

South Dakota Part C Continuous Improvement Visit Letter
Enclosure - Verification Component

Scope of Review

During the verification component of the Continuous Improvement Visit, 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.

Description of the Part C System

In South Dakota (SD), the Department of Education serves as the lead agency, which is responsible for the general administration, supervision of programs and activities receiving assistance, and the monitoring of programs and activities used by the State to carry out Part C of IDEA. Within the SD Department of Education, the Birth to Three Connections program provides early intervention services for children, from birth to age three, who have a disability or a developmental delay. Birth to Three oversees 13 regions, which are consolidated into nine early intervention programs.

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

OSEP Conclusion

Based on the review of documents, 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.

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

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, unless otherwise noted.

South Dakota Part C 2011 Continuous Improvement Visit Letter – Enclosure - Verification Component

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 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), 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. However, 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

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 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, 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.

OSEP staff reviewed an unsigned interagency agreement between the following State agencies: the Department of Education, the Department Health, the Department of Human Services, and Department of Social Services. This agreement indicated that some agencies, other than the State lead agency, are sometimes financially responsible for providing Part C services. However, during the visit, State staff indicated that only Birth to Three and the Department of Social Services, as the State agency responsible for Medicaid, are financially responsible for the provision of Part C services. The State indicated that it will revise its interagency agreement to reflect which State-level agencies provide or pay for Part C services, and to meet the requirements of subpart of F of the new IDEA Part C 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 also concludes that it is unclear whether the State's draft interagency agreement reflects which State-level agencies provide and pay for IDEA Part C services.

Required Actions/Next Steps

The State must review and revise its interagency agreement, or other written method, to ensure financial responsibility for IDEA Part C services provided, or paid for, by other State-level agencies. That method must be consistent with the requirements under subpart of F of the 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.

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.