



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

Honorable James W. Holsinger, Jr., M.D., Ph.D.
Secretary
Cabinet for Health Services
275 East Main Street
Frankfort, Kentucky 40621-0001

APR 15 2004

Dear Secretary Holsinger:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to the State of Kentucky. As indicated in my letter to Secretary Morgan of September 9, 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). OSEP staff conducted a verification visit to the State of Kentucky during the week of November 17, 2003.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and Statewide assessment systems to assess and improve State performance; and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the 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 systems are designed to identify and correct noncompliance and improve performance.

The Cabinet for Health Services is the Lead Agency for First Steps, Kentucky's Early Intervention System (KEIS). In October 2001, administrative responsibility moved from the Division for Mental Health/Mental Retardation—which developed the State's Self Assessment—to the Commission for Children with Special Health Care Needs (CCSHCN). As part of the verification visit to the Cabinet for Health Services, OSEP staff met with Ellen Heslen, Deputy Secretary, Cabinet for Health Services; Eric Friedlander, Executive Director, CCSHCN; Diane Haynes, Part C Coordinator; Anja Peersen, Director, Quality Assurance; Donna Bissmeyer, Eligibility Branch Manager; Brenda Curry-White, Director, Central Billing and Information System (CBIS); Trish Howard, Regulatory Consultant; and Janet Berry, Interagency Coordinating Council (ICC) Chair. All of these individuals provided background information on the oversight of general supervision activities including monitoring, mediation, complaint resolution, and impartial due process hearings, and the collection and analysis of State-reported data.

Prior to the visit, OSEP staff reviewed a number of documents¹, including the following: (1) Kentucky's Part C Application, Self-Assessment, Improvement Plan, and September 2003 Progress Report; (2) the 1999 Program Review Report; (3) the CBIS website; (4) the KEIS website; (5) Westat Data Profiles (1994 to 2001) for the State of Kentucky; (6) sample monitoring documents; (7) the Family Rights Handbook for KEIS Families; (8) the KEIS Program Evaluation Report of December 9, 1999; and (9) the KEIS Update in Response to the 1999 Program Review Report.

OSEP also conducted a conference call on October 31, 2003 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.

The information that Mr. Friedlander 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 KEIS' system for general supervision, and data collection and reporting.

General Supervision:

In looking at the State's general supervision system, OSEP collected information 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.

KEIS is in the process of implementing the Improvement Plan approved by OSEP in a June 13, 2003 letter. The Improvement Plan addresses areas for improvement, identified in the Kentucky Self-Assessment of December 2001, regarding general supervision; child find and public awareness; early intervention and family centered services; early childhood transition; and parent involvement. OSEP's June 13, 2003 letter also noted concerns about noncompliance with Part C requirements in the area of service coordinators meeting the requirements of 34 CFR §303.23; the family assessment as it relates to the requirements in 34 CFR §303.322(d); and the 45-day timeline as it relates to the requirements in 34 CFR §303.321(e).

OSEP's June 13, 2003 letter also noted concerns about potential noncompliance regarding: (1) the recurrence of deficiencies identified in monitoring; (2) identifying, locating, and evaluating all eligible infants and toddlers; (3) determining which children

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.

are receiving early intervention services; (4) implementing transition requirements; (5) informing families of their procedural safeguards; and (6) monitoring to ensure that families are informed of, and understand, their rights and responsibilities.

OSEP learned through interviews with KEIS administrative and monitoring staff that KEIS contracts with seven regional universities to conduct compliance monitoring of service providers. There were four FTE specialist positions allocated to monitoring in 1999. At the time of the verification visit, OSEP was informed that KEIS had increased the monitoring positions to nine.

KEIS conducts on-site monitoring on a cyclical basis every two years. Provider sites are selected for monitoring in a variety of ways, such as a random pull by CBIS; those with complaints lodged against them from other providers; those selected for follow-up to previous monitoring (which entails a review of 10% of records to ensure implementation of action plan); those with anomalies in CBIS data; and those who have not been previously monitored.

