



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

APR 15 2004

Honorable Antonia C. Novello, M.D.  
Commissioner  
Department of Health  
Corning Tower, Room 1408  
Empire State Plaza  
Albany, New York 12237

Dear Commissioner Novello:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) November 17, 2003 visit to New York. As indicated in my letter to you 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).

The purpose of our verification reviews of States is to determine how States use their general supervision, State-reported data collection, and State-wide 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.

As part of the verification visit to the New York Department of Health (NYDOH), the State's Part C Lead Agency, OSEP staff met with Dr. Barbara McTague (the State's Acting Director for the Early Intervention Program), and Dr. Donna Noyes (the director of policy and clinical services). OSEP also met with other members of NYDOH's Early Intervention Program (EIP) staff who are responsible for the State's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), the comprehensive system for personnel development and the collection and analysis of State-reported data. Prior to and during the visit, OSEP staff observed the operation of the State's computerized data-based system and reviewed a number of documents including the: (1) State's Part C applications for fiscal years 1998-2003; (2) Self-Assessment (SA); (3) Annual Performance Reports (APR) for fiscal years 1999-2001; (4) Improvement Plan (IP); (5) Interagency Agreements; (6) Monitoring Procedures; (7) Local Monitoring Reports; (8) Corrective Action Plans (CAP); and (9) submission of data under Section 618 of the IDEA, as well as other information and documents posted on NYDOH's website.<sup>1</sup> OSEP also conducted a conference call on October 1, 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. Dr. McTague and Dr. Noyes also participated in the call and

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<sup>1</sup> Documents reviewed a part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's system.

assisted us by inviting the participants. During the verification visit, WESTAT staff participated in the discussion on the State's 618 data system.

The information that Dr. McTague and her 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 NYDOH's general supervision systems and data collection and reporting systems in carrying out the State's administrative and oversight responsibilities regarding the New York Early Intervention Program.

### ***General Supervision***

In reviewing the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (2) 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; (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.

NYDOH submitted the State's Part C Improvement Plan to OSEP on May 22, 2003 and its Federal Fiscal Year (FFY) 2001 Part C Annual Performance Report on October 3, 2003. (These documents address the areas of noncompliance identified in the OSEP monitoring report issued on September 14, 2001.) OSEP responded to the NYDOH Improvement Plan in a letter dated July 9, 2003. OSEP approved the NYDOH Improvement Plan subject to revisions outlined in the July 9, 2003 letter and requested that NYDOH submit a revised Improvement Plan by December 31, 2003. NYDOH submitted the revised Improvement Plan to OSEP on February 18, 2004. The areas of noncompliance presented in the Improvement Plan and the FFY 2001 Annual Performance Report addressed the lack of an effective general supervision system to ensure the: (1) monitoring of all programs and agencies consistent with Federal Part C requirements; (2) correcting deficiencies identified through monitoring; (3) providing timely technical assistance; (4) issuing written decisions of State complaints within the required 60-day timeline; and (5) implementing follow-up activities to ensure noncompliance is corrected. The attached APR letter requests that NYDOH submit documentation that demonstrates compliance for each of these five areas of noncompliance within a reasonable period of time, not to exceed one year from the date of the APR letter.<sup>2</sup>

OSEP learned in the review of NYDOH documents, and confirmed through interviews with NYDOH staff, that the State's general supervision systems consists of: (1) a computerized data-based system; (2) policies, procedures and guidance documents; (3) interagency agreements; (4) a provider approval process; (5) monitoring protocols; (6) parent, provider and municipal surveys; (6) contracts; (7) self-assessments; (8) provisions for technical assistance and training;

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<sup>2</sup> OSEP is responding to the NYDOH FFY 2001 Annual Performance Report and the revised Improvement Plan in a separate letter (attached).

(9) provisions for corrective actions; (10) fiscal audits; (10) provisions for enforcement actions; (11) provisions for procedural safeguards and; (12) the State's Interagency Coordinating Council.

