

## **Pennsylvania 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 systems<sup>1</sup>
- 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

#### **Background**

Pennsylvania has a unique structure for administering its infant/toddler early intervention program in the State. In January 2007, Pennsylvania created a new unified office for the Departments of Education and Public Welfare. The new office, the Office of Child Development and Early Learning (OCDEL), coordinates all Pennsylvania early childhood programs, including the Part C early intervention program and the Part B preschool early intervention program. OCDEL has general supervisory responsibility for all early intervention programs for children aged birth to three.

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<sup>1</sup> 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.

## **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.

Pennsylvania is not identifying and requiring correction of all instances of noncompliance with IDEA Part C regardless of the extent of the noncompliance. State staff reported that for programs that are not receiving an onsite visit, data are pulled twice a year. The State identifies the poorest performers and issues findings of noncompliance, typically in the areas of transition, timely services, and 45-day timeline. Low performance is based on programs that have been poor performers for the previous six months and are in the “bottom cluster” of programs. The State has information in its database for programs that show less than 100% compliance, but does not issue findings unless the program is being monitored or is determined to be one of the lowest performers. Therefore, no findings are made, even though the State has data indicating that the program has data demonstrating compliance levels less than 100%.

### **OSEP Conclusion**

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 identify all noncompliance in information available to it, regardless of the source of the State’s data or the level of noncompliance. Based on the review of documents, analysis of data and interviews with State and local personnel, as described above, OSEP concludes 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.

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

Within 90 days of receipt of this letter, the State must provide a written assurance that it identifies and requires correction of any noncompliance, including all noncompliance identified through its State database. With the next APR due February 1, 2012, the State must submit documentation demonstrating that the State requires identification and timely correction of any noncompliance regardless of the amount of noncompliance, including all noncompliance identified through its statewide database.

### ***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.

The State requires the EI programs to develop Improvement Plans that serve as corrective action plans. EI programs are required to submit an Improvement Plan to address all findings of noncompliance. Improvement Plans are approved by the Bureau of Early Intervention Services (BEIS) and each plan's implementation is validated within one year of issuance of the findings report. Although BEIS pulls subsequent data to verify that the program is properly implementing the specific regulatory requirement, BEIS does not have a mechanism to verify that the EI providers have corrected each individual instance of noncompliance, and therefore BEIS has not ensured correction of noncompliance consistent with OSEP Memo 09-02.

### **OSEP Conclusion**

To ensure the timely correction of noncompliance by EIS programs/providers, as required by IDEA sections 616, 635(a)(10)(A), and 642 and 34 CFR §§303.500 and 303.501, and OSEP Memo 09-02, the State must verify correction of noncompliance by ensuring that the EIS program has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the EIS program. Based on the review of documents, analysis of data and interviews with State and local personnel, as described above, OSEP concludes that the State does not have a general supervision system that is reasonably designed to correct noncompliance in a timely manner using its different components.

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

Within 90 days of receipt of this letter, the State must provide an assurance that it has revised its procedures for verifying correction of noncompliance to include a process to ensure that the EIS program has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the EIS program. With the next APR due February 1, 2012, the State must submit documentation that the State is verifying that each EIS program or provider has corrected each individual case of noncompliance in accordance with OSEP Memo 09-02.

### ***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 §§303.510-303.512; 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)).

*Investigation of Alleged Violations of IDEA:* OSEP reviewed a selection of State complaints filed with BEIS during FFY 2008. The purpose of this activity was to review the procedures the State followed when it received the State complaints. Based on our review, supplemented with information provided through interviews with State staff, OSEP noted that in some cases, the State declined to initiate an investigation of the allegations and stated that the issues in the complaint were outside the State's jurisdiction. However, OSEP found that on their face, some of the complaints not investigated did allege a violation of IDEA requirements that would appear

to require investigation. In discussing this issue, State staff indicated that the determination that an investigation of the complaint was not within the State's jurisdiction under IDEA was made on the basis of telephone calls or other contacts with the complainant, but the information that led to that determination was not documented in the State's letter or the State complaint files.

*Model Form:* The BEIS written State complaint procedures detailed in Announcement E-08 #06 (IDEA Early Intervention Complaint Procedures) state that the "EI Complaint Registry Form (Attachment #1) is to be used by individuals, parents, or organizations to file a complaint with OCDEL against an Infant/Toddler or Preschool EI Program." The procedures further state that the form may be obtained from OCDEL or on-line. BEIS staff reported that while the written procedures state that the form must be used, in practice, BEIS accepts and acts on complaints it receives that are written on other forms or documents. The Part C regulations at 34 CFR §303.511(a) require that the complaint must include a statement that the State has violated a requirement of Part C of the IDEA or its implementing regulations; and the facts on which the complaint is based. The form used by BEIS impermissibly requires that the complainant provide information that is in excess of the requirements of 34 CFR §303.511(a).

