



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

JAN 14 2005

Honorable Patricia A. Nolan, M.D., MPH  
Director of Health  
Rhode Island Department of Health  
3 Capitol Hill  
Room 303-Canon Building  
Providence, Rhode Island 02908

Honorable Ronald A. Lebel, Esq.  
Acting Director of Human Services  
Rhode Island Department of Human Services  
Louis Pasteur Building  
600 New London Avenue  
Cranston, Rhode Island 02920

Dear Dr. Nolan and Mr. Lebel:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) verification visit to Rhode Island during the week of September 27, 2004. As indicated in my April 30, 2004 letter to Dr. Nolan, 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). Prior to OSEP's visit, the Department of Health (DOH) staff had informed OSEP of Rhode Island's plans to change its designated lead agency under Part C of the IDEA. During the visit, OSEP staff received a letter, dated September 8, 2004, from Governor Donald L. Carcieri designating the Rhode Island Department of Human Services (DHS) as the lead agency for Part C of IDEA, effective July 30, 2004.

The purpose of OSEP's verification review 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. This visit also included a meeting with staff from DHS and DOH to discuss the transition in the Lead Agency and implications for the Federal Fiscal Year (FFY) 2004 Part C grant period.

OSEP staff met with Dr. William Hollinshead, Medical Director, DOH, Ms. Deb Garneau (the Part C Coordinator under DOH), Mr. Neil Young (DOH Early Intervention Policy Coordinator), and members of the DOH early intervention staff, who have been 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. In addition, staff from DHS attended all sessions and provided essential information on the status of the change in Lead Agency. Prior to and during the visit, OSEP staff reviewed a number of documents, including: (1) the State's Part C Application, Self-Assessment, Improvement Plan, and FFYs 2001 and 2002 Part C Annual Performance Reports (APR); (2) Part C monitoring files, including documentation regarding correction of noncompliance; (3) descriptions of DOH's procedures for

data collection and general supervision; and (4) other information and documents posted on the DOH and DHS websites.<sup>1</sup>

OSEP also conducted two conference calls to hear perspectives on the strengths and weaknesses of the State's systems for general supervision and data collection and reporting. The June 18, 2004 call was with members of the State Interagency Coordinating Council (SICC), and the September 9, 2004 call was with parents and providers. Ms. Garneau and Mr. Neil Young also participated in the calls and assisted us by inviting the participants, with assistance from the Rhode Island Parent Training Information Center and the Rhode Island Advocacy Center.

The information that Ms. Garneau 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 DOH's systems for general supervision and for data collection and reporting for the Rhode Island Early Intervention System. Also, the information provided by Mr. John Young and his DHS staff enhanced our understanding of the new Lead Agency's perspectives on Part C and their commitment to a smooth transition of the 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 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, previous monitoring results, etc.) to identify systemic issues and problems.

***Structure and Review of the State's Early Intervention System.*** This verification letter addresses DOH's systems for general supervision and data because at the time of OSEP's visit, DHS had not yet assumed daily administration of Part C. It is OSEP's understanding that DHS expects to assume daily administration and management of Part C as of January 1, 2005. DOH's early intervention system consisted of seven regional offices that locate and evaluate eligible children for services. In addition, there are three service units for specialized early intervention services under the auspices of the following: (1) the RI School for the Deaf; (2) the RI Department of Education (RIDE); and (3) DHS. DOH required all providers to demonstrate capacity to comply with certification standards for EI services. Staff was required to attend a four-day training within six months of employment. DOH also had interagency agreements that maintained and implemented the State-wide, comprehensive, coordinated, multidisciplinary, and interagency system of services for infants and toddlers and their families. During OSEP's visit, it was reported by DOH that there were shortages of personnel to provide specific therapies throughout the State and that this impacted the timely provision of early intervention services.

---

<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.

