



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable John Selig
Director, Arkansas Department of Health
and Human Services
700 Main Street
P.O. Box 1437
Little Rock, AR 72203-1437

NOV 14 2005

Dear Director Selig:

The purpose of this letter is to respond to the Arkansas Department of Health and Human Services' (ADHHS') August 30, 2005 submission its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under Part C of the Individuals with Disabilities Education Act (IDEA) for the grant period July 1, 2003 through June 30, 2004. The APR reflects accomplishments that the State made during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) has designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP in the Continuous Improvement and Focused Monitoring System (CIFMS).

The State's APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to Arkansas' FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

Background

The conclusion of OSEP's January 14, 2005 FFY 2002 APR response letter required the State to provide: (1) a list of non-ADHHS entities monitored and a summary of findings of noncompliance identified during that monitoring; (2) data (from record reviews or other methods) confirming that children with diagnosed conditions were automatically determined eligible and were not subject to additional eligibility criteria; and (3) data collected from the revised monitoring tool regarding justification for services not provided in natural environments, and analysis specific to 34 CFR §303.344(d)(1)(ii).

Arkansas' APR should reflect the collection, analysis, and reporting of relevant data, and include specific data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to Arkansas' FFY 2003 APR. OSEP has set out its comments, analysis and determinations by cluster area.

General Supervision

Identification and timely correction of noncompliance

OSEP's August 2000 Monitoring Report found noncompliance in this cluster because the State did not have effective Part C compliance monitoring procedures. (34 CFR §303.501(b)). The State submitted an Improvement Plan (IP) in September 2001 to address the noncompliance, and included strategies to ensure ADHHS would monitor: (1) for all Part C requirements; and (2) all entities that provide Part C services regardless of whether they receive Part C funds. OSEP's April 2003 letter responded to the State's IP, indicating that the State must demonstrate correction of the noncompliance by April 15, 2004. OSEP's February 24, 2004 verification letter noted that, at the time of OSEP's October 2003 verification visit, ADHHS was not monitoring for all requirements of Part C, nor was it monitoring the other non-ADHHS entities that provide Part C services.

First, with regard to the monitoring of all Part C requirements, OSEP's January 14, 2005 letter regarding the State's FFY 2002 APR discussed the activities the State had taken to address this issue. In that letter, OSEP noted that the State had reported that it was not collecting data regarding the number of individualized family service plans (IFSPs) that included justifications for service outside the natural environments, and required the State to provide data regarding its monitoring of that issue in the FFY 2003 APR. As discussed in the Early Intervention Services in the Natural Environment section of this letter, OSEP did not identify additional concerns regarding that issue.

Second, with regard to the monitoring of all non-ADHHS entities that provide Part C services,¹ OSEP's January 2005 letter directed ADHHS to submit a list of non-ADHHS entities monitored and a summary of findings of noncompliance identified during that monitoring. This information was not included in the FFY 2003 APR. On page 3 of the FFY 2003 APR, Arkansas indicated that a tool was being developed to monitor direct services provided by service providers. On page 6, the State reported that the lead agency would collaborate with Medicaid to implement monitoring procedures for independent therapy providers and Children's Health Management Services (CHMS) sites. However, on page 6 of the FFY 2003 APR, Arkansas indicated that, "entities providing direct services only were not monitored as of 6/3/04." No explanation was provided and there was no indication of the impact of this information on the effectiveness of the State's monitoring system.

ADHHS did not demonstrate that it implemented a monitoring system to ensure compliance with the Part C requirement at 34 CFR §303.501(b). With the State Performance Plan (SPP), due December 2, 2005, the State must provide data indicating that it monitors all programs used by the State to carry out Part C, whether or not these programs are receiving assistance under Part

¹ During the verification visit, Arkansas indicated that there were three major providers of services to children with special needs and their families: (1) The First Connection Program (Part C); (2) the Developmental Disabilities Treatment Centers (DDTCs) under Arkansas Department of Human Services (ADHHS); and (3) Children's Health Management Services (CHMS). ADHHS indicated that not all CHMS sites were monitored for Part C compliance.

C, including non-ADHHS entities, to ensure that the State complies with Part C. With the SPP, the State must also include a description of its monitoring procedures for reviewing CHMS sites, and the monitoring findings it has made at those sites.

Dispute resolution

Page 1 of Attachment 1 of the FFY 2003 APR indicated there were three complaints filed during the reporting period and each was resolved within required timelines. No mediations were requested. The Attachment indicated that one hearing was requested and, as of September 30, 2004, one hearing was being appealed to the circuit court. The Attachment further indicated that no hearings were adjudicated either within 45 days or within properly extended timelines, so OSEP assumes that the one hearing that was requested was the hearing that was being appealed. ADHHS must clarify this data in the SPP to confirm whether the hearing decision was issued in a timely manner. OSEP also looks forward to reviewing the State's updated data as requested in the SPP.

