



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

APR - 2 2004

Honorable Paul S. Nusbaum  
Secretary  
West Virginia Department of  
Health and Human Resources  
State Capitol Complex  
Building 3 Room 206  
Charleston, West Virginia 25305

Dear Secretary Nusbaum:

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 West Virginia. 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 and improving performance with Parts B and C of the Individuals with Disabilities Education Act (IDEA). OSEP staff conducted a verification visit to West Virginia during the week of September 15, 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 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.

As part of the verification visit to the West Virginia Department of Health and Human Resources (WVDHHR), the State's Part C Lead Agency, OSEP staff met with Pam Roush (the State's Part C Coordinator), and members of the early intervention staff who are responsible for the State's 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 documents, including the State's Part C Application, Self-Assessment, and Improvement Plan<sup>1</sup> and submissions of data under Section 618 of the IDEA, as well as other information and documents provided to this office.<sup>2</sup> OSEP also conducted a conference call on July 29, 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. Pam Roush also participated in the call and assisted us by inviting the participants.

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<sup>1</sup> OSEP is responding to West Virginia's APR, and the Improvement Plan that was attached to the APR, in a separate letter.

<sup>2</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.

The information that Ms. Roush 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 the WVDHHR systems for general supervision and data collection and reporting for the West Virginia Birth to Three (WVBTT) program.

***General Supervision:***

In looking at 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's June 10, 2003 letter, regarding the Self Assessment, identified noncompliance in the area of general supervision because the State's Self-Assessment reported that a monitoring system had been revised and was in place, but the system had not been fully implemented to ensure the provision of early intervention services for children with disabilities. During the verification visit, WVBTT explained to OSEP that it was in the process of moving from a system of local point of entry agencies to Regional Administrative Units (RAUs). WVBTT indicated that it would complete the process of switching over to RAUs in July 2004. Therefore, as explained in the letter OSEP is sending to the State in response to West Virginia's Part C Federal Fiscal Year 2001 Annual Performance Report (APR) and Improvement Plan, WVBTT must confirm when it has completed the implementation of its new system of RAUs.

In addition, as a result of the information obtained during its verification visit in September 2003, OSEP believes that the WVDHHR systems for general supervision constitute a reasonable approach to the identification of noncompliance. However, as described in this letter, OSEP cannot yet determine whether the State system for correction of noncompliance is effective. Therefore, OSEP is requesting in the attached letter in response to West Virginia's APR and Improvement Plan that the State submit follow-up data regarding the implementation of its general supervision system, and correction of State identified noncompliance.

OSEP learned through review of the Orientation to West Virginia Birth-to-Three Handbook, the Birth-to-Three Software Manual, the West Virginia Birth-to-Three Documentation and Billing Manual Provider and interviews with several of WVBTT staff, that the West Virginia Birth-to-Three system relies on a multi-level, collaborative approach to ensure compliance with Part C regulations. First, the WVBTT has employed a software system that collects data from the RAU that is entered by the interim service coordinator. This would include referral information, child demographics, evaluation and assessment data, eligibility determinations and initial IFSPs. WVBTT's data system also includes a web-based component that is used by the ongoing service coordinator and related service provider to input services provided. All services provided by ongoing service coordinators and related service providers are also submitted on paper and added to

the child's main file. Data in the child's main file is reviewed as part of the Office of Maternal, Child, and Family Health (OMCFH) file review. The OMCFH monitor compares the data that is submitted on each child electronically to documentation in the child's main file. Incompatible data and any other findings of noncompliance are reported to WVBTT and the RAU in a formal report. All follow up activities including technical assistance, corrective action planning, and close out activities are supervised by the WVBTT Quality Assurance Monitor (QAM).

WVBTT explained to OSEP that its database allows data to be submitted daily to the WVBTT office from the RAU. The WVBTT database allows central office staff to review individual child files or to aggregate regional or statewide data. WVBTT has recently added a data administrator and quality assurance monitor to assist with overall general supervision activities. WVBTT can use its database to collect data from multiple sources and to use these data to focus its monitoring of each RAU through sequential processes, including: (1) previsit review of records by OMCFH and other data submitted by the RAU; (2) on-site record review; (3) issuance of a written compliance report that includes WVBTT findings, and a Plan of Action summarizing the specific actions that the program must take to correct findings of noncompliance and target dates for completing those actions; and (4) follow-up and ongoing technical assistance to assist the program in correcting identified areas of noncompliance. WVBTT has established a list of sanctions that may be imposed if a program fails to take the requisite corrective actions specified in the Plan of Action, which include: the repayment of misappropriated Federal Part C and State funds, the withholding of State and Federal funds until the corrective action is taken to ensure compliance, and, as a last resort, the cancellation of the program's early intervention contract. However, to date, WVBTT has not actually imposed repayment sanctions or cancelled any program's early intervention contract.

During the verification visit in September 2003, WVBTT shared with OSEP the following documents connected to the monitoring of one of the RAUs: (1) the file review protocol used by OMCFH for monitoring RAUs and the on-site monitoring report that OMCFH issued to one of the RAUs, (2) WVBTT's corrective action/technical assistance report issued to that RAU in response to the OMCFH onsite monitoring visit, and (3) the RAU's corrective action plan to WVBTT. These materials demonstrate that WVBTT has made findings regarding such Part C requirements as adherence to the 45-day timeline for IFSP development and transition planning for children exiting the Part C program. The materials and interviews with WVBTT staff also demonstrate to OSEP that WVBTT conducted follow-up data collection and technical assistance visits to the RAU that had been monitored. However, WVBTT indicated to OSEP that, at the time of OSEP's visit, the timeline for the RAU to show that the areas of noncompliance had been resolved had not lapsed. Therefore, as explained in the letter OSEP is sending to the State in response to West Virginia's Part C APR and Improvement Plan, WVBTT will need to demonstrate to OSEP that the current monitoring process ensures correction of identified noncompliance.

