



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

Honorable Charles Smith  
Agency of Human Services  
103 South Main Street  
Waterbury, Vermont 05671-0204

NOV -2 2004

Dear Secretary Smith,

The purpose of this letter is to inform you of the result of the Office of Special Education Program's (OSEP's) recent verification visit to Vermont. As indicated in my letter to you of January 30, 2004, 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). We conducted our visit to Vermont during the week of July 26, 2004.

The purpose of our verification reviews of States is to determine how they 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 data collected through verification visits will help OSEP: (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 Vermont Agency of Human Services (AHS), OSEP staff met with Helen Keith (the State's Part C Coordinator) and members of AHS' staff 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<sup>1</sup>, including: (1) the May 7, 2003 Self-Assessment Letter; (2) the State's Annual Performance Report for grant periods July 1, 2001 - June 30, 2002 and July 1, 2002 - June 30, 2003; (3) the State's Part C application; and (4) information from the State's website as well as other information and documents.

On June 23, 2004, OSEP conducted a conference call with members of the Part C Steering Committee, and on July 21, 2004 with parents and members of the advocacy community to hear their perspectives on the strengths and weaknesses of the State's

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<sup>1</sup> 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.

systems for general supervision, data collection and reporting. The information that Ms. Keith 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 AHS' systems for general supervision, data collection and reporting for the Vermont Family, Infant and Toddler Project.

OSEP's May 2003 Self-Assessment letter to the State identified specific areas of concern across several clusters where there were not sufficient data to make data-based performance and compliance determinations. Specifically, OSEP noted this problem in the General Supervision, Early Intervention Services in Natural Environments, Family Centered Services and Early Childhood Transition cluster areas. In OSEP's March 2004 letter responding to the FFY 2001 Annual Performance Report (APR) submitted by AHS, OSEP explained that AHS had described several monitoring activities that the State had implemented but that AHS neither provided the data nor its analysis, as it regarded compliance with Part C requirements. OSEP directed AHS to provide the actual data, and its analysis in the FFY 2002 APR.

### **Background**

AHS' FFY 2002 APR, submitted on March 31, 2004, contained data relevant to the General Supervision, Early Intervention Services in Natural Environments and Early Childhood Transition Clusters which identified noncompliance related to the following Part C requirements that: (1) Each individualized family service plan (IFSP) will identify a single service coordinator under 34 CFR §303.23; (2) IFSPs will contain each child's present level of functioning and confirmation that evaluations and assessment are conducted in all five developmental domains under 34 CFR §303.344(a); and (3) the initial IFSP meeting must be conducted within the 45-day timeline under 34 CFR §303.342(a). AHS indicated in the FFY 2002 APR that there was a need to revise its methods for collecting and analyzing its monitoring data to improve the specificity of its findings and recommendations for improvement. In its July 26, 2004 response to the FFY 2002 APR, OSEP directed AHS to submit a plan to OSEP within 60 days of the date of that letter detailing how the State would address within a year of OSEP's acceptance of the plan each of these three noncompliance areas. OSEP's July 2004 letter also directed AHS to submit within 60 days of that letter its review of its transition data to determine whether it reflected noncompliance and the status of correction for Orleans/Essex North agency.

### **General Supervision**

OSEP collected information regarding a number of elements, including whether the State: (1) had identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impeded 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 non-compliance; (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.

The State contracts with twelve regional host agencies comprised of Parent Child Centers (6), mental health centers (2), a child development center, a school district and a parent-to-parent program. The host agencies administer the Part C program, typically provide service coordination and developmental therapy, and work cooperatively with the local school districts within the region. The host agency is also responsible for child find and public awareness activities within its region. Early intervention services such as occupational, physical and speech-language therapies are provided through home health agencies, public school personnel or private providers who are not employees of the regional host agency. The State is responsible for maintaining a list of related service providers through a therapy provider enrollment process that stipulates service provider qualifications, service standards and reimbursement provisions.

The lead agency monitors up to four host agencies each year using the Community Review Process (CRP). The CRP utilizes a standardized format and highlights the particular strengths and deficiencies of each program monitored. Since May 2003, this process has been used to monitor five host agencies. Before each on-site monitoring visit, the lead agency staff recruits and trains a peer review team that assists the lead agency with the on-site and post-visit monitoring activities. The peer review team consists of members of the lead agency staff, staff from other host agencies, parents and staff from the Part B 619 program. The peer review team is provided a day-long training during which data and documents relevant to the host agency are reviewed and clarified. The reviews of data include, but are not limited to, policy, survey results, file review results<sup>2</sup>, child count data, previous monitoring reports and the host agency's annual plan. This review yields a report which summarizes these findings for the peer review team and focuses the on-site visit on the strengths, weaknesses and potential areas of noncompliance that are relevant to the host agency being monitored.

