

Puerto Rico 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 Commonwealth's general supervision and fiscal systems,¹ and its systems for improving functional outcomes for infants and toddlers with disabilities and protecting child and family rights. We also reviewed the Commonwealth'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 Commonwealth's systems for general supervision, including the collection of Commonwealth-reported data,² and fiscal management, and the Commonwealth's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the Commonwealth'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 Commonwealth submitted for selected indicators in the Commonwealth's Federal Fiscal Year 2009 State Performance Plan (SPP)/Annual Performance Report (APR)
- Reviewed the following—
 - Previous APRs
 - The Commonwealth's application for funds under Part C of the IDEA
 - Previous OSEP monitoring reports
 - The Commonwealth's Web site
 - Other pertinent information related to the Commonwealth's systems³
- Gathered additional information through surveys, focus groups, or interviews with—
 - The Part C Coordinator
 - Commonwealth personnel responsible for implementing the general supervision, data, and fiscal systems
 - The Commonwealth Interagency Coordinating Council
 - Parents and Advocates
 - The Parent Training and Information Center (APNI)
 - The Commonwealth Protection and Advocacy office

The Puerto Rico Department of Health (PRDH) (in Spanish, el Departamento de Salud) is the lead agency for the Puerto Rico Part C program. Within PRDH, the Office of Maternal and Child Health administers the Part C program. PRDH has eight Pediatric Centers, which coordinate

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 Commonwealth's general supervision system, including the collection of Commonwealth-reported data, see the State Performance Plan (SPP) on the Commonwealth'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 the Commonwealth's systems.

services for a designated geographical region of the Commonwealth and serve as early intervention service (EIS) programs for SPP/APR reporting purposes. PRDH contracts with provider organizations and with individual providers to staff their provider network. PRDH also contracts with APNI, the Parent Training and Information Center for Puerto Rico, for service coordination 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 303.501,⁴ the Commonwealth 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 Commonwealth and local personnel, OSEP concludes that the Commonwealth'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 Commonwealth's systems are fully effective in identifying noncompliance in a timely manner.

Required Actions/Next Steps

No action is 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 and 34 CFR §§303.500 and 303.501, the Commonwealth 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 Commonwealth 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.

⁴ Unless otherwise 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.

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, because the data for Indicator 9 in the FFY 2009 APR were 75%, OSEP cannot conclude that the State's systems are fully effective in correcting noncompliance in a timely manner. Further, as described below under General Supervision Critical Element 3, Dispute Resolution, the Commonwealth does not have a mechanism for tracking correction of noncompliance identified from its dispute resolution system.

Required Actions/Next Steps

Please see the required actions under Critical Element 3, Dispute Resolution.

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 Commonwealth must have procedures and practices that are reasonably designed to implement the following IDEA Part C dispute resolution requirements: (1) the State Complaint procedures in 34 CFR §303.512; and (2) 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)). The Commonwealth has adopted the IDEA Part C due process procedures to resolve individual child complaints.

A 2003 agreement between PRDH and the Office of the Ombudsman for Persons with Disabilities (OPP) provides that OPP is responsible for implementing mediation and due process hearings, and that parents may file State complaints with either PRDH (at the Pediatric Centers) or OPP. PRDH informed OSEP that, prior to May 2010, a PRDH staff member was responsible for overseeing OPP's implementation of the mediation, due process hearing, and State complaint procedures, and for ensuring implementation of any corrective actions required by a hearing or State complaint decision. This PRDH staff person would visit OPP to review records specific to hearing and State complaint cases. PRDH further informed OSEP that this staff member retired in May 2010, and that since that time PRDH's oversight of OPP's implementation of mediation, due process hearing, and State complaint procedures was limited to a request to OPP to provide the data that PRDH needed to submit Table 4 under IDEA section 618 and to provide data for Indicators 10, 11, and 13 of the APR.

Further, the Commonwealth has not updated PRDH's agreement with OPP since 2003, and that agreement is not fully consistent with IDEA as amended in 2004, because it provides that mediation is available only when a due process hearing is requested, which is inconsistent with the requirement of IDEA 2004 that mediation be available to the parties to resolve disputes, regardless of whether there has been a request for a due process hearing. (See IDEA sections 639(a)(8) and 615(e)(1).) PRDH reported, however, that it makes mediation available to families at any time although its dispute resolution procedures do not specify this. Given that the IDEA Part C regulations published on September 28, 2011 further revised the requirements for State complaints, due process hearings, and mediations, OSEP expects that PRDH will need to further update its agreement with OPP as well as its policies and procedures.

OSEP Conclusion

To ensure that the Commonwealth has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, as required by IDEA section 639 and 34 CFR §§303.419, 303.421-303.423, and 303.510-303.512, PRDH must, as part of its general supervisory responsibility, oversee implementation of those requirements and ensure compliance. Based on the review of documents, analysis of data, and interviews with PRDH personnel, as described above, OSEP concludes that the Commonwealth does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, because it has not met its general supervisory responsibility (see 34 CFR §303.501) to ensure compliance with those requirements as implemented through agreement by OPP. Further, the agreement with OPP is, as described above, inconsistent with IDEA Part C's requirements related to when mediation must be made available.

