



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

Honorable Kurt Knickrehm
Department of Human Services
Donaghey Plaza West
Slot 329
P.O. Box 1437
Little Rock, AR 72203-1437

FEB 24 2004

Dear Dr. Knickrehm,

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 Arkansas. OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with and improving performance under Parts B and C of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Arkansas during the week of October 27, 2003.

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

As part of the verification visit to the Arkansas Department of Human Services (ADHS), OSEP staff met with Sherrill Archer (the State's Part C Coordinator) and members of ADHS's staff who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings; and (2) the collection and analysis of State-reported data. Prior to and during the visit, OSEP staff reviewed a number of documents¹, including the following: (1) OSEP's August 2000 Monitoring Report; (2) the State's Annual Performance Report for grant period July 1, 2001-June 30, 2003; (3) the State's Part C application; and (4) information from the State's website as well as other information and documents. OSEP also conducted a conference call on October 3, 2003 with members of the Part C Steering Committee, to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision and data collection and reporting. The information that Ms. Archer 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

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.

understanding of ADHS' systems for general supervision, data collection and reporting, for the Arkansas First Connections Infant and Toddler Program.

OSEP's 2000 monitoring report identified the following ten areas of noncompliance:

- (1) lack of effective monitoring procedures to ensure compliance among participating agencies;
- (2) child find efforts among public agencies were not coordinated;
- (3) procedures were not in place to determine the extent to which primary referral sources disseminate information to parents, and all primary referral sources did not have appropriate and adequate information about the early intervention system;
- (4) evaluators did not use informed clinical opinion in determining initial and continuing eligibility as required by Federal regulation;
- (5) ADHS impermissibly required that children with diagnosed conditions also meet developmental delay criteria in order to be eligible for services;
- (6) ADHS did not ensure that all services for eligible children and their families were identified and provided;
- (7) ADHS did not ensure that each family had one service coordinator who acted as the single point of contact for a child and family to assist families with all service coordination activities as required by Part C;
- (8) ADHS did not ensure an appropriate IFSP team decision making process for the identification of the unique needs of the child and family including the natural environment for the delivery of services;
- (9) ADHS did not ensure that the supports and services necessary to enhance the family's capacity to meet the developmental needs of their children were identified and included in a statement of the specific services needed to meet the unique needs of the child and family on the IFSP; and
- (10) ADHS did not ensure that a written transition plan was developed and implemented for each child according to requirements in the IDEA.

ADHS submitted its Improvement Plan to address each of these findings, which OSEP approved by letter dated April 15, 2003. The April 15, 2003 letter to Arkansas indicated that the State must address each of the ten areas of noncompliance identified in OSEP's August 25, 2000 Monitoring Report within one year from the issuance of the letter and must submit a final progress report on April 15, 2004 providing data that demonstrates full compliance with each of the ten areas of non-compliance. ADHS submitted an updated progress report on July 1, 2003 as part of its Federal fiscal year 2001 (FFY) Annual Performance Report (APR). OSEP has responded in a separate letter to ADHS' FFY 2001 APR and addressed each finding separately.

General Supervision

In looking at the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) had identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impeded 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 non-compliance; (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, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

OSEP is unable to conclude at this time that Arkansas has a comprehensive, systemic monitoring system that can identify and correct all potential areas of Part C noncompliance because at the time of OSEP's verification visit, ADHS was neither monitoring for all requirements of Part C nor was it monitoring the other non-ADHS entities that provide Part C services. The lack of monitoring activities and materials to ensure compliance with all Part C requirements was cited in OSEP's August 2000 monitoring report to ADHS. Although ADHS has made some progress in developing its protocols to monitor within its own agency, it still does not monitor for all Part C requirements. OSEP is extremely concerned about ADHS' ability to meet the April 15, 2004 timeline for ADHS to demonstrate full compliance with its general supervision and monitoring responsibilities. In its letter responding to the FFY 2001 APR submitted by ADHS, OSEP indicated that Arkansas must submit to OSEP its final data (including monitoring reports) by April 15, 2004 indicating that ADHS is monitoring for all requirements of Part C and all entities within the State that are part of the Part C system and provide Part C services.

ADHS has partially developed a systematic monitoring process with activities for the identification and correction of noncompliance. This means that ADHS has in place a process that monitors for most Part C requirements and can identify and correct noncompliance in those areas it is monitoring. OSEP learned through interviews that ADHS has implemented a data-based process for these areas that consists of the following steps that allow ADHS to build a body of information regarding a program or provider that could potentially result in a broad range of compliance findings. ADHS can use its Performance Effectiveness Evaluation Plan (PEEP) self assessment process and electronic data systems to collect information from multiple sources which include: (1) random desk audits and previsit review of provider agreements; (2) financial, and monthly service reports provided to the Part C office by the monitored program or through ADHS's data systems; (2) on-site record reviews and interviews; (3) issuance of a written compliance report that includes Part C findings and recommendations concerning strengths and weaknesses; and (4) follow-up and ongoing technical assistance. ADHS indicated to OSEP that the current monitoring materials and procedures are in various stages of development to more fully capture all Part C requirements. For example, Part C has worked closely with the Quality Assurance Section of the Developmental Disabilities Services Division to develop a monitoring tool that would better address the first 45 days after referral of a child for Part C services. The tool will cover natural environments, transition, the family assessment process, and the use of informed clinical opinion. It appears that ADHS is making progress in ensuring that the State's monitoring tools are comprehensive and include all Part C requirements.

