

Kansas 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 functional outcomes for infants and toddlers with disabilities 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, including the 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 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) 2009 State Performance Plan (SPP)/Annual Performance Report (APR)
- 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 Coordinator
 - 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

The Lead Agency for Part C in Kansas is the Kansas Department of Health and Environment (KDHE). In Kansas, there are 37 "networks" that serve as early intervention service (EIS) programs and provide early intervention services through a system of contracts. Kansas served 3,425 infants and toddlers with disabilities or 2.75% of its birth to three population in 2008 and 3,563 infants and toddlers with disabilities or 2.84% of its birth to three population in 2009.

¹ For a description of the State's general supervision system, including the collection of State-reported data, 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.

I. General Supervision System

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 303.501,³ the State must have a general supervision system that identifies noncompliance in a timely manner.

Failure to issue findings of noncompliance in timely manner

KDHE reported to OSEP that it uses its database, parent and provider surveys, file reviews, technical assistance visits, and informal complaint logs to identify areas of potential noncompliance. The only documentation of identified noncompliance that KDHE provided OSEP was letters sent to EIS programs as a result of analysis of data in the database, but these findings were issued well over a year following KDHE's review of the data. In instances where noncompliance was identified, the State noted that it found "some individual records" were "not meeting the regulatory requirements" but the letters stated that the noncompliance had been corrected by the time the letters had been issued and, therefore, no findings of noncompliance were made. KDHE reported in Indicator 9 in its FFY 2009 APR, and State staff confirmed, that it did not issue "formal findings of noncompliance" for any of its EIS programs during the FFY 2009 performance period. However, OSEP discovered multiple instances where KDHE identified, through subsequent reviews, the same issue in the same EIS programs.

KDHE provided documentation that it issued two findings of noncompliance during FFY 2010. The State reported that the findings were issued more than one year after the time KDHE became aware of the noncompliance because KDHE identified the same issue in the program during multiple data reviews and finally issued a finding because of the repeated noncompliance. If a State collects compliance data through a State database and the data collected show noncompliance in an EIS program, the State must issue a finding of noncompliance within a reasonable period of time, unless it determines that the EIS program has already corrected the noncompliance before the State issues its finding.

Lack of comprehensive system to identify noncompliance with Part C requirements

OSEP determined that the State does not have methods to systemically identify noncompliance for Part C requirements. OSEP found that KDHE did not make findings of noncompliance even when it had the data to identify noncompliance. For example, KDHE personnel reported that KDHE staff review a sample of four children's IFSPs and related child specific documents every year in each EIS program. KDHE personnel acknowledged that they use this review for technical assistance and did not identify and document noncompliance even when it was discovered during the State's record review. In another example, OSEP found that KDHE had received audit reports from two EIS programs and that there was an audit issue that could have resulted in a Part C finding of noncompliance in one of the reports, but KDHE did not follow up on the audit issue to determine if there was noncompliance.

³ The IDEA Part C regulations cited in this letter are the regulations with which States must comply during FFY 2011 and which were in effect prior to the publication of the new IDEA Part C regulations published in 76 *Federal Register* 60140 on September 28, 2011, unless otherwise noted.

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 have a comprehensive system available to identify compliance with Part C requirements; and the State must timely identify and issue written findings when data in databases or other monitoring data clearly reflect noncompliance, unless it determines that the EIS program has already corrected the noncompliance before the State issues its finding. OSEP concludes that the State's general supervision system was not reasonably designed to identify noncompliance because: (1) the State did not issue findings of noncompliance within a reasonable period of time after identifying the noncompliance; (2) the State did not make findings when noncompliance was identified through record reviews; and (3) the State did not follow up on potential noncompliance raised in audit reports.

Required Actions/Next Steps

Within 90 days from the date of this letter, KDHE must provide OSEP an assurance and a copy of its revised monitoring procedures to reflect that it will generally issue written findings less than three months from when KDHE identifies noncompliance with a Part C requirement, and use all appropriate sources of information, including record reviews and audit issues, to identify noncompliance with the Part C requirements. Within 90 days from the date of this letter or with its FFY 2010 APR, due February 1, 2012, the State must include documentation from all findings issued for four months from September 2011 through December 2011 to demonstrate that the State has timely identified noncompliance based on all sources of information available to KDHE, including database data and audit findings in local EIS programs.

