



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

SEP 15 2004

Honorable Scott D. Williams, M.D., M.P.H.
Executive Director
Utah Department of Health
P.O. Box 142802
Salt Lake City, Utah 84114-2802

Dear Honorable Scott Williams:

The purpose of this letter is to respond to the Utah State Department of Health's (UDOH's) May 28, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement activities) and consolidates the self-assessing and improvement planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

Background

In its May 3, 2004 response to Utah's FFY 2001 APR submitted in FFY 2003, OSEP required the State to report on the progress made to correct the previously identified area of noncompliance that UDOH failed to ensure that the initial IFSP meeting was held within 45 days of the referral to Part C. OSEP also requested UDOH to provide data to demonstrate performance and compliance in the following three areas: (1) Individualized Family Service Plans (IFSPs) including an appropriate justification when services cannot be provided in the natural environment; (2) a transition conference is held, with the approval of the family, for children who may be Part B eligible, at least 90 but not more than 180 days, before the child's third birthday; and (3) the percentage of children receiving Part C services who demonstrate improved and sustained functional abilities.

During the week of April 26, 2004, OSEP visited Utah to verify the State's systems for general supervision and data collection under Section 618 of IDEA. OSEP summarized the results of that visit in its May 8, 2004 letter to the State and concluded that although the State's system is

reasonably calculated to identify noncompliance, OSEP cannot, without collecting data at the local level determine if the noncompliance is corrected.

The State's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas (as well as any other areas identified by the State to ensure improvement). OSEP's comments regarding the State's FFY 2002 APR are listed by cluster area below.

General Supervision

OSEP's May 3, 2004 letter in response to the FFY 2001 APR stated that UDOH included data and analysis to demonstrate that UDOH's general supervision system was effective in identifying and correcting noncompliance. OSEP, in its May 8, 2004 verification letter to the State, however identified noncompliance with the provision to ensure the timely correction of noncompliance as required by 34 CFR § 303.501(a)(2)(b). OSEP, in its May 8, 2004 verification letter required UDOH to revise the State's monitoring protocols for the Compliance Determination Report (CDR), provide evidence that all local programs were required to correct all identified area(s) of noncompliance and submit the documentation to OSEP by July 28, 2004.¹

On pages 2-11 of the FFY 2002 APR, UDOH identified results from its general supervision activities that confirmed noncompliance with the timely correction of identified areas of noncompliance identified by OSEP. UDOH reported that 14 of 15 local program applications were approved; file reviews and follow-up monitoring were conducted in 10 local programs (follow-up monitoring was conducted in two local programs monitored in FFY 2001). The result of UDOH's monitoring demonstrated that four of the 10 local programs were compliant with Part C requirements. Three of the six remaining local programs were required to develop an improvement plan to correct the identified areas of noncompliance within one year. However, due to a staff vacancy at the State level, the remaining three local programs were not issued a Compliance Determination Report (CDR); therefore, they did not develop an improvement plan to correct the identified areas of noncompliance. UDOH reported that the State was in the process of issuing a CDR to the three local programs previously monitored and analyzing the data from the improvement plans for three local programs that developed one. UDOH indicated that the data and the analysis from these activities would be reported in the FFY 2003 APR. On pages four and seven of the APR, the State included strategies, proposed targets and timelines designed to ensure compliance with the provision to ensure the timely correction of noncompliance. OSEP accepts these strategies. UDOH must report on the progress being made to correct the areas of noncompliance, including supporting data and its analysis, in the FFY 2003 APR due March 31, 2005, and provide a report to OSEP demonstrating compliance no later than 30 days following one year from the date of this letter.

On August 15, 2004, UDOH submitted the revised monitoring protocols to OSEP. OSEP's analysis of UDOH's monitoring protocols will be disseminated under separate cover letter. UDOH on pages 24-25, 31, and 32 of the FFY 2002 APR, presented data and analysis that indicated compliance with the provision to ensure that the State's monitoring system was effective to identify areas of

¹ On July 7, 2007, UDOH requested, and OSEP granted, an extension to submit the required documents on August 15, 2004 instead of July 28, 2004 as specified in the May 8, 2004 verification letter. UDOH submitted these documents to OSEP.

noncompliance as required by 34 CFR § 303.501. UDOH's monitoring data indicated that three new areas of noncompliance were identified as described in the Early Intervention Services in Natural Environments and the Transition sections of this letter, specifically provisions to ensure: (1) all services documented on the IFSP were provided as required by 34 CFR §§303.344 and 303.342(e); (2) IFSPs included steps to support the transition of the child and family, as required by 34 CFR §303.344(h); and (3) a transition conference was held, with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §§303.148(b) and 303.344(h).

