

South Carolina 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 Individuals with Disabilities Education Act (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 Coordinator
 - State personnel responsible for implementing the general supervision, data, and fiscal systems
 - Early intervention service (EIS) program staff, where appropriate
 - State Interagency Coordinating Council
 - Parents and Advocates
 - The South Carolina Protection and Advocacy Office

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.

The Lead Agency for Part C in South Carolina is First Steps to School Readiness (FSSR). In the State structure, FSSR is located under the Governor’s office. FSSR became the lead agency for IDEA Part C in January 2010. Prior to that time, the lead agency was the Department of Health and Environmental Control (DHEC).

There are eight system “points of entry” for referral and intake purposes. In addition , there are 65 service coordination vendors that serve as EIS programs for SPP/APR reporting purposes and that also provide EIS in South Carolina through a system of contracts.

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?

Background

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. The failure to timely identify and timely correct findings of noncompliance was the subject of South Carolina’s 2003 Compliance Agreement and has been the subject of Special Conditions on South Carolina’s IDEA Part C grant awards in FFY 2008, FFY 2009, FFY 2010 and FFY 2011. The Special Conditions were initially imposed when DHEC was the lead agency and have continued since FSSR has been the lead agency for Part C.

The Special Conditions on South Carolina’s IDEA Part C FFY 2011 grant award required FSSR to submit progress reports to OSEP on October 15, 2011, February 1, 2012, and May 7, 2012. In those progress reports, the State was required to submit correction data for outstanding findings identified by the State in FFY 2007, FFY 2008, and FFY 2009. For the October 2011 and February 2012 progress reports, FSSR reviewed the data in its database to determine whether instances of noncompliance were corrected and whether updated data showed compliance. OSEP will address the issues regarding the State’s system to verify correction of noncompliance under Critical Element 2 below.

Based on the information provided in the State’s progress reports and during the CIV, OSEP identified the following issues with the State’s system to identify noncompliance.

Failure to make timely findings of noncompliance based on BabyTrac data system for SPP/APR Indicators 1, 7, and 8C

During the verification component of the CIV, FSSR reported to OSEP that it has used its BabyTrac data system to collect data for Part C SPP/APR Indicators 1, 7, and 8C, and that, as the State reported in its FFY 2009 APR, those data demonstrated noncompliance in FFY 2009 for each of those indicators. FSSR further reported that, although data in the data system showed noncompliance in FFY 2009, the State did not issue any findings of noncompliance based on those data after January 1, 2010, the date on which it became the lead agency. FSSR also reported that DHEC, the lead agency during the first half of FFY 2009 (through December 31,

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.

2009), did not issue findings of noncompliance based on those data during the first half of FFY 2009. As noted in Critical Element 4 below, because the State did not make any findings of noncompliance in FFY 2009, it would appear that the State would not be able to report valid and reliable data, on the timely correction of FFY 2009 findings, for Indicator 9 of its FFY 2010 APR.

FSSR provided OSEP with revised general supervision procedures, dated November 2011, that provided for making findings of noncompliance for the 65 service coordination vendors. Those revised procedures include a process for monitoring for noncompliance based on data reflected in the BabyTrac data system for Indicators 1, 7⁵ and 8C. Pursuant to its revised monitoring procedures, FSSR issued monitoring reports to the 65 service coordination vendors in October 2011 that included findings of noncompliance based on FFY 2010 data for Indicators 1, 7, and 8C. During the CIV, OSEP reviewed copies of some of those monitoring reports, and confirmed that FSSR had sent those reports to the service coordination vendors, and that they included findings of noncompliance.

No method to make findings of noncompliance regarding requirements for timely, comprehensive, multidisciplinary evaluations and assessments

The Part C regulations require, in 34 CFR §303.322(e)(1), that, except as provided in 34 CFR §303.322(e)(2),⁶ an evaluation and initial assessment of each child (including the family assessment) must be completed within 45 days from the child’s referral to Part C. The evaluation and initial assessment must be multidisciplinary, comprehensive, and timely, and include an evaluation of the child’s level of functioning in each of the following developmental areas: (1) cognitive development; (2) physical development, including vision and hearing; (3) communication development; (4) social or emotional development; and (5) adaptive development. 34 CFR §303.322(c)(3).

