



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

Honorable Deborah Fleming
Director
Wyoming Department of Health
Hathaway Building, First Floor
2300 Capitol Avenue
Cheyenne, Wyoming 82002

FEB 23 2004

Dear Dr. Fleming:

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 Wyoming. 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 and improving performance under Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted a visit to Wyoming during the week of October 27, 2003.

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 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 Wyoming Department of Health (WYDH), the State's Part C Lead Agency, OSEP staff met with Shelldon Skelcher (Supervisor for Part C and Preschool Services under Part B), Jason Jones (the State's Part C Coordinator), and members of the WYDH 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, a sample of WYDH monitoring reports, proposed State Rule revisions, submissions of data under Section 618 of the IDEA, and Wyoming's July 8, 2003 Annual Performance Report (APR).¹ [OSEP is responding to the State's APR under separate cover.]

OSEP also conducted a conference call on September 29, 2003, with members of the Part C Steering Committee, to hear their perspectives on the strengths and weaknesses of the

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.

State's systems for general supervision and data collection and reporting. Mr. Skelcher and Mr. Jones also participated in the call and assisted us by inviting the participants.

The information that Mr. Skelcher, Mr. Jones and the Part C 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 WYDH's systems for general supervision, and data collection and reporting, for the Wyoming Early Intervention System.

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.

OSEP believes that WYDH's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance through its on-site record review procedure, corrective action plan procedures, and its authority and capacity to impose sanctions, if necessary, to ensure timely correction of noncompliance. However, OSEP cannot, without also collecting data at the local level, determine whether WYDH is fully effective in identifying and correcting noncompliance.

OSEP learned through review of WYDH's regional monitoring reports and interviews with WYDH staff, that WYDH uses on-site visits to monitor, on a cyclical basis, (at least once every two years) all of the 14 early intervention regions that provide early intervention services and service coordination. Conducted by two WYDH Part C staff (1.6 full time equivalents), the four to five day on-site visit consists of: (1) Record reviews of a minimum of 20% of eligible children in the region; (2) Informal discussions with service coordinators and/or administrators; (3) Review of the quality of child and family outcomes in each Individualized Family Service Plan (IFSP), and (4) An exit conference with regional staff to discuss strengths, file reviews, and suggestions for improvement. Two weeks prior to the on-site visit, WYDH disseminates a parent satisfaction survey to all families enrolled in the regional program. Families can request a telephone contact from the WYDH if they wish to provide additional information or have any questions about the system.² WYDH tabulates the results of these surveys that

² WYDH staff commented that families rarely contact the State after receiving the survey. Typically, 20-40% completed surveys are returned and surveys are written in English and Spanish.

are then given to the region to interpret and to include in a corrective action plan, if appropriate.

If WYDH identifies noncompliance or has suggestions for improvement during the onsite visit, a Region must submit a corrective action plan to address both noncompliance and improvement strategies within 30 days of receipt of WYDH's written monitoring report that is issued 8- to 12-weeks after the site visit. The Part C staff stated they either accept or reject the corrective action plan. If the plan is rejected in whole or in part, the Part C staff directs the regional program to modify the plan and may visit the region to discuss the plan or provide technical assistance. According to WYDH staff, once the plan is in place, regional providers have 60 days to implement the corrections, unless a longer time period is warranted to correct noncompliance or improvements. Although the WYDH Part C staff stated that all corrections are occurring within 12 months and that they monitor a region within 12 months after identification of noncompliance to ensure correction, corrective action plans reviewed by OSEP did not contain specific timelines for correcting noncompliance. OSEP suggests that WYDH direct the regional providers to include reasonable timelines, not to exceed one year, for corrective actions related to noncompliance.

WYDH has established a list of sanctions that may be imposed if a region fails to take the requisite corrective actions that includes: 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 Region's early intervention contract. WYDH staff commented that they have acted upon the imposition of sanctions with one region in 1999 by terminating the State contract with that region. The staff further stated that although the WYDH has the authority to impose a variety of sanctions through its contracting procedures, the State believes it is more effective to correct noncompliance issues through the provision of training and technical assistance.