On page 7 of the FFY 2002 APR, UDOH reported that no complaints, mediations, or due process hearings were filed; however, the State on page five of the APR identified the lack of effective procedures to ensure procedural safeguards as required by 34 CFR §303.400, as one of the systemic areas of noncompliance. In the May 8, 2004 verification letter, OSEP confirmed noncompliance with the provision for procedural safeguards. OSEP, in its May 8, 2004 verification letter required UDOH to ensure that each of its 15 local programs revised the procedural safeguards notice and submit evidence to OSEP on July 28, 2004. In the May 8, 2004 verification letter, OSEP required UDOH to demonstrate that prior written notice was given at the times required by 34 CFR §303.403(a). UDOH, in a telephone conference with OSEP staff on July 7, 2004, proposed to develop a State-wide procedural safeguards notice and require all local programs to adopt and implement these procedural changes to ensure consistency and compliance. UDOH, on the conference call reported that a draft of the State-wide procedural safeguards notice would be submitted to OSEP by August 15, 2004. OSEP accepted this proposal. UDOH, on August 15, 2004 submitted these documents to OSEP. OSEP's analysis of UDOH's procedural safeguards notice will be disseminated under separate cover letter. UDOH, must submit a final progress report including information on training and the distribution of the revised notice form, in the FFY 2003 APR due March 31, 2005.

On page 3 of Attachment 2 of the FFY 2003 APR, UDOH described the State's capacity to coordinate funding resources within the State to ensure the provision of early intervention services. UDOH reported that State funds constituted the greatest financial support. The other sources of funding included: (1) Medicaid; (2) Maternal and Child Health block grant; and (3) donations.

On pages 8-12 of the APR, UDOH reported that State policy required staff to renew their credentials every five years. UDOH stated that 26 of the 48 staff renewed their credentials within the specified timeframe, the remaining 22 staff were required to develop corrective action plans and all but three staff have renewed their credentials to ensure compliance as required by 34 CFR §303.361. UDOH indicated it is following up to ensure that the remaining staff appropriately renewed their credentials.

On pages 13-14 of the APR, UDOH reported compliance with the State's requirement that all local programs submit the required data sets, including 618 data, in a timely manner, consistent with the State's contract provisions. UDOH stated that a data manager was hired in June 2003 to facilitate data-related activities, including the electronic database Baby and Toddler Online Tracking System (BTOTS). The BTOTS would allow local programs to submit or export data in a standard format and minimize data errors.

UDOH, must report in the FFY 2003 APR due March 31, 2005 on the progress being made to: (1) correct the noncompliance regarding the timely correction of identified areas of noncompliance including the three newly identified areas of noncompliance described in the Early Intervention

Services in Natural Environments and Early Childhood Transition sections of this letter; and (2) information on training and the distribution of the revised procedural safeguards notice form, in the in the FFY 2003 APR due March 31, 2005.

Comprehensive Public Awareness and Child Find System

UDOH provided trend data to demonstrate that public awareness and child find activities were being implemented to ensure that the requirements at 34 CFR §§303.320-323 of Part C of the IDEA were met. On pages 15-17 of the FFY 2002 APR, UDOH required that coordinated child find and public awareness activities were implemented to ensure that all eligible infants and toddlers and their families were identified and referred to Part C. UDOH reported that, over the past five years, the number of eligible infants and toddlers served increased by 38%. UDOH indicated that the number of children served, birth to age three, remained constant: 1.92 % in FFY 2001 and 1.96% in FFY 2002. The number of infants under age one however, decreased from .96% in FFY 2001 to .83% in FFY 2002.

UDOH's data did not indicate noncompliance in this area and, based on its review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster area.

Family Centered Services

OSEP, in its May 3, 2004 response to UDOH's FFY 2001 APR, recommended that UDOH report on the results of the activities implemented to maintain performance in this cluster area in the FFY 2002 APR. UDOH included baseline data to demonstrate that seven of the 10 local programs were in compliance with the provision to ensure that family outcomes were routine/activity-based and were documented on the IFSP as required by 34 CFR §303.344(c). The three local programs found out of compliance developed improvement plans and completed all of the targeted activities to demonstrate compliance. UDOH indicated that, due to staff shortages in FFY 2001, the family survey that was designed to collect data in this area was not implemented. OSEP recommends that in the FFY 2003 APR, UDOH report on the results of the family satisfaction survey and any additional data to indicate the extent to which progress toward achieving the family outcomes is being made consistent with 34 CFR §303.344(c)(1).