The NYDOH system for the State's Early Intervention Program is comprised of contract providers that include; 58 municipalities (including the five boroughs of New York City), approximately 1000 providers, 1,700 provider agencies, and 82 programs administered by the New York State Education Department (NYSED). OSEP learned, through the review of documents and interviews with NYDOH staff, that the State made revisions to the State's general supervision systems to ensure accountability and consistency in determining compliance with Federal and State Part C requirements. NYDOH had completed several of the revisions while others were in the draft stage. These revisions included: (1) contracting out monitoring activities; (2) revamping the computerized data-based system; (3) revising contract provisions; (4) formalizing the audit process; (5) aligning enforcement procedures with criteria for sanctions; (6) revising the process to document and track provider certification; (7) ensuring ongoing stakeholder involvement in collaboration with the State Interagency Coordinating Council; (8) revising State guidelines; (9) proposing legislative changes regarding transition to Part B and the implementation of a sliding fee scale. These revisions and ongoing general supervision activities in the State have enhanced NYDOH's ability to identify and correct areas of noncompliance, as described in the sections below and based on the analysis of the data presented in the State's FFY 2001 Annual Performance Report.

In 2002 NYDOH entered into a contractual arrangement with Island Peer Review Organization, Inc. to monitor all programs and entities in the statewide system, rather than monitoring by the State staff. Although NYDOH authorized the Island Peer Review Organization to conduct monitoring activities, the State maintained responsibility for administrative oversight, decisions regarding findings, and finalization of monitoring reports, corrective action plans and enforcement provisions. NYDOH also entered into an interagency agreement with NYSED to monitor providers approved by NYSED. The 58 municipal local early intervention administrators also monitored providers and agencies within their jurisdiction in coordination with, or in addition to, the monitoring conducted by Island Peer Review Organization. NYDOH developed and field-tested monitoring protocols prior to conducting training and issuing guidance to NYSED staff, local administrators, and staff of the Island Peer Review Organization. The monitoring guidelines outlined the procedures to administer pre-site, on-site and post-site monitoring activities. NYDOH staff confirmed that the State monitored 58 municipalities on an annual basis. The State monitors individual providers and provider agencies, including those approved by NYSED, on a three-year cycle (one-third every year.) At the time of OSEP's verification visit NYDOH staff confirmed that all 58 municipalities, 574 individual providers, 272 provider agencies and all 82 NYSED-approved providers had been monitored utilizing the revised monitoring protocols. NYDOH staff told OSEP that the remaining agencies and providers would be monitored by December 2003. NYDOH, in collaboration with the Island Peer Review Organization, developed a computerized monitoring databased system to identify, record and track monitoring activities to determine compliance and the level of intervention needed to ensure the correction of identified deficiencies among all contract providers.<sup>3</sup>

<sup>3</sup> The administrative data-based system provides relevant information such as: (1) monitoring schedules and tools; (2) provider approval status; (3) survey instruments; (4) interview protocols; (5) program status regarding compliance; (6) monitoring results; and (7) status of corrective actions. Monitoring guidelines provide details on: (1) pre-defined criteria used to rank order providers; (2) the list of contract providers and agencies selected to be monitored on a quarterly bases; (3) the criteria to select and review child/family records; (4) staff selected to conducted the monitoring; (5) provider information; (6) pre-monitoring events; (7) notification letters; (8) confidentiality guidelines and forms; (9)

To ensure consistency in the identification of noncompliance, the State established standards and indicators aligned with IDEA Part C requirements and consistent with OSEP's five Part C cluster areas.<sup>4</sup> The State administered interviews and surveys to local administrators, providers, collaborators and parents annually. In an effort to ensure consistency in assessing the performance of all contract providers, NYDOH utilized standardized forms and procedures to document and report monitoring results.<sup>5</sup> The monitoring results, once entered into the computerized monitoring data-based system, were analyzed and formed the basis for the development of the local monitoring reports. NYDOH staff told OSEP that the Island Peer Review Organization issues monitoring reports to all municipalities and providers, however, the Island Peer Review Organization sends monitoring reports with identified deficiencies to NYDOH for review prior to dissemination. The Island Peer Review Organization issues monitoring reports within 45 days of the monitoring visit, except for those reports that require a NYDOH review. OSEP reviewed six local monitoring reports, two from municipalities and four from providers. NYDOH staff confirmed that local monitoring reports use a standardized report format and highlight the particular strengths and deficiencies of each municipality and provider.

OSEP reviewed a limited number of local corrective action plans and NYDOH staff confirmed that State guidelines require local providers and municipalities to submit corrective action plans addressing the identified deficiencies. NYDOH requires local providers to submit corrective action plans within 45 days of the receipt of the State's monitoring report and municipalities to submit plans within 60 days. NYDOH reported that the following strategies ensure the timely correction of identified deficiencies: (1) conducting follow-up visits; (2) aligning the provision for technical assistance with the targeted areas of identified deficiencies; (3) requiring participation in training and continuing education that focus on the areas of deficiencies; (4) disqualifying a provider to render services if corrections are not timely; and (5) implementing sanctions and enforcement provisions.

