

Wyoming 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 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 Part C System and Background

The Wyoming Department of Health (WDOH) is designated as the lead agency to administer the IDEA Part C early intervention program in Wyoming, administered at the local level through 14 regional Child Development Centers (CDCs), which are the State's early intervention service (EIS) programs for SPP/APR reporting purposes. Within WDOH, the IDEA Part C program is administered by the Developmental Disabilities Division (DDD) staff.

¹ For a description of Wyoming's general supervision and data systems, see the State Performance Plan (SPP) on the State's Web site; <http://www.health.wyo.gov/ddd/index.html>.

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.

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.

Wyoming issues written findings after an on-site visit for noncompliance with IDEA Part C only if it is systemic and does not issue any findings based on individual file reviews. State staff reported that findings are also made from the desk audits, which reflect data from 100% of the child records, if the EIS program shows less than 95% compliance in any area but is not based on an individual child's record alone. The State's monitoring manual, revised in July 2010, does indicate that the State uses data from the annual desk audit and on-site file reviews and information from interviews to identify all instances of noncompliance for each regional program. However, the notification letters reviewed by OSEP show that findings of noncompliance were only made after an on-site visit if there is a "pattern" of noncompliance and the level of noncompliance was below 95%.

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 issue written findings for all noncompliance, regardless of the level of noncompliance, unless the State has verified correction of the noncompliance before the finding is issued. 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 from the date of this letter, the State must provide an assurance that it is issuing written findings for all instances of noncompliance regardless of the level of noncompliance. With its FFY 2010 APR due February 1, 2012, the State must include a description of how it changed the process for issuing written findings of noncompliance and revised its monitoring manual. In addition, the State must include copies of two monitoring reports and Notification letters with the FFY 2010 APR.

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), 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 EIS programs to develop corrective action plans, but only if the level of compliance is below 95%. The State does not require corrective action plans to include correction of individual noncompliance. To date, the State has monitored the progress of the local EIS programs' correction of noncompliance by reviewing: (1) evidence of change and timelines submitted by the regions; and (2) the data and other information submitted. The State also verifies that the noncompliant policies, procedures and practices have been revised and that noncompliance has been corrected. There is no clear guidance for determining that noncompliance has been corrected except for the statement in the manual that "when data and information substantiate correction of noncompliance the State releases the region from the [corrective action plan] CAP through written communication." The State staff agreed that there has been a threshold for compliance, but the revised monitoring manual reflects that the expectation is now 100% correction. However, a threshold for compliance as discussed above is different from a threshold for correction. The revised monitoring manual does not reflect that a finding is made regardless of the level of noncompliance. The State staff completes a CAP tracking log as the data are submitted, including when noncompliance has been corrected. If data do not show expected progress toward correcting noncompliance or improving performance, the lead agency may impose revisions to the CAP and require targeted TA prior to the one-year deadline for timely correction. There is no requirement for individual child-specific correction, although the State does use child-specific data for verification. Programs are not currently given the child-specific information because they are not required to develop CAPs to address child-specific noncompliance.

The July 2010 revised monitoring manual states that, regardless of the level or extent of the noncompliance, the State requires all noncompliance to be corrected as soon as possible, but in no case more than one year from identification. This includes verifying correction of each instance of child-specific noncompliance, unless the child is no longer in the jurisdiction of the region, and verifying that the region is correctly implementing the requirement by reviewing updated or subsequent data. For child-specific noncompliance that relates to a timeline requirement (i.e., timely services, 45-day timeline, transition conference, timely correction of noncompliance, timely data, timely Individualized Family Service Plan (IFSP) meetings), the required action must be completed, even if late (e.g., the IFSP meeting is held after 45 days). However, the July 2010 revised monitoring manual still states that CAPs are not required to correct noncompliance, unless the level of compliance is less than 95%. The July 2010 revised monitoring manual also does not include information on how the regions will document correction of noncompliance if the level of compliance is less than 95%. On the final day of the verification visit, State staff informed regions who were represented at the summary meeting that the State will begin providing names of the children whose files the State had reviewed.

Therefore, OSEP finds that the State does not require correction for any noncompliance that results from a level of compliance that is below the 95% threshold. The State is also not

verifying correction of noncompliance because it is not ensuring that the EIS program: (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/provider

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 subsection (e), and OSEP Memo 09-02, the State must: (1) require correction of all noncompliance, regardless of the level of the noncompliance; (2) verify correction of noncompliance by ensuring that the EIS program is correctly implementing the specific regulatory requirements (i.e., has achieved 100% compliance) based on a review of updated data, such as data subsequently collected through on-site monitoring or the State's data system; and (3) 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

The State must develop a mechanism for tracking correction of noncompliance where a CAP is not required and ensure that the regions have corrected each individual case of noncompliance. Within 90 days from the date of this letter, the State must provide an assurance that it is tracking correction for all instances of noncompliance regardless of the level of noncompliance. With its FFY 2010 APR due February 1, 2012, the State must include a description of how it changed the process for tracking correction of noncompliance and revised its monitoring manual. In addition, the State must include copies of two CAP tracking logs and two letters detailing release from the CAP with the FFY 2010 APR.

