



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Patricia Montoya
Secretary
Department of Health
1190 St. Francis Drive
PO Box 26110
Santa Fe, New Mexico 87502-6110

FEB 24 2004

Dear Secretary Montoya:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) August 18, 2003 visit to New Mexico. As indicated in my letter to you of June 18, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with, and improving performance under, Parts B and C of the Individuals with Disabilities Education Act (IDEA).

The purpose of our verification reviews of States is to determine how they use their systems for general supervision, State-reported data collection, and statewide assessment to assess and improve State performance, and to protect child and family rights. The purposes of the verification visits are to: (1) understand how these systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's general supervision systems are designed to identify and correct noncompliance and improve performance.

As part of the verification visit to the New Mexico Department of Health, Long Term Services Division (NMDOH) -- the State's Part C Lead Agency -- OSEP staff met with Marilyn Price, Andrew Gomm (the State's Part C Coordinator), members of NMDOH's early intervention staff and staff members from the New Mexico Division of Health Improvement Quality Management Bureau who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); and (2) the collection and analysis of State-reported data. Prior to and during the visit, OSEP staff reviewed a number of documents,¹ including the following: (1) the State's Part C Application; (2) the Improvement Plan; (3) Family Infant Toddler Statewide data reports; (4) submissions of data under Section 618 of the IDEA; (5) the 2000 OSEP Monitoring Report; (6) New Mexico's monitoring protocols, monitoring instructions and standards for monitoring; (7) the State's 2003 monitoring reports for local programs

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of the State's systems.

monitored during the pilot phase of the newly-implemented monitoring system, as well as other information and documents; and (8) information from the State's website.

On July 21, 2003, OSEP conducted a conference call with members of the Part C Steering Committee to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision and data collection and reporting. Andrew Gomm participated in the call and assisted us by recommending and inviting the participants. During the visit, the Improvement Quality Management Bureau provided OSEP with an in depth presentation of the new monitoring system, its implementation (beginning in February 2003), how the process will be validated and improved, and how the data from on-site monitoring will be presented. In addition, the 618 data manager provided comprehensive information on their methods for collecting this data and assuring accuracy of data reported to WESTAT. The data manager also identified strategies to analyze the data for monitoring purposes.

The information that Mr. Gomm and his staff provided during the OSEP visit, together with all of the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of NMDOH's general supervision systems and data collection and the reporting systems it utilizes in carrying out its administrative and oversight responsibilities regarding the New Mexico Family Infant and Toddler program.

General Supervision:

In reviewing the State's general supervision system, OSEP collected data regarding a number of elements, including whether the State: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and - if necessary - sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

OSEP issued a monitoring report of findings of noncompliance with Part C requirements to New Mexico in January 2000. At that time, NMDOH monitored programs and providers using the Health Department process that did not address most of the requirements for Part C. OSEP found that New Mexico was not in compliance with the general supervision requirements at 34 CFR §303.501, which require a supervision and monitoring system to ensure compliance with Part C of the IDEA, for all entities providing early intervention as part of New Mexico's early intervention system. In addition to noncompliance in the General Supervision Cluster of OSEP's Continuous Improvement Monitoring Process, OSEP also found noncompliance in the Child Find Cluster (referrals not made in a timely manner by all referral sources, information not adequate for general public, evaluations not completed in 45 days), the Early Intervention Services in Natural Environments Cluster, (service coordination, services not coordinated or included on the Individualized Family Service Plan (IFSP), lack of transportation and bilingual therapists, IFSP participants individual decision making) and the

Transition Cluster (transition meeting does not always occur 90 to 120 days prior to the child's third birthday). Noncompliance was not identified in the Family-Centered Services Cluster. New Mexico submitted a plan to address all of these noncompliance issues in its improvement plan that was approved by OSEP in June 2001.

OSEP learned through interviews with NMDOH staff, that the NMDOH Division of Health Improvement assisted NMDOH in the development of its Community Based Assessment (CBA) process to ensure compliance with Part C. The CBA was piloted at 5 of 32 sites beginning in February 2003. The monitoring tools and materials were revised based on information obtained during the pilot. On a three-year cycle, NMDOH will monitor all of the 32 local early intervention programs that provide service coordination and other early intervention services, including State programs. Some children and families receive early intervention services from other State programs, such as the New Mexico School for the Deaf, the New Mexico School for the Hearing Impaired, the University of New Mexico (evaluations only) and Children's Medical Services (service coordination). Plans for monitoring these entities to ensure children and families' rights for the provision of early intervention services had not been completed at the time of the verification visit. Subsequently, NMDOH submitted its October 2003 progress report on the improvement plan which stated that those services provided by other State entities will be monitored at the end of the cycle, after the 32 contracted providers have been monitored.