*Timely Resolution of State Complaints:* OSEP found that the State was not able to document that all complaints were resolved within 60 days of receipt, or within a properly extended timeframe.

Our review of BEIS State complaint files revealed that the State did not consistently record (such as through a date stamp) and track the date it received a complaint. In addition, some of the files reviewed by OSEP did not contain the actual written complaint. As a result, OSEP was not able to determine whether BEIS issued all complaint decisions within the required 60-day timeline.

*Reconsideration:* BEIS's written complaint procedures allow for reconsideration of the State's decision and state: "Families that do not agree with OCDEL's decision may pursue the matter by writing to the appropriate Secretary's [sic] of the Department of Education or Public Welfare." (see Announcement EI-08 #6, dated June 30, 2008). Further, BEIS stated in an FFY 2009 complaint investigation report that a party to the complaint "may submit a written request for reconsideration within 15 days of the date" of the State's decision. Based on this documentation and interviews with BEIS staff, OSEP finds that the State does not consistently require implementation of any corrective actions ordered in the decision, pending the outcome of the reconsideration process.

### **OSEP Conclusions**

Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as follows:

- (1) The State complaint form requires the complainant to provide information when filing a State complaint that is in excess of the requirements at 34 CFR §303.511(a).
- (2) The State does not carry out investigations and issue written decisions that address each alleged violation of IDEA in State complaints filed with BEIS consistent with the requirements at 34 CFR §303.512(a); if the State determines the concerns addressed in the written complaint are not within the SEA's jurisdiction, the State must document and provide the complainant with notice of the reason for the SEA's refusal to conduct an investigation of the matter.

- (3) The State does not consistently document the date the complaint is received in order to show that the decisions are issued within 60 days of the date the complaint is received (unless an extension of time is determined appropriate consistent with the requirements at 34 CFR §303.512(a)).
- (4) The State does not require that the implementation of any corrective actions required in BEIS's final decision is not delayed pending the reconsideration process, if the reconsideration process is completed later than 60 days after the original filing of the complaint.

**Required Actions/Next Steps**

- (1) Within 90 days of the date of this letter, the State must submit a written assurance that it has revised its dispute resolution procedures and practices to ensure that:
  - a. The State complaint form does not require the complainant to submit information that is in excess of the requirements at 34 CFR §303.511(a).
  - b. The State carries out an investigation and issues a written decision that addresses each alleged violation of IDEA in State complaints filed with the SEA consistent with the requirements at 34 CFR §303.512(a); if the State determines the concerns addressed in the written complaint are not within the SEA's jurisdiction, the State must document, and provide the complainant with notice of, the reason for the SEA's refusal to conduct an investigation of the matter.
  - c. The State consistently documents the date the complaint is received and issues a written decision within 60 days of the date the complaint is received (unless an extension of time is determined appropriate consistent with the requirements at 34 CFR §300.152(a)).
  - d. If the reconsideration process is completed later than 60 days after the original filing of the complaint, implementation of any corrective actions required in BEIS's final decision is not delayed pending the reconsideration process.
- (2) With the next APR due February 1, 2012, the State must submit documentation to demonstrate that the State is correctly implementing the dispute resolution requirements of IDEA, as specified immediately above in Required Action 1.

***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 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., making local determinations and publicly reporting on EIS program performance, CSPD, and interagency coordination.

**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.

As reported above under Critical Element 3, the State is not consistently recording the dates that complaints are received and a copy of the written complaints were not found in all of the files that OSEP reviewed.

**OSEP Conclusions**

Based on the review of documents and interviews with State personnel, OSEP concludes that the State does have 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, except OSEP could not determine that the State's dispute resolution system sufficiently documents the date the complaint is received.

**Required Actions/Next Steps**

Within 90 days of the date of this letter, the State must provide an assurance that it has revised its procedures to ensure that it sufficiently documents the date the complaints are received. With the next APR due February 1, 2012, the State must include a description of how the State ensured that data submitted under Indicator 10 are accurate and reliable.

***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**

To ensure that the State has procedures that are reasonably designed to ensure appropriate use of IDEA funds, as required by IDEA sections 635, 638 and 34 CFR Part 303, the State must have procedures that are reasonably designed to ensure that Part C IDEA funds are used for allowable purposes consistent with 20 U.S.C. 1435 and 1438, and a mechanism for ensuring fiscal accountability. Based on the review of documents, analysis of data and interviews with State and local personnel, as described above, OSEP concludes that the State does have procedures and practices that are reasonably designed to ensure appropriate use of IDEA funds.

**Required Actions/Next Steps**

No action is required.