In addition to the cyclical on-site monitoring, each selected provider must conduct a self-study that addresses compliance/regulatory data; review of the Individualized Family Service Plan (IFSP), billing, certification and licensure information; and family satisfaction information.

KEIS implements the following procedures for correcting noncompliance identified through the monitoring process: (1) submission of a corrective action plan from the service provider to address resolution of noncompliance (the monitoring specialist conducts follow-up visits to ensure adherence to the corrective action plan and the correction of noncompliance); (2) provider mentoring in the area of noncompliance; (3) cancellation of contract if noncompliance is not corrected within a reasonable time period; and (4) provider paybacks when findings cannot be addressed or when cited again on follow-up visit.

Point of Entry (POE) offices, located in the 15 Area Developmental Districts, serve as the single point of entry into KEIS. These offices are responsible for public awareness, child find, initial evaluation to determine eligibility, and initial service coordination. The POE is monitored by the monitoring specialist and is responsible for submitting a corrective action plan when noncompliance is identified. The monitoring specialist conducts follow-up visits to the POE to ensure adherence to the corrective action plan and the correction of noncompliance. The POE submits monthly activity reports to the eligibility branch manager and all POEs participate in quarterly meetings with the eligibility branch manager to receive updates and guidance.

Since 1998, the number of children served by KEIS has increased each year. Despite an increase in the number of children served each year, KEIS identified the need to target public awareness and child find efforts to geographic areas and developmental delay conditions believed to be under-reported, and continues to focus on developing collaborative outreach efforts at the regional level.

During OSEP's interview with KEIS staff and the ICC in the areas of initial evaluation and assessment, OSEP reviewed Section 1, subsection (5)(b)(2)(a) of 911 KAR 2:120 of the Kentucky State statute. Under the State statute, "If the child has an established risk condition, and the developmental evaluation does not indicate a developmental delay in at least one (1) skill area, the family shall receive service coordination services until the earlier of: (i) an annual developmental evaluation that is performed in accordance with subsection (8) of 911 KAR 2:120; or (ii) notification that the family has a concern or suspects that the child may have a delay present that was not revealed by the testing." Upon OSEP's initial review of the statute, it appeared that children with an established risk condition also had to exhibit a delay in at least one developmental area in order to receive early intervention services. If that is the intent of the State statute, it conflicts with 34 CFR §303.16(a)(2) of the IDEA. Under 34 CFR §303.16(a)(2) of the IDEA, "As used in this part, *infants and toddlers with disabilities* means individuals from birth through age two who need early intervention services because they... have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay. 34 CFR §303.16(a)(2) does not require that a child with an established risk condition also exhibit a delay in at least one developmental area in order to receive early intervention services.

On March 9, 2004, the OSEP State contact for Kentucky and the Part C attorney with the Office of General Counsel (OGC) conducted a teleconference with the Executive Director of CSHCN and the Director for Quality Assurance to clarify the intent of the State statute. OSEP learned through the teleconference that the intent of the State regulation at Section 1, subsection (5)(b)(2)(a) of 911 KAR 2:120, is to allow the family of a child with an established risk condition, who does not indicate a delay in any developmental area, to receive service coordination until the earlier of: (1) an annual developmental evaluation; or (2) notification that the family has a concern or suspects that the child may have a delay present that was not revealed by testing. If the family has a concern or suspects that the child may have a delay present that was not revealed by testing, the State statute includes procedures to allow for more in-depth testing to address the concerns of the family. CSHCN clarified that all children who meet the definition of a diagnosed condition under 34 CFR §303.16(a)(2) are automatically eligible for early intervention services and do not need to qualify for specific services and thus, the State statute at Section 1, subsection (5)(b)(2)(a) of 911 KAR 2:120, does not conflict with 34 CFR §303.16(a)(2) of the IDEA.

