

Nebraska 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 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 systems³
- 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

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.

Nebraska's Part C program, the Early Development Network (EDN), is implemented through a co-lead agency structure between the Nebraska Department of Education (NDE) and the Nebraska Department of Health and Human Services (HHS). EDN is defined in the Early Intervention Act, a State statute (Neb. RRS 43-2501-2516), and the regulations that govern the administration and implementation of special education programs are contained in the Nebraska Administrative Code Rule 51. As a birth mandate State, infants and toddlers with disabilities are eligible to receive a free and appropriate public education (FAPE) from birth to three. The State's policies establish the authority for NDE and HHS to identify and correct noncompliance and provide guidance about the co-lead agency responsibilities. NDE and HHS jointly administer the Part C program including co-writing the program budget, co-funding personnel, and implementing training and quality assurance activities. NDE receives the Federal Part C funds and the Division of Administrative Services disperses the funds to EDN, which implements the State's Part C program.

EIS are provided through the 252 local school districts and the 22 service coordination units. Due to large geographical regions in the State that are sparsely populated and share service coordination responsibilities, the local early intervention programs are organized geographically and by population into 18 Education Service Units (ESUs), which serve as the EIS programs for reporting purposes under IDEA sections 616 and 642. The State created 28 Early Childhood Planning Regions Teams (PRTs) within the 18 ESUs for service coordination and technical assistance, to ensure communication networks that can identify and address local priorities, and to provide outreach and dissemination services.

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

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 identify 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 identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is required.

⁴ 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.

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), 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), Nebraska has elected to adopt the IDEA Part B due process hearing procedures to resolve individual child disputes under IDEA Part C in lieu of the IDEA Part C procedures in 34 CFR §§303.419 through 303.424 and has adopted provisions consistent with 34 CFR §303.425.

OSEP identified two areas of concern regarding Nebraska's dispute resolution procedures: (1) the State's due process complaint model form includes additional content requirements and does not contain clarifying language regarding these requirements; and (2) the State is not tracking its due process complaint, resolution, and due process hearing timelines.

Due Process Complaint Form

Under 34 CFR §300.509(a), the State must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with 34 CFR §§300.507(a) and 300.508(a) through (c). However, the State may not require the use of the model forms. Under

34 CFR §300.509(b), parents, public agencies, and other parties may use the appropriate model form described above, or another form or document, as long as the form or other document, in the case of a due process complaint, meets the content requirements in 34 CFR §300.508(b).

Based on OSEP's review of Nebraska's form entitled "Sample Petition Form for Special Education Contested Cases" (sample form), in NE DOE Title 92, Chapter 55, Appendix A, found at <http://www.education.ne.gov/legal/webrulespdf/Clean55may06.pdf>, pages 23-24, OSEP has identified the following concerns.

This form has been labeled as a form to assist a parent in filing a due process hearing petition if they do not agree with a school district's identification, evaluation, or proposed placement of their child. Under 34 CFR §§303.403(a) and 303.420(a), a parent or a public agency must file a due process complaint prior to the initiation of a due process hearing, and the complaint may concern any matters relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the child. Nebraska will need to revise its sample form to reflect IDEA requirements governing the scope of due process complaints to include a reference to matters relating to "the provision of early intervention services to a child."

While NDE's sample form generally included the content required in 34 CFR §300.508(b) governing a due process complaint, it also required information that exceeded the content requirements in 34 CFR §300.508(b). Specifically, Nebraska's sample form stated that a petition must include the address of the respondent and must:

1. "(Set forth a concise statement of the grounds upon which the Department's authority or jurisdiction depends.)" and
2. "(Specifically state the legal rights, duties, or privileges of the petitioner that the hearing officer is required by law to determine.)"

As OSEP staff discussed with your staff during and subsequent to the verification visit, Nebraska may continue to include this information on its sample form, provided that it does not require parents to provide this information as a condition of processing their due process complaint, if that complaint meets the other applicable requirements in 34 CFR §§300.507-300.508. Nebraska will need to revise its model form to specify that the additional information requested is based on applicable Nebraska law, is not required by the IDEA, and that the State will not refuse to process the due process complaint if the parent is unable to provide the requested information.

OSEP notes that Nebraska will need to revise its procedural safeguards generally, including its model form, to meet the new requirements in the 2011 IDEA Part C regulations published on September 28, 2011. The requirements that OSEP has noted in this letter and which the State does not include in its model forms have not substantively changed in the new regulations.

Resolution and Due Process Hearing Timelines

During the verification visit, OSEP identified an issue regarding Nebraska's procedures for tracking adherence to resolution and due process hearing timelines. As explained further below, the State has since resolved this issue.

