

**New Mexico Part C Continuous Improvement Visit Letter**  
**Enclosure - Verification Component**

**Scope of Review**

During the verification component of the Continuous Improvement Visit (CIV), the Office of Special Education Programs (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 Annual Performance Report (APR)/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 systems<sup>3</sup>
- 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

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<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.

## **Description of the Part C System**

New Mexico Department of Health (NMDOH) is the State's Part C lead agency. The Family Infant Toddler Program (FIT), within NMDOH, is responsible for administering Part C of IDEA in New Mexico. Early intervention services in New Mexico are provided through 42 early intervention service (EIS) programs, which include: (1) contracts with 39 local EIS provider agencies, which operate in one of four regions; and (2) three interagency agreements with other State agencies that provide Part C services to specific populations in the entire State (New Mexico School for the Blind, New Mexico School for the Deaf, and UNM – Center for Development and Disability, Early Childhood Evaluation Program). The State reported that one local program recently closed and one State program is no longer providing early intervention services. FIT also utilizes six professional/technical contracts for training and technical assistance (TA), focused monitoring, parent training, and public awareness.

NMDOH reported in its most recent IDEA section 618 Federal child count data submission (Fall 2010) that 4,746 infants and toddlers with disabilities received early intervention services through FIT, which represents 5.28% of the State's infants and toddlers from birth to age three. NMDOH reported in its IDEA section 618 Federal child count data that 862 at-risk infants and toddlers received Part C services through FIT. As described in general supervision critical element five below, NMDOH has elected to make Part C services available beyond age three under IDEA section 635(c) (FIT extended option) during FFYs 2010 and 2011 and reported that 418 toddlers between the ages of three and four received Part C services through the FIT extended option during FFY 2010. As of FFY 2012 (July 1, 2012), the State will no longer make Part C services available beyond age three under IDEA section 635(c).

### **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,<sup>4</sup> 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 New Mexico'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.

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<sup>4</sup> 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, unless otherwise noted.

***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.

**OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with State and local personnel, OSEP concludes that the New Mexico'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)). New Mexico has adopted the Part C due process hearing procedures.

**OSEP Conclusion**

Based on the review of documents, 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 for the mediation, State complaint procedures, and the due process procedure requirements. Also, because the State had not received any complaints and/or due process hearing requests in the last APR reporting year, OSEP could not determine the effectiveness of those procedures and practices.

**Required Actions/Next Steps**

No action is required.

***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 New Mexico 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.

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. New Mexico currently has three memoranda of understanding (MOUs) and one Joint Power of Agreement with other State-level agencies for the provision of early intervention. The State reported that it is in the process of revising these MOUs to reflect both current practice and the requirements in the new IDEA Part C regulations. The MOUs are with the New Mexico Schools for the blind/visually impaired and the State school for the deaf, Department of Health Services Medical Assistance, the University of New Mexico and the New Mexico Department of Education (PED). The State should review OSEP’s IDEA Part C Grant Application Technical Assistance Checklist for Fiscal Certification required under 34 CFR §303.202.

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

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

Regarding the State's grant assurances for the New Mexico State Interagency Coordinating Council (ICC), OSEP learned during the verification visit that State Statute requires the reappointment of an interagency council whenever a new governor is elected. The State must ensure under IDEA section 641 that it has an ICC in place which functions to advise and assist the lead agency in the promotion of interagency agreements with other State level agencies. During the verification visit discussion on State-level interagency coordination, OSEP was advised by State staff that the New Mexico ICC is functioning without being appointed by the Governor.

Finally, regarding specific grant assurances, State staff informed OSEP that NMDOH has made changes to the Family Infant Toddler (FIT) program that will become effective as of July 1, 2012 and affect a child's eligibility for Part C of IDEA such that New Mexico will no longer make services available to children beyond age three under IDEA section 635(c). This change will require a revision of the State's policies and procedures and the early childhood transition agreement between NMDOH and PED. State staff reported that the State has developed guidance materials for parents of children already in the program and early intervention service providers in order to ensure that services are not interrupted for the children and their families but also to effect a smooth transition for all.

### **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. OSEP will review, and respond to, the State's methods to ensure financial responsibility for the provision of Part C services as part of the IDEA Part C grant application process.

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

In the FFY 2012 IDEA Part C Grant Application due April 16, 2012, the State must review Assurance #18 in Section II (B) regarding the ICC and ensure that the Governor has appointed the ICC members by the time the grant application is submitted. OSEP will review the State's revised policies regarding making services available beyond age three, early childhood transition, and any revised methods that are interagency agreements or other methods, as part of the State's FFY 2012 IDEA Part C grant application.