

Michigan Part C Continuous Improvement Visit Letter

Enclosure - Verification Component

Scope of Review

During the verification component of the Continuous Improvement Visit (CIV), OSEP reviewed critical elements of the State's general supervision and fiscal systems,¹ 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,² 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 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 systems³
- 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 State's Protection and Advocacy Center

¹ As explained in the cover letter, OSEP will respond to the fiscal component of the review under separate cover.

² 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.

³ 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 Michigan Department of Education (MDE) is the lead agency for the Part C program, Early On. Early On is now combined with Michigan's Part B – IDEA section 619 program in one office called Great Start effective August 28, 2011. MDE is responsible for the general supervision of the State's 57 intermediate school districts (ISDs) that provide early intervention (EI) services. ISDs are hereafter referred to as the early intervention service (EIS) programs, which are also Michigan's EIS providers.

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 303.501,⁴ the State must have a general supervision system that identifies noncompliance in a timely manner.

MDE primarily uses two monitoring mechanisms to identify noncompliance with Part C, as described below.

- **Self-Assessment** – MDE requires all EIS programs to submit a completed self-assessment based on the EIS program's review of ten child files or ten percent of child files, whichever is greater. This data is entered by EIS programs into the Michigan Electronic Grants System each year using the Early On System checklist and used by MDE to identify noncompliance with APR Indicators 1 (timely provision of services), 7 (initial IFSPs within 45 days), 8A (transition plans included in individualized family service plans (IFSPs)), 8B (notification to the local education agency of children transitioning) and 8C (timely transition planning conference). MDE enters any finding(s) of noncompliance against a particular EIS program into the Continuous Improvement Monitoring System (CIMS). Findings of noncompliance entered by MDE into CIMS trigger a notification to the responsible EIS program.
- **On-site monitoring** – Based on self-assessment results, MDE selects only those EIS programs for on-site monitoring that report less than 100% compliance for any of the APR compliance indicators. On-site monitoring consists of a review of child files (ten or 10%, whichever is greater) identified by MDE Early On staff. MDE staff review child files against a checklist to ensure compliance with Indicators 1, 7, and 8 and related requirements for those indicators. MDE issues findings against a particular EIS program also through CIMS, unless the noncompliance identified by MDE during the on-site monitoring is corrected by the EIS program before MDE issues a finding. Any pre-finding correction is verified by MDE consistent with 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).

⁴ Unless specifically noted, the IDEA Part C regulations cited in this letter are to 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, which are referred to in this enclosure as "new" regulations.

During the visit, MDE staff acknowledged that the State uses the same monitoring manual used by MDE's IDEA Part B program to monitor EIS programs for Part C compliance. OSEP finds that the State's monitoring system is not reasonably designed to identify noncompliance with Part C requirements as required by IDEA sections 616, 635(a)(10)(A), and 642 and 34 CFR §303.501 because the State only has monitoring manuals and procedures that identify IDEA Part B and not IDEA Part C requirements. MDE Part C officials indicated that generally the State personnel who conduct monitoring are familiar with Part C requirements. However, it is unclear whether all State monitoring staff are trained in Part C requirements and existing written materials only refer to Part B requirements. It appears that State practice in monitoring EIS programs differs from the stated policies and procedures described in the State's monitoring manual. It is unclear how EIS programs would have notice of which requirements will be reviewed and enforced by the State during the on-site monitoring visit. A written policy that is consistent with actual practice provides notice to EIS programs, transparency for all stakeholders, and allows for consistency and continuity of practice over time.

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 monitoring system to ensure compliance with all requirements of Part C of the IDEA. If the State has a written monitoring manual or other materials regarding its monitoring process, then those manuals and materials must identify the requirements of Part C.

Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP cannot conclude that the State has 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 this letter, MDE must submit to OSEP MDE's procedures for monitoring EIS programs for Part C requirements, consistent with IDEA sections 616, 635(a)(10)(A) and 642, and 34 CFR §§303.500 and 303.501.

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 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 Memo 09-02, in order to verify that previously-identified noncompliance has been corrected, the State must verify that the EIS program and/or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the EIS program and/or provider.

OSEP Conclusion

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State's systems for general supervision are reasonably designed to correct noncompliance in a timely manner. However, without also collecting data at the local level, OSEP cannot determine whether the State's systems are fully effective in correcting noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

Critical Element 3: Dispute Resolution

Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?

The State must have procedures and practices that are reasonably designed to implement the following IDEA Part C dispute resolution requirements: the State Complaint procedures in 34 CFR §303.512; and the mediation and due process procedure requirements in 34 CFR §§303.419 through 303.425 (as modified by IDEA sections 615(e) and 639(a)(8)).

Under 34 CFR §303.420(a), the State has elected to adopt the IDEA Part B due process hearing procedures in lieu of the Part C procedures in 34 CFR §§303.419 through 303.424 and has also adopted provisions consistent with 34 CFR §303.425.

The State uses the same procedural safeguards notice for parents whose children are receiving services under Part C as for parents whose children are receiving services under Part B. The language contained in the procedural safeguards notice refers only to Part B programs, services, and regulations, and does not include the information required under Part C for filing a State complaint. Specifically, the procedural safeguards notice under Part B that the State is using to meet the requirement in 34 CFR §303.510, provides information that is inconsistent with Part C requirements (under 34 CFR §§303.510 through 303.512, and the new regulations under 34 CFR §§303.431 through 303.434).

OSEP Conclusion

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 and 639, the State must have a procedural safeguards notice specific to parents of children receiving Part C services. OSEP notes that the 2011 IDEA Part C regulations published on September 28, 2011 will require the State to make changes to comply with the new requirement in 34 CFR §303.421(b)(3).

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. In addition, because the State has not received any State complaints or due process hearing requests in FFYs 2008 and 2009, OSEP could not determine the effectiveness of the State's due process hearing procedures and practices.

Required Actions/Next Steps

With the FFY 2012 grant application due April 16, 2012, MDE must provide OSEP with an assurance that its procedural safeguards notice to parents of infants and toddlers referred to Part C contains language specific to Part C and that such notice will include the applicable provisions regarding State complaint procedures in the new Part C regulations in 34 CFR §§303.421, and 303.432 through 303.434.

Critical Element 4: Data System

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), 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 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.

OSEP Conclusion

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 timely collect and report data that are valid and reliable and reflect actual practice and performance.

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 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.

Methods for ensuring fiscal responsibility: 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. Beginning with the 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.

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As part of the verification visit process, the State submitted its interagency agreement for Michigan's Early Intervention System, dated February 22, 1993. If the State intends to use an updated version of that agreement as its method to ensure the financial responsibility for IDEA Part C services, the State must revise the agreement to meet the requirements of the new IDEA Part C Final Regulations. OSEP's IDEA Part C Checklist for Fiscal Certification under 34 CFR §303.202, at <http://osep-part-c.tadnet.org/materials>, 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 procedures and practices that are reasonably designed to implement selected grant application requirements regarding monitoring and enforcement related to local determinations. OSEP will review and respond to the State's interagency agreement, or other written method, as part of the IDEA Part C grant application process, and is not making any conclusions regarding that agreement in this enclosure.

Required Actions/Next Steps

Through the IDEA Part C grant application process, OSEP will review, and respond to, any methods that the State elects to update and submit as part of its FFY 2012 application under IDEA sections 637(a)(2) and 640 to ensure financial responsibility for the provision of Part C services.