During the CIV, FSSR acknowledged that, in most cases prior to October 2011, a comprehensive initial evaluation and assessment was not completed prior to the development of the initial Individualized Family Service Plan (IFSP). Rather, a special instructor conducted an evaluation that was not comprehensive, and the IFSP team developed an IFSP that indicated a need for additional evaluations by other qualified personnel, i.e., speech, physical and occupational therapists. FSSR acknowledged that complete evaluations and assessments were not administered before the development of the initial IFSP and within the 45-day timeline, and that FSSR did not have a process for identifying this noncompliance and making findings of noncompliance. FSSR also acknowledged that the State had not made any such findings of noncompliance. In addition, the revised monitoring procedures that FSSR submitted in November 2011 do not include any monitoring method for the State to determine whether evaluations and assessments meet the requirements of 34 CFR §303.322.

⁵ The State acknowledged during the verification component of the CIV that, as explained in the next issue: (1) FSSR is not able to determine from the data system whether a complete evaluation and assessment was conducted; (2) compliance with that requirement has been a long-standing issue; and (3) FSSR did not have any methodology for determining compliance with that requirement.

⁶ The regulations provide in 34 CFR §303.322(e)(2), that, “The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will--(i) Document those circumstances; and (ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with section 303.345(b)(1) and (b)(2).”

No method to make findings of noncompliance regarding IFSP content, including transition steps and services

The Part C regulations specify what content must be included in the IFSP, including the steps to be taken to support the transition of the child, in accordance with 34 CFR §303.148, to: (1) preschool services under Part B of the Act, to the extent that those services are appropriate; or (2) other services that may be available, if appropriate. 34 CFR §303.344. FSSR acknowledged that it had no procedure to monitor for compliance with the IFSP content requirements or to collect data for SPP/APR Indicator 8A (Transition steps and services in the IFSP). In addition, the revised monitoring procedures that FSSR submitted in November 2011 do not include a method for the State to determine compliance with the requirements in 34 CFR §303.344 for the content of IFSPs, including transition steps and services.

OSEP Conclusion

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 monitor for all IDEA requirements and issue written findings when data in a database or other monitoring results reflect noncompliance. Based on the review of documents, analysis of data, and interviews with State and local personnel, as described above, OSEP concludes that the State has not had a general supervision system that was reasonably designed to identify noncompliance in a timely manner using its different components.

Specifically, OSEP concluded that: (1) the State made no Part C findings of noncompliance between July 1, 2009 and October 17, 2011, although the State had data showing noncompliance; (2) although the State was aware that in many cases a comprehensive, multidisciplinary evaluation and assessment was not completed before the development of the initial IFSP (and within Part C's 45-day timeline), the State had no process for monitoring for compliance with these requirements and had made no findings of noncompliance; and (3) the State had no process for monitoring for the IFSP content requirements in 34 CFR §303.344, including the steps and services to be taken to support the transition of the child, or for collecting data for SPP/APR Indicator 8A.

Required Actions/Next Steps

By June 8, 2012, FSSR must submit its procedures for monitoring for compliance with the requirements for timely, comprehensive, multidisciplinary evaluations and assessments, and for the requirements for the content of IFSPs, including transition steps and services in IFSPs. In addition, with the State's FFY 2011 APR, due February 1, 2013, the State must report on the number of findings the State identified regarding: (1) timely, comprehensive, multidisciplinary evaluations and assessments, and IFSP content, including transition steps and services in the IFSP; and (2) the dates the State issued those findings to the service coordinator vendors.

See the required actions for General Supervision Critical Element 4 for required actions regarding SPP/APR Indicators 8A and 9.

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.

As discussed above in Critical Element 1, the failure to timely identify and timely correct findings of noncompliance was the subject of South Carolina's 2003 Compliance Agreement, and has been the subject of Special Conditions on South Carolina's IDEA Part C grant awards in FFY 2008, FFY 2009, FFY 2010 and FFY 2011. The Special Conditions on South Carolina's IDEA Part C FFY 2011 grant award required FSSR to submit progress reports to OSEP on October 15, 2011, February 1, 2012, and May 7, 2012. In those progress reports, the State was required to submit correction data for outstanding findings identified by the State in FFY 2007, FFY 2008, and FFY 2009.