In Arkansas, there are three major providers of services to children with special needs and their families. They are: (1) The First Connections Program (Part C); (2) the Developmental Disabilities Treatment Clinic Service Centers (DDTCS) under ADHS; and (3) Children's Health Management Services (CHMS). CHMS primarily serves medically fragile and developmentally delayed children ages 0-6 in a full day treatment program. Some CHMS sites are privately owned and are not licensed through the DDS system but by the State health department. Part C program providers and DDTCS centers are licensed by Developmental Disabilities Services within ADHS. There are some DDTCS centers that are jointly licensed with CHMS centers. It is only when a center is jointly licensed as a DDTCS center and as a CHMS center that it is subject to DDS licensure and monitoring activities. The result is that not all CHMS sites are included in the Part C system of services and are therefore not monitored by Part C.

It was recently brought to OSEP's attention that Arkansas proposed legislation, Senate Bill 23 (84th Assembly section 20), appears to identify CHMS clinics as the only early intervention service day provider in the State; the actual language reads "As CHMS clinics are the only providers of early intervention day treatment, ...". It is unclear how this bill relates to the implementation of Part C in the State. However, under 34 CFR §303.500, the Governor of Arkansas has designated ADHS as the "lead agency" under Part C. As the Part C lead agency, ADHS is responsible for implementing the Part C general supervisory responsibilities including monitoring to ensure that CHMS clinics and entities that provide Part C services are in compliance with Part C requirements. Each Part C lead agency is responsible for the general administration and supervision of programs and activities receiving assistance (34 CFR §§303.501(a) and (b)(1)-(4)). The State must monitor the programs and activities used to carry out Part C, whether or not they receive funds under Part C, to ensure the State complies with all requirements of Part C. As cited in OSEP's August 2000 monitoring report, ADHS must adopt and use proper methods to monitor each program including monitoring agencies, institutions and organizations used by the State to carry out Part C, enforcing any obligations imposed on those agencies under Part C and its regulations, providing technical assistance, and correcting deficiencies.

ADHS has added additional Part C requirements to its monitoring process. In fiscal year 2003, some Part C requirements, primarily those related to referral, intake, evaluation and the initial IFSP, were integrated into the DDS annual licensure protocol that is used with all contracted community service providers and the initial service coordinators². This is an on-site desk audit and three percent of the files of the provider's total number of files are randomly pulled for review. Within 30 days of the completion of the on-site monitoring, a written report is sent to the service coordinator or program provider documenting findings and any areas of concern requiring additional training or technical assistance. A copy of this report is sent to the Part C coordinator. The data system also is able to provide ADHS with a file print out every two months on each child, which

² There are currently 10 initial service providers who are each state employees. More initial service providers previously under CMS are being added to increase the total number. Typically, initial service providers manage a case up to and including the initial IFSP meeting and then hand the case over to the ongoing service coordinator.

includes the referral and evaluation date, date of IFSP, services on the IFSP, location of services and eligibility data. These data reports coupled with the financial reports allow the Part C office to identify by child or by provider which services have been provided, are reviewed as part of the on-site desk audits and are used to flag potential non-compliance issues to be investigated during on-site visits.

At the time of OSEP's visit to the State, ADHS was in the process of adding two additional methods for collecting monitoring data regarding the implementation of Part C as methods to monitor other entities that provide Part C services. The first is a self-assessment process that would include DDTCS centers, initial service coordinators and independent providers. At the time of OSEP's visit to the State, the initial data on the self-assessment had been collected but not analyzed. OSEP requests that ADHS' analysis of this data be included as part of ADHS' next APR to OSEP (due March 31, 2004). The second method was to include Children's Medical Services nurses, who are serving as initial service coordinators, in the system of on-site desk audits that previously only included Part C initial service coordinators and some community programs. The inclusion of these strategies into the Part C monitoring system has more fully brought the DDTCS centers and some CHMS sites under the general supervision of ADHS.

OSEP also learned through interviews with ADHS staff and review of documents, that ADHS conducts technical assistance visits, as necessary, to local programs and providers to ensure correction of identified non-compliance. OSEP reviewed an example of a case where non-compliance was identified during monitoring. Follow-up procedures included a corrective action report, technical assistance to the provider and a final report of correction. ADHS has established and implemented procedures to ensure that deficiencies identified through monitoring are corrected. OSEP asks that ADHS keep OSEP informed by reporting in the FFY 2002 APR (due March 31, 2003) concerning its progress in ensuring correction of non-compliance and provide a final progress report by April 15, 2004.

