

## **Oklahoma 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,<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 Individuals with Disabilities Education Act (IDEA) funds made available under The American Recovery and Reinvestment Act of 2009.

#### **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 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.

The Oklahoma State Department of Education (OSDE) is the lead agency for the SoonerStart EIS for infants and toddlers with developmental delays and/or disabilities. The program is a joint effort of OSDE and the Oklahoma State Department of Health (OSDH). OSDE is responsible for the monitoring and general supervision of the State's EIS programs and OSDH is the contracting agency for providing EIS. The SoonerStart program is comprised of 26 EIS programs. Oklahoma served 2,770 (1.75 percent) infants and toddlers with disabilities in FFY 2010.

## **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 (Part C) 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.

OSDE's general supervision system consists of the following monitoring mechanisms:

- **Annual Desk Audit Review.** OSDE identifies noncompliance with SPP/APR Indicators 1 (timely provision of services), 7 (initial individualized family service plans (IFSPs) within 45 days), 8A (transition plans included in IFSPs), 8B (notification to the local education agency of children transitioning from Part C to Part B) and 8C (timely transition planning conference) through an annual desk audit review. The Regional Program Manager<sup>5</sup> conducts quarterly reviews to monitor corrective action plans and possible noncompliance for Indicators 1, 7, and 8.
- **Focused monitoring.** OSDE's SoonerStart stakeholders select the State's focused monitoring areas based on an analysis of the data from the Annual Desk Audit Review. Programs with low performance in the identified focus area are generally selected for focused monitoring. The EIS program's performance and compliance with Part C regulatory requirements are evaluated through this mechanism. EIS programs are required to submit a written improvement and/or corrective action plan when there is low performance or identified noncompliance.
- **Concern-specific monitoring.** Concern-specific monitoring is used to look into concerns that are raised through an informal parent complaint related to a personnel issue or a concern from an EIS program, e.g., how to submit data. OSDE reported that, although it has not yet issued findings through this mechanism, it is not precluded from doing so.

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<sup>4</sup> As noted in the cover letter, the IDEA Part C regulations cited in this letter and 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> The Regional Program Manger is responsible for conducting monitoring and verification activities in EIS programs to ensure compliance with APR data reported for Indicators 1, 7, and 8. In addition, Regional Managers provide technical assistance and monitor corrective action/improvement plans when an EIS provider has not met compliance.

OSEP identified the following three issues regarding the State's system for identifying noncompliance:

1. Monitoring for Related Requirements. The State reported that "related requirements [are] not a part of the process for identifying noncompliance" through the Annual Desk Audit Review or Focused Monitoring. When the State discovers noncompliance with related requirements through its quarterly review of data it requires the EIS program to access technical assistance in the area of noncompliance, but the State does not make a finding of noncompliance and verify correction. The State confirmed that although the State's data system is designed to collect and track related requirements, the State is only using the data system to identify noncompliance for Indicators 1, 7 and 8.
2. Content of IFSP. Although OSEP identified noncompliance with regard to content of the IFSP (a related requirement), this noncompliance was not identified by OSDE. OSEP staff found through the review of 30 IFSPs that the State-mandated IFSP form does not include all of the content required by 34 CFR §303.344(d). Specifically, the IFSP form does not identify the specific services to be provided to each child or the payment arrangements, if any, for the services, as required by 34 CFR §303.344(d)(1) and (d)(1)(iv).<sup>6</sup> The State's assumption that the IFSP includes the specific child services by listing the professional responsible for the service is not sufficient to explain the specific child services in the IFSP.
3. Timely Notice of Noncompliance. OSEP found that the State does not issue notices of noncompliance within a reasonable period of time after noncompliance has been identified. OSEP found through the review of documents and interviews with State staff, that the State is waiting eight to 11 months to issue EIS programs formal notices of noncompliance. The State reported that on July 1<sup>st</sup> of each year, it conducts a review of the previous year's data. Following a 30-day data clean-up period, another data review is conducted on August 1<sup>st</sup> (note: the State uses these data for its APR submission on February 1<sup>st</sup>). EIS programs are notified of noncompliance identified during the August 1<sup>st</sup> data review on May 1<sup>st</sup> of the following year. The State does not provide notices of findings until 30 days before local determinations are made on June 1<sup>st</sup> and EIS programs are notified of their determination. The timeline for correction begins in May, a practice which allows noncompliance to remain uncorrected for more than 12 months after the State first discovers the noncompliance.