UDOH's data did not indicate noncompliance and, based on its review of the data and information reported in the APR, OSEP did not identify additional concerns in this cluster.

Early Intervention Services in Natural Environments

OSEP, in the May 3, 2004 response to the State's FFY 2002 APR, required UDOH to demonstrate progress to correct the following areas of noncompliance and to determine the level of performance regarding: (1) whether initial IFSP meetings were held within 45 days of referral to Part C as required by 34 CFR §303.342(a); (2) the extent to which IFSPs contained an appropriate justification when services were not provided in the natural environment, consistent with 34 CFR §303.344(d)(i)(ii); and (3) the percentage of children participating in the Part C program that demonstrated improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). UDOH was required to submit to OSEP an interim progress report by October 31, 2004 and a final progress report by June 3, 2005 demonstrating compliance with the 45-day timeline requirement. OSEP also required UDOH to revise its target to ensure that 90% of

the initial IFSP meetings were held within 45 days of the referral to Part C to reflect that all (100%) of the initial IFSP meetings would be held within 45 days consistent with 34 CFR §303.342(a). On page 24 of the APR, UDOH revised the target to demonstrate full compliance with this cluster.

On pages 24-25 of the APR, the State included data and analysis that demonstrated progress to hold the initial IFSP meeting within 45 days of the referral to Part C. The results of UDOH's monitoring data indicated that seven of the 10 local programs were in compliance and 86% of the files from the 10 local programs demonstrated compliance in this area. UDOH indicated that two of the three local programs identified as noncompliant completed the strategies and activities in their corrective action plan. As a result, nine of the 10 local programs completed the strategies and activities in the corrective action plans that support correction of the noncompliance as required by 34 CFR §303.342(a). UDOH must in the interim progress report, due by October 31, 2004 continue to report its progress to ensure that the initial IFSP meeting is held within 45-days of the referral to Part C. UDOH must submit a final progress report by June 3, 2005.

OSEP, in the May 3, 2004 response to the State's FFY 2001 APR required UDOH to present a plan to ensure compliance with the provision to ensure that an appropriate justification was written on the IFSP when early intervention services were not provided in the natural environment no later than June 3, 2005. On pages 27-28 of the APR, UDOH presented data to indicate improvement in this area and presented strategies, targets and timelines to correct the noncompliance. UDOH's monitoring data indicated that seven of the 10 local program and 84% of the files reviewed in the 10 local programs were in compliance in this area. UDOH stated that one of the three local programs identified as noncompliant implemented its corrective action plan to address this issue and follow up activities, including data verification and technical assistance, would be conducted to ensure compliance. OSEP has reviewed and accepts these strategies, targets and timelines. UDOH must report on the progress being made to correct the areas of noncompliance, including supporting data and its analysis, in the FFY 2003 APR due March 31, 2005, and provide a report to OSEP demonstrating compliance not later than 30 days following one year from the date of this letter.

OSEP's analysis of UDOH's FFY 2002 APR data identified a new area of noncompliance not previously identified by OSEP. On pages 24-25 of the APR, UDOH's monitoring data indicated that seven of the nine local programs monitored (one local program was not monitored in this area) were out of compliance with the provision to ensure that all services identified on the IFSPs were provided as required by 34 CFR §303.344. UDOH reported that a preliminary analysis of the data indicated that this area of noncompliance might be attributed to a lack of documentation in the records. UDOH included strategies, targets and timelines to address this issue. OSEP has reviewed and accepts these strategies, targets, and timelines. OSEP requests that the State report on the progress being made to address this noncompliance, including supporting data and its analysis, in the FFY 2003 APR due March 31, 2005, and provide a report to OSEP demonstrating compliance not later than 30 days following one year from the date of this letter.

On pages 24-25 of the APR, UDOH reported that nine of the 10 local programs monitored demonstrated compliance with the provision to ensure that children were assessed in all five developmental areas and family assessments were conducted and documented on the IFSP. On pages 29-30 of the APR, UDOH stated strategies were being explored to document ways to quantify sustained and improved functional abilities. UDOH provided data to show that the number of children exiting Part C, as a result of completing the goals on the IFSP, increased from 15% in FFY 2001 to 18% in FFY 2002. UDOH reported that 27% to 29% of the Part C eligible children exiting

Part C either achieved appropriate developmental skills for their age or were determined not eligible for Part B services. UDOH proposed strategies including development of a process to measure the level of delay or functioning over time utilizing the State's electronic database system.