WYDH remarked that it ties its training and technical assistance to the results of its on-site visits. For 2002-2003, WYDH stated that training and technical assistance focuses on family centered practices, early childhood transition, natural environments, and the development and measurement of functional child and family outcomes. WYDH intends to focus its attention on strengthening service coordination and is planning to work with the OSEP-funded National Early Childhood and Technical Assistance Center to develop a service coordination certification procedure. At the time of OSEP's visit, the primary resources available for training and technical assistance in these areas are the 1.6 FTE Part C personnel that also conduct on-site monitoring visits.

WYDH has developed several processes to identify and correct noncompliance under Part C of IDEA: a record review checklist, a parent survey, a requirement for a corrective action plan for regions demonstrating noncompliance or need for improvements, and written sanctions outlined in regional contracts. However, WYDH has not, to date, completed a systemic analysis of its current general supervisory practices to ensure that all Part C requirements are appropriately implemented throughout the State. WYDH does not have any written procedures or guides about how to: conduct

record reviews, interview regional early intervention staff, or analyze parent surveys. WYDH does not have methods to ensure implementation of interagency agreements or strategies to involve key stakeholders, such as the State Interagency Coordinating Council, in carrying out general supervision. OSEP recommends that WYDH strengthen its general supervision system by: (1) systematizing its procedures for conducting on-site and off-site data collection to ensure the procedures address all Part C requirements; (2) building a capacity to collect, utilize, analyze, and report on a body of information (e.g. 618 State-reported data, monitoring results, early intervention provider needs assessments, parent surveys, and State Interagency Coordinating Council recommendations/activities), and (3) developing an evaluation procedure to periodically review how well its general supervisory practices are working. WYDH is examining its current staff capacity to implement general supervision and training and technical assistance. OSEP recommends that WYDH's analysis of its general supervision system include an analysis of current staff resources that could be a factor in the State's ongoing implementation of a comprehensive general supervisory oversight system.

During the verification visit, OSEP discussed the need to document and implement its general supervisory system that includes all Part C requirements. During and subsequent to OSEP's visit, WYDH staff is working with one of the OSEP-funded technical assistance centers to more fully develop its general supervisory system. OSEP asks that WYDH keep OSEP informed in its next APR concerning its progress in developing this system.

Another component of the WYDH general supervisory system is interagency collaboration. WYDH has a current, signed interagency agreement with the Wyoming Department of Education (WYDE) to carry out its general supervisory responsibilities for child find and early childhood transition as well as WYDH's responsibilities as the designated intermediate educational unit for the provision of preschool special education for children 3-5 throughout the State. WYDH monitors the implementation of the agreement by examining the rate of growth for child identification and conducting record reviews of appropriate transition procedures for children who exit Part C on their third birthday. WYDH staff stated it has procedures in place to monitor preschool services in collaboration with WYDE. During a joint meeting with OSEP during the verification visit, staff from WYDH and WYDE stated that the agencies want to discuss the current interagency agreement and to make adjustments in the agreement, as needed. In order to further verify the State's general supervision, we ask that WYDH keep OSEP informed concerning its discussions regarding this agreement in its next APR.

To promote ongoing State and Regional interagency collaboration, WYDH plans to invite the fourteen Regional Interagency Councils to the 2004-2005 quarterly State Interagency Coordinating Council (SICC) meetings, held in various locations throughout the State. WYDH hopes that this activity will provide a forum to collect additional data about how the early intervention system is working and to support the Regional Interagency Councils in their respective, ongoing interagency discussions.

The State was unable to demonstrate that its state dispute resolution system meets the IDEA requirements as set forth below: prior written notice and availability of trained impartial mediators and hearing officers.