OSEP staff also found through the review of documents that the State's written notice of noncompliance sent to the EIS providers did not include the citation of the statute or regulation and description of the data supporting the State's conclusion that there is noncompliance with that statute or regulation (See response to question one of OSEP's September 3, 2008 Frequently Asked Questions (FAQ) guidance document). However, subsequent to OSEP's visit, the State has submitted a revised copy of the written notice of noncompliance that includes the required regulatory information and meets the requirements for the statutory or regulatory citations and the description of the data supporting the State's conclusion.

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<sup>6</sup> The new IDEA Part C regulations published in 76 *Federal Register* 60140 on September 28, 2011 continue to require, in new 34 CFR §303.344(d)(1) and (d)(1)(iv), that States identify in the IFSPs the specific services to be provided to each child and the payment arrangements, if any, for the services.

## **OSEP Conclusion**

To effectively monitor the implementation of Part C of the IDEA by EIS programs/providers, as required by IDEA sections 616 and 642, 34 CFR §303.501(a) and (b)(1) and 20 U.S.C. 1435(a)(10)(A), the State must have a general supervision system that is reasonably designed to identify noncompliance in a timely manner. Based on the review of documents, analysis of data and interviews with State personnel, as described above, OSEP concludes that the State does not have a general supervision system that is reasonably designed to identify noncompliance because the State did not: (1) identify noncompliance with IDEA related requirements; (2) identify noncompliance when IFSPs did not include the specific services to be provided to each child or the payment arrangements, if any, for the services, as required by 34 CFR §303.344(d)(1) and (d)(1)(iv); and (3) issue findings of noncompliance within a reasonable period of time after identifying the noncompliance.

## **Required Actions/Next Steps**

Within 90 days of the date of this letter, OSDE must: (1) revise its monitoring procedures to require the identification of noncompliance with related requirements, and submit a copy of the revised procedures with an implementation plan including the training of OSDE staff and local programs on the new procedures to ensure immediate implementation; (2) submit: (a) an assurance that it is issuing written findings for identified noncompliance within a reasonable period of time (i.e., less than three months) from when OSDE identifies noncompliance with a Part C requirement, and (b) the notifications of all findings of noncompliance issued to EIS programs for four months from September 2011 to December 2011; (3) revise: (a) the State's IFSP form to require IFSPs to identify the specific services to be provided to each child and the payment arrangements, if any, for the services, and (b) the State's monitoring procedures to ensure compliance with IFSP content requirements, and (4) submit an assurance that it has revised its IFSP form and monitoring procedures accordingly.

## ***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, titled "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 that only 81.91% 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 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 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 that document 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(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 adopted procedures consistent with 34 CFR §303.425.

### **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 the dispute resolution requirements of IDEA.

### **Required Actions**

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, dated December 23, 2009: 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, 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.

As part of the CIV, the State submitted its "Contract for Services and Interagency Agreement between Oklahoma State Department of Education and Oklahoma State Department of Health." If the State intends to use that Agreement as a method to ensure the financial responsibility for IDEA Part C services, the State must review and 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 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 interagency agreement, or other written methods, 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 methods, to ensure financial responsibility for IDEA Part C services provided, or paid for, by other State-level agencies. The State's methods must be consistent with the requirements under subpart F of the

## Oklahoma Part C 2011 Continuous Improvement Visit Verification Component Enclosure

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.