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)).

The State reported no complaints in its FFY 2008 APR submitted to OSEP on February 1, 2010. The State tracks informal complaints and requires the regions to submit their informal complaint logs annually with their self-assessments. In accordance with Wyoming's rules, policies and procedures, the regional programs must provide parents with support and guidance in filing formal complaints, requesting an impartial due process hearing, and/or requesting mediation if informal resolution is not reached. The State follows up once a year on these informal complaint logs. In the parent survey summary submitted by the Parent Information Center (PIC) to OSEP three parents stated they had requested mediation yet the State reported no mediations. In reviewing the informal complaint logs OSEP raised a concern about whether regions informed

parents of their right to submit a written complaint, as well as pursue informal resolution of the complaint. The State staff stated that the informal log and instructions will be revised to include steps to ensure that parents are afforded the right to submit a formal complaint or request a due process hearing or mediation. In addition, the State staff will review the informal complaint logs on a quarterly basis rather than just once a year in order to monitor the process.

OSEP Conclusions

To ensure that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as required by IDEA sections 615(e) and 639(a)(8), the State must inform parents of their rights to file a complaint, request a due process hearing, and/or enter into mediation. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. However, without also collecting data at the local level and interviewing parents of eligible children, OSEP cannot determine whether the State's systems are fully effective in implementing the dispute resolution requirements of IDEA.

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?

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, analysis of data, and interviews with State and local personnel, OSEP concludes the State has policies, procedures, and practices that are reasonably designed to improve early intervention results and functional outcomes for infants and toddlers with disabilities. However, without also collecting data at the local level, OSEP cannot determine whether the State's procedures and practices are reasonably designed to improve early intervention results and functional outcomes for all infants and toddlers with disabilities.

Required Actions/Next Steps

No further action 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.

State-level interagency coordination

Although there is a Memorandum of Understanding (MOU) that is in the process of being revised between the WDOH and the Wyoming Department of Education (WDOE) for the purposes of the Part B of IDEA 619 preschool program which is administered through WDOH, it does not address the requirements under 34 CFR §303.148(c) that if the State educational agency (SEA), which is responsible for administering preschool programs under Part B of the Act, is not the lead agency under Part C, an interagency agreement between the two agencies is required to ensure a smooth transition for children receiving early intervention under Part C. WDOH is designated as a Local Education Agency (LEA) in order to administer the IDEA preschool program. The requirements still require an interagency agreement between the lead agency and the SEA and do not provide exemption if the lead agency is also an LEA.

OSEP Conclusion

To ensure that the State has procedures and practices that are reasonably designed to implement State-level interagency coordination, the State must develop an interagency agreement on transition between WDOH as the lead agency for Part C and WDOE, as required under IDEA section 637(a)(9) and 34 CFR §303.148(c) that meets the applicable interagency agreement requirements in IDEA section 637(a)(2), 640 and 34 CFR §§303.520 through 303.528. The interagency agreement must also meet the transition requirements in section 637(a)(9)(A)(ii)(I), and 34 CFR §303.148(b)(1), LEA Notification, and in section 637(a)(9)(ii)(II), and 34 CFR §303.148(b)(2), Timely Transition Conferences, and in section 637(a)(9)(B), and 34 CFR §303.148(b)(3), Procedures to Review the Child's Program Options, and in section 636(a)(3), and 637(a)(9)(C), and 34 CFR §§303.148(b)(4), and 303.344(h), Establish a Transition Plan and 612(a)(9), and 34 CFR §300.124, and in section 637(a)(9)(C)(i), and 34 CFR §§303.148(a) and 303.344, Include the Family in the Transition Plan, and in section 612(a)(9), and 34 CFR §300.124(b), IEP in place by third birthday for child eligible under Part B, and in section 612(a)(9), and 34 CFR §300.124, LEA must participate in transition conference, and in section 614(d)(1)(D), and 34 CFR §300.321(f), Invitation to Service Coordinator at Parent's Request for initial IEP meeting, and in section 614(d)(2)(B), Considering IFSP when IEP team develops IEP.

Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that although the State does have procedures and practices that are reasonably designed to implement selected grant application requirements regarding: (1) making local determinations for, and publicly reporting on, EIS program performance pursuant to IDEA sections 616 and 642; and (2) implementation of a CSPD pursuant to IDEA section 635(a)(8) and 34 CFR §303.360, but that it does not have the interagency agreement on transition required by 34 CFR §303.148(c).

Required Actions/Next Steps

WDOH must submit an interagency agreement between WDOH and the WDOE with its FFY 2011 Part C Application or an assurance that one will be completed by June 30, 2012 that includes all transition requirements and the applicable interagency agreement requirements above.

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 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.

The State staff described a data collection system that collects and reports valid and reliable data and information to the Department and the public in a timely manner. For the most part the data collected and reported reflects actual practice and performance except for data on children referred from the neonatal intensive care units (NICU). To ensure that all eligible infants and toddlers in the State are identified, located and evaluated, WDOH includes responsibility for child find in the contracts with the regional EIS programs (CDCs). During interviews conducted prior to OSEP's visit to the State, staff reported that there are no NICUs in the State and they must work with hospitals in four other States on child find for referrals on Wyoming infants and toddlers served in the NICU. The lead agency had provided guidance to the regions that the 45-day timeline begins when the infant returns home from the hospital. The State staff stated that they do not include children referred from the NICU in the State's data for Indicator 7 in the SPP/APR.

Through the ICC Stakeholder Survey and the on-site focus group with CDC administrators, OSEP learned that there is an arrangement with one hospital in one of the bordering States to start working with the families as soon as the referral is received. However, this is not the case with the other hospitals in that bordering State or in the other bordering States. In addition, OSEP learned that when a referral comes in from one of these out-of-State NICUs, not all the regional programs are appointing a service coordinator, conducting the evaluation and assessment, and holding an IFSP meeting within 45 days. Most of these infants in the NICU are eligible for Part C under the established conditions and the family could benefit from IFSP services prior to the infant returning home from the hospital. In some areas of the State, families are not given the option to develop an IFSP while the infant is still in the NICU.

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, with the exception of child find, specific to NICU referrals, according to 34 CFR §§303.321(e)(2)(i)(ii) and 303.322.

Required Actions/Next Steps

1. Within 90 days from the date of this letter the State must provide an assurance that it has developed procedures to ensure that:

- NICU referrals will be included in the measurement or included in the numbers of children excluded due to exceptional family circumstances under Indicator 7 in the SPP/APR.
 - Regional EIS programs: (1) assign a service coordinator on all referrals; (2) conduct the initial evaluation and assessments; (3) document eligibility on infants that meet the criteria of established conditions; and (4) conduct an initial IFSP meeting (if the child is eligible).
2. With the FFY 2010 APR, due February 1, 2012, the State must describe the process it used to ensure that NICU referrals are included in the measurement or included in the numbers of children excluded due to exceptional family circumstances under Indicator 7 in the SPP/APR, and that, for each referral, regional EIS programs assign a service coordinator, conduct the initial evaluation and assessments, document eligibility on infants that meet the criteria of established conditions; and conduct an initial IFSP meeting (if the child is eligible).

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, and 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), the 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.

Use of Funds for Allowable Costs

The program staff of the lead agency reviews the Applications and budgets submitted for use of Part C funds to ensure that all requests are allowable under IDEA. The finance office receives monthly requests for the funds from the regional EIS programs. However, these requests do not specify how the funds were used, so the lead agency is not able to track these funds to confirm that they are being spent on allowable expenditures under IDEA section 638.

Procedures for Correction/Enforcement

The lead agency is included in the statewide single State audit. The audit office will follow up on any issues with the respective agency for which issues are identified. Part C is included in the audit; there is a report that lists all Federal programs. The mechanism in place in Wyoming to ensure fiscal accountability of the Part C funds used for services is the use of program-level audits. With the exception of region 14, which is under the auspices of the Bureau of Indian Education (BIE), each CDC must submit an annual audit report to the lead agency. Although WDOH reviews these reports, the State does not have a mechanism to facilitate the resolution of any of those audit issues. In FFY 2009 several CDCs had audits that were unresolved. The major concern referenced in the audits was the lack of internal controls. In addition, there are no protocols for fiscal reviews or monitoring the use of funds during the on-site visits conducted each year by the State staff.

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 not have procedures and practices that are reasonably designed to ensure appropriate use of IDEA funds.

Required Actions/Next Steps

Within 90 days, the State must submit:

1. a revised monthly request for funds form that shows specific expenditures; and
2. a description of how the State will monitor the use of funds during the on-site visits that are conducted each year by State staff.