UDOH provided data on the number of children who exited Part C as a result of completing IFSP goals or achieving appropriate developmental skills for their age. This standard is higher than the Part C indicator which requested State reports on the percentage of children participating in the Part C programs that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). Demonstrating "improvement" does not require a child to demonstrate age-appropriate abilities. Please revise the data collection strand to measure the number of children who demonstrated "improved" and sustained functional abilities. Because Federal law requires OSEP to demonstrate that the provision of Part C services is improving the skills and abilities of infants and toddlers with disabilities, OSEP is required to collect data on whether and how children are improving as a result of receiving early intervention services. If the State wishes to collect this data from a sample of children, it may do so provided that the information is collected using statistically sound methods. Please continue to provide, in the next APR (for FFY 2003), responsive data (whether collected through sampling, monitoring, individual IFSP review, or other methods) indicating the percentage of children participating in the Part C program who demonstrate improved and sustained functional abilities in the five developmental areas.

Early Childhood Transition

In the May 2004 response to the FFY 2001 APR, OSEP requested that UDOH provide data for OSEP to determine compliance regarding: (1) IFSPs including steps to support the transition of the child and family, consistent with 34 CFR §303.344(h); and (2) holding a transition conference, with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §§303.148 and 303.344(h). On pages 31 and 32 of the APR, UDOH reported data that demonstrated noncompliance in these two areas, not previously identified by OSEP. UDOH stated that all local applications and interagency agreements were in place and complied with Federal Part C requirements. The results of UDOH's monitoring data however, indicated that only eight of the 10 local programs were monitored for compliance with the transition provisions due to a staff vacancy at the State level. Of the eight local programs reviewed, only six local programs demonstrated compliance with the transition provisions. UDOH reported that CDRs would be issued and improvement plans would be required of the four local programs that were either not monitored or did not submit an improvement plan during FFY 2002. UDOH included activities and timelines to address these areas of noncompliance, and OSEP accepts these activities. UDOH must report on the progress being made to correct the two newly identified areas of noncompliance, including supporting data and its analysis, in the FFY 2003 APR due March 31, 2005, and provide a report to OSEP demonstrating compliance not later than 30 days following one year from the date of this letter.

Conclusion

UDOH must submit data with a final progress report due by June 3, 2005, that include the required information to demonstrate progress towards correcting the one previously identified area of noncompliance:

- Early Intervention Services in Natural Environments: ensure that the initial IFSP meeting is held within 45 days of the referral to Part C as required by 34 CFR §303.342

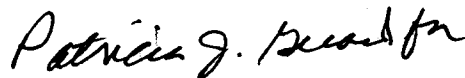
UDOH must submit in the FFY 2003 APR, data and the required information to demonstrate compliance or progress towards correcting the newly-identified areas of noncompliance and those without data to determine compliance or performance:

- General Supervision: (1) for the three local programs that the State required an improvement plan to correct the identified areas of noncompliance; and (2) for the two newly identified areas of noncompliance described below to ensure timely correction of noncompliance as required by 34 CFR § 303.501(a)(2)(b).
- Early Intervention Services in Natural Environments: (1) evidence that in the two local programs identified as noncompliant in ensuring that all services identified on the IFSP are provided as required by 34 CFR §303.342(e); (2) when services are not provided in the natural environment, a justification is written on the IFSP as required by 34 CFR §303.342(d)(1)(ii); and (3) the percentage of children that demonstrate improved and sustained functional abilities (in the five developmental domains).
- Early Childhood Transition: In the four programs identified for which the State required corrective action plans on Part C transition requirements: (1) ensure that IFSPs included steps to support the transition of the child and family as required by 34 CFR §303.344(h); and (2) the extent to which a transition conference is held, with the approval of the family, 90-days before the child's third birthday as required by 34 CFR §303.148 and 34 CFR §303.344(h).

A final progress report on these issues including the newly identified area of noncompliance and those identified in the General Supervision, Early Intervention Services in Natural Environments and the Early Childhood Transition, as stated above is due 30 days from one year for the date of this letter.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State, and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Alma McPherson at (202) 245-7443.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc:
Susan Ord