

Hawaii Part C Verification Visit Letter

Enclosure

Scope of Review

During the verification visit, the Office of Special Education Programs (OSEP) reviewed critical elements of the State's general supervision, data and fiscal systems, and the State's systems for improving child and family outcomes and protecting child and family rights.

Methods

In reviewing the State's systems for general supervision, collection of State-reported data,¹ and fiscal management, and the State's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the State's general supervision, data, and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed the State's systems for collecting and reporting data the State submitted for selected indicators in the State's Federal Fiscal Year (FFY) 2008 Annual Performance Report (APR)/SPP
- Reviewed the following—
 - Previous APRs
 - The State's application for funds under Part C of the IDEA
 - Previous OSEP monitoring reports
 - The State's Web site
 - Other pertinent information related to the State's systems²
- Gathered additional information through surveys, focus groups or interviews with—
 - The Part C Coordinators
 - State personnel responsible for implementing the general supervision, data, and fiscal systems
 - Local providers
 - State Interagency Coordinating Council
 - Parents and Advocates

Description of the State's Part C System

Hawaii's Part C program, the Hawaii Early Intervention Section, is a component of the Hawaii State Department of Health (HDOH), the State lead agency under Part C of the Individuals with Disabilities Education Act (IDEA). The State provides Part C services through three early intervention services (EIS) programs, 18 purchase of service (POS) programs, and 12 Public Health Nursing Branch programs.

¹ For a description of the State's general supervision and data systems, see the State Performance Plan (SPP) on the State's Web site.

² Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

Services are provided in 31 regions by these State agencies and/or its contractors, which are the State's EIS programs. The State has a system of payments on file with the OSEP and uses the Part C due process hearing procedures to resolve individual child disputes.

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?

To effectively monitor the implementation of Part C of the IDEA by EIS programs/providers, as required by IDEA sections 616, 635(a)(10)(A), and 642 and 34 CFR §§303.500 and 303.501, the State must have a general supervision system that identifies noncompliance in a timely manner.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to identify noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems are fully effective in identifying noncompliance 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?

To effectively monitor the implementation of Part C of the IDEA by EIS programs/providers, as required by IDEA sections 616, 635(a)(10)(A), and 642, 34 CFR §§303.500 and 303.501, the State must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act, dated October 17, 2008 (OSEP Memo 09-02), in order to verify that previously identified noncompliance has been corrected, the State must verify that the EIS program and/or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the EIS program and/or provider.

OSEP Conclusions

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to correct noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems are 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?

The State must have procedures and practices that are reasonably designed to implement the following IDEA Part C dispute resolution requirements: the State Complaint procedures in 34 CFR §303.512; and the mediation and due process procedure requirements in 34 CFR §§303.419 through 303.425 (as modified by IDEA sections 615(e) and 639(a)(8)).

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. However, because the State had not received any mediation and/or due process hearing requests in the last APR reporting year, OSEP could not determine the effectiveness of those procedures and practices.

Required Actions

No further 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?

The State must have procedures and practices that are reasonably designed to improve early intervention results and functional outcomes for all infants and toddlers with disabilities.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State 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 effectively implement selected grant application requirements, i.e., making local determinations and publicly reporting on EIS program performance, comprehensive system of personnel development (CSPD), and State-level interagency coordination?

The State must have procedures and practices that are reasonably designed to ensure that the State is effectively implementing the following grant application requirements: (1) making local determinations for, and publicly reporting on, EIS program performance pursuant to IDEA sections 616 and 642; (2) implementation of a CSPD pursuant to IDEA section 635(a)(8) and 34 CFR §303.360; and (3) State-level interagency coordination to ensure that methods are in place

under IDEA sections 635(a)(10), 637(a)(2) and 640 and applicable provisions in 34 CFR §§303.520 through 303.528.

OSEP reviewed HDOH's policy titled "How the State Made Determinations for Hawaii's Part C Programs" (Determination Policy), and found that it did not include all of the applicable enforcement actions from IDEA sections 616(e) and 642. Specifically, under IDEA sections 616(a)(1)(C)(ii) and 642, if the Part C lead agency determines an EIS program to be "needs assistance" for two or more consecutive years (NA-2), "needs intervention" for three or more consecutive years (NI-3), or "needs substantial intervention" in any year (NSI), it must take one of the applicable specified enforcement actions in IDEA sections 616(e)(1)(A) (technical assistance) or (C) (special conditions) (for NA-2), 616(e)(2)(B)(i) (corrective action or improvement plan) or (v) (withholding funds) (for NI-3), or (e)(3)(B) (withholding funds) (for NSI). HDOH must ensure that it takes appropriate enforcement actions under IDEA section 616(a) and (e) based on the determinations made for its EIS programs, and must ensure that its policies and procedures provide that the State will take one of the applicable enforcement actions from IDEA sections 616(e) and 642 listed above.

In addition, from the State's Determination Policy, it is unclear if the State's process for making determinations for EIS programs includes a consideration of any audit findings, and a consideration of whether data submitted by early intervention services (EIS) programs are valid, reliable, and timely. Under OSEP's "Determination FAQs" (10/19/06), a State must consider "any audit findings," and "whether data submitted by EIS programs is valid, reliable, and timely," when making its determinations for EIS programs.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures and practices that are reasonably designed to implement selected grant application requirements, i.e., publicly reporting on EIS program performance, CSPD, and interagency coordination. However, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement selected grant application requirements for making local determinations because it does not include all of the applicable enforcement actions in IDEA sections 616(e)(1)(A) and (C) (for NA-2), 616(e)(2)(B)(i) and (v) (for NI-3), and (e)(3)(B) (for NSI).