The on-site visit is designed to further validate, clarify or correct information gathered during the pre-site activities. The on-site visit begins with a presentation by the host agency of its self-assessment. The peer monitoring team then interviews groups of parents, providers and the host agency administrators. After the on-site visit, the peer review team meets to discuss the overall findings from the various sources. The final report, which includes identified strengths, areas of noncompliance, and recommendations for improvement, is developed by lead agency personnel and sent to the host agency for review. The host agency is then required to develop a corrective action

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<sup>2</sup> At least 10%-20% of child early intervention service files are reviewed by AHS on-site at the host agency.

plan that must, at a minimum, provide strategies to resolve identified noncompliance within one year of the monitoring report. If the lead agency staff approves the corrective action plan, the host agency is notified in writing to implement that plan. The host agency is required to submit six-month progress reports when the corrective actions are approved. Implementation of the corrective action plan is monitored by the lead agency. Correction of noncompliance is documented by the submission of documents reviewed by the lead agency staff. To date, the State has not closed a corrective action plan to document correction of noncompliance identified during monitoring. Although enforcement sanctions have not been utilized by AHS to date, the lead agency is authorized to withhold funding from host agencies in cases of persistent noncompliance. Host agencies that are not selected for on-site visits are monitored based on child count data reviews and through submission and review of the host agencies' annual reports. The annual report includes a review of the year's activities and projected activities for the upcoming year. The lead agency staff reviews the plan to ensure that it includes goals and activities that align with priority areas identified through State monitoring activities. The lead agency has recently added three staff to assist in gathering and analyzing monitoring data and to ensure timely correction of noncompliance through oversight of the corrective action plans. Currently, the Part C staff is involved with revising the CRP to better align with the Annual Performance Report (APR) and other State data requirements.

The State has submitted several copies of monitoring reports developed by AHS that indicate that the State has methods to monitor for Part C requirements at 34 CFR §303.501(b)(1). However, each host agency is also required to be responsible for correcting deficiencies that are identified through monitoring. The State has provided an example of a corrective action plan submitted by a host agency, but has not provided OSEP with documentation to demonstrate that the State has a method in place to determine and ensure correction of noncompliance. See Part C regulations at 34 CFR §303.501(a)(4). OSEP is unable to conclude at this time that Vermont has a comprehensive monitoring system that is designed to correct all State-identified areas of noncompliance.

OSEP requested initial correction documentation within 60 days of OSEP's July 26, 2004 APR letter to the State. OSEP will review this documentation when it is submitted to OSEP but requests that the State also include in its FFY 2003 APR updated monitoring and correction data from the five regions the State reported during the verification visit that it had monitored since 2003 that indicates correction of State-identified noncompliance.

OSEP reviewed the State's IFSP form prior to the verification visit. The IFSP form is the State's format for a written plan for identifying the early intervention services needed by an eligible infant or toddler and his or her family. It is also one of the primary documents reviewed through the State's monitoring system to identify noncompliance. OSEP noted that the current IFSP form did not include space to: (1) indicate, as appropriate, when

services were not provided in the natural environment as required at 34 CFR §303.344(d)(ii); and (2) specifically document the child's level of functioning in the five developmental areas (cognitive, physical, communication, social/emotional and adaptive development) as required at 34 CFR §303.322. OSEP is unable to determine if the lack of these two IFSP content areas contributes to the IFSP content noncompliance issues identified by OSEP in its review of the State's FFY 2002 APR. The State acknowledged the need to revise the current IFSP form in its March 2004 FFY 2002 APR to OSEP. The State indicated to OSEP that the revised IFSP would be part of a web-based system through which the required IFSP data will be entered by the service coordinator. The State is designing the data protocol to include all IFSP content requirements. OSEP is available to review the IFSP protocol as it is developed. OSEP's July 26, 2004 FFY 2002 APR letter directed the State to provide evidence of progress in correcting each area of noncompliance, including supporting updated data and its analysis in the FFY 2003 APR due March 31, 2005. Please include in the next APR submission the State's revised IFSP form that includes the required IFSP content including natural environments/justification and present levels of functioning.

In addition, OSEP reviewed the interagency agreement between AHS and the Vermont Department of Education (VDE). AHS indicated that its current interagency agreement with VDE has lapsed. Part C regulations at 34 CFR §303.148(c) require that if the State educational agency, which is responsible for administering preschool programs under Part B of IDEA, is not the lead agency under Part C of IDEA, the lead agency must submit under Part C an interagency agreement between the two agencies to ensure coordination on transition matters. An interagency agreement must conform to the interagency requirements of Part C at 34 CFR §§303.523 through 303.525 as well as Part B and Part C transition requirements at 34 CFR §§300.132, 303.148(b) and 303.344(h). The State must submit as soon as possible after the agreement is signed, but no later than when the State submits its Part C FFY 2005 application, a signed interagency agreement that meets the requirements indicated above in order to be eligible for its FFY 2005 Part C funds. If this is the agreement that VDE uses to meet its child find obligations under Part B at 34 CFR §300.125(c), the agreement must also address the child find requirements of Part B and Part C including those regulatory requirements at 34 CFR §§300.125 and 303.321 and must be submitted with the State's Part B FFY 2005 application in order for VDE to be eligible for its FFY 2005 Part B funds. OSEP is providing VDE with a copy of this letter to inform VDE of this Part B eligibility documentation requirement.