Personnel

On page 2 of the FFY 2003 APR, Arkansas indicated that the State's enrolled provider system provided families with a minimum of two potential providers within the county from which to choose for each service. The system had not had an open enrollment since 1995. When contacted, service providers reported that a provider might not be able to serve a child. In response, the lead agency developed a procedure allowing for additional providers to be added, as needed. In addition, the lead agency added staff from Maternal and Child Health as service coordinators, resulting in a reduction in the service coordinator caseload. On page 4, the State reported that the Part C coordinator position was vacated in October 2004 and remained vacant until April 2005. A newly-created data manager position remained vacant during this reporting period.

Collection and timely reporting of accurate data

On page 3 of the FFY 2003 APR, Arkansas reported that the data collection system was being converted to a web-based application capable of collecting additional Part C elements to support monitoring activities. OSEP appreciates the State's efforts to improve performance in this area. This is an indicator in the SPP, due December 2, 2005. In preparation for this submission, the State should carefully consider its current data collection against the requirements related to this indicator in the SPP packet, to ensure that data will be responsive to those requirements. The State must submit responsive baseline data demonstrating that State-reported data (§618, SPP and Annual Performance Reports) are timely and accurate.

Comprehensive Public Awareness and Child Find System

On page 10 of the FFY 2003 APR, Arkansas indicated that the State was serving 3,283 children (2.59%) statewide. The national average for 2003 was 2.24%. Arkansas' data system was revised to include an indicator for primary referral source, and that information was added for each new child referral. OSEP appreciates the State's efforts in this area and looks forward to

reviewing the State's data regarding the percent of infants and toddlers, birth to age one, and birth to age three, with IFSPs compared to: (1) other States with similar eligibility definitions; and (2) national data, in the SPP, as requested in indicators 5 and 6.

Family Centered Services

During this reporting period, Arkansas disseminated 3,085 parent surveys of which 409 were returned for analysis. Overall results were that parents were generally satisfied with Part C services. A revised IFSP form, which was disseminated statewide, required notation regarding the family assessment and related outcomes. As a result, 348 of 361 files reviewed identified family concerns, priorities and resources. Statewide training for service coordinators focused on family centered service provision and the use of the revised IFSP. OSEP appreciates the State's efforts in this area and looks forward to the State's response to the family outcome indicator (#4) in the SPP.

Early Intervention Services (EIS) in Natural Environments (NE)

Service coordination

On page 18 of the FFY 2003 APR, Arkansas indicated that it has developed and implemented an IFSP form that includes a section to designate the name of the service coordinator. In addition, on page 6 of the APR, the State indicated that of 381 files reviewed statewide, 376 documented a single service coordinator and service coordination activities. On page 7 of the APR, the State reported that of 409 parent surveys reviewed, 366 parents indicated they had adequate contact with their service coordinators. OSEP appreciates the State's efforts in this area.

Evaluation and identification of needs

In its August 2000 Monitoring Report, OSEP found that ADHHS established impermissible additional criteria for eligibility. OSEP found that children with an established diagnosed condition that had a relatively high probability of resulting in developmental delay were required to exhibit that delay before being determined eligible. OSEP's February 2004 letter stated that, while ADHHS indicated it clarified its policy and procedures related to this issue, it must provide actual monitoring and other data and analysis, specific to this requirement. OSEP's January 2005 letter stated that it could not determine whether the data provided in the FFY 2002 APR related to children with established conditions and directed the State to submit the needed data and its analysis in the FFY 2003 APR, to confirm that children with diagnosed conditions were automatically determined eligible and were not subject to additional eligibility criteria. On page 6 of the FFY 2003 APR, ADHHS reported that 372 of 381 records, "documented appropriate determination of eligibility." OSEP is unable to determine, from this information, whether ADHHS used the revised procedures (and did not require an additional determination of developmental delay for infants and toddlers with established diagnosed conditions) when determining eligibility. With the SPP, due December 2, 2005, ADHHS must confirm that it is using its revised procedures to determine eligibility, and that it is not requiring an additional determination of developmental delay for infants and toddlers with established diagnosed conditions.

On page 6 of the APR, the State reported that 354 of 366 IFSPs reviewed were developed within 45 days from the date of referral, and 377 of 381 evaluations were completed within 45 days of referral. OSEP looks forward to reviewing the State's updated data in response to indicator 7 in the SPP.

Individualized family service plans (IFSPs)

OSEP's August 2000 Monitoring Report indicated that ADHHS did not ensure that the needs of each eligible child and the child's family were identified and that needed services were included on the IFSP (34 CFR §303.344(d)). OSEP's February 2004 letter stated it appeared that ADHHS was making progress, but requested that ADHHS submit monitoring and other data and analysis, specific to this requirement. ADHHS reported on pages 17-20 of the FFY 2003 APR that IFSPs included required content and child outcomes. OSEP appreciates the State's efforts to ensure that needed early intervention services are identified on a child's IFSP.

