



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

AUG 14 2006

Honorable Estelle B. Richman
Secretary
Department of Public Welfare
Health and Welfare Building
Room 333
Post Office Box 2675
Harrisburg, Pennsylvania 17105-2675

Dear Secretary Richman:

The purpose of this letter is to inform you of the result of the Office of Special Education Program's (OSEP's) recent verification visit to Pennsylvania. As this office explained in its letter that was received in the Pennsylvania Office of Child Development, Department of Public Welfare on March 23, 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 with Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Pennsylvania on May 17 and 18, 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, child and family outcomes, and the protection of child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine the extent to which OSEP can rely on the State's data to make focused monitoring decisions; and (3) determine the extent to which the State's systems are effective in ensuring compliance and improving performance.

My staff appreciated the opportunity to meet with Ms. Harriet Dichter, Deputy Secretary for Child Development, at the beginning of their visit to the Office of Child Development, Division of Early Intervention Services. As part of the verification visit to your agency, OSEP staff also met with Ms. Maureen Cronin, the State's Part C coordinator, and with members of your agency's staff who are involved in, and responsible for, the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), and collection and analysis of State-reported data. As part of the review process, we also reviewed a number of State documents¹, including: (1) Pennsylvania's State Performance Plan (SPP); (2) Pennsylvania's FFY 2003 Annual Performance Report (APR); and (3) Pennsylvania's revised Improvement Plan. In addition, we conducted a conference call on May 4, 2006 with a number of members of your State's Interagency Coordinating Council, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision and data collection.

¹ 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. Cronin 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 Pennsylvania systems for general supervision and data collection and reporting for the Pennsylvania 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., section 618 State-reported data, due process hearings, complaints, mediation, previous monitoring results, etc.) to identify systemic issues and problems.

Pennsylvania is in the process of implementing the State Performance Plan (SPP) that OSEP's March 10, 2006 letter indicated includes measurable and rigorous targets and improvement activities that meet the requirement of 616(b) of the IDEA. In its SPP, the State reported a 72% level of compliance for Indicator 9A, and a 79% level of compliance for Indicator 9B, regarding correction of noncompliance within one year of identification as required by 34 CFR §303.501. The State's SPP includes activities to address, among other things, the State's failure to correct noncompliance within one year of identification. OSEP's March 10, 2006 letter requested that the State provide documentation in the FFY 2005 APR, due to OSEP by February 1, 2007, that demonstrates compliance with each of the areas of noncompliance identified in OSEP's letter, including the State's failure to ensure the correction of noncompliance within one year of identification. Failure to demonstrate compliance at that time may affect OSEP's determination of the State's status under section 616(d) of the IDEA.

Effective July 2005, the Pennsylvania early intervention program was moved from the Office of Mental Retardation (OMR) to the Office of Child Development (OCD) under the direction of Deputy Secretary Dichter. OSEP learned through Deputy Secretary Dichter that the intent of the move was to increase the focus on early childhood by combining all early childhood programs under one department, and to enhance collaboration among the offices of Child Care, OCD, the Pennsylvania Department of Education (PDE), and Head Start. The restructuring and enhanced collaboration among early childhood programs in Pennsylvania is intended to increase inclusion, enhance the State's ability to measure child outcome and progress, and allow OCD to implement its SPP improvement activities that are designed to improve performance in the area of Part C to Part B transition.

OSEP learned through review of Pennsylvania's SPP and confirmed through interviews with Pennsylvania's Part C staff that the Pennsylvania Part C program and PDE have established an interagency linkage to ensure compliance and improve performance. Examples of the types of

activities resulting from the linkage include establishment of joint workgroups that address birth to age 5 issues including: (1) developing service guidelines; (2) building new approaches to childhood assessment; (3) reviewing quality management issues such as effectively leveraging the resources of both programs; (4) examining financial issues; (5) increasing inclusion of Part C children transitioning to Part B programs; and (6) developing outcome measures and child progress.

OSEP learned through review of Pennsylvania's SPP and confirmed through interviews with Pennsylvania's Part C staff that the Pennsylvania Part C program is a county-administered program through the Mental Health/Mental Retardation (MH/MR) framework. There are 67 counties in Pennsylvania and 48 early intervention systems². The counties contract with individuals and agencies to provide early intervention services to infants and toddlers with disabilities and their families. The State has assigned an early intervention coordinator with supervision and oversight responsibility at the county level to each of the early intervention systems. The State assumes oversight of county implementation through State monitoring of counties, and the counties use a variation of the State's monitoring tool to monitor local providers.