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.

In its FFY 2009 APR, the State reported in Indicator 9 that it verified prefinding correction for all noncompliance consistent with OSEP Memo 09-02. During OSEP's verification visit, the process the State described to OSEP was not consistent with OSEP Memo 09-02. KDHE reported to OSEP and provided letters to the EIS programs which identified noncompliance in the database, and which demonstrated that the State considered noncompliance to be corrected when child-specific noncompliance was resolved. However, OSEP was informed by KDHE that

it did not review updated data or a sample of records to ensure that the EIS program was correctly implementing the specific regulatory requirement prior to determining that the noncompliance was corrected. The State concurred with OSEP that the State's process for correction and verification of correction was not consistent with OSEP Memo 09-02. To ensure the timely correction of noncompliance by EIS programs and providers, as required by IDEA sections 616, 635(a)(10)(A), and 642, 34 CFR §§303.500 and 303.501, and OSEP Memo 09-02, KDHE must verify correction by reviewing updated data that the EIS program or provider is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) and verifying that noncompliance has been corrected within one year of identification.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that KDHE does not verify the correction of noncompliance by ensuring that each EIS program or provider is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data.

Required Actions/Next Steps

Within 90 days from the date of this letter, KDHE must provide OSEP an assurance and a copy of its revised monitoring procedures indicating that when noncompliance is identified, the State verifies correction of noncompliance by obtaining updated data that reflect 100% compliance to ensure that the EIS program or provider is implementing the specific regulatory requirement.

With its FFY 2011 APR, due February 1, 2013, the State must include documentation from all findings issued for four months from September 2011 through December 2011 to demonstrate that the State has verified that each EIS program or provider is correctly implementing the specific regulatory requirements based on a review of updated data and that such updated data reflect 100% compliance.

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 through 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)).

Written decision issued in response to State complaint

As set forth at 34 CFR §303.512(a), the State is required to issue a written decision within 60 calendar days after a written complaint is filed. OSEP was informed by KDHE that it has received one written complaint over the past three years. Although OSEP was informed that a written decision was issued, KDHE was unable to provide documentation that a written decision was issued.

Procedures available to conduct a due process hearing

As set forth at 34 CFR §303.420, the State must have procedures available to resolve individual child complaints (through due process hearings) that are filed by parents. KDHE personnel informed OSEP that it is in the process of finalizing a memorandum of agreement (MOA) with

the Kansas Department of Hearings, and therefore, had no formal agreement in place for hearing officers to conduct due process hearings under IDEA Part C, should the need arise.

Inconsistent policies and procedures for requesting mediation

Under 34 CFR §303.419, the State must ensure that procedures are established and implemented to allow parties to disputes to resolve the disputes through a mediation process that meets the requirements at 34 CFR §303.419(b). KDHE provided OSEP policies and procedures that permit parties to disputes to request mediation by filing a request with the State. However, Kansas Administrative Regulation (KAR) 28-4-569 requires a complaint to be sent to the “local interagency coordinating council” before it is forwarded to the State, although KDHE personnel assured OSEP the procedures in this regulation are not being implemented.

OSEP Conclusion

OSEP finds that KDHE does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of Part C of the IDEA. Specifically, the State has not provided documentation that it issued a written response to the complainant consistent with the complaint procedures as required by 34 CFR §303.512; and does not have a finalized MOA with the Kansas Office of Administrative Hearings to ensure that it has hearing officers available to conduct a due process hearing should it receive such a request consistent with 34 CFR §303.420. In addition, the State appears to have policies and procedures for requesting mediation that are inconsistent with State regulation.

Required Actions/Next Steps

Within 90 days from the date of this letter, KDHE must provide OSEP with an assurance that KDHE will issue written decisions with findings of fact, as required by the State complaint procedures in 34 CFR §303.512. With the FFY 2011 APR, due February 1, 2013, KDHE must submit documentation regarding any written complaints it receives during FFY 2011 and the resolution of those complaints (including a copy of the written decisions).

Within 90 days from the date of this letter, KDHE must provide OSEP with a signed copy of its MOA with the Kansas Department of Administrative Hearings that makes clear that hearing officers are available and trained to conduct due process hearings under Part C of the IDEA.