As confirmed by OSEP's review of NMDOH monitoring reports from the pilot process and interviews with NMDOH staff, NMDOH is making a number of compliance findings regarding Part C requirements for IFSPs, transition, parents rights, child find, and evaluations and assessments. Since OSEP's verification visit, NMDOH has incorporated methods to ensure accuracy of data as part of its CBA monitoring process. The materials for this activity were provided to OSEP on site and, according to the Part C Coordinator, are now part of the monitoring process. The improvement plan, submitted after the verification visit, provides trend data that indicate improvement in all areas of noncompliance. The Improvement Plan review will be reported in a separate document in conjunction with the Annual Performance Report (APR).

The monitoring materials and process were developed jointly with the Quality Management Bureau and the Long Term Services Division Family Infant Toddler staff, with assistance from a statistician. Monitoring activities are carried out jointly with a team leader from the Quality Management Bureau who has been trained in Part C requirements and the Long Term Services Family Infant Toddler program staff. OSEP also learned through interviews with NMDOH staff, and review of the CBA Handbook and NMDOH monitoring files and reports, that NMDOH has designed and implemented a systematic, data-based process that consists of the following steps that allow NMDOH to build a body of information regarding a program or providers resulting in a broad range of compliance determinations. NMDOH can use its CBA process to collect data from multiple sources and to use these data to focus its monitoring of each program and provider, through sequential processes, including: (1) previsit review of records and other data submitted by the monitored program or agency; (2) on-site record reviews and interviews with community partners, parents and program staff; (3) issuance of a written compliance report that includes NMDOH's findings, areas of program strengths, and

procedures for correcting noncompliance within a year; and (4) quarterly reports from each provider that include information on evaluations and assessments, and child find activities.

Numerous noncompliance issues in a variety of areas were identified by NMDOH during the pilot phase of its monitoring system, demonstrating that the materials developed were effective in identifying noncompliance in the areas of service coordination, family rights, and the IFSP process from referral to transition. The CBA monitoring tools have enabled NMDOH to identify noncompliance in Individual Family Service Plan (IFSP) development, family and child rights, service coordination and transition. Progress on the June 2001 approved improvement plan strategies to resolve OSEP's findings identified in the January 2000 Monitoring Report will be included in the review of the APR in a separate correspondence.

During the verification visit, NMDOH reported to OSEP that the corrective action plans they have received thus far are insufficient for NMDOH to determine if the noncompliance has been resolved. Therefore NMDOH is in the process of developing additional requirements to be included in future corrective action plans and in revisions to current plans. During OSEP's visit, NMDOH staff identified several activities that may be employed; however, this process is still in the development stage and OSEP is unable to determine effectiveness of corrective action strategies at this time.

Although OSEP cannot, without also collecting data at the local level, determine whether NMDOH's systems for general supervision are fully effective in identifying and correcting noncompliance, OSEP believes that the recently developed monitoring system constitutes a reasonable approach to the identification of noncompliance. Since NMDOH only began piloting its monitoring system in February 2003, the system's ability to ensure correction cannot yet be determined. In addition, prior to OSEP's verification visit, NMDOH had not included monitoring other State agencies in its monitoring plans. Since that visit, NMDOH has submitted to OSEP its update on the Improvement Plan that includes monitoring all providers and State entities that provide early intervention services.

OSEP recommends that NMDOH develop strategies and procedures to ensure that all programs used by the State to provide early intervention services are in compliance with Part C and that monitoring activities include procedures to enforce compliance by all providers, including other State agencies, and to ensure correction of deficiencies identified through monitoring as required by 34 CFR §303.501.

OSEP asks that NMDOH keep OSEP informed, through the Annual Performance Report of the status of its progress in monitoring, ensuring correction of identified deficiencies, developing and reporting to OSEP its improvement strategies and trend data that demonstrates NMDOH's status on ensuring that all programs and providers, including other State entities, are in compliance with the requirements for Part C of IDEA.

OSEP also reviewed NMDOH's systems for the resolution of State complaints, due process hearings and mediation. Review of the procedures and policy manual indicates that procedures are adequate to ensure families' rights. Although the State has adopted Part C

State complaint, due process hearing and mediation procedures, there has been only one Part C mediation and no due process hearings or complaints filed in the last three years. (Although NMDOH has received no complaints or other written expressions of concern in the last three years, NMDOH does receive telephone calls and e-mail from parents, and has worked informally with these individuals to resolve their concerns.) The State keeps a file of telephone calls of parent complaints and informs parents of their rights to due process and mediation. NMDOH informed OSEP that prior to the implementation of its new CBA monitoring system in February 2003, it could not determine whether the lack of administrative complaints and/or due process hearing requests was due to a high degree of family satisfaction with Part C services as indicated in the Family Survey, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures. CBA monitoring by the State identified that not all service coordinators are cognizant of all the due process and complaint procedures and parents rights to that information. Providers found noncompliant with this requirement are required by the State to submit corrective action plans to be completed within one year.

