

## **Mississippi Part C Continuous Improvement Visit Letter**

### **Enclosure - Verification Component**

#### **Scope of Review**

During the verification component of the Continuous Improvement Visit, OSEP reviewed critical elements of the State's general supervision and fiscal systems<sup>1</sup>, 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<sup>2</sup>, 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 systems<sup>3</sup>
- 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
  - The State Interagency Coordinating Council
  - Parents and Advocates

---

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

<sup>2</sup> 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.

<sup>3</sup> Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your State's systems.

The Mississippi State Department of Health (MSDH) is the Mississippi Part C lead agency. Within MSDH, the First Steps: Early Intervention Program is specifically responsible for administering Part C of IDEA in Mississippi. The State provides EIS through nine regional Health Districts. The Health Districts are part of MSDH, and District employees, including service coordinators, are MSDH employees. In addition to the service coordinators that are MSDH employees, Health Districts also contract with service coordinators. The administrators of the nine Health Districts report to MSDH's Director of Finance and Administration. Pursuant to a memorandum of understanding, the Mississippi Department of Mental Health (MSDMH) is the primary public provider of EIS, providing services directly as well as sub-contracting with private providers. The Health Districts also contract with private service providers. The State's most recent Federal child count submission (Fall 2010) under IDEA 618 was 2,358 infants and toddlers with disabilities receiving early intervention services.

### **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,<sup>4</sup> the State must have a general supervision system that identifies noncompliance in a timely manner.

The State reported that it collects data for SPP/APR Indicators 1 (timely provision of EIS), 7 (timely initial IFSP meetings), 8A (transition content of IFSPs), 8B (notification of local educational agency for transitioning children), and 8C (transition planning conference) through its database, and that it uses those data to make findings of noncompliance. States that collect compliance data through a database must review those data at least once each year to make findings of noncompliance, and must review the data for that purpose back to the last date on which it reviewed those data. Thus, a State that reviews data in the database once a year for the purpose of making findings of noncompliance must review the data for a full year.<sup>5</sup> The State reported that it did, as required, use the full year's data for FFY 2008 (July 1, 2008-June 30, 2009) in making findings of noncompliance. However, for FFY 2009 and FFY 2010, the State had reviewed data only for the periods of September 1, 2009-December 1, 2009, and August 1, 2010-October 31, 2010 for the purpose of making findings of noncompliance. Thus, the State did not meet the requirement that when it reviews data from the database for the purpose of making findings of noncompliance, it must review data going back to the last date for which it had previously reviewed data for that purpose. On October 28, 2011 and January 4, 2012, the

---

<sup>4</sup> The IDEA Part C regulations cited in this enclosure 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, unless otherwise noted.

<sup>5</sup> See, "OSEP Frequently Asked Questions Regarding the Identification and Correction of Noncompliance and Reporting on Correction in the [SPP/APR]," dated September 3, 2008. A State may identify one or more points in time during the SPP/APR reporting period when it reviews compliance data from the database and identify noncompliance. In making compliance decisions, the State should then review all data that it has received since the last time that the State examined data from the database and made compliance decisions. The State may determine whether it will examine all data in the database or a statewide representative sample.

State submitted copies of revised findings letters, which it sent to Health Districts on October 27, 2011 and November 1, 2011, using a full year's data for FFY 2009 (July 1, 2009-June 30, 2010) and FFY 2010 (July 1, 2010-June 30, 2011) in making findings of noncompliance. Thus, the State has corrected the noncompliance that OSEP identified during the verification component of the CIV (not using data for the full period of FFY 2009 and FFY 2010 in making findings of noncompliance).

### **OSEP Conclusion**

To ensure the identification of noncompliance by EIS programs, as required by IDEA sections 616, 635(a)(10)(A), and 642 and 34 CFR §§303.500 and 303.501, a State must review all data that it has received since the last time that the State examined data from the database and made compliance decisions. Based on the review of documents, analysis of data, and interviews with State personnel, as described above, OSEP concludes that although the State did not have a general supervision system that included a review of all data that it has received since the last time that the State examined data from the database, the State subsequently submitted documentation that has corrected this noncompliance.

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

No further action required.

### ***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.

There are two issues that raise concerns regarding the State's system to ensure correction of identified noncompliance in a timely manner. First, OSEP has imposed Special Conditions on Mississippi's IDEA Part C grant awards since FFY 2006 to ensure compliance with the timely provision of EIS requirements in 34 CFR §§303.340(c), 303.342(e) and 303.344(f)(1). Under the Special Conditions imposed on the State's FFY 2011 IDEA Part C grant award, MSDH must submit two progress reports to OSEP, due February 1, 2012, and May 1, 2012. OSEP will review those progress reports separately.