OSEP staff met with staff from both agencies, DOH and DHS, to discuss the following issues: (1) lead agency designation; (2) provision of technical assistance; (3) the State application; (4) general supervision; (5) service provision and early intervention system; and (6) grant administration. A Memorandum of Understanding between DHS and DOH allows DOH to continue its role in operating the program under the administration of DHS, until DHS fully assumes the administration of the program's operation (January 1, 2005). DHS indicated that the referral, evaluation and assessment, and early intervention service provider structures and personnel would remain the same but that State staff regarding monitoring and other general supervision responsibilities would shift from DOH to DHS beginning on January 1, 2005. The plan is to move to DHS the structure already in place at DOH and replace all references to DOH with DHS on the application. Two staff members (client service coordinator and data manager/quality assurance coordinator) will move to DHS, while DHS staff will assume the other early intervention responsibilities. A Part C coordinator had not been named at the time of OSEP's visit. DHS staff were aware that any changes to the application will require that Part C's public participation requirements at 34 CFR §§303.110 through 303.113 are met.

OSEP notes that although DOH may continue to assist DHS in the provision of early intervention services and in other reporting requirements (such as the FFY 2003 APR), DHS as the lead agency under Part C is responsible for all fiscal and general supervision responsibilities, under 34 CFR §§303.127, 303.142, 303.500 and 303.501, for Rhode Island's Part C FFY 2004 funds. In addition, OSEP requests that DHS submit with the State's APR, due March 31, 2005: (1) the revised interagency agreements between DHS and, (a) DOH, the State educational agency, the Rhode Island Department of Education, and (b) any other Rhode Island agencies (as needed); (2) a revised FFY 2004 Part C application (if needed to address any substantive application changes needed), including its revised system of payment policies and procedures (such as the recent Rhode Island legislation enacted to ensure payment of early intervention services); (3) monitoring procedures that will be used by DHS to identify and correct noncompliance with Part C requirements; (4) Rhode Island's Part C coordinator or other contact within DHS; and (5) information regarding DHS's restricted indirect cost rate approved by the U.S. Department of Health and Human Services to apply to the Part C program. (Under 34 CFR §§76.563 through 76.569, DHS must ensure that it either does not charge indirect costs to the Part C FFY 2004 grant or have an approved restricted indirect cost rate from its cognizant Federal agency.)

***Prior Noncompliance/Potential Noncompliance Issues.*** OSEP's October 18, 2002 letter responding to Rhode Island's Self-Assessment identified one area of noncompliance with 34 CFR §303.320, requiring the Lead Agency to ensure development and dissemination of public awareness materials to primary referral sources, including translation of materials for Spanish-speaking referral sources. In a September 9, 2003 letter, OSEP approved the State's July 2002 Improvement Plan that included strategies to address the lack of public awareness materials to reach its non-English speaking population. The Final Progress Report was received on September 27, 2004, at the beginning of OSEP's visit, and was reviewed by OSEP staff. During the verification visit, OSEP acknowledged that the Report demonstrated completion of the Improvement Plan strategies. The State is responsible for demonstrating that it continues to implement effective public awareness efforts, and reporting the data pertaining to this cluster area in the State's FFY 2003 APR, due March 31, 2005.

Additionally, OSEP's September 27, 2004 letter responding to the FFY 2002 APR identified two potential areas of noncompliance with the following requirements: (1) 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a) requiring the State to complete the evaluation and assessment activities and hold the initial IFSP meeting within 45 days of referral; and (2) 34 CFR §303.344(d)(ii) requiring the IFSP to include a statement of the early intervention services necessary to meet the unique needs of the child and include the natural environments in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment.

The State was given 60 days from the date of OSEP's September 27, 2004 letter to provide either the data demonstrating compliance with these two requirements or its plan that includes strategies, proposed evidence of change, targets and timelines that address the areas listed above within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan. During the verification visit, staff from DOH and DHS provided some data and strategies to review these areas and requested an extension to submit a plan and additional data.

OSEP staff recognized the immediate needs for the staff to develop a revised application and ensure a smooth transition so that eligible children and families continue to receive services without interruption. OSEP granted an extension of the due date of the plan regarding these two potential areas of noncompliance (the 45-day timeline and natural environments requirements) until March 31, 2005, when the FFY 2003 APR is due.