It was evident from interviews with the OMCFH monitor, the WVBTT quality assurance monitor, the RAU administrator and the data administrator who demonstrated the general supervision capabilities of the data system, that there exists an infrastructure to improve the monitoring process on an ongoing basis. OSEP learned through interviews with WVBTT staff that there is a plan in place to further enhance the current data system in the near future so that it will support the growing number of independent service providers that are now enrolling into the early intervention system. WVBTT may wish to provide to OSEP updated information regarding its plan to further enhance the current data system.

OSEP also reviewed WVBTT systems for the resolution of State complaints, due process hearings and mediation. Although the State has adopted complaint, due process hearing and mediation procedures, to date there has not been any Part C due process hearing, mediation requests or complaints filed. (Although WVBTT has received no complaints or other written expressions of concern, WVBTT does receive telephone calls from parents, and has worked with these individuals to resolve their concerns informally.) OSEP cannot determine whether the lack of administrative complaints and due process hearing requests is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures.

OSEP reviewed WVBTT's prior written notice documents, required pursuant to 34 CFR §303.403, to determine whether they include all of the required information regarding due process hearings, and whether any lack of required notice content might be a factor in the lack of 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-... (3) All procedural safeguards that are available under §§303.401-303.460 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." OSEP found that WVBTT's prior written notice forms do not include all of the information required pursuant to 34 CFR §§303.403(b); attached is a memo that identifies those regulatory requirements not addressed in WVBTT's prior written notice forms. WVBTT must revise its prior written notice documents to ensure that they meet those requirements. OSEP is available to work with WVBTT to ensure that the required information is included. Please submit to OSEP within 60 days from the date of this letter either the revised notice materials or a written assurance that WVBTT has corrected the notice to address all of the issues identified in the attached memo and has redistributed the notice broadly and as required under 34 CFR §303.403.

In addition, based on the discussions during the verification visit, it is unclear whether parents are receiving the prior written notice at the times required by the regulations. The Part C regulations at 34 CFR §303.403(a) require that: Written prior notice must be given to the parents of an eligible child within a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. WVBTT should review its policies and procedures regarding 34 CFR §303.403(a) to ensure that they meet Part C regulatory requirements. OSEP is available to work with WVBTT to ensure that the regulatory requirements are met.

#### ***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; (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 WVBTT's system for collecting and reporting data is a reasonable approach to ensuring the accuracy of the data that WVBTT reports to OSEP under section 618.

RAU staff informed OSEP that when the RAU receives a referral form from a parent or other referral source, the RAU enters the child into its data system. The RAU staff further explained that it does not include a child as part of the Part C child count until the evaluation and assessment process is complete, WVBTT has found the child eligible under Part C, and the child has an IFSP. The interim service coordinator at the RAU is responsible for entering child and family information, along with the child's initial IFSP, into the database. Within each child's data file is information regarding demographics, eligibility, service personnel, and type of IFSP (i.e. initial, transition, annual). Each RAU is able to aggregate data into a monthly profile that provides child count by age and race. The RAU is also able to report the total number served during the month, the number of referrals made to the RAU and the number of children exiting the program. This data, in addition to the ongoing web-based service data submitted by independent providers, is transmitted to the WVBTT data administrator. WVBTT verifies data submissions by closely monitoring electronically submitted weekly reports and monthly profiles from the RAU. Duplicative and incomplete records are identified and returned to the RAU for correction. Independent providers are only reimbursed if services provided match the current IFSP on file within the system and if the child was assigned to the provider during an IFSP meeting. This allows WVBTT to keep a real-time, electronic listing of personnel and service data. Additionally, when a child and family exits the Part C system, the local program or District Office submits a child/family closure form electronically which flags the file as closed to any RAU or WVBTT office staff that may be reviewing that file. When discussing potential barriers in the 618 data collection system, WVBTT staff indicated that there was concern that not all files were being closed in a timely manner when children exit the system. OSEP suggests that, as the State develops and implements the enhanced web-based data system, WVBTT consider ways in which to better ensure the accuracy of its exiting data.

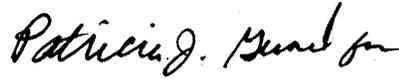
WVBTT staff informed OSEP that they disseminate the annual OSEP data collection policy letters and memoranda to the RAUs as guidance on how to collect and report all required data consistent with Federal data reporting requirements. Training is provided to RAU staff, service coordinators and related service providers regarding data entered into the WVBTT system. Targeted training is provided to a RAU and specific personnel when a need is identified.

WVBTT is in the process of expanding their web-based data system to be fully implemented by July 2004. OSEP is available to assist WVBTT in the consideration of methods to ensure that the data collected helps to inform decision making processes pertinent to improving outcomes for children with disabilities and their families and in ensuring the identification and correction of non-compliance.

It was a pleasure visiting with the WVBTT and their staff. It was evident to OSEP that there has been a significant investment of time and resources into both the implementation and continuing enhancements to the data collection system and into the personnel responsible for program administration.

We look forward to collaborating with West Virginia as you continue to work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie Smith Lee".

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Pam Roush