OSEP reviewed KEIS' system for procedural safeguards, the resolution of State complaints and due process hearings and mediation. OSEP learned through interviews with KEIS staff that KEIS has adopted the Part B due process procedures and utilizes a Family Rights Handbook to meet procedural safeguard requirements. Kentucky's Federal Fiscal Year (FFY) 2000 Annual Performance Report (APR) indicated that 20 formal complaints were investigated and successfully resolved during that period and no requests for mediation or due process hearings were received during that period. Kentucky's FFY 2001 APR indicated no activity to report for complaints, mediations, and due process hearings for that period, and Kentucky's FFY 2002 APR indicated that

no complaints were received and no requests for mediation or due process hearings were received during that period.

OSEP's review of the Family Rights Handbook indicated that it does not include the required content in 34 CFR §303.403(b). Under 34 CFR §303.403(b), "the notice must be in sufficient detail to inform the parents about--(1) the action that is being proposed or refused; (2) the reasons for taking the action; (3) all procedural safeguards that are available under §§303.410-303.460 of this part; and (4) the State complaint procedures under §§303.510-303.512, including a description of how to file a complaint and the timelines under those procedures." KEIS must develop procedures to ensure that the prior written notice provided to parents meets these requirements. One method of doing this would be to develop a model notice that includes the required content. OSEP is available to work with KEIS to ensure that the required information is included. Please develop and submit to OSEP, within 60 days from the date of this letter, procedures to ensure that families are provided prior written notice that includes the content required in 34 CFR §303.403(b).

Data Collection under Section 618 of the IDEA:

In looking at 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; and (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies.

CBIS is the billing and information system for KEIS. CCSHCN contracts with the University of Louisville to implement CBIS. CBIS provides critical financial and other program data to satisfy State and Federal requirements and provides useful information about service utilization. KEIS incorporates the requirement of an annual financial audit of the billing system. CBIS employs eight full-time staff plus a contracted computer programmer; staff turnover is very low; and KEIS has an assigned staff person to collaborate with CBIS. CBIS leadership has not changed since Kentucky implemented Part C. CBIS and agency staff attend the National Data Manager's Meeting each year and CBIS staff have ongoing contact with Westat staff.

Service coordinators submit IFSP data on a summary sheet to CBIS within five days of an IFSP meeting for data entry; the same summary sheet is used Statewide. Data validity is stressed at quarterly mandatory service coordinator meetings. New service coordinators are trained in data collection and completion of data forms. The data that are collected and stored in CBIS are clearly defined by Kentucky Administrative Regulations.

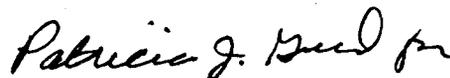
Data input is the responsibility of CBIS staff; no data input is done at the local level. To determine validity and reliability of reported data, CBIS conducts a 10% random selection of data input to review for accuracy and reliability. About every three weeks, staff receives feedback on errors and how to correct them. In addition, CBIS forms are being revised to better reflect the data being collected. OSEP suggests that, as KEIS continues to refine its data collection system, KEIS continues to consider ways to capture compliance data to inform decision making in the areas of monitoring and data collection.

On February 13, 2004, OSEP responded to Kentucky's FFY 2001 APR. In the response, OSEP included an analysis of Kentucky's August 28, 2003 Improvement Plan progress report. In the analysis, OSEP indicated that the August 28, 2003 progress report did not indicate how Kentucky is progressing with implementation of improvement strategies and it provided insufficient data for OSEP to determine whether Kentucky is compliant with the Part C requirement at 34 CFR §303.501(b)(4).

OSEP is concerned that important information was not included in Kentucky's FFY 2001 APR. For the FFY 2002 APR, Kentucky was instructed to include appropriate data in the areas of general supervision, comprehensive public awareness and child find system, family centered services, early intervention services in natural environments, and early childhood transition that will demonstrate the extent to which Kentucky is moving towards addressing the areas of concern identified in its December 2001 Self-Assessment, as well as the four areas identified in OSEP's June 13, 2003 letter to the State.

We appreciate the cooperation and assistance provided by your staff during our visit. As noted in the General Supervision section of this letter, KEIS must submit to OSEP, no later than 60 days from the date of this letter, procedures to ensure that the prior written notice meets the content requirements in 34 CFR §303.403(b). We look forward to collaborating with KEIS as you continue to work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Eric Friedlander
Germaine O'Connell