Components of the State's general supervision system: OSEP learned through review of Pennsylvania's SPP and confirmed through interviews with Pennsylvania's Part C staff that the State's general supervision system consists of the following eleven components: (1) State monitoring reviews which include annual monitoring of the State's 48 early intervention systems; (2) development of corrective action plans by counties that delineate the manner in which noncompliance will be corrected within one year from identification; (3) validation reviews conducted by the State six months after the date of the exit interview, to assess the status of correction of noncompliance by the county; (4) county early intervention program monitoring of local providers, required on an annual basis to ensure compliance with IDEA Part C requirements; (5) county early intervention program self-assessment, conducted every three years with the involvement of stakeholders and used to review such issues as the family's evaluation of the program, family-centered practices, and observation of multi-disciplinary evaluations and individualized family service plan (IFSP) meetings to assess personnel skills; (6) annual training and technical assistance plans for improvement developed by each county early intervention systems; (7) stakeholder involvement, specifically the State Interagency Coordinating Council (SICC) that assists in identifying potential solutions to systemic issues; (8) dispute resolution processes, including complaints, mediation and due process hearings; (9) communication systems such as regular meetings between State and county staff to discuss areas of concern, quarterly meetings with Part B preschool and county staff to increase collaboration, discuss issues, and problem solve; (10) People Stat, Pennsylvania's department-wide quality and program management entity designed to increase accountability for program performance and improvement; and (11) the State's early intervention reporting system (EIRS) which allows the State to ensure accurate and timely data.

² Some of the 67 counties joined together, as a result of their population base, to form the 48 early intervention systems. In this letter, both the terms "counties" and "early intervention systems" are used to indicate the programs that administer early intervention services to infants and toddlers and their families at the local level.

Identification of noncompliance: OSEP learned through interviews with Pennsylvania's Part C staff that the State determined the tool utilized to monitor its early intervention systems statewide during the 2003-2004 and 2004-2005 reporting periods posed a barrier to effective general supervision. Specifically, the State determined the monitoring tool: (1) was subjective and as a result, there were inconsistencies in its application among users; (2) was not evidence-based; (3) did not provide information with the required level of specificity; (4) did not yield results in a manner that could easily be analyzed or allow for reports to be generated without difficulty; (5) was outdated to current practices; (6) did not address quality of services or family input; and (7) did not assist in identifying Statewide training needs.

To address the barrier, the State implemented a new monitoring format effective July 2005.³ The Early Intervention Quality Management Tool (EIQMT) is based upon key indicators and takes a comprehensive look at the performance of early intervention systems. The State has developed a protocol and monitoring guidelines to facilitate consistency among monitoring staff using the EIQMT. The monitoring reports for the early intervention systems include numerical scores and describe any noncompliance. The State reports this scoring process better identifies the progress that the early intervention systems are making toward achieving compliance. Each early intervention system is able to view the scores of its counterparts throughout the State and the State plans to post monitoring reports on the State's website. The State reports that the use of the EIQMT supports the State's identification of IDEA Part C noncompliance.

The State monitors each of the early intervention systems on an annual basis. As part of the monitoring process, the State reviews the early intervention system's policies and procedures, systems for collecting and reporting data, and results of complaints and due process hearings. The State also reviews child early intervention records and validates that services are provided consistent with the child's IFSP. State staff conducts observations of first contacts, IFSP meetings, transition meetings, and service delivery and interviews families. The State has procedures in place to ensure that the sample of child records reviewed represents different service coordinators, early intervention providers and funding streams; low incidence disabilities; geographic regions within the county; and children transitioning to Part B or other community services. The counties are required to monitor their contracted providers on an annual basis to ensure compliance with requirements of IDEA and State early intervention regulations. The State considers the results of that monitoring when conducting the annual review of the counties, along with the county's self-assessment that is completed every three years. At the conclusion of the monitoring, the State conducts an exit interview with the early intervention system staff to summarize the program strengths and areas of needed improvement. A written monitoring report is sent to the early intervention system, describing any identified noncompliance.

Based on OSEP's review of Pennsylvania's Part C monitoring system during the verification visit, OSEP believes that Pennsylvania's revised systems for general supervision are reasonably calculated to identify noncompliance.

³ EIQMT was piloted in 4 early intervention systems in 2004-2005, and was implemented statewide effective July 2005.

