



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

Honorable Vincent P. Meconi, Secretary
Delaware Department of Health and Social Services
1901 N Dupont Highway
Main Building
New Castle, DE 19720

SEP 16 2004

Dear Secretary Meconi:

The purpose of this letter is to respond to the Delaware Department of Health and Social Service' (DHSS') March 29, 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 strategies) 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

On January 16, 2004, OSEP responded to DHSS' FFY 2001 APR submitted in 2003. In the letter, OSEP did not identify systemic noncompliance. However, OSEP did request that DHSS submit in the FFY 2002 APR documentation and evidence of change data that transition conferences are held at least 90 days before the child's third birthday, as required under 34 CFR § 303.148(b)(2). In response to the request, DHSS submitted technical assistance documents about transition from the Delaware Department of Education, data, and strategies regarding the implementation of transition requirements.

OSEP conducted a visit to Delaware during the week of September 22, 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA. During this visit, OSEP discussed State monitoring and data

collection process and procedures that ensure implementation of early childhood transition requirements.

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. OSEP's comments are listed by cluster area.

General Supervision

In the APR (pages CI 1-15), DHSS provided information about monitoring processes and procedures implemented by State staff and early childhood partners, including: monitoring protocols, data sources, results of monitoring and corrective actions, improvement strategies for performance issues, activities to ensure procedural safeguards, personnel capacity and entry-level standards (for all early intervention service providers), State factors that affected the early intervention program (i.e. hiring freeze), and strategies to ensure valid and reliable data. DHSS did not identify systemic noncompliance in its general supervision cluster. The information in the APR described the process and procedures that were used in its general supervision system. In addition, DHSS provided information regarding the State's support of the data system (entry and analysis) to ensure data integrity and efforts to enhance fiscal efficiency with early childhood partners.

In the next APR, the State must continue to report on its strategies to ensure compliance and performance in this area.

Public Awareness and Child Find

In the APR (pages CII 1-9), DHSS described its public awareness and child find systems and provided data to support conclusions about the implementation of IDEA requirements. No systemic noncompliance was identified by DHSS in this cluster. DHSS tracked and presented the following longitudinal data (three to five years for each chart): the percentage of infants and toddlers who were eligible for Part C services (3.2% of the population, disaggregated by age); the number of infants and toddlers identified as eligible through clinical judgment, established condition, or developmental assessment; demographic data on the individuals identified as eligible for Part C services in comparison to the general population of the State; the number of referrals from each referral source; and identification trends for infants under age one who were identified for early intervention services. In addition, DHSS described: cross-agency efforts to implement a comprehensive, coordinated child find system; family survey information documenting an increasingly positive perception of "ease of accessibility" to the early intervention program; and technical assistance provided to inform the public about the early intervention program.

The FFY 2002 APR contains numerical goals regarding the number of children identified by Part C by including targets such as the following on Page CII 3: "Maintain identification and eligibility for Part C children at current rate of 3.2% or at least the

projected target of 2.0%.” While it is not inconsistent with Part C of the IDEA to include a numerical goal regarding the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal.

Family Centered Services

In the APR (pages CIII 1-9), DHSS described its strategies to implement family centered services. DHSS’ goal for this cluster was that family supports, services, and resources would increase the family’s capacity to enhance outcomes for infants and toddlers and their families. Consistent with the FFY 2001 APR, DHSS provided analysis of family survey data; described opportunities for families to participate in classes, forums, playgroups, and trainings; demonstrated collaborative relationships with: the University of Delaware, Delaware Technical and Community College, Partners in Policymaking, the Delaware Department of Education, the Delaware Infant Hearing Assessment and Intervention Committee, the Delaware Office of Child Care Licensing, and the Division of Libraries; and provided monitoring activities and results utilized by the State to ensure individualization of family services that would enhance the development of the child receiving early intervention services. DHSS provided opportunities for families to participate in forums that addressed compliance and performance topical areas (i.e. immunizations and epilepsy), supported family members in trainings to encourage community leadership, and identified sibling and father-specific services to support families who have children with disabilities. Family members co-taught or were guest lecturers for the following: university courses; pre- and in-service trainings for early childhood professionals; and conference sessions. DHSS built child care capacity by partnering with the Office of Child Care Licensing in trainings on disability topics. In addition, DHSS described numerous efforts to ensure that materials maintained or distributed by early intervention programs were available in different formats and Spanish.