For the October 2011 and February 2012 progress reports, FSSR reviewed the data in its database to determine whether instances of noncompliance were corrected and whether updated data showed compliance. In its February 2012 progress report, the State reported that all of the noncompliance reflected in its FFY 2007 and 2008 data for Indicators 7 and 8C was corrected. However, the State did not report that all of the noncompliance reflected in its FFY 2007 and 2008 data for Indicator 1 was corrected. Specifically, the State reported that 40% of the noncompliance reflected in its FFY 2007 Indicator 1 data was not corrected, and 35% of the noncompliance reflected in its FFY 2008 Indicator 1 data was not corrected.

In addition, in the February 2012 progress report, the State did not report that it has verified that each EIS program with noncompliance reflected in the FFY 2009 data for Indicators 1, 7 and 8C: (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 each individual case of noncompliance, unless the child is no longer within the jurisdiction of the EIS program, consistent with OSEP Memo 09-02. Therefore, the State has not demonstrated that it corrected the noncompliance reflected in its FFY 2009 data for Indicators 1, 7, and 8C.

FSSR has not yet reported on the verification of correction of noncompliance identified in the monitoring reports the State issued in October 2011, based on data from FFY 2010.

The State's November 2011 monitoring procedures include procedures for verifying, consistent with OSEP Memo 09-02, correction of noncompliance identified through the BabyTrac data for Indicators 1, 7, and 8C. However, those procedures do not explain how FSSR will verify the correction of other areas of noncompliance, such as those noted in Critical Element 1 above.

OSEP Conclusion

It is unclear whether the State currently has a general supervision system that is reasonably designed to correct noncompliance in a timely manner using its different components because the State did not report that all of the noncompliance reflected in its FFY 2007 and 2008 data for Indicator 1 was corrected, or that the noncompliance reflected in its FFY 2009 data for Indicators 1, 7, and 8C was verified as corrected, consistent with OSEP Memo 09-02. Further, the State has not yet verified the correction of findings identified in the reports the State issued in October 2011, based on data from FFY 2010.

In addition, the State's November 2011 monitoring procedures do not explain how FSSR will verify, consistent with OSEP Memo 09-02, the correction of areas of noncompliance, other than Indicators 1, 7, and 8C, including noncompliance with the requirements for timely, comprehensive, multidisciplinary evaluations and assessments, and the requirements for the content of the IFSP, including transition steps and services.

Required Actions/Next Steps

By this letter, OSEP is revising the requirements for the Final Special Conditions Progress Report, due May 7, 2012, and requires that FSSR must report: (1) whether the remaining 40% of the noncompliance reflected in the State's FFY 2007 Indicator 1 data, and remaining 35% of the noncompliance reflected in its FFY 2008 Indicator 1 data, has been corrected; (2) whether all noncompliance reflected in its FFY 2009 data for Indicators 1, 7, and 8C has been verified as corrected, consistent with OSEP Memo 09-02; and (3) (a) correction data (as of April 15, 2012) for all findings issued in October 2011, based on data from FFY 2010; and (b) confirmation that correction of those findings was verified consistent with OSEP Memo 09-02 for all findings reported as corrected.

In addition, by June 8, 2012, FSSR must submit its procedures for verifying, consistent with OSEP Memo 09-02, the correction of areas of noncompliance, other than Indicators 1, 7, and 8C, including noncompliance with the requirements for timely, comprehensive, multidisciplinary evaluations and assessments, and the requirements for the content of IFSPs, including transition steps and services in IFSPs.

OSEP will respond separately to the State's FFY 2010 APR and the State's May 7, 2012 Final Special Conditions Progress Report and identify what further action is required.

See also the required actions for Critical Element 4.

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)). The State has adopted the Part C due process hearing procedures in requirements in 34 CFR §§303.421 through 303.425 to resolve individual child disputes.

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 the dispute resolution requirements of IDEA. However, because the State has not received any due process hearing requests in FFY 2010, OSEP could not determine the effectiveness of the State's due process hearing procedures and practices.

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: 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.

