

Oregon Part C Verification Visit Letter

Enclosure

Scope of Review

During the verification visit 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, 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)/State Performance Plan (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 systems¹
- 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
 - Early intervention services (EIS) program staff, where appropriate
 - State Interagency Coordinating Council
 - Parents and Advocates

I. General Supervision Systems

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.

¹ 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.

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 further 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, and 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 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 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 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 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)).

Under 34 CFR §303.420(a), the State has elected to adopt the IDEA Part B due process hearing procedures in lieu of the Part C procedures in 34 CFR §§303.420 through 303.424. Therefore, it must also adopt provisions consistent with 34 CFR §303.425.

With regard to Oregon's State complaint procedures, ODE reported that Model Rule 137-004-0080 of the Oregon Administrative Procedures Act provides a mechanism for a person who is subject to an order in other than a contested case to petition for reconsideration of that order within 60 calendar days of the date of the order. ODE informed OSEP that orders in EI/ECSE and special education State complaints are subject to this reconsideration process, which occurs after the 60 day complaint resolution timeline has expired. Following the verification visit, ODE informed OSEP that one petition for reconsideration of an order in a special education complaint was granted in 2008, and as a result, the State's written decision on the complaint was issued outside of the 60-day complaint resolution timeline. ODE also reported that since that time, it received two petitions for reconsideration, but that it has refused to grant those petitions, because the reconsideration could not occur within the 60-day complaint resolution timeline.

Under 34 CFR §303.510(a), a State must include in its complaint procedures a time limit of 60 days after a complaint is filed under §303.511 for a written decision to be issued that addresses each allegation in the complaint, unless one of the exceptions in 34 CFR §303.510(b) applies. Although the Part C regulations are silent as to appeals of decisions in State complaints, reconsideration is not an exceptional circumstance under 34 CFR §303.510(b) that would justify extension of the 60-day complaint resolution timeline.

Consistent with a State's responsibility to resolve Part C State complaints within the 60-day timeline or a properly extended timeline in accordance with 34 CFR §303.512(b), OSEP has permitted States to establish procedures that would allow requests for reconsideration of Part C State complaint decisions that would result in a decision on the reconsideration within the 60-day complaint resolution timeline. Additionally, OSEP permits States to establish procedures for reconsideration of complaint decisions, even though the reconsideration would not be completed until after the 60-day timeline, but only if implementation of any corrective action(s) required in the State's final decision is not delayed pending the reconsideration process. See OSEP Memo 00-21, Complaint Resolution Procedures Under Part C of the Individuals with Disabilities Education Act, dated July 17, 2000, question 10.² Even though Oregon has informed OSEP that it has not granted petitions for reconsideration of written decisions in State complaints since 2008, the State has also indicated that if directed to do so by OSEP, it would revise its special education State complaint procedures in Oregon Administrative Rule 581-015-2030 to address how reconsideration of State complaints under Oregon Model Rule 137-004-0080 could occur consistent with Part C. OSEP believes that Oregon needs to revise Administrative Rule 581-015-2030 (Procedures for Complaints as Required by IDEA Regulations) to be consistent with Part C, as described above.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that with the exception of the need to clarify procedures governing petitions for reconsideration of written decisions in IDEA State complaints under Oregon Model Rule 137-004-0080, the State has procedures and practices that are reasonably designed to implement the dispute resolution

² Note that the citations in OSEP Memo 00-20 reflect prior regulations for this program.

requirements of IDEA. With regard to Oregon's procedures and practices governing reconsideration of IDEA State complaint decisions, as noted above, reconsideration of special education State complaints under Oregon law must occur outside of the 60-day complaint resolution timeline, and a request for reconsideration is not an exceptional circumstance under 34 CFR §303.512(b) that would justify extension of the 60-day complaint resolution timeline. Oregon informed OSEP that its current practice is not to grant petitions for reconsideration in IDEA State complaints because that reconsideration must occur outside of the 60-day complaint resolution timeline, but indicated that it would revise its special education complaint procedures in Oregon Administrative Rule 581-015-2030 to be consistent with Part C, if directed to do so by OSEP.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must submit a written assurance that it has revised its special education complaint procedures in Oregon Administrative Rule 581-015-2030, to ensure that petitions for reconsideration of orders in special education State complaints under Oregon Model Rule 137-015-0080 are implemented in a manner that is consistent with Part B. In revising its State complaint procedures, Oregon may choose one of the following options, as described above:

1. Consistent with its current practice, Oregon may establish procedures that would refuse to grant petitions for reconsideration of orders in special education State complaints under Model Rule 137-015-0080 because that reconsideration cannot occur within the 60-day complaint resolution timeline in 34 CFR §303.512(a); or
2. Oregon may establish procedures that would permit petitions for reconsideration of orders in IDEA State complaints under Model Rule 137-015-0080 to occur outside of the 60-day complaint resolution timeline, but only if any corrective action(s) required in the State's written decision is not delayed pending the reconsideration process. See OSEP Memo 00-21 dated July 17, 2000, question 10.

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; (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.

During the verification visit, OSEP reviewed the State's District FFY 2009 Determination and Enforcement Matrix (Determination Matrix) (based on 2009-2010 data). The Determination Matrix describes the criteria ODE used in making local determinations for its EIS programs that were determined to be "meets requirements," "needs assistance," "needs intervention," or "needs substantial intervention." However, OSEP found that that the Matrix did not include the applicable required enforcement actions in IDEA section 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). During OSEP's verification visit, ODE revised the Matrix to include the required enforcement actions. OSEP has reviewed ODE's revised Matrix and has determined that it includes 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).

OSEP Conclusion

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., making local determinations and publicly reporting on EIS program performance, CSPD, and interagency coordination, except that with regard to monitoring and enforcement, ODE did not have procedures and practices that were reasonably designed to implement the requirements in IDEA sections 616 and 642 because its Determination Matrix did not include all of the applicable enforcement actions under IDEA sections 616(a)(1)(C)(ii) and (e) and 642. However, ODE revised its Determination Matrix and OSEP finds that the Determination Matrix now appropriately includes the required 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

No action is required.

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, and that the data collected and reported reflects 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 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 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 in the State 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 Conclusion

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 funds.

Required Actions/Next Steps

No action is required.