#### *Complaints, Due Process, Mediation and Prior Notice*

The State reported that, to date, there had been no due process hearing, complaint or mediation requests filed. OSEP cannot determine whether this is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed of the State's Part C dispute resolution procedures.

As part of its evaluation of the State's dispute resolution system, OSEP received a copy

of AHS' prior written notice documents, required pursuant to 34 CFR §303.403, to determine whether they include all of the required information regarding complaints and due process hearings, and whether any lack of required notice content might be a factor in the lack of complaints and due process hearing requests. The Part C regulations at 34 CFR §303.403(b) require that: "The notice must be in sufficient detail to inform the parents about ... (4) The State complaint procedures under 34 CFR §§303.510-303.512, including a description of how to file a complaint and the timelines under those procedures." OSEP will send under separate cover the review of AHS' prior notice forms to determine if they include all of the requisite information regarding administrative complaint procedures, required pursuant to 34 CFR §303.403(b)(4).

Currently, the State asks service coordinators and parents about the prior notice form during on-site focus groups meetings and through its survey forms as a means to monitor compliance with the requirement. However, the State indicated that it intends to require documentation on the IFSP to better ensure full compliance with 34 CFR §303.403. OSEP is available to provide technical assistance to Vermont as it further explores revisions to the IFSP.

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

In reviewing 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 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.

The State Part C coordinator, Helen Keith, and key personnel oversee the 618 data collection process. Currently data is manually collected on standardized forms that include directions for completion of each table and a number to call for technical assistance. In addition, each host agency submits monthly data reports that are used to verify annual reports submitted for the December child count. Data forms are checked by lead agency staff and verified for accuracy. Service data submitted by the host agency is crosschecked with Medicaid and Children with Special Health Care Needs data banks to further ensure accuracy. Conference calls are held with each host agency to review file submissions and clarify errors.

The State uses the same definitions provided by OSEP for all the tables in the current data collection system. Child count, exiting, settings and services are all completed in the

same way using the data collection process described above. Data for the personnel table are collected by the host agency and are based on data collected from service contracts and billing records. The lead agency relies heavily on contract agencies to provide related services under Part C. The State indicated that there is not a consensus on the definition of full time equivalency for contractors across agencies and as a result, the accuracy of the personnel data table is impacted. The State is continuing to discuss resolutions to this with contractors and hopes to resolve this problem in the near future. The State must report on the progress with resolving the definition of full time equivalency in the next APR due on March 31, 2005.

Lead agency staff informed OSEP that they disseminate the annual OSEP data collection policy letters and memoranda to service coordinators as guidance on how to collect and report all required data consistent with Federal data reporting requirements. Lead agency staff expressed overall confidence in the 618 data that is reported to OSEP. The State has used a previous General Supervision Enhancement Grant (GSEG) to improve its current ACCESS data system and has applied to re-compete for the GSEG to develop a web-based data system to more efficiently collect data at the host agency level.

OSEP believes that AHS' system for collecting and reporting data is a reasonable approach to ensuring the accuracy of the data that AHS reports to OSEP under 618.

### **Summary**

The State was required to submit to OSEP by September 20, 2004 (60 days from OSEP's July 26, 2004 response to the State's FFY 2002 APR):

1. a plan including strategies, targets, timelines, evidence of change for the three noncompliance areas identified from the FFY 2002 APR;
2. clarification of transition data from the FFY 2002 APR, and if the data indicate noncompliance, a plan including strategies, targets, timelines, and evidence of change; and
3. the status of correction of the Orleans/Essex North agency

If that information has not been already submitted, it must be submitted by October 30, 2004.

In the next APR due March 30, 2005, the State must include:

1. revised IFSP forms with natural environment justification and present level of development content; and
2. updated monitoring and correction data on the five regions monitored since 2003

that indicates correction of State-identified noncompliance.

3. an update on the progress in reaching consensus on the definition of full time equivalency for contractors across agencies.

In addition, the State must submit as soon as possible but no later than the FFY 2005 Part C application AHS' interagency transition agreement with the Vermont Department of Education.

As noted above, we request that you keep us informed of your progress through the APR process in ensuring correction in the local programs with ongoing noncompliance. We look forward to collaborating with Vermont 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: Honorable Richard Cate  
Helen Keith, Part C Coordinator