



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

Honorable John A. Stephen
Commissioner
Department of Health and Human Services
129 Pleasant Street
Concord, New Hampshire 03301-3857

NOV 1 2006

Dear Commissioner Stephen:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) recent verification visit to New Hampshire under Part C of the Individuals with Disabilities Education Act (IDEA). As indicated in my letter to you on April 26, 2006, 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 IDEA. We conducted a visit to New Hampshire during the week of July 17, 2006.

The purpose of our verification reviews of States is to determine how they use their general supervision and State-reported data collection systems to assess and improve State performance and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the New Hampshire Department of Health and Human Services (DHHS), the State's Part C Lead Agency, OSEP staff met with Lorene Reagan (Supervisor for Children and Families Services in the Lead Agency), Carolyn Stiles (the State's Part C Coordinator), and other members of the DHHS and other 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 under Part C of the IDEA. Prior to the visit, OSEP staff reviewed a number of documents, including New Hampshire's Part C Application, FFY 2003 and FFY 2004 Annual Performance Reports (APRs), December 2, 2005 State Performance Plan (SPP), the State's record review form, selected DHHS corrective action plans, and submissions of data under Section 618 of the IDEA.¹

OSEP also conducted a conference call on June 27, 2006, with members of New Hampshire's State Interagency Coordinating Council, to solicit their perspectives on 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.

strengths and weaknesses of the State's systems for general supervision and data collection and reporting.

The information that Ms. Reagan, Ms. Stiles and the other 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 the New Hampshire Early Intervention System and DHHS' systems for general supervision and data collection and reporting.

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, previous monitoring results, etc.) to identify systemic issues and problems.

OSEP learned, through review of DHHS' monitoring reports and interviews with DHHS staff, that DHHS has established structures to monitor New Hampshire's eighteen Early Supports and Services (ESS) programs that provide early intervention services and service coordination. (The eighteen ESS programs consist of twelve Area Agencies (private non-profit organizations) located in ten geographic regions. The area agencies both provide early intervention services directly and contract with ESS programs.) The State's monitoring mechanisms include: annual child record reviews, an annual quality improvement process, a computerized data-based system (SPEDIS), monthly electronic program reports, and a 5-year cyclical Area Agency re-designation process. These structures provide both quantitative and qualitative information about the implementation of Part C in New Hampshire that includes: (1) data on number of children served and number of children exiting Part C, program settings for services, and types of early intervention services provided; (2) data related to compliance in Part C from individual child records, including procedural safeguards; (3) topics that require training or technical assistance; (4) data to improve the quality of early intervention programs; (5) annual evaluation of the early intervention system based on surveys from community partners and families; (6) data on the infrastructure, administrative and fiscal status of the ESS system (Area Agencies and ESS programs); and (7) data regarding timeliness of evaluations and assessments, individualized family service plans (IFSPs), early intervention services, and service coordination.

OSEP also learned, through interviews and document reviews, that the State's Part C staff carry out general supervisory responsibilities through a variety of ongoing activities,

utilizing the structures outlined above, including: (1) performing data analyses of monthly program reports that contain relevant information regarding IFSPs (contents of which are available in the State's electronic database); (2) reviewing and analyzing individual child information in another State electronic database (SPEDIS); (3) sponsoring quarterly meetings with ESS staff, program managers and supervisors to discuss performance and provide data about program performance expectations; (4) publishing periodic reports on ESS programs that are in compliance to encourage compliance in all programs. These reports are disseminated widely to Area Agency managers, ESS programs, the State ICC, and parents; (5) performing extensive annual contract reviews for each Area Agency; (6) reviewing each Area Agency's annual fiscal audit; (7) engaging the State's Interagency Coordinating Council, at least quarterly, in program improvement and compliance concerns; (8) conducting annual site visits to the eighteen ESS programs to ensure compliance is met; (9) conducting follow-up site visits, as needed, to ensure the correction of noncompliance; (10) reviewing, commenting on and approving ESS programs' annual improvement plans; and (11) participating in the cyclical Area Agency re-designation process.

DHHS and OSEP also discussed the use of the State's website as a general supervisory tool and as a means to disseminate information to the public. The State's Part C staff is in the process of developing a plan to enhance information currently available on the State's website. OSEP encourages DHHS to proceed with its plan.

DHHS staff stated that it typically monitors correction of noncompliance identified from its monitoring structures and ongoing general supervisory activities through corrective action plans, periodic progress reports, "work samples" (records or other data that demonstrates correction of noncompliance), record reviews conducted by Area Agency managers, and State follow-up site visits within one year of DHHS' identification of noncompliance. DHHS provided samples of its corrective action documents that indicate evidence of correction must be achieved no later than six months from the date it is identified in an ESS program. During the visit, the State provided documentation to demonstrate correction of noncompliance within one year of identification. DHHS staff also shared one example when correction did not occur within one year of identification of noncompliance and provided documentation of the steps taken by DHHS to address the delay in correcting the noncompliance. The State reported that this program did not meet the State's standard of achieving compliance within 6 months, due to management issues and inability to maintain compliance over a longer period of 12 months for two Part C issues (evaluation in all developmental areas and 45-day timeline). The State reported that the program resolved this matter through management reorganization.

