

Utah 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. We also reviewed the State's policies and procedures for ensuring the appropriate tracking, reporting and use of IDEA funds made available under The American Recovery and Reinvestment Act of 2009 (ARRA).

Methods

In reviewing the State's systems for general supervision, collection of State-reported data¹, 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 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
 - Early intervention services (EIS) program staff, where appropriate
 - State Interagency Coordinating Council
 - Parents and Advocates

Description of the State's Part C System

Utah's Part C Baby Watch Early Intervention Program (BWEIP) is part of the Bureau of Child Development within the Division of Community and Family Health Services and Emergency Preparedness, (DCFHSEP), under the Utah Department of Health (UDOH), the State's Part C Lead Agency. BWEIP consists of 16 early intervention programs including the Utah School for

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.

the Deaf and Blind. Annual contracts with early intervention programs include local health departments, non-profit organizations, colleges and universities, and local school districts.

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.

The State informed OSEP that the BWEIP general supervision system consists of the following key components: (1) on-site compliance monitoring; (2) follow-up visits, (3) complaints and due process hearings; and (4) the Baby Toddler Online Tracking System (BTOTS), the State's database system. In August 2009, BWEIP moved from a two year to a three year cyclical compliance monitoring process which resulted in both on-site compliance monitoring and follow-up visits to the Early Intervention Service (EIS) programs.

BWEIP reported to OSEP that each year five of the 16 EIS programs receive an on-site compliance monitoring visit and if noncompliance is identified, a written finding is issued as soon as possible but no later than 3 months from identification of the noncompliance. In addition, BWEIP told OSEP that the ten EIS programs that are not scheduled to receive an annual on-site compliance monitoring visit, may receive a follow-up visit to ensure correction of the previously identified noncompliance, technical assistance or training, as needed.

BWEIP reported to OSEP that as part of its follow-up visit process to the EIS programs, the State reviews data from BTOTS which indicates the status of EIS programs performance on all compliance and results indicators. The State reported that, in the past, it did not issue a written finding if new noncompliance was discovered when reviewing data in BTOTS during a follow-up visit. BWEIP stated that the EIS program was, however, required to complete a corrective action plan (CAP) and correct the noncompliance within one year. OSEP reviewed CAPs issued by BWEIP to EIS programs and confirmed that written findings were included in those CAPs when noncompliance was identified by the State.

On November 15, 2010, BWEIP submitted a memo to OSEP indicating that it would annually review database data, even for programs that are not receiving an on-site visit that year, and will make findings if noncompliance is identified. In the memo, BWEIP also indicated that, on October 27, 2010, BWEIP reviewed data for all 15 programs, and issued findings if the data indicated less than 100% compliance. However, based on a subsequent phone call with BWEIP on December 13, 2010, it is unclear whether BWEIP reviewed FFY 2009 data, and issued written findings, on October 27, 2010, or a later date.

OSEP Conclusions

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 issue written findings when data in databases or other monitoring data clearly reflect noncompliance, even if the program is not receiving an on-site visit that year. Based on the review of documents, analysis of data and interviews with State personnel, OSEP concludes that

part of the State's general supervision system was not reasonably designed to identify noncompliance in a timely manner using its different components, because, as described above, the State did not issue written findings identified from BTOTS during follow-up monitoring visits.

Required Actions/Next Steps

Within 90 days from the date of this letter, BWEIP must: (1) provide a written assurance that it has revised its policies and procedures to ensure that written findings are issued when noncompliance is identified from any source, including the BTOTS database and follow-up monitoring visits; and (2) provide information regarding when, and how many, written findings were issued based on the State's review of the FFY 2009 data. In addition, BWEIP must report on the correction of those findings in the FFY 2010 APR, due to OSEP on February 1, 2012.

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 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)).

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 complaints 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 BWEIP's policy titled "Monitoring and Technical Assistance Activities Related to Local Determination Levels," 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). BWEIP 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, the State's policy, titled "Criteria for BWEI's Determination of Local Program Performance in Meeting the Requirements and Purposes of the IDEA," indicates that the State considers the timely correction of "any" noncompliance when making determinations. Under OSEP's "Determination FAQs" (10/19/06), a State must consider "any audit findings" when making its determinations for EIS programs. It is unclear if the State includes consideration of audit findings when making determinations.

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, BWEIP 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 the State takes into consideration any audit findings specific to an EIS program when the State makes local determinations for its EIS programs.

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 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 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 funds.

Required Actions/Next Steps

No action is required.