***Identification of Noncompliance.*** The Department of Health system for identifying noncompliance consisted of on-site monitoring activities and development of a quality assurance plan. On-site monitoring responsibilities are assigned to State staff who work with parents, providers and others to review the service program agencies under the certification review process developed in 2001. The initial certifications were valid for two years, and in 2003, programs were granted three-year certifications. OSEP staff reviewed the monitoring records from the 2003 certification and found that two of the seven agencies were granted a provisional certificate based on low scores. The agencies were given 60 days to respond to the review and develop a corrective action plan. Local Self-Assessments, interagency agreements, policies, service records, and child count accuracy were monitored during these visits. The monitoring also included quality outcome measures. The procedures include record reviews, parent and provider interviews, mail surveys, telephone surveys, public hearings and focus groups. Monitors were trained to use checklists and scoring sheets as part of the process. The quality assurance plan was implemented in January 2003 by DOH. This plan summarized and integrated data from the results of the family satisfaction survey, formal and informal complaints, record reviews, site visit reports, billing information and the early intervention management information system (EIMIS). DOH monitored quality assurance, performance, and compliance by systematically reviewing ten percent of early intervention records annually and focusing on the content and substance of those records. The data are aggregated and trend analyses are conducted so that State-wide resources may be appropriately utilized.

OSEP staff identified that the State lacked data to determine that the initial evaluation is completed within 45 days of the date of referral as required by 34 CFR 303.321(e)(2)(i). DOH assumed that if the IFSP was completed within 45 days, the evaluation was also completed within the timelines. However, DOH staff indicated that a report was not generated that included when the initial IFSP meetings exceeded the 45-day timeline; therefore it could not track the completion of evaluations.

During the verification visit, the data manager demonstrated that the EIMIS had the capacity to produce data with this information, but that the system had not been utilized for this purpose. In the next APR, due March 31, 2005, the State must demonstrate that the initial evaluation is completed within 45 days from the date of referral as required by 34 CFR §303.321(e)(2)(i).

The Part C coordinator from DOH stated that prior to 2001 there were lists of children waiting for Part C services. "Wait Lists" are no longer utilized but there is still a capacity issue for the implementation of early intervention services specified in the IFSP. DOH had reported that the "Wait List" plan documented in the monitoring reports is a contingency plan used to identify possible service delivery issues in order to ensure that children are not waiting for services.

Because of the change in Rhode Island's lead agency, OSEP cannot determine if the State has a reasonable system in place to identify noncompliance and, without collecting data at the local provider level, determine whether the State is fully effective in identifying noncompliance. However, it appears that except in the area of timely evaluations, the prior agency, DOH, had a system in place that was reasonably designed to identify noncompliance. However, OSEP will review the monitoring system proposed by DHS to determine whether DHS will continue to have such a system in place.

***Correction of Noncompliance.*** At any level of the review process, DOH indicated it could request a corrective action plan from the local providers to address an area of noncompliance with the standards. Review of the corrective action plan becomes a part of all review activities until DOH accepts the plan and the outcomes are met. Failure to develop and complete a plan may result in sanctions determined by DOH, including, but not limited to, revocation of certification status. Technical assistance is also provided with the assistance of the State's training coordinator. OSEP's review of the corrective action plans and other files found data lacking regarding lead agency follow-up on corrective action strategies in order to determine how persistent issues, such as the adherence to the 45-day timeline, are addressed systemically. When OSEP staff asked about the one-year timeline when enforcing correction, the State staff could not provide data to show that a one-year timeline was required, or the steps that are taken when timelines are exceeded.

In the next APR, due on March 31, 2005, the State must submit its plan to collect data on corrective actions, or submit the data with its analysis. It does not appear that DOH had a system in place to ensure that Part C of IDEA noncompliance is corrected within a timely manner. DHS must submit to OSEP by the next APR, due on March 31, 2005, its plan to ensure timely correction of noncompliance identified by DOH in its monitoring procedures. The plan must include strategies, timelines and targets to ensure correction within a reasonable period not to exceed one year from when the noncompliance is identified.

***Complaints, Due Process Hearings, Mediation, and Notice of Procedural Safeguards.*** The Self-Assessment indicated that there was some concern that, "when an issue was resolved, the burden to ensure that whatever plan was agreed upon or ordered rendered was carried out, fell primarily upon the parent who would resubmit the complaint if needed." In Rhode Island's Part C system, the client services coordinator has had the responsibility to follow-up and ensure that plans were implemented. All parent calls to the Lead Agency are recorded, and if a parent is reporting a concern, then procedural safeguards are reviewed with that parent. Most of the concerns have been resolved informally at the local and State level. Rhode Island has a one-tiered due process hearing

system. DOH has elected, pursuant to 34 CFR §303.420, to develop procedures for mediation and hearings that are consistent with the Part B requirements at 34 CFR §§300.506-300.512. A single mediation request was filed during the period from July 1, 2002 to June 30, 2003, and no due process hearing requests were filed during that period.