As explained in General Supervision Critical Element 1, OSEP has identified the following issues regarding the State's data system:

- (1) FSSR reported that it has no method to collect accurate and valid and reliable data for SPP/APR Indicator 8A (IFSPs with transition steps and services), and that it had not collected FFY 2010 data for that indicator.
- (2) The State acknowledged that in most cases prior to October 2011, a comprehensive initial evaluation and assessment was not completed prior to the development of the initial IFSP. Given that information, the data the State collected for Indicator 7 of its FFY 2009 APR did not represent the correct measurement, and were not valid and reliable.
- (3) The State clarified that it did not issue any findings of noncompliance in FFY 2009, although its database showed noncompliance during that fiscal year. Accordingly, the State would not be able to report valid and reliable data for Indicator 9 in its FFY 2010 APR.

OSEP Conclusion

Based on the review of documents and interviews with State personnel, OSEP concludes that the State does not 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. Specifically, the State does not have a process for collecting data for SPP/APR Indicator 8A (IFSPs with transition steps and services), and the State's FFY 2009 data for Indicator 7 were not based on the correct measurement. Further, because the State did not make any findings of noncompliance in FFY 2009, it would appear that the State would not be able to report valid and reliable data for Indicator 9 of its FFY 2010 APR.

Required Actions/Next Steps

By June 8, 2012, the State must submit the procedures that it will use to collect valid and reliable FFY 2011 data for Indicator 8A, and to report those data in its FFY 2011 APR, due February 1, 2013.

Further, during the SPP/APR clarification period, with its response to OSEP's FFY 2010 South Carolina Part C SPP/APR Status Table, the State must provide to OSEP a description of the extent to which the data that the State reported in its FFY 2010 APR, due February 1, 2012, for SPP/APR Indicators 8A and 9 are valid and reliable.

OSEP will respond to the State's FFY 2010 reported data for Indicator 7 in its FFY 2010 SPP/APR Response Table.

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.

Local Reporting

As required in IDEA sections 616(b)(2)(C)(ii)(I) and 642, the State must report annually to the public on the performance of each EIS program located in the State on the targets in the State's SPP. FSSR informed OSEP during the CIV that it had not reported to the public on the FFY 2009 performance of each EIS program. Further, as stated in OSEP's June 20, 2011 FFY 2009 Response Table: (1) the State did not report to the public on the FFY 2008 performance of EIS programs on the targets in the SPP; and (2) although the State publicly reported on the FFY 2007 performance of each EIS program on the targets in the SPP, the report did not report on the targets for Indicator 4.

Local Determinations and Enforcement

As required in IDEA sections 616(a)(1)(C), (d), and (e), and 642, the State is required to make a determination each year for each EIS program and to take specified enforcement actions. During the CIV, FSSR informed OSEP that the State had never made determinations for EIS programs or taken enforcement action based on such determinations. FSSR did report that it has developed procedures for making determinations, and that it would inform EIS programs of their determinations, based on FFY 2009 data, in January 2012.

State-level Interagency Coordination

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 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. Beginning with the FFY 2012 IDEA Part C grant application, any State that is required to have a

method must certify that the State has a method in place and that method may be a State statute or regulation, interagency agreement, or other appropriate written method. The State may either indicate in Section II.A.3. of its FFY 2012 IDEA Part C grant application 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 or the State may indicate “No” and provide a date not later than June 30, 2013. 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) and the State has updated the agreement or other written method, the State must submit that method with its FFY 2012 IDEA Part C grant application.

OSEP Conclusion

Based on the review of documents, and interviews with State and local personnel, as described above, OSEP concludes that the State has not met the requirements of IDEA sections 616 and 642 to: (1) report annually to the public on the performance of EIS programs on the targets in the SPP; and (2) make annual determinations for EIS programs and take enforcement action as necessary under IDEA sections 616(d) and (e) and 642. The State has reported that it has developed procedures for public reporting and determinations, and informed OSEP of its intent to implement those procedures in January 2012.

Required Actions/Next Steps

By June 8, 2012, the State must provide documentation that it has: (1) reported to the public on the performance of EIS on the targets in the SPP; (2) made determinations for each EIS program; and (3) to the extent required by IDEA sections 616(e) and 642, taken enforcement action.

As part of 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.