Regarding the State's ability to correct noncompliance once it is identified, ADHS has established a list of sanctions that may be imposed if a program fails to take the requisite corrective actions. These sanctions are triggered primarily as the result of a violation of State program licensure requirements or billing improprieties (i.e. over billing for services) and do not specifically focus on Part C requirements. However, findings of noncompliance identified by DSS monitors are reported to the Part C office, which triggers a Part C review of the entity. Entities that are debarred by the Department of Human Services are also debarred from contracting with DDS or Part C. OSEP asks that ADHS provide OSEP in the next FFY 2002 APR with a list of the number of times and reasons that any entities have been debarred, a summary of findings of noncompliance made against providers, any corrective actions required of providers by the State, and any other sanctions that ADHS has developed and/or used to ensure that it can correct noncompliance once it is identified by the State.

OSEP also reviewed ADHS's systems for the resolution of State complaints, due process hearings and mediation. ADHS reports that, to date, there have been no due process

hearing or mediation requests filed. OSEP reviewed one complaint that was filed with ADHS during OSEP's verification visit that was resolved according to the timeline requirements. OSEP cannot determine whether the fact that one complaint has been filed and no due process hearing requests have been received is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures.

As part of its evaluation of the State's dispute resolution system, OSEP reviewed after the verification visit, ADHS' prior written notice documents, required pursuant to 34 CFR §303.403, to determine whether they include all of the required information regarding complaints and due process hearings, and whether any lack of required notice content might be a factor in the lack of complaints and due process hearing requests. OSEP received the following forms from Arkansas: Notice to Parent, Parent Notice of Meeting Outcome, First Connections Program Participation Authorization, and Developmental Disabilities Services/First Connections Evaluation & Information Authorization. However, these forms do not include the content required by 34 CFR §303.403. The Part C regulations at 34 CFR §303.403(b) require that: "The notice must be in sufficient detail to inform the parents about--...(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 finds that ADHS's prior notice forms do not include most of the requisite information. Arkansas must revise its forms, or create a separate prior written notice document, to address all of the regulatory content requirements under 34 CFR §303.403. OSEP is available to work with Arkansas to ensure that the required information is included. Please submit to OSEP within 60 days from the date of this letter the revised notice materials that include the content required in 34 CFR §303.403(b).

Data Collection under Section 618 of the IDEA

In looking at the State's system for data collection and reporting, OSEP collected data regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the state's ability to accurately, reliably and validly collect and report data under section 618.

OSEP believes that ADHS' system for collecting and reporting data is a reasonable approach to ensuring the accuracy of the data that ADHS reports to OSEP under 618 ADHS staff informed OSEP that when ADHS receives a referral form from a parent or other referrals source, ADHS enters the child into its data system. They explained that ADHS does not include a child as part of the Part C child count until the evaluation and

assessment process is complete, ADHS has found the child eligible under Part C, and the child has an IFSP; once a child is determined to be eligible, the initial service provider is responsible for entering child and family information, along with the child's IFSP, into the database.

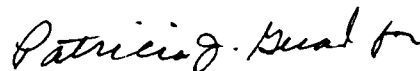
ADHS further informed OSEP that local early intervention programs and ongoing independent service coordinators are responsible for providing updated information to keep the State's Part C data system current. The Part C office is able to review this data by child or by provider at any time. Monthly data reports track the infants and toddlers and their families who are served by the local program or receive service coordination through independent providers. ADHS staff reviews these data reports, checking the data for errors, and requires providers to make appropriate edits and updates with regard to their service data. Additionally, when a child and family exits the Part C system the local program or independent service provider enters the appropriate edits into the data system which clearly flags that child as exited from the system. Overall 618 data collection activities are monitored through both the monthly data reports and the desk audit process.

ADHS staff informed OSEP that they disseminate the annual OSEP data collection policy letters and memoranda to ongoing service coordinators as guidance on how to collect and report all required data consistent with Federal data reporting requirements. ADHS staff expressed overall confidence in the 618 data that they report to OSEP.

ADHS is in the process of reconfiguring and enhancing its data systems. OSEP suggests that, as the State continues to develop its data systems, ADHS consider ways in which to better ensure that the data collected is coordinated and monitored at the local/provider level to better inform its monitoring and decision-making activities.

We appreciate the cooperation and assistance provided by your staff during our visit. As noted above, we request that you keep us informed of your progress in ensuring correction in the local programs with ongoing noncompliance and await the submission of your revised notice materials within 60 days from the date of this letter. We look forward to collaborating with Arkansas as you continue to work to improve results for children with disabilities and their families.

Sincerely,



Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Sherrill Archer
Part C Coordinator