The FFY 2002 APR reported that 25 complaints were filed pursuant to 34 CFR §§303.510-512 between June 2002 and June 2003. DOH's complaint categories included dissatisfaction with services, disagreement regarding the frequency of services, and clarification of State-wide procedures. OSEP staff reviewed the complaint logs and found that in fact only one complaint was a formal written complaint. OSEP staff explained that the reporting requirement on the FFY 2001 and 2002 APRs refers to formal written complaints only. The one formal written complaint went to mediation and was resolved within the timelines required under Part C of IDEA. OSEP staff reviewed the brochures given to parents regarding procedural safeguards and dispute resolution, and concluded that the procedures for the complaint process were not clear. In the next APR, due March 31, 2005, the State must provide documentation demonstrating that parents are informed on how to file a complaint, including the option to file a formal written complaint.

As part of its evaluation of the State's dispute resolution system, OSEP received the prior written notice documents from DOH, required pursuant to 34 CFR §303.403, to determine whether all of the required information is included regarding complaints, due process hearings, and mediation, and whether any lack of required notice content may be a factor in the lack of complaints, due process hearing and mediation requests. 34 CFR §303.403(a) requires that prior written notice must be given to the parents 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. The regulations further require, at 34 CFR §303.403(b), 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 Rhode Island does not use a formal written procedure for ensuring that prior written notice is provided as required under 34 CFR §303.403. DOH staff stated that parents are notified, but not always in writing, and, in fact, in most cases parents are given the option to waive their right to a prior notice. The regulations at 34 CFR §303.403 clearly state that a prior written notice must be given to the parents of a child eligible under Part C 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. Families do not have the option to waive the lead agency's requirement to provide prior written notice. The State must submit in the next APR, its plan that includes strategies, targets and timelines to ensure that prior written notice is provided as required by 34 CFR §303.403.

***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 of the IDEA.

The EIMIS was installed at all the Early Intervention sites by July 2000 and was fully operational by January 2001. It was designed to be both a management tool for the provider and a quality assurance tool for the State. It is also used as a basis for the State's cost reimbursement system and additionally, it interfaces with the Department of Health's Kids Net database to maximize the sharing of health data for children in early intervention. It is an ACCESS 97 database, has built-in edit checks and is password protected. The early intervention applications at the local level include information regarding the EIMIS data. Providers must actively cooperate by participating in maintaining prescribed data that include their billing information. They must report the data in a timely manner, run reports to analyze the data and use the information from this analysis to improve their service delivery. The State holds the providers accountable for the data management through its quality assurance process. Accuracy of the data is checked against paper records during quarterly record reviews. Reports are run quarterly at the State level and reviewed to check for missing data, duplications, and other inaccuracies. All data managers meet three times a year and technical assistance is available on a continual basis. The service coordinators and therapists are required to report data to the local service provider agency within 15 days of collecting the data and the data manager at the agency submits these data to the State monthly. The local programs import their total database to the Department of Administration's server. Staff at the State Health Department download the data, check it for accuracy, and aggregate the data for Section 618 reporting purposes.

The data managers from two of the provider agencies demonstrated the system for data collection at the local level. Service coordinators submit the data to the agency providers. Agency providers utilize the error reports to check the data for accuracy and reliability.

Under Section 618, States must report five categories of Part C data that include: (1) child count; (2) settings; (3) early intervention services; (4) exiting; and (5) personnel. Child Count is based on those eligible infants and toddlers having current and active IFSPs as of December 1. The child count data are disaggregated by age and race. Definitions in Rhode Island for race/ethnicity are broader than those provided by OSEP. Rhode Island uses the formula provided by WESTAT to crosswalk the definitions. The State also uses different definitions for settings and provided OSEP with a crosswalk that was developed for the 618 tables. Technical assistance is provided to the local program agencies when collecting and recording data for Section 618 reporting, because the building codes and definitions are different from OSEP's list of early intervention services. Personnel full-time equivalency (FTE) data are submitted monthly by the local program agencies on an Excel spreadsheet. At the State level, the reported number of personnel is divided by the hours of services provided by each type of personnel. DOH staff stated that this method was the most effective way of getting an accurate FTE for the Section 618 report.