OSEP reviewed WYDH's system for resolution of State complaints, due process hearings and mediation. OSEP learned that there had been one written complaint filed in 2001 that was investigated and resolved according to the WYDH Part C staff.³ No requests for due process hearings or mediations have ever been filed under the Part C system.

OSEP cannot determine whether the lack of 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 WYDH'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 WYDH's prior written notice forms do not include all of the requisite information regarding due process hearing procedures, required pursuant to 34 CFR §§303.403(b). Attached is a memo that identifies those regulatory requirements not addressed in WYDH's prior written notice forms. WYDH must revise its prior written notice documents to ensure that they meet those requirements. OSEP is available to work with WYDH 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 WYDH 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.

During the verification visit, WYDH staff informed OSEP that it does not have a list of trained mediators, required in 34 CFR §303.419(b)(1)(iii) and (b)(2), or trained impartial person(s), required in 34 CFR §303.421, to conduct due process proceedings. As a result of OSEP's visit, the WYDH staff stated they would contact the WYDE to obtain a list of its mediators and hearing officers and would collaborate with WYDE to provide training to qualified mediators and hearing officers about the Part C IDEA requirements. Within 90 days, or the next APR, whichever occurs first, WYDH must submit its strategies, timelines and evidence of change to obtain and make available qualified, trained mediators and hearing officers to ensure WYDH's compliance with these Part C requirements within a reasonable timeframe not to exceed one year from OSEP's approval of the strategies to make available qualified, trained mediators and hearing officers under Part C.

³ OSEP reviewed the files related to this complaint. WYDH reviewed the complaint in a timely manner, conducted technical assistance for the Regional provider, and provided compensatory services to the child.

During the visit, OSEP discussed with WYDH about how parents learn about dispute resolution procedures under Part C of IDEA and the types of training provided for parents. The State staff told OSEP that the family service coordinator is the primary contact for informing parents of the dispute resolution procedures, and that WYDH does monitor children's records to ensure the service coordinator provides information regarding dispute resolution procedures. If parents have additional questions or concerns, the regional staff encourages parents to call the State. The State could recall receiving three telephone inquiries from parents within the past year that resulted in informal problem solving between the parents and regional program. The State also has a designated 800 number that is available for parent questions. However, WYDH staff commented there have not been any calls "in years" to the 800 number. The staff acknowledged that they believe parent training is needed and intends to conduct a parent training needs assessment in the near future. OSEP encourages WYDH to contact the OSEP-funded parent information center located in Wyoming, as soon as possible, to collaborate on future parent training and information dissemination pertaining to dispute resolution procedures available under the IDEA.

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 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.

At the time of OSEP's visit, WYDH did not demonstrate that it had a system for collecting and reporting data from the regional early intervention programs that ensures the accuracy of the data that WYDH reports to OSEP under section 618.

Although WYDH provides written guidance to the regions regarding the requirements and procedures for reporting data under 618 of the IDEA, WYDH does not appear to have a system for: (1) providing ongoing guidance and training to regional programs regarding requirements and procedures for reporting data under section 618 of IDEA; (2) ensuring that individuals accurately enter and report data; and, (3) implementing procedures for identifying anomalies in data that are reported and correcting any inaccuracies.

In OSEP's interviews, WYDH staff stated that WYDH collects timely 618 data from the regional providers in order to meet OSEP's submission timelines. The State Data Manager sends copies of the OSEP instructions to regional early intervention providers;

then, service coordinators or other regional office staff (1-5 persons depending on size of the region) collect and report the data on the forms forwarded to them from WYDH. No additional guidance is provided unless regional providers call the State. WYDH staff stated they rely on the regional staff to accurately report the data.