Correction of noncompliance: The early intervention system must develop and submit a plan of correction within 30 days of the date of the State's report of findings of noncompliance. The corrective action plan identifies the steps that will be taken to correct all identified noncompliance within agreed upon timelines, not to exceed one year from the date of identification. The State conducts validation reviews within six months of the monitoring exit interview to verify that areas of noncompliance have been corrected. While the State has been effective in identifying IDEA Part C noncompliance, it continues to report difficulty in correcting all identified noncompliance in a timely manner.

The State's regulations outline the State's enforcement authority when an early intervention system fails to comply with the requirements. The State has procedures in place for enforcement, including sanctions, if an early intervention system fails to correct noncompliance within one year of the date of identification. These include: focused training and technical assistance related to correcting the area of noncompliance; requiring completion of a fiscal audit; placing restrictions or special conditions on funding; and withholding funds.

Pennsylvania contracts with Early Intervention Technical Assistance (EITA) to provide training and technical assistance to the counties. Annually, each early intervention system, in collaboration with EITA staff, develops a training and technical assistance plan based on the results of the State's monitoring, results of the early intervention system's self-assessment, complaints and due process hearing findings, and statewide initiatives. State staff monitors implementation and outcomes of the early intervention system's training and technical assistance plan.

During OSEP's verification visit, State Part C staff provided documentation to demonstrate an early intervention system's correction of noncompliance within one year of identification. The State also shared an example where correction did not occur within one year and provided documentation of the steps taken by the State to address the early intervention system's delay in correcting the noncompliance. Although the State has shown that it has ensured the correction of some noncompliance within one year of identification, OSEP cannot determine whether the State's procedures ensure the correction of all State-identified noncompliance within one year of identification. As stated in OSEP's March 10, 2006 letter regarding Pennsylvania's SPP, the State must include data in the FFY 2005 APR that demonstrate compliance with the general supervision requirements in 34 CFR §303.501.

Complaint Resolution, Mediation, and Due Process Systems: The State has disseminated information about methods available to resolve disputes concerning early intervention services. Parents are provided notice of procedural safeguards through the State's publication, "*A Family's Introduction to Early Intervention in Pennsylvania.*" As part of its monitoring process, the State verifies that parents have been properly informed of their procedural safeguards, including the availability of the dispute resolution processes under IDEA. This includes reviewing child records to ensure that parents are provided notice of procedural safeguards and that a signed and dated "Parent Rights Agreement" is contained within the record as required by the State's procedures.

The State has disseminated its publication, "*Problem Solving in Early Intervention Birth to Age Three*" to parents and the community-at-large. This publication describes the procedures for filing a complaint, requesting mediation, and initiating a due process hearing under IDEA. The publication also includes information about the conflict resolution process required by State regulation. This process affords parents the opportunity to meet with a county administrator to attempt to resolve issues relating to the provision of early intervention services to an infant or toddler with a disability and the infant or toddler's family. The conflict resolution process is voluntary on the part of the parents and does not preclude parents from exercising their procedural rights under IDEA.

The State reports that seven complaints were received during the FFY 2004-2005 reporting period. Each of the complaints was investigated and resolved within the 60-day timeline. The State provides technical assistance and follow-up to ensure implementation of the corrective actions required as a result of the investigations. Complaint findings are considered when the State conducts its monitoring of the counties and determines county and Statewide training and technical assistances needs.

The State received two requests for mediation during the FFY 2004-2005 reporting period. Of those, one mediation session was held but did not result in a mediation agreement.

The Office of Dispute Resolution (ODR) conducts due process hearings, pursuant to a contract with the State. The State ensures that hearing officers receive training annually or more frequently if the need arises, to ensure they are knowledgeable about Part C of IDEA requirements and applicable State early intervention law. The State reports it received nine requests for due process hearings during the FFY 2004-2005 reporting period. Of these, four resulted in a due process hearing. The State reports that each of the four due process hearings held during the FFY 2004-2005 reporting period were issued beyond 30 days because the hearing officer granted an extension of the timeline.

Although the primary purpose of OSEP's verification visit was not to identify noncompliance, some of the information provided during the visit demonstrated that the State has not complied with the Part C requirements regarding due process hearing procedures under 34 CFR §303.423(b). Under 34 CFR §303.423(b), when a State chooses to implement due process procedures under Part C, the hearing decision must be rendered within 30 days of the request for a hearing and no extensions are allowed.