NYDOH staff told OSEP that when a contract provider persists in demonstrating noncompliance, NYDOH imposes sanctions or enforcement procedures. These procedures include: (1) delaying or discontinuing the renewal of a provider's certification pending correction of deficiencies; (2) requiring the provider to discontinue enrolling additional children into their program; and (3) refraining the provider from implementing the service(s) related to the area of noncompliance. OSEP reviewed sample corrective action plans from local providers. OSEP's review determined that NYDOH documented corrective actions and implemented corrective actions and sanctions. OSEP's review of the NYDOH FFY 2001-2002 APR identified that NYDOH disqualified three providers. (The disqualification of three additional providers was pending.) NYDOH staff told

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documents for review on-site; (10) post-monitoring activities including the validation process, monitoring report and findings; (11) corrective action plans and (12) consideration for fiscal audit and enforcement action and the development of a corrective action plan.

<sup>4</sup> The OSEP Part C cluster areas include: (1) general supervision; (2) child find and public awareness; (3) family centered services; (4) early intervention services in natural environments; and (5) transition.

<sup>5</sup> These procedures included: (1) policy review forms; (2) a sampling formula to select child and family records for review (including an audit of records of children diagnosed with autism and or pervasive developmental disorder to comply with a stipulation and court order B.D. v. DeBuono); (3) documentation of licensure certification and registration; (4) scheduling regarding the availability of services; (5) copies of contracts; (6) approval of original application and amendments; (7) policies regarding safety, health and sanitation standards; (8) documentation of internal quality assurance; (9) fire marshal certification (if on-site services are provided); (10) public awareness and outreach materials; (11) caseload information; (12) confidentiality procedures regarding the maintenance, storage and transfer of records; and (13) billing procedures, including the use of private insurance.

OSEP that the State is working with the NYDOH's Office of General Counsel to align sanctions and enforcement proceedings with the severity of the deficiency. Sanctions and enforcement actions range from fines to disqualification of the provider or agency. NYDOH staff told OSEP that in the future the State's monitoring guidelines and local monitoring reports would be made public. The data based system will inform contract providers of the status of compliance with Federal and State requirements within the State and in designated regions. NYDOH reported that the monitoring guidelines and reports will also demonstrate the State's efforts to ensure impartiality and consistency in the State's administration of its general supervision system and will inform municipalities and providers of the systemic issues that must be collectively addressed.

OSEP also reviewed NYDOH's systems for the resolution of State complaints, due process hearings and mediations, that incorporate the Part C complaint regulations. OSEP reviewed NYDOH's guidance documents, parents' handbook, and prior written notice and found them adequate to inform families of their procedural safeguards and rights. State staff reported to OSEP that, during FFY 2001-2002, 19 complaints were filed. The written decisions issued by the NYDOH resulted in the issuance of 84 corrective actions. NYDOH maintains a log of State complaints and tracks the timelines and the issues resulting from the written decisions. At the time of OSEP's verification visit, State data showed that none of the 19 complaints resulted in a written decision within the required 60 days. The average number of days from receipt of complaints to completion of the investigation and issuance of the report was 142 days. OSEP's 2001 Monitoring Report identified the timely resolution of complaints as an area of noncompliance. OSEP requests that NYDOH report on the progress to correct the timely resolution of complaints when it submits the October 31, 2004 progress report. (Note: The NYDOH FFY 2001-2002 Annual Performance Report proposed activities to address this deficiency.)

Based on OSEP's review of NYDOH's monitoring system and interviews with NYDOH administrative and monitoring staff during the verification visit, OSEP believes that the State's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether the systems are fully effective in identifying and correcting noncompliance.

NYDOH staff told OSEP that while the results from the State's continuous monitoring efforts ensure compliance with IDEA Part C requirements, the State identified several challenges. These challenges include: (1) lack of resources to support the high volume of contract providers that constitute the Statewide system; (2) an improved monitoring system that resulted in an increase in Part C findings; (3) revision of program and performance indicators; and (4) improvement to the monitoring data system.

OSEP recommends that NYDOH continue with the revision of its general supervision system and the review of existing policies, procedures, rules and regulations to maintain compliance with IDEA Part C requirements. NYDOH may continue to collaborate with other national technical assistance programs and OSEP to devise appropriate strategies to continue to bring about better results for children and their families.