Second, in its FFY 2009 Annual Performance Report (APR), the State reported that only 62.5% of its findings of noncompliance identified in FFY 2008 were corrected in a timely manner. OSEP will review the State's data in its FFY 2010 APR separately.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the State has components of a general supervision system that are reasonably designed to verify the correction of noncompliance. However, given the longstanding issue with ensuring the timely provision of EIS, and the low level of compliance for Indicator 9 in the State's FFY 2009 APR, OSEP concludes that the State's systems are not fully effective in correcting noncompliance in a timely manner.

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

OSEP will review the data in the State's Special Conditions progress reports, due February 1 and May 1, 2012, regarding correction of noncompliance with the timely provision of early intervention services requirements, and the data that the State reports in Indicator 9 of its FFY 2010 APR, due February 1, 2012, regarding the timely correction of findings of noncompliance identified in FFY 2009. OSEP will respond to those documents separately, and inform the State if any additional 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(b), the State has elected to develop IDEA Part C due process hearing procedures consistent with 34 CFR §§303.419 through 303.424.

### ***State Complaints***

The Part C regulations in 34 CFR §303.512(a)(4) require that the State issue a written decision to the complainant in a State complaint alleging noncompliance with Part C that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the lead agency's decision. OSEP reviewed the letters that the Lead Agency sent to the complainants for three complaints from FFY 2010, and found that although those letters explained what had been done to resolve the parents' concerns, those letters did not indicate whether the lead agency had concluded that there had been noncompliance with a Part C requirement.

### ***Mediation***

The Part C regulations require in 34 CFR §303.419(b)(1)(iii) and (2) that mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and that the State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The State reported that it did not have a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

### ***Due Process***

The State reported that it had not received any due process hearing requests during FFY 2007, FFY 2008, FFY 2009, FFY 2010, or the portion of FFY 2011 that had elapsed (July 1, 2011-September 14, 2011) at the time of OSEP's September 2011 visit.

In 34 CFR §303.421(a)(1), the Part C regulations require that an impartial person must be appointed when a party requests a due process hearing, and that person must have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families. The regulations further require, in 34 CFR §303.423(b), that a hearing decision must be completed and mailed to each of the parties within 30 days from the receipt of the request for a hearing. The State informed OSEP that it had not identified any individuals who meet the requirements in 34 CFR §303.421 who could be appointed as a hearing officer if a party requests a hearing. OSEP is concerned about the ability of the State to ensure, if a due process hearing is requested: (1) the appointment of a hearing officer who meets the requirements in 34 CFR §303.421; and (2) the issuance of a decision within the 30-day timeline in 34 CFR §303.423(b).

### **OSEP Conclusion**

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 Part C. Specifically, the State has not met the requirements in: (1) 34 CFR §303.512(a)(4) to ensure that the State issues a written decision to the complainant in a State complaint alleging noncompliance with Part C that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the lead agency's decision; and (2) 34 CFR §303.419(b)(2), that the State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.

In addition, OSEP cannot determine whether the State would be effective in ensuring the timely resolution of due process hearing requests as the State reported that it has not received any due process hearing requests during FFY 2007, FFY 2008, FFY 2009, FFY 2010, or the portion of FFY 2011 that had elapsed (July 1, 2011-September 14, 2011) at the time of OSEP's September 2011 visit.

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

Within 60 days from the date of this letter, MSDH must provide documentation (including copies of any written Part C State complaint decisions issued since OSEP's September 2011 visit) to ensure that decisions include findings of fact and conclusions and the reasons for the State's final decision as required by 34 CFR §303.512(a)(4)(i) and (ii). In the event that the State issues no decisions on Part C State complaints within 60 days from the date of this letter, the State must submit, by June 15, 2012, a copy of any decisions that it issues by that date.

Within 60 days from the date of this letter, MSDH must also submit: (1) the State's list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services, and (2) an assurance that the State has identified hearing officers who meet the requirements in 34 CFR §303.421, who can be appointed in a timely manner, if a due process hearing is requested.

***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 fiscal coordination to ensure that methods are in place under IDEA sections 635(a)(10), 637(a)(2) and 640.

**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. In the IDEA Part C grant application, States provide 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 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.

As part of the verification visit process, the State submitted its Interagency Agreement for the Mississippi Early Intervention System, dated March 1998. 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**

The State must review and revise its interagency agreement, or other written method, to ensure financial responsibility for IDEA Part C services provided, or paid for, by other State-level agencies. That method must be consistent with the requirements under subpart F of the new IDEA Part C regulations and must be current as of the time the State submits its fiscal certification with its FFY 2012 IDEA Part C grant application.

Through the IDEA Part C grant application process, OSEP will review, and respond to, 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.