While State regulation requires that due process hearings be held and a decision rendered within 30 days to the parties, the State's Policy Bulletin 00-99-09, Early Intervention Due Process System, allows the hearing officer to grant a delay or postponement of the hearing for extenuating circumstances. Subsequent to the verification visit, the State notified OSEP that the State's Policy Bulletin 00-99-09 was rescinded and Pennsylvania Early Intervention Regulations, Chapter 4226 establish the requirements for due process hearings. The State provided a written assurance to OSEP that all providers in the state will comply with IDEA requirements, including 34 CFR §303.423(b). However, OSEP cannot yet determine whether the State has taken the steps necessary to ensure due process hearings are conducted and written decisions issued within 30 days of the hearing request consistent with 34 CFR §303.423(b). Therefore, OSEP is requesting

that the State submit data in the February 1, 2007 APR that demonstrate compliance with the due process procedures at 34 CFR §303.423(b).

Collection of Data under Section 618 of the IDEA

In reviewing 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.

The State uses the Early Intervention Reporting System (EIRS) to collect and report the data required under section 618 of the IDEA. EIRS enables the State to aggregate and disaggregate its early intervention data. Policies on data collection and reporting are documented in the State's *Early Intervention Reporting System Roles and Responsibilities*. Compliance with these procedures is a component of the State's annual compliance and monitoring process with the early intervention systems.

Access to the data base environments in EIRS is restricted based on staff roles and responsibilities. Encryption technology is used to protect the confidentiality of data in the transmission process. The counties collect and enter their data for monthly submission to the State. The State provides the counties with a transaction error listing following each EIRS data submission. The State's EIRS Support Group provides the early intervention system with information that details the errors and possible solutions for correcting them. State staff is responsible for ensuring that the county corrects all findings on the error report in a timely manner.

The State has procedures in place to identify and correct errors and inadequacies in the EIRS data. The State ensures reliability through an editing program that performs a check on the data to verify its accuracy. The State conducts monthly, quarterly, and annual reviews of the data to identify inconsistencies and follow up with early intervention systems as necessary. The State examines data on a quarterly and annual basis to determine its accuracy specifically with regard to the following: age of referral; percentage of children in active service in each reported ethnic group by county; number of children served; number of children leaving service each month; number of children at-risk tracking; and children served by types and location of service provided.

As part of the State's onsite monitoring of early intervention systems, State staff observes the early intervention system staff's ability to use EIRS and generate data reports. Inconsistencies

identified through the monitoring process are addressed through a corrective action plan and staff training.

EIRS is updated, at least annually, to meet any new requirements. When new fields are added to EIRS, the EIRS manual is updated, which is available both in hard copy and online, and statewide training is conducted. Recent changes to EIRS reflect commitments the State has made to address effective transition and collection of child and family outcome data.

New Data Initiatives: The State is looking to develop a statewide web-based system to report the performance of the early intervention systems to the public. Pennsylvania was recently awarded a General Supervision Enhancement Grant (GSEG) from the U.S. Department of Education, Pennsylvania Early Childhood Outcomes Evaluation Grant. The primary purpose of the grant is to develop a comprehensive measurement process across the State's early learning programs for children aged 0-5. One of the goals of the GSEG is to develop a database for child and family outcome data for children aged 0-5 that will be coordinated with the State's existing data systems. The child and family outcome data will be used to improve the State's interventions and programs for young children and identify the need for additional programs or resources.

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

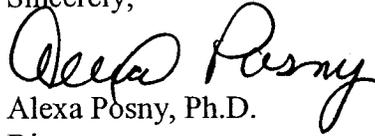
Conclusion

Although OSEP believes that Pennsylvania's revised systems for general supervision are reasonably calculated to identify noncompliance, OSEP cannot determine whether the State's procedures ensure the correction of all State-identified noncompliance within one year of identification. As stated in OSEP's March 10, 2006 letter regarding Pennsylvania's SPP, the State must include data in the FFY 2005 APR, due February 1, 2007, that demonstrate compliance with the general supervision requirements in 34 CFR §303.501.

In addition, OSEP cannot yet determine whether the State has taken the steps necessary to ensure due process hearings are conducted and written decisions issued within 30 days of the hearing request consistent with 34 CFR §303.423(b). Therefore, OSEP is requesting that the State submit data in the FFY 2005 APR that demonstrate compliance with the due process procedures at 34 CFR §303.423(b).

We appreciate the cooperation and assistance provided by your staff during our visit. If you have any questions about this letter, please contact Ms. Lisa Pagano, OSEP's State Contact for the Pennsylvania Part C program at 202-245-7413. We look forward to collaborating with Pennsylvania 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 "Alexa Posny". The signature is fluid and cursive, with the first name "Alexa" written in a larger, more prominent script than the last name "Posny".

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

cc: Maureen Cronin