The State must ensure that, in accordance with 34 CFR §300.510(a), lead educational agencies (LEAs) or EIS programs hold a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the meeting does not need to be held because the parent and the LEA agree in writing to waive the resolution meeting or the parties agree to use mediation. Further, the State must ensure that there is a 30-day resolution period consistent with

34 CFR §300.510(b), or an adjusted resolution period, if one of the circumstances in 34 CFR §300.510(c) is present. If the parent and the LEA cannot resolve the parent's concerns to the parent's satisfaction during the resolution period, the 45-day hearing timeline is initiated at the conclusion of the 30-day resolution period or an adjusted resolution period. 34 CFR §300.515(a).

Although the State did not report any due process hearings being conducted in FFY 2009 or 2010, OSEP finds that the State did not have procedures for tracking the timeliness of the resolution process, for ensuring that an LEA convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint, in accordance with 34 CFR §300.510(a), unless the meeting did not need to be held, and that the 45-day due process hearing timeline in 34 CFR §300.515(a) was initiated at the conclusion of the 30-day resolution period or an adjusted resolution period pursuant to 34 CFR §300.510(c), if the parent and LEA were unable to resolve the dispute that is the subject of the due process complaint.

Specifically, Nebraska informed OSEP that at the time of the verification visit, it required parents to send a copy of their due process request to NDE and to the school district. NDE also required the parent to mail the copy to the district to be mailed "return receipt requested" so that the parent would receive documentation from the U.S. Post Office as to the exact date the due process request was received by the district. A copy of that receipt was then forwarded to NDE by the parent so that NDE would know when the resolution timelines began. However, the State reported that this procedure proved to be problematic because in many cases the parent would not get the return receipt to NDE until after the 15 day resolution meeting timeline had expired.

On January 11, 2012, subsequent to the verification visit, the State informed OSEP that it had revised its procedures and had implemented those revised procedures with a due process complaint that was recently filed under IDEA Part B. Under the revised procedures, NDE requires its legal counsel office to inform the appropriate office when a due process request is received from the parent and that office then contacts the district to determine when the LEA received the due process request from the parent and when the resolution meeting is scheduled. The district is also contacted on the date after the scheduled resolution meeting to make sure that the meeting has occurred or has been appropriately waived.

NDE has also informed OSEP that it has implemented a revised procedure to ensure that the 45-day due process hearing timeline is initiated at the expiration of the 30-day resolution period or an adjusted resolution period, if the LEA and the parents are unable to resolve the dispute that is the subject of the parent's due process complaint. OSEP appreciates NDE resolving this issue.

OSEP Conclusions

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 have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA Part C except for the State's model form for due process complaints.

Specifically, to meet the requirement in 34 CFR §300.509, OSEP concludes that the form that the State refers to as its model form (Sample Petition for Special Education Contested Cases), does not reflect all of the requirements of 34 CFR §300.509 because it: (i) does not accurately describe all matters that can be the subject of a due process complaint under 34 CFR §303.403(a) -- i.e., matters relating to the provision of early intervention services to an infant or toddler with a

disability; (ii) does not identify information that goes beyond the Part C and Part B content requirements for a due process complaint as information required by Nebraska law and not by Part B; and (iii) does not include language advising parents that the State will not refuse to process their due process complaint if the parent is unable to provide the information required by State law.

Required Actions

Within 90 days of the date of this letter, the State must provide an assurance that it has revised its model due process complaint form for Part C to meet the requirements of 34 CFR §303.420(a) and 34 CFR §§300.507 through 300.509. Specifically, the State must ensure that: the form applies to due process complaints regarding all of the matters described in 34 CFR §303.403(a), which include complaints on matters relating to the provision of EIS to an infant or toddler with a disability; that the form identifies for parents the specific information required by Nebraska law, and not by Part C of the IDEA; and that language is included in the form advising parents that the State will not refuse to process their due process complaint if the parent is unable to provide the additional information required under State law.

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.

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 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 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 Conclusions

Based on the review of documents and interviews with State personnel, OSEP concludes that the State has procedures and practices that are reasonably designed to implement selected grant application requirements regarding monitoring and enforcement related to local determinations.

Required Actions/Next Steps

The State must review, and if necessary revise, its methods to ensure financial responsibility to meet the requirements of subpart F of the new IDEA Part C Final Regulations (new 34 CFR §§303.500 through 303.521). If the State uses an interagency agreement or a method other than State statute or regulation, it must submit that method with its FFY 2012 IDEA Part C grant application and OSEP will review, and respond to, such method(s) as part of the IDEA Part C FFY 2012 grant application process.