Finally, within 90 days from the date of this letter, KDHE must provide OSEP with an assurance that KDHE is following its current dispute resolution policies and procedures, notwithstanding KAR 28-4-569, such that any party who wishes to request mediation may do so by submitting the request to KDHE at the State level and that such procedures are reflected in the State’s prior written notice provided to parents under 34 CFR §303.403.

Critical Element 4: Improved Results and Functional Outcomes

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 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 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 implement selected grant application requirements, i.e., monitoring and enforcement related to local determinations and State-level interagency coordination?

The State must have procedures and practices that are reasonably designed to ensure that the State is implementing the following grant application requirements: (1) monitoring and enforcement related to local determinations pursuant to IDEA sections 616 and 642; and (2) State-level interagency fiscal coordination to ensure that methods are in place under IDEA sections 635(a)(10), 637(a)(2) and 640.

OSEP reviewed the State's practices for making local determinations under IDEA sections 616 and 642. At the time of OSEP's visit, the State completed its local determinations for the FFY 2009 data. OSEP noted that on the documentation KDHE provided to OSEP regarding the determinations that were made for each local network, local networks were marked as "meet requirements" for Indicators 8b and 8c, both compliance indicators, even though KDHE determined the data to be not valid and reliable, and KDHE staff specifically acknowledged that those indicators were not factored into the local determinations for those local networks or EIS programs. When asked about other determination factors, KDHE staff informed OSEP that, in making local determinations, KDHE did not consider audit findings of EIS programs that were available, local data that were not valid or reliable, or uncorrected noncompliance of EIS programs. The OSEP guidance document *Determination of the Status of Local Programs by State Agencies Under Part B and Part C of IDEA* specifies that States must consider: (1) performance on compliance indicators; (2) whether data submitted by local education agencies (LEAs)/EIS programs are valid, reliable, and timely; (3) uncorrected noncompliance from other sources; and (4) any audit findings.

With regard to State-level interagency fiscal coordination, in any State where a State-level agency, other than the State lead agency, provides or pays for IDEA Part C services, the lead agency must have a method for ensuring the financial responsibility for those services as required by IDEA sections 635(a)(10), 637(a)(2) and 640. In the IDEA Part C grant application, each State provides a certification regarding its methods and that method must be current as of the date the State submits its certification with its grant application. Beginning with the State's FFY 2012 IDEA Part C grant application, any State that is required to have a method must certify that its method meets the requirements of Subpart F of the new IDEA Part C Final Regulations (new 34 CFR §§303.500 through 303.521), which were published on September 28, 2011. In addition, if the State's method is an interagency agreement or other written method (i.e., anything other than a State statute or regulation), the State must also submit that method with its FFY 2012 IDEA Part C grant application. OSEP's IDEA Part C Checklist for Fiscal Certification under new 34 CFR §303.202 provides further guidance regarding this fiscal

certification. If the State has any questions about its methods or this fiscal certification, OSEP remains available to provide technical assistance.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has policies and procedures that are reasonably designed to implement the grant application requirements regarding monitoring and enforcement related to local determinations. However, while the State's policies and procedures appeared to be reasonably designed to consider relevant factors when making local determinations, the State was not applying these policies and procedures in its practice because it did not consider for its local EIS programs any outstanding audit findings, data that were not valid or reliable, or uncorrected noncompliance.

Required Actions/Next Steps

With the State's FFY 2012 grant application, the State must submit an assurance that its FFY 2010 local determinations were made based on all required factors, including: (1) performance on compliance indicators; (2) whether data submitted by EIS programs are valid, reliable, and timely; (3) uncorrected noncompliance from other sources; and (4) any audit findings. OSEP will review and respond to, as a part of the IDEA Part C grant application process, any methods the State is required to submit as part of the FFY 2012 application under IDEA sections 637(a)(2) and 640 to ensure financial responsibility for the provision of Part C services.