The WYDH Data Manager enters the data into the OSEP-provided electronic reporting charts, reviews the data to determine if the numbers appear consistent with previous submissions, and forwards data to OSEP and WESTAT.⁴ The State said they rely primarily on WESTAT to inform the State about anomalies in their data. In instances where questions arise from WESTAT, the WYDH Data Manager reviews the questions and contacts regional staff to obtain clarification, if needed. In one instance during an on-site monitoring visit, WYDH stated it identified that inaccurate settings data were being recorded in one region. WYDH required corrective action and followed-up to ensure the records had been corrected. The WYDH staff stated that this type of review is atypical for on-site monitoring, however.

WYDH told OSEP that a new electronic data collection system was to be launched in all regions on December 1, 2003. The WYDH staff believes that the new data system, containing IFSPs and referral information, will greatly improve the accuracy of the State's 618 data collection system and assist the staff in identifying issues that require monitoring or technical assistance. WYDH will have the capacity to monitor regional reporting, including 618 data, two times each year (May and December). In addition, the new system contains automatic edit checks.

Training was provided for regional staff during 2002-2003, and the State's data consultant is available to provide ongoing support to the WYDH and regional staffs about how to initiate a variety of reports and analyze the data. The state is discussing the possibility of holding annual training about data collection for all service coordinators.

The WYDH personnel stated that regional staffs are also embracing the new electronic data system and are committed to reporting accurate data, in part, because the regional staff will be able to develop regional reports about their respective system. To enhance timeliness of data entry and to make the data entry user friendly, WYDH provided a laptop computer for each family service coordinator to enter IFSP information at the time of the first and subsequent IFSP meetings.

OSEP cannot determine the accuracy of the data that WYDH reports to OSEP under section 618 of the IDEA. In order to ensure that WYDH can meet its responsibility to submit accurate data under section 618 of the IDEA, OSEP requests that within 90 days, or in its next APR, whichever occurs first, WYDH submit to OSEP its plan to: (1) provide ongoing training to regional programs regarding requirements and procedures for reporting data under section 618 of IDEA; (2) ensure individuals accurately enter and report data; and, (3) implement procedures for identifying anomalies in data that are reported and correcting any inaccuracies.

⁴ OSEP contracts with WESTAT to compile and analyze 618 data for IDEA.

We appreciate the cooperation and assistance provided by your staff during our visit. We request that you keep us informed of your progress in providing the above noted information. OSEP is available to work with WYDH on any of these matters.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Smith Lee".

Stephanie Smith Lee

Director

Office of Special Education Programs

Attachment

cc: Sheldon Skelcher
Jason Jones

Attachment A
Wyoming Part C Notice

OSEP has reviewed the Wyoming Part C notice, and has the following comments:

The requirements in the following sections must be explained to the notice: 303.401(b); 303.403(b)(1), (b)(2), (c)(2) and (c)(3); 303.406; 303.425; 300.506(b)(1)(i), (b)(2)(i), (b)(3) through (c)(2); 300.507(a)(2), (c)(2)(i), (ii), (iii), (iv)[including facts relating to the problem], (v)[to the extent known and available to the parents at the time], (c)(3) and (c)(4); 300.508; 300.509(a) through (c); 300.510(a)[final unless appealed under 300.512]; 300.511(c) and (d); 300.512(a) through (c); 303.510(b); 303.511(b); 303.512(a)(2) through (a)(4), (b)(2), and (c); 300.562(b)(1); (b)(3), and (c); 300.563; 300.564; 300.565; 300.567; 300.568; 300.569; 300.572; 300.573.