Using the new CBA monitoring system, NMDOH has identified noncompliance in the area of families' rights and understanding of families' rights by service coordinators and provision of adequate prior notice (prior written notices are developed locally by each provider). The CBA includes interviews of service coordinators to ensure that they understand service coordination requirements. NMDOH has identified noncompliance for both the prior notice and service coordination requirements. Service coordinators are required to attend training annually, and results of monitoring will be used to improve service coordinators' training. Through its review of NMDOH monitoring reports, OSEP determined that NMDOH found noncompliance in documentation for determining eligibility, participants at the IFSP meeting, family outcomes, and evidence of transition. Based on this identification of noncompliance, NMDOH believes its new monitoring system will be effective in ensuring families' rights through correction of these issues. NMDOH requires local programs to resolve compliance issues within one year.

As part of its evaluation of the State's dispute resolution system, OSEP reviewed NMDOH's policy manual, parents' handbook, and prior written notice requirements. NMDOH informed OSEP that it has identified noncompliance in the area of provision of parents' rights during the pilot of its CBA. NMDOH stated that programs develop their own written prior notice, which NMDOH requires be based on the policies and procedures in its Dispute Resolution Manual. Although the State allows a local to use its own version of the prior written notice, it must contain all of the Part C requirements. NMDOH had determined through its pilot of the CBA that some programs' brochures did not include all of the required information. These programs were cited for this noncompliance and must develop a compliant prior written notice. OSEP requests that NMDOH submit a written assurance to OSEP within 60 days of the date of this letter that all programs in the State that provide Part C services are using corrected prior written notice materials that include all content required under 34 CFR §303.403(b). All of NMDOH providers that were monitored using the new CBA system must develop corrective action plans related to the noncompliance. It has not yet been a full year since this system was implemented; therefore, NMDOH cannot yet determine the effectiveness of correction.

OSEP requests that NMDOH submit with its next APR the revised corrective action plans from those providers cited for noncompliance, a summary of the noncompliance identified and plans for follow-up to ensure local providers' strategies are effective to correct noncompliance. The Annual Performance Report needs to include the trend data that will demonstrate NMDOH status and progress in these areas. OSEP also requests that NMDOH inform OSEP of follow-up activities and monitoring related to these informal complaints. In addition, please provide logs of informal complaints to the State, as well as logs of informal complaints to local providers with the submission of the next Annual Performance Report.

Data Collection under Section 618 of the IDEA:

As a part of its review of the State's system for data collection and reporting, OSEP collected data regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying and correcting any inaccuracies in the data collected and reported; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

OSEP believes that NMDOH's system for collecting and reporting data is a reasonable approach to ensuring the accuracy of the data that NMDOH reports to OSEP under section 618 and data collected for its monitoring purposes.

NMDOH staff informed OSEP that information on children is entered into the data system by local programs and by some other State agencies providing services to eligible children. The data is submitted electronically or by computer disk to the State office four times each year. With its new CBA monitoring system, NMDOH will now be able to track the accuracy of its 618 and other data collected.

New Mexico is developing plans to make its data collection system web-based. This will ensure that children are not duplicated in the data base, the State has up-to-date information at all times, (eliminating the sole reliance on quarterly-reported data), and that storage will not become an issue as the size of the data base increases. Currently there are some State agency service providers and the Navajo Growing in Beauty program that do not use the Family Infant/Toddler data collection system.

NMDOH staff also told OSEP that they conduct mandatory training sessions with data entry personnel on an annual basis. Each data entry person is provided with a data entry manual that contains the definitions supplied by OSEP. Some of the challenges expressed by staff included concern that some data definitions were subject to interpretation, a lack of computer skills for some program staff, and difficulties with validating the data from agencies that do not use the Family Infant/Toddler data base (a labor intensive process).

We appreciate the cooperation and assistance provided by your staff during our visit. Please keep us informed concerning your progress in ensuring that all agencies and programs providing early intervention services are in compliance with Part C, that data accuracy is ensured through monitoring, and that procedures are developed to ensure correction of deficiencies identified through monitoring. We look forward to collaborating with New Mexico as you continue to work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Smith Lee".

Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Andrew Gomm