II. Data System

Critical Element 1: Valid and Reliable Data

Does the State have a data system that is reasonably designed to timely collect and report data that are valid and reliable and 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 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. In its FFY 2009 APR, KDHE reported to OSEP 100% for its Statewide data for the early childhood transition Indicators 8b and 8c. However, KDHE provided documentation of data summaries from local networks that showed data less than 100% for Indicators 8b and 8c for multiple EIS programs for the FFY 2009 reporting period. KDHE personnel explained that they did not believe the data for 8b and 8c were accurate, but still reported 100% to OSEP in its APR based on implementation of procedures.

OSEP Conclusion

Based on documents and interviews, OSEP concludes that KDHE has a data system that is reasonably designed to provide reliable and accurate data, but that it did not report valid and reliable data in its FFY 2009 APR for Indicators 8b and 8c.

Required Actions/Next Steps

During the clarification period for the State's FFY 2010 APR, the State must confirm that its data for Indicators 8b and 8c in its FFY 2010 APR are valid and reliable and not based solely on implementation of procedures.

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 Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that, with the exception of the data in the FFY 2009 APR for Indicators 8b and 8c as discussed directly above, 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 further action required.

Critical Element 3: Integrate Data to Inform Improvement

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 Conclusion

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 further action required.

III. Fiscal System

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 Part C 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 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 the timely obligation and liquidation of its IDEA Part C funds.

Required Actions/Next Steps

No further action required.

Critical Element 2: Allowable Use of IDEA Funds at the State Level

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

The State must have procedures that are reasonably designed to ensure the allowable use of IDEA Part C funds at the State level 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 applicable regulations in 34 CFR Part 303.

Inadequate policies and procedures to resolve audit findings, ARRA Priority Areas 2A Internal Controls and 4A Monitoring of EIS Programs/Providers

A State must have procedures to resolve noncompliance, including audit findings at the local level, to ensure correction of fiscal noncompliance consistent with sections 616(a), 635(a)(10)(A) and 642 and 34 CFR §303.501(b). Although the State received copies of two audits of local EIS programs for calendar year 2010, KDHE personnel informed OSEP that KDHE did not have procedures to resolve audit findings when there is noncompliance identified in audit reports. Following the visit, KDHE reported that its updated procedures require all EIS programs to conduct annual financial audits and provide KDHE with the audit reports so that KDHE can ensure audit findings are resolved; however these procedures have not yet been fully implemented.

Inadequate policies and procedures to calculate time and effort and ARRA Priority Area 2A Internal Controls

A State is required to document time and effort (including Personnel Activity Reports (PARs) and bi-annual payroll certifications) at the State level to ensure compliance with OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4). In Kansas' FFY 2011 IDEA Part C grant application, KDHE indicated it has three State positions funded with Part C funds, which positions spend less than 100% of their time and effort on the IDEA Part C program. KDHE personnel informed OSEP that KDHE does not have procedures to document time and effort, as required by OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4); and, therefore, it is not able to accurately allocate the salaries of its IDEA Part C personnel to the Part C grant.

State policies and procedures regarding nonsupplanting and MOE

During the verification visit, OSEP reviewed the IDEA Part C nonsupplanting/MOE requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.124. Although the State provided some information, OSEP has additional follow-up questions and will contact the State separately regarding this issue.

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 Part C funds, with the following exceptions. First, KDHE does not have procedures to document time and effort (including PARs and bi-annual payroll certifications) at the State level to ensure compliance with OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4). Second, as discussed under GS-2 above, the State must implement corrective actions when informed of outstanding audit findings when such findings require correction. Finally, OSEP will contact the State separately to request additional information, and makes no conclusion about the IDEA Part C nonsupplanting/MOE requirements in this letter.

Required Actions/Next Steps

Within 90 days from the date of this letter, KDHE must submit to OSEP its written policies and procedures used to document time and effort at the State level (including PARs and bi-annual payroll certifications) to ensure compliance with OMB Circular A-87, Appendix B, Paragraphs 8(h)(3) and (4) and provide an assurance that it has implemented such policies and procedures. KDHE must also submit to OSEP its written policies and procedures used to resolve audit findings in local EIS programs, and provide OSEP an assurance that it has resolved the audit findings for the local EIS program in the audit report provided to OSEP on-site. In addition, OSEP will contact the State separately to request additional information regarding the State's implementation of the IDEA Part C nonsupplanting/MOE requirements in IDEA section 637(b)(5)(B) and 34 CFR §303.124.