In addition, the notice must be revised to address the following issues:

- 300.401(a)(2): The notice must explain that the written consent must describe the activity for which consent is being sought, and list the records (if any) that will be released and to whom.
- 303.401(a)(3): The notice must explain that consent may be revoked at any time.
- 303.402: The notice states that the parents “have the right to be fully informed of all information contained in” their child’s records, and “may review or request copies of your child’s file at any time.” However, the notice does not explain that these rights are, “In accordance with the confidentiality procedures in the regulations under part B of the Act (34 CFR 300.560 through 300.576).”
- 303.403(a): The language in the notice is inconsistent with the regulation and may prevent the State from taking certain actions necessary to meet its responsibilities under the IDEA without first providing prior written notice. For example, if the State reviewed a child’s records, including an IFSP, it arguably would be required under the current notice language to provide prior written notice to the parents. The State must provide written prior notice before it “proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of early intervention services to the child and the child’s family.”
- 303.404(a): The notice says that “The early intervention program needs your written permission to take any actions that affect your child.” However, this statement is too broad because it may prevent the State from taking certain actions necessary to meet its responsibilities under the IDEA without first obtaining consent. The notice must explain the requirements for consent in 34 CFR 303.404(a).
- 303.405: The notice must explain that the parents may decline the services after first accepting them.
- 303.460: This provision cross-references 34 CFR 300.560 through 300.576. The notice must be revised to address the requirements of 34 CFR 300.560 through 300.576, as explained in this document.
- 300.506(a): It appears from the notice that mediation is available at all times. If that is not correct, the notice must be clarified to explain when mediation is available,

which must be, at a minimum, whenever a hearing is requested. In addition, the notice must explain the rights of the parties, not just the parents, under 300.506(a).

- 300.506(b)(1)(iii): The notice says that the parent may request a “trained mediator,” however the notice must explain that the mediation must be conducted by a “qualified and impartial mediator who is trained in effective mediation techniques.”
- 300.506(b)(2)(ii): If mediators are not selected on a random basis, the requirements in 300.506(b)(2)(ii) must be explained in the notice.
- 300.506(d): If Wyoming has adopted the procedure in 300.506(d), it must be explained in the notice.
- 300.507(a)(1): The notice explains the parents’ right to bring a hearing, but the notice must also explain the public agency’s right to bring a hearing under that section.
- 300.507(a)(3): The notice says that “you will be informed of any free or low cost legal assistance upon request.” However, this statement appears to improperly combine the requirements in 300.507(a)(3)(i) and (ii). The notice must be clarified to state that the public agency shall inform the parents of any free or low cost legal and other relevant services available in the area if (i) the parent requests the information or (ii) the parent or the agency initiates a hearing.
- 303.510(a)(1): The notice informs parents of their right to file a complaint. This is incomplete because the notice must inform the parents that (1) any individual or organization, including an individual or organization from another State, may file a complaint, and (2) the complaint must relate to a public agency or private service provider violating a requirement of Part C.
- 303.511(a): The notice says that the “complaint should include a clear and complete statement of your concern.” However, the State must revise the notice to inform parents that the complaint must include a statement that the State has violated a Part C requirement, and the facts on which the complaint is based.
- 303.512(a)(1): The notice references an “investigation,” but it does not say that the procedures include an “independent on-site” investigation, if the lead agency determines that such an investigation is necessary.
- 303.512(b)(1): The notice says that the “investigation must be completed within 30 days, or if exceptional circumstances exist, within 60 days.” However, this is incomplete because the notice must specify that all of the actions in 303.512(a) must be completed within 60 days, unless exceptional circumstances exist “with respect to a particular complaint.”
- 300.562(a): The notice must explain that the agency shall comply with a request without unnecessary delay.
- 300.566(a) and (b): The notice is silent on charging fees for copies of records. If the State charges fees for copies of records (which it may do in limited circumstances), it must explain the requirements in 300.566(a) and (b) in the notice.
- 300.571(a) and (b): The notice says that the parents’ “written permission is also required before any information regarding your child can be exchanged between the early intervention program and any other service or health care provider.” That language appears to be both too broad and too limiting. Records cannot be disclosed to anyone without prior written parental permission, unless such disclosure is allowed under the IDEA and FERPA. In addition, there may be exceptions under the IDEA and FERPA that would allow the release of records to other service or health care

providers without the prior written consent of the parents. In order to ensure that your notice is consistent with the federal regulations, please revise to track the language in 300.571(a) and (b).