Required Actions/Next Steps

Within 90 days from the date of this letter, the State must: (1) provide documentation that it has revised its enforcement action procedures and practices to be consistent with IDEA section 616(e) to include all of the applicable enforcement actions in IDEA sections 616(e)(1)(A) and (C) (for NA-2), 616(e)(2)(B)(i) and (v) (for NI-3), and (e)(3)(B) (for NSI); and (2) confirm that, when the State makes local determinations for its EIS programs, it takes into consideration any audit findings specific to an EIS program, and whether data submitted by EIS programs is valid, reliable, and timely.

II. Data Systems

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?

To meet the requirements of IDEA sections 616, 618, 635(a)(14), and 642 and 34 CFR §303.540, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the U.S. Department of Education (Department) and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has a data system that is reasonably designed to collect valid and reliable data and information, to report the data and information to the Department and the public in a timely manner, and to ensure that the data and information collected and reported reflects actual practice and performance.

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?

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

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes 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?

To meet the requirements of IDEA sections 616, 618, 635(a)(14), and 642, 34 CFR §303.540 and OSEP Memorandum 10-04: Part C State Performance Plan (Part C – SPP) and Part C Annual Performance Report (Part C – APR), the State must compile and integrate data across systems and use the data to inform and focus its improvement activities.

OSEP Conclusions

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

Required Actions/Next Steps

No action is required.

III. Fiscal Systems

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?

The State must have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA funds, as required by the General Education Provisions Act (GEPA), its implementing regulations in the Education Department General Administrative Regulations (EDGAR) (including 34 CFR Parts 76 and 80), and the applicable sections of Office of Management and Budget (OMB) Circulars A-87 and A-133.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State 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 Use of IDEA Funds

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

The State must have procedures that are reasonably designed to ensure appropriate use of IDEA Part C funds that are consistent with the requirements of GEPA, EDGAR (including 34 CFR Parts 76 and 80), OMB Circulars A-87 and A-133, IDEA section 638 and 34 CFR Part 303. OSEP made two findings based on the information obtained during the verification visit.

OSEP finds that the State does not have procedures to determine the amount of “State and local expenditures” to meet the maintenance of effort (MOE) requirements in 34 CFR §303.124(b). Specifically, during the verification visit, HDOH staff acknowledged to OSEP staff that the State did not have procedures to calculate the amount of the State portion of Medicaid funds used to pay for Part C services and the amount of State funds used to pay for the portion of public health nurses that provide Part C services. HDOH staff indicated to OSEP during the visit that they will develop procedures to determine the public health nursing staff time and effort and that the State lead agency is in the process of revising its Medicaid reimbursement procedures to ensure that the State can track “State and local expenditures” to meet the MOE requirements in 34 CFR §303.124(b).

OSEP also finds that the State does not have procedures to ensure compliance with the OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4), which identify requirements for payroll certification and split level funding (i.e., when personnel expenses are paid through multiple funding sources, including a Federal award). Under OMB Circular A-87, Appendix B, Paragraph 8.h(4), when employees work on multiple activities or cost objectives, the basis for distributing their salaries or wages among different funding sources must be supported by personnel activity reports or equivalent documentation. Such documentary support is required in certain circumstances including when employees work on: (a) more than one Federal award, and (b) a Federal award and a non-Federal award.

In Section III of Hawaii's FFY 2010 IDEA Part C Application, HDOH indicated that 19.5 staff are 100% funded through IDEA Part C funds and two staff (secretarial) are 50% funded through IDEA funds. During the verification visit, HDOH staff reported to OSEP staff that approximately 10-15 of its Part C staff are "split-funded" based on the following: (1) they spend 100% of their time in Part C but are paid from different funding sources, including IDEA Part C funds; or (2) they work with both Part C-eligible children and non-Part-C-eligible children (and are paid from both IDEA Part C and other funds, but the basis for payment is unclear). The information provided during the verification visit appears inconsistent with HDOH's FFY 2010 Application as it is unclear to OSEP how many HDOH staff are 100% funded using IDEA Part C funds and how many are "split-funded" as described above.

In addition, HDOH staff acknowledged during the visit that HDOH does not document time and effort for any HDOH staff providing IDEA Part C services that are only partially funded using IDEA Part C funds. HDOH staff also reported that HDOH is not, and has not been, documenting bi-annual certifications for employees who are paid 100% through IDEA Part C funds, as required at OMB Circular A-87, Appendix B, Paragraph 8.h(3). Subsequent to OSEP's verification visit, HDOH staff reported to OSEP that it had begun developing written procedures and has distributed bi-annual certification forms and time-and-effort report forms (referred to as Personnel Activity Reports or PARs) to relevant HDOH staff to establish a basis for time-and-effort documentation and MOE calculations.

OSEP Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures that are reasonably designed to ensure appropriate use of IDEA Part C funds, except that HDOH does not have procedures to: (1) Calculate "State and local expenditures" to determine compliance with the MOE requirement in 34 CFR §303.124(b); and (2) Document time-and-effort (including PARs and bi-annual payroll certifications) to ensure compliance with OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4).

Required Actions/Next Steps

Within 90 days of the date of this letter, HDOH must submit: (1) its written policies and procedures used to calculate "State and local expenditures" to determine compliance with the IDEA Part C MOE requirements in 34 CFR §303.124(b) (including how the State will determine the amount of the State portion of Medicaid funds used to pay for Part C services); (2) its written policies and procedures used to document time-and-effort (including PARs and bi-annual payroll certifications) to ensure compliance with OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4); a copy of the correspondence in which HDOH has informed its State auditors to include compliance with the IDEA Part C MOE and time-and-effort requirements (as indicated above) in any audit pursuant to the Single Audit Act and OMB Circular A-133.