OSEP and DHHS staff discussed the progress made by DHHS in correcting a systemic area of noncompliance that OSEP identified in New Hampshire's September 29, 2005 APR response letter related to ensuring that a transition meeting is held 90 days prior to a child's third birthday as required by 34 CFR §303.148(b)(2)(i). DHHS has regulatory sanctions that may be imposed if an Area Agency or ESS program fails to take the requisite corrective actions, such as withholding funding or removing funding, resources and authority to provide services in a designated area of the State. DHHS indicated that

it has not exercised this authority for any Part C program because other mechanisms such as the publication of reports of programs that are in compliance, providing targeted technical assistance, and providing peer support, were more effective in correcting noncompliance.

DHHS remarked that it ties its training and technical assistance to issues identified in ESS program improvement plans, on-site visits, and the Area Agency re-designation process. In instances when statewide training is required, the State uses sign-in sheets and evaluation forms to document those participants attending the training and whether the training met the needs of the participants. A local ESS program provider told OSEP that it discovered a need to provide technical assistance regarding appropriate referrals to and eligibility criteria for the State's Part C program as a result of its Area Agency re-designation process. The provider reported to OSEP that primary referral sources referred an increased number of appropriate children to the program as a result of the technical assistance.

DHHS also uses its quarterly meetings with staff from Area Agencies and ESS programs to disseminate and share promising practices. In addition, DHHS funds an Early Education and Intervention Network that provides statewide training, sponsors the State's longstanding mentorship program, and produces newsletters highlighting promising practices. One ICC member told OSEP that the State's mentorship program has been instrumental in supporting correction of noncompliance issues.

During the visit, the State and Area Agency staff frequently discussed the use of general supervision and data collection to: (1) link data with program improvement and compliance; (2) meet the training and technical needs of the ESS system leading to maintenance of compliance and retention of qualified personnel; (3) use collaboration between State staff, Area Agency Supervisors, and the ESS' peer support network to promote program improvement and achieve compliance; and (4) provide ongoing communication with Area Agencies and ESS programs to support program improvement and achieve compliance.

OSEP's March 2, 2006 letter responding to New Hampshire's Part C SPP indicated that the State must ensure the correction of noncompliance within one year of its identification and include data in the FFY 2005 APR that demonstrate timely correction of noncompliance. OSEP's March 2, 2006 letter also noted that failure by DHHS to provide data in its Part C FFY 2005 APR that demonstrate timely correction of noncompliance may affect OSEP's determination of the State's status under section 616(d) of the IDEA. The State reported to OSEP during the July 2006 verification visit that findings of noncompliance that it identified in the December 2, 2005 SPP were corrected with two exceptions: (1) the State imposed sanctions on one program that did not correct its noncompliance within one year; therefore, this program is not yet in compliance; and (2) a statewide systemic finding of noncompliance related to ensuring a transition meeting is held 90 days prior to a child's third birthday as required by 34 CFR §303.148(b)(2)(i). OSEP and DHHS discussed its progress in correcting the one State systemic area of noncompliance that OSEP identified in New Hampshire's September 29,

2005 APR response letter and that the State identified in the SPP related to ensuring that a transition meeting is held 90 days prior to a child's third birthday.

Based on documents reviewed, prior to and during the visit, and discussions with the State, it appears that DHHS' general supervision system is reasonably designed to identify and correct noncompliance; however, OSEP cannot, without also collecting data at the local level, determine whether it is fully effective in identifying and correcting noncompliance. As noted in OSEP's March 2, 2006 letter responding to New Hampshire's Part C SPP, the State must include data in response to Indicator 9 in its FFY 2005 APR, due February 1, 2007, that demonstrate timely correction of State-identified noncompliance as required in 34 CFR §303.501(b)(4).

OSEP reviewed DHHS' system for the resolution of State complaints, due process hearings and mediation. Since July 1, 2004, the State received only one request for a due process hearing and mediation. The matter was resolved through mediation in less than 30 days from the date the request was received by the State.² DHHS reported that it also receives two to three phone calls per year from parents requesting assistance with Part C issues. When DHHS receives a call from a parent, DHHS staff reported that the State discusses the parents' rights under Part C and informs them about how to file a complaint, request a due process hearing or mediation. However, the State reported that parents typically prefer to have their concerns resolved locally. DHHS follows up with the Area Agency from the geographic region where the parent resides to follow up on the informal inquiries the State receives and then follows up by contacting each parent to ensure the parent's concern was resolved.