### **Data Collection under Section 618 of the IDEA**

In looking at the State's system for data collection and reporting, OSEP collected information 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 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 anomalies in data that are reported, and correcting any inaccuracies; 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 NYDOH's system for collecting and reporting data is reasonably calculated to ensure the accuracy of the data that NYDOH reports to OSEP under section 618.

NYDOH staff reported that the State has a multifaceted databased system, comprised of four databases, some in operation since 1993. These data based systems include the: (1) Kids Integrated Data System (KIDS) used to generate 618 data; (2) fiscal system; (3) provider approval data system; and (4) monitoring data collection system that is contracted with the Island Peer Review Organization. NYDOH utilized these data systems to implement the Continuous Improvement Monitoring Process (CIMP) through the collection, analysis and reporting of data that demonstrate systems change and progress towards compliance. NYDOH staff are responsible for verifying the accuracy of the data. NYDOH reported that the State uses data from these various data systems for program management purposes and to generate the IDEA Part C Section 618 reports.

NYDOH provides each of the municipalities and counties with the KIDS software application to collect data on demographic, health and safety information, referrals, evaluations, Individualized Family Services Plans (IFSP), service authorization, exiting, and billing information. NYDOH issued guidance to all contract providers to identify the data sets to report, the timeline for data submission, and procedures to download, copy and transmit the data to the State. NYDOH's contracts with providers contained language that required contract providers to collect and report on the data elements consistent with the requirements specified in the State's data guidelines. Once providers submit data sets to NYDOH, State staff conduct an analysis of the data to verify the accuracy and to identify discrepancies. In the event of a discrepancy in reporting the data, NYDOH issues detailed letters that identify the data sets in question and specify the steps the contract provider should take to correct the issue within a specific timeframe.

NYDOH developed policies to comply with the Health Insurance Portability and Accountability Act (HIPAA) requirements to ensure confidentiality when transferring data electronically. NYDOH completed revisions to the KIDS database to ensure that it was compliant with HIPAA. When the State upgrades the data systems, as was the case with KIDS, NYDOH makes the revisions and disseminates the revised diskette and program instructions for installation and operation.

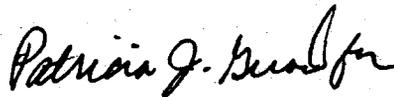
NYDOH told OSEP that the qualifications of the data entry personnel varied within the 58 municipalities, programs and agencies. NYDOH staff told OSEP that the State developed and

disseminated a data manual to administrators responsible for the local oversight of data entry to ensure consistency and to provide ongoing technical assistance. NYDOH provides training for local administrators annually to ensure data accuracy and to update changes to policies or procedures. The State provided training to contract staff on basic and advanced levels, and the State made available a KIDS train-the-trainer manual to facilitate ongoing efforts. Training and technical assistance also focused on the integration and collaboration with other relevant State level data sources. These collaborative efforts focused on: (1) foster care protocol; (2) commercial insurance; (3) program records; (4) central register for child abuse and maltreatment; (5) new born hearing screening; (6) Medicaid enrollment; (7) communication domain; (8) monitoring system; (9) natural environments; (10) autism; and (11) service coordination with the Medicaid home and community waiver. After programs submit data sets to NYDOH, State staff conduct an analysis of the data to verify the accuracy and to identify discrepancies. NYDOH, in collaboration with the association of county administrators, maintains a website that provides timely information, resource materials, publications, schedule of training opportunities, and family initiatives to support the early intervention system.

NYDOH, jointly with public and private entities such as the State Office for Technology and the State Technology Enterprise Corporation, issued a Request for Proposals (RFP) for award by July 2004. The RFP will fund the new data system to integrate the four data-based systems, enhance security and confidentiality, improve data entry, enhance report development, reduce effort, and speed up the process at any time for clarification of any technical question. The State anticipates that the system will be completed by December 2006. OSEP suggests that as NYDOH continues to refine its data collection system, consider incorporating mechanisms that ensure the timely analysis and dissemination of data so that State and local entities can be better informed of the issues that may impede compliance and to assist with the decision making process.

We appreciate the cooperation and assistance provided by your staff during our visit. NYDOH must provide OSEP with a progress report by October 31, 2004 regarding the implementation of the monitoring system that identifies and ensures correction in local programs. The State must submit a final progress report demonstrating compliance with all requirements one year from the date of OSEP's APR letter. We look forward to collaborating with New York 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: Barbara McTague