OSEP's January 2005 letter also indicated that it could not determine from the data submitted by ADHHS whether children received the early intervention services on their IFSPs. OSEP directed ADHHS to submit in the FFY 2003 APR data and analysis indicating that eligible children and their families received the early intervention services on their IFSPs. ADHHS did not include data regarding service provision in its FFY 2003 APR. On page 7 of the FFY 2003 APR, ADHHS indicated that of 409 parents responding to a survey, 209 indicated a services rating of good, 66 indicated a rating of better-than-average and three rated the services average. From this data, OSEP cannot determine whether eligible children and their families receive the early intervention services on their IFSPs. This is an indicator in the SPP, due December 2, 2005. The State must submit data responsive to indicator 1 in the SPP.

Natural environments

OSEP's August 2000 Monitoring Report indicated that ADHHS did not ensure that the IFSP meeting discussion and decision about natural environments was part of the IFSP decision-making process and met the Federal requirements at 34 CFR §§303.344(d)(1)(ii), 303.12(b), and 303.18. The State's FFY 2002 APR reported that the State was revising its monitoring tool because the "flag" used by the State did not accurately assess the inclusion of justifications for services provided in an environment other than the natural environment. OSEP's January 2005 letter requested ADHHS to submit in the FFY 2003 APR data collected from the revised monitoring tool, and its analysis specific to 34 CFR §303.344(d)(1)(ii).

On page 18 of the FFY 2003 APR, ADHHS reported that, based on its review of 366 files, 286 children received their services in natural environments, while 72 received their services outside the natural environments and included the required justification. Eight of the folders did not provide appropriate justification. OSEP appreciates the State's efforts in this area, and looks forward to reviewing the State's data in response to indicator 2 in the SPP.

Early childhood outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. §1116, the effectiveness of the IDEA Part C program is measured based on the extent to which children receiving Part C services demonstrate improved and sustained functional abilities in the cognitive, physical, communication, social or emotional, and adaptive developmental areas. The Part C FFY 2001, 2002 and 2003 APRs requested data on 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). In its January 2005 letter OSEP found that the State had reported data based on self-assessment information collected from providers indicating 11,209 outcomes were achieved for 1,098 children whose IFSPs were reviewed. ADHHS indicated that it intended to revise its self-assessment and monitoring tools to include indicators that will allow it to more accurately evaluate progress regarding improved functional abilities in the five developmental areas. On page 19 of the FFY 2003 APR, ADHHS reported that a data system will be implemented statewide to collect child-specific and family outcomes data demonstrating improvement and sustained functional abilities of the child and family. ADHHS further indicated that the system was currently being piloted.

The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR, due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Early Childhood Transition

On page 24 of the FFY 2003 APR, ADHHS reported that 56 of 70 records reviewed indicated that the transition conference was held at least 90 days before the child's third birthday and that 70 of 381 records reviewed revealed the need for transition activity. ADHHS also reported that of 70 records reviewed, 46 indicated timely notice to the local educational agency. This data indicates potential noncompliance with the requirements in 34 CFR §303.148(b)(1) and (b)(2)(i). In the SPP, the State must provide updated data as requested in indicator 8. If the data indicate noncompliance, the State must include with the SPP a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Conclusion

With the SPP, due December 2, 2005, Arkansas must submit the following:

- (1) Data indicating that it monitors all programs used by the State to carry out Part C, whether or not those programs are receiving assistance under Part C, including non-ADHHS entities, to ensure that the State complies with Part C. The State must also submit a description of its monitoring procedures for reviewing CHMS sites, and the monitoring findings it has made at those sites;

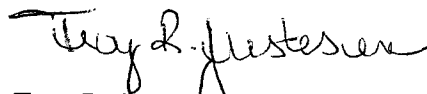
- (2) Clarification of the data regarding the hearing that was requested confirming whether the hearing decision was issued in a timely manner;
- (3) Confirmation that it is using its revised procedures to determine eligibility, and that it is not requiring an additional determination of developmental delay for infants and toddlers with established diagnosed conditions;
- (4) Data demonstrating that eligible children and their families receive the early intervention services on their IFSPs (as required in SPP indicator 1); and
- (5) Updated data regarding transition, as requested in indicator 8. If the data indicate noncompliance, the State must include with the SPP a plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

IDEA 2004, §616, requires each State to submit an SPP that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to the clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP remains concerned with ADHHS' failure to correct deficiencies related to monitoring and dispute resolution, first identified in OSEP's August 2000 Monitoring Report. Continued failure to demonstrate compliance could have an impact on ADHHS' FFY 2006 grant award.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks 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 Jill Harris at (202) 245-7372.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Sharon Lee-Mitchell