Required Actions/Next Steps

Within 90 days from the date of this letter, PRDH must provide a copy of the procedures that it will use to ensure compliance with Part C requirements related to State complaints, due process hearings, and mediation. These procedures must comply with Part C requirements for dispute resolution, whether those procedures are implemented by the lead agency or OPP, and must require that mediation is available at any time, whether or not a party has requested a due process hearing.

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), and 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 Commonwealth 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.

During the verification portion of the CIV, PRDH reported to OSEP that the early childhood outcomes data that it has reported for SPP/APR Indicator 3 have not been valid and reliable, because: (1) PRDH receives many incomplete Child Outcomes Summary Forms because many EIS providers do not understand the importance of the outcomes process; (2) there is inconsistency among Pediatric Centers in how they collect child outcomes data; (3) many new EIS providers have been hired since the last Commonwealth-wide child outcomes training in 2009 (which training was discontinued because PRDH removed those responsibilities from the contract of the Pediatric Center Director who conducted this training); and (4) the Commonwealth's sampling procedures differ from those PRDH had described to OSEP in its OSEP-approved sampling plan for this indicator.

Further, although the measurement for SPP/APR Indicator 3 requires the Commonwealth to collect and report data for all infants and toddlers with disabilities who exit the Part C program after at least six months in the program, PRDH reported that it only collects and reports data for children who exit the program at age three, but not also, as required by the measurement, for children who exited the program, after six months, before age three.

OSEP Conclusion

Based on the review of documents and interviews with Commonwealth personnel, OSEP concludes that the Commonwealth 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 with the exception of the data that PRDH has been reporting for SPP/APR Indicator 3 (Child Outcomes), which do not appear to be valid and reliable for the reasons mentioned above.

Required Actions/Next Steps

Within 90 days from the date of this letter, the Commonwealth must provide a description of the steps that it will take, with timelines, to ensure that it collects and reports valid and reliable data for SPP/APR Indicator 3. These steps must include: (1) accessing technical assistance on the Commonwealth's child outcomes issues; (2) training all providers on the child outcomes process; and (3) revising the child outcomes sampling plan and submitting it to OSEP for approval.

Further, with its response, during the SPP/APR clarification period, to OSEP's FFY 2010 Puerto Rico Part C SPP/APR Status Table, the Commonwealth must provide to OSEP a description of the extent to which the data that the Commonwealth reported in its FFY 2010 APR, due February 1, 2012, for SPP/APR Indicator 3 are valid and reliable.

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 Commonwealth must have procedures and practices that are reasonably designed to ensure that the Commonwealth 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 or entity that receives IDEA Part C funds where a State-level agency, other than the 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 (which includes the Commonwealth) 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 Commonwealth's method is an interagency agreement or other written method (i.e., anything other than a Commonwealth statute or regulation), the Commonwealth must also submit that method with its FFY 2012 IDEA Part C grant application. If the Commonwealth has any questions about updating its methods or this fiscal certification, OSEP remains available to provide technical assistance. The Commonwealth should review carefully OSEP's IDEA Part C Grant Application Technical Assistance Checklist for Fiscal Certification required under new 34 CFR §303.202.

Local Determinations and Enforcement

PRDH reported that although it has reported annually to the public on the performance of each of its EIS programs (Pediatric Centers) on the Commonwealth's SPP/APR targets and made determinations for those EIS programs in accordance with IDEA sections 616(d)(2)(A) and 642, it has not complied with the requirements regarding enforcement actions in IDEA sections 616 and 642. PRDH reported to OSEP that although there were Pediatric Centers that had received a determination of Needs Assistance for two or more consecutive years, PRDH had not imposed any of the enforcement actions required by IDEA sections 616(a) and (e)(1) and 642. In addition, PRDH reported that it had no written procedures for enforcement under IDEA sections 616(a) and (e) and 642.

OSEP Conclusion

Based on the review of documents and interviews with Commonwealth personnel, OSEP concludes that the Commonwealth has procedures and practices that are reasonably designed to implement selected grant application requirements, i.e., monitoring related to local determinations and Commonwealth-level interagency coordination. The Commonwealth does not, however, have procedures and practices that are reasonably designed to implement the applicable enforcement actions in IDEA section 616(a) and (e) applicable to Part C through IDEA section 642.

Required Actions/Next Steps

Within 90 days from the date of this letter, PRDH must provide OSEP with a copy of its procedures for implementing the enforcement actions required by IDEA sections 616(a) and (e) and 642. OSEP will review, and respond as part of the IDEA Part C grant application process to, any methods submitted by the Commonwealth with its FFY 2012 application to ensure financial responsibility for the provision of Part C services.