DHHS and OSEP staff also discussed how DHSS ensures that parents are informed about the dispute resolution procedures under Part C of the IDEA. The State staff told OSEP that the service coordinator is the primary contact for informing parents of the dispute resolution procedures, and that DHHS monitors children's records, at a minimum annually, to ensure that the service coordinator provides information regarding dispute resolution procedures. The State also hosts an annual training for hearing officers, mediators, Area Agencies and ESS programs regarding dispute resolution procedures.

To enhance its procedural safeguards system, the State reported to OSEP that it established a procedure in May 2006 by which any family concern or inquiry received at the Area Agency or ESS program levels must be reported to the State's Part C office on a monthly basis. The Area Agency or ESS program must also report to the State the resolution of the problem or the plan to resolve a family concern. DHHS plans to review and catalogue this information and submit it to an already existing State Quality Assurance Network (comprised of representatives from Area Agencies, the DHSS' attorney and Part C and other DHHS staff). The State's intent is to monitor not only the resolution of individual concerns, but to monitor possible statewide trends that may need

² In DHHS' December 2, 2006 SPP, the State reported it had received 1 complaint, 1 request for a due process hearing, and 1 request for mediation during 2004-2005. However, during the visit, DHHS explained to OSEP that it had received 1 simultaneous request for mediation and a due process hearing, not a request for a complaint investigation.

to be addressed through quality improvement, corrective action, or training and technical assistance.

OSEP also reviewed DHHS' prior written notice document, required pursuant to 34 CFR §303.403, to determine whether it included information about the availability of State complaint procedures under 34 CFR §§303.510 through 303.512. 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 DHHS' prior written notice document includes most of the requisite information regarding State complaint procedures under 34 CFR §§303.510 through 303.512, required pursuant to 34 CFR §303.403(b). The attached memorandum contains OSEP's analysis of the dispute resolution provisions of New Hampshire's prior written notice under Part C.

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.

OSEP believes that DHHS' system for collecting and reporting data from the early intervention programs is a reasonable approach to ensuring the accuracy of the data that DHHS reports to OSEP under section 618.

In interviews with OSEP, DHHS staff stated that the State collects timely 618 data from the Area Agencies and ESS programs in order to meet OSEP's submission timelines and ensure reliability of the data submissions through an electronic database entitled "SPEDIS" (a database operated by the New Hampshire Department of Education (NHDOE) for DHHS through a Memorandum of Agreement). One person in either the Area Agency or ESS program has authority to enter and modify data entries. Data entry personnel are required to transmit new monthly 618 data by a certain date each month. The NHDOE data manager conducts reliability checks as does an off-site vendor to assure information in the database matches State and Federal data definitions. A NHDOE expert is available to Area Agencies and ESS programs to address technical questions about the operation of the electronic system. Confidentiality is maintained through the use of various passwords, user identification numbers, and limitations on the

number of State and local staff that can view personally identifiable information in the data system.

DHHS reported that, although this system is able to collect data that is required to be reported to OSEP under IDEA Section 618, users reported to OSEP their difficulty in entering data into the system due to periods of system unavailability or slowness. OSEP's interviews found that use of these data for program management is limited and it is difficult to modify the system. DHHS staff remarked that, in 2004, the NHDOE began development of an electronic database that will be flexible and more user friendly. DHHS indicated that it began piloting a new system for Part C on July 24, 2006. Under the new system, service coordinators are responsible for entering data into the system allowing them to track important events and activities required under Part C. In addition, DHHS and ESS program providers will be able to run various reports to enhance current program monitoring. During the rollout of the new system, the State will continue to operate its prior SPEDIS data system until the State can ensure the new system is reliable and meets the needs of the State.

The State also indicated that it ensures the accuracy of data through other mechanisms that include: (1) data from SPEDIS, monthly reports and on-site record reviews are matched to ensure reliability and validity of data; (2) Area Agency managers are held accountable for submitting reliable and valid data; (3) data dictionaries and instruction manuals are provided and updated as needed; (4) DHHS and Area Agencies discuss data challenges and solutions during quarterly meetings; and (5) new data entry personnel are trained by State personnel in a computer laboratory.

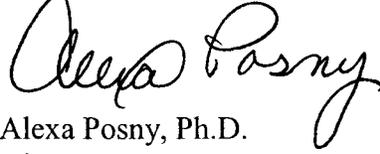
DHHS staff told OSEP that data collection and analysis is an integral part of its general supervisory activities (described above under the "General Supervision" section of this letter). Analysis of data is used, for example, to monitor program growth and effectiveness of child find, to identify trends in referrals to preschool special education and to ensure adequate personnel are available to provide services required under Part C.

Conclusion

As noted above, although it appears that New Hampshire's Part C system for general supervision is reasonably designed to identify and correct noncompliance, the State must include data in response to Indicator 9 in its FFY 2005 APR, due February 1, 2007, that demonstrate timely correction of State-identified noncompliance as required in 34 CFR §303.501(b)(4).

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to collaborating with New Hampshire as you continue to work to improve results for infant and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large, looping initial 'A'.

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosure

cc: Carolyn Stiles
Part C Coordinator