OSEP expressed concern during the verification visit about the definitions used by Rhode Island for exiting. The State staff confirmed that their data do not capture all of the 618 data requirements for exiting and the data may not be accurate. For instance, OSEP requires States to report on children who were Part B eligible, not eligible for Part B/exited to other programs, not eligible for Part B/exited with no referral and Part B eligibility not determined. However, Rhode Island collects data on children reaching age three and children who will begin to receive services from the local school system or other community local agency. The State staff stated that they do not have a formal way to crosswalk the data into the categories required by OSEP for exiting. Currently Rhode Island's data system does not distinguish between those children exiting to Part B and those exiting to other programs. The State must review the requirements for reporting exiting data, ensure that the definitions used by the State match OSEP's definitions and report these data accurately in the appropriate exiting categories. In the next APR, due on March 31, 2005, the State must report on the progress in updating its data system to accurately reflect exiting data, as required under Section 618 of IDEA.

Both DOH and DHS staff discussed challenges regarding the data system. The ACCESS 97 system is old and not supported by Microsoft. The data is not "real time" data. Each program uses its own identifier and no unique child identifiers are used State-wide. Aside from the seven program agencies, there is not a mechanism to consistently report data on specialty services provided. In the transition to DHS, discussions have been taking place to determine solutions to these issues. OSEP is concerned that the State has not been able to report all the data from the three specialty services. The State must submit, in the next APR, its plan to ensure that the data from all services will be reported under Section 618 reporting.

OSEP cannot, in light of the concerns addressed above, determine whether the system results in fully accurate data. In addition, in light of the change in lead agency, OSEP cannot yet determine how DHS will ensure the reporting of accurate and reliable data. It will be important that, as part of its FFY 2003 APR, due March 31, 2005, the State provide its data-based conclusions as to whether the State's procedures and practices ensure collection and reporting of accurate and timely data. The State must respond to the concerns expressed regarding exiting and specialty services data.

**Conclusion:**

In the next APR due March 31, 2005, DHS must provide:

1. any revised interagency agreements between DHS and (a) DOH, the State educational agency, the Rhode Island Department of Education, and (b) any other Rhode Island agencies (as needed);
2. a revised FFY 2004 Part C application (if needed to address any substantive application changes needed) including its revised system of payment policies and procedures (such as the recent Rhode Island legislation enacted to ensure payment of early intervention services);
3. its proposed monitoring procedures that will be used to monitor all-entities that are part of the Part C system to ensure identification and correction of noncompliance with Part C requirements;
4. the contact information for Rhode Island's Part C coordinator or other contact within DHS; and

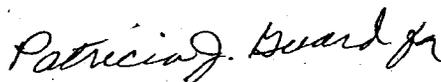
5. information regarding DHS's restricted indirect cost rate approved by the U.S. Department of Health and Human Services to apply to the Part C program. (Under 34 CFR §§76.563 through 76.569, DHS must ensure that it either does not charge indirect costs to the Part C FFY 2004 grant or has an approved restricted indirect cost rate from its cognizant Federal agency.)

In the next APR, the State also must:

1. demonstrate that the initial evaluation is completed within 45 days from the date of referral as required by 34 CFR §303.321(e)(2)(i);
2. submit its plan that includes strategies, targets and timelines to ensure timely correction of noncompliance within a reasonable period not to exceed one year from when the noncompliance is identified by the State;
3. submit documentation demonstrating that parents are informed on how to file a complaint including the option to file a formal written complaint;
4. submit a plan that includes strategies, targets, and timelines to ensure that prior written notice is provided to parents when required under 34 CFR §303.403;
5. report on the progress in updating its data system to accurately reflect exiting data as required under Section 618 of IDEA (including its review of the requirements for reporting exiting data, ensure that the definitions used by the State match OSEP's definitions and are reported accurately in the appropriate exiting categories), provide its data-based conclusions as to whether the State's procedures and practices ensure collection and reporting of accurate and timely data, and submit its plan to ensure that the data from all services will be reported under Section 618 reporting, including those provided by the three specialty providers.

We appreciate the cooperation and assistance provided by your staff during our visit, and we look forward to collaborating with Rhode Island 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: Deb Garneau, DOH  
John Young, DHS