plans to track this information for FFY 2009. In order to determine MOE for FFY 2009 and FFY 2010, DBHDS must go back and calculate its effort for FFY 2008 under 34 CFR §303.124(b).

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that DBHDS appears to have procedures that are reasonably designed to ensure appropriate use of IDEA Part C funds at the State level, with the exception of appropriately determining whether the State is in compliance with Part C's maintenance-of-effort requirements under IDEA section 637(b)(5)(B) and 34 CFR §303.124(b).

Required Actions/Next Steps

DBHDS must submit with its Part C FFY 2010 Application, due May 10, 2010: (1) a separate written assurance that the State has calculated its effort for FFY 2008 under the IDEA MOE requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.124(b) and included all State and local public expenditures on Part C early intervention, including those made by State agencies other than DBHDS; and (2) a copy of the correspondence in which DBHDS has informed its State audit office of the need to review under the State's Single Audit, conducted under the Single Audit Act, the State's procedures to ensure that the State is tracking of expenditures to meet the IDEA Part C maintenance-of-effort (MOE) requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.124(b) and specifically included all State and local public expenditures on Part C early intervention, including those made by State agencies other than DBHDS.