DHSS family survey data demonstrated positive perceptions of early intervention services, personnel skills, and increased family capacity to advocate for their child’s needs. DHSS specifically chose to focus on ensuring that services to families were based on family assessment results and reflected the unique strengths and concerns of families. Interview and survey results included descriptions of personnel as personable and sensitive, conscientious, and respectful. Additionally, families reported the following as a result of early intervention services: more confidence in their ability to deliver interventions to their children because professionals demonstrated the activities in the home; more knowledgeable about what their child needed; increased ability to access and advocate for services for their child; and improved quality of life. The family survey data was collected by the University of Delaware and will be repeated every other year.

DHSS did not identify systemic noncompliance in this cluster. The information provided in the APR demonstrated how DHSS is implementing, evaluating, and documenting family centered services.

Early Intervention Services in the Natural Environment (EIS NE)

In the APR (pages CIV 1-13), DHSS provided information, evidence, and conclusions about the implementation of requirements for early intervention services in the natural environments. DHSS did not identify systemic noncompliance in this cluster. In addition to compliance data, DHSS also described current and future activities to improve performance. The following data and information gathered through State monitoring activities were included: all families had access to a service coordinator; families reported that service coordination was effective and service coordination activities were conducted; service coordination activities were described in Memoranda of Understanding with other State departments; evaluations covered the five required developmental domains; child and family needs identified during assessments were reflected on IFSPs; and data collected in the data-tracking system were reviewed for accuracy.

Data presented by DHSS on pages CIV. 1 and CIV. 2 indicated that 60% of initial IFSP's were developed and signed within the 45-day timeline during the reporting period. The State also reported that, in 2003, 67% of IFSPs were signed within the 45-day timeline and that monitoring data in 2004 will track reasons why the State's 45-day timeline was not met. DHSS did not identify the timeline as an area of noncompliance. IDEA regulations require that evaluations and assessments be conducted and an initial IFSP meeting be held within 45 days after the lead agency receives a referral, see 34 CFR §§ 303.321(e)(2), 303.322(e) and 303.342(a). The Part C regulations do not specify that the IFSP must be signed within 45 days. While the State may require that IFSPs be signed within 45 days of referral, OSEP cannot determine from the data if it demonstrates that the *initial IFSP meeting* is held within 45 days of referral. DHSS provided evidence that its monitoring system provided timeline information and demonstrated that its improvement strategies had an impact on increasing the percentage of IFSPs signed within 45 days of referral (by providing data from 2003). DHSS reported that it has revised monitoring procedures that document reasons why the 45-day timeline was not met. In the FFY 2003 APR (due March 31, 2005), DHSS must provide data on whether initial IFSP meetings are convened within 45 days of referral to Part C. If the data indicates systemic noncompliance with the Part C 45-day timeline requirement, a plan (including strategies, proposed evidence of change, targets, and timelines) must be included in the FFY 2003 APR to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date when OSEP accepts the plan.

The State also reported data regarding the timeliness of evaluations. DHSS reported "State monitoring data in 2002 indicated that 81% of all multi-disciplinary evaluations (MDAs) were held within 45 days." (page CIV.4). IDEA regulations require that within 45 days of receiving a referral, the public agency shall *complete the evaluation and assessment*, see 34 CFR §§ 303.321(e)(2) and 303.322(e). The data provided in the FFY 2002 APR indicates noncompliance with that requirement. In the FFY 2002 APR, the State identified factors that affected the completion of evaluations: the hiring freeze in the State, and identifying young children with expressive language delays. (page CIV.5). The State indicated that it has provided increased funding for contracts to Early Intervention

providers to assist in completing five domain assessments. (page CIV.5). The State must submit to OSEP, within 60 days of the date of this letter, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The State's plan should address the State's findings regarding the hiring freeze and identifying young children with expressive language delays, as well as any other State-identified causes of the noncompliance.

The State has established a timeline of 30 days from completed referral after the IFSP is developed for the EI provider to start early intervention services identified on the IFSP. (page CIV 6). DHSS reported that, "Baseline data indicated 96% of all services on IFSPs were started. Of all these services, 71% were started within 30 days from completed referral to EI provider." On page CI.12 of the APR, the State explains that service gap data reflected that speech language services were the service most often started in more than 30 days from referral to EI provider, which reflects the ongoing shortage of qualified Speech Language Pathologists trained to work with young children. The State indicated that the Birth to Three Early Intervention System and Part B Preschool Services facilitated a stakeholder's meeting in January 2003 to develop alternative ways to identify and offer interventions for children with language delays. The State must submit to OSEP, within 60 days of the date of this letter, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The State's plan should address the State's findings regarding speech language services and Speech Language Pathologists, as well as any other causes of the noncompliance.

The FFY 2002 APR also raises a concern because DHSS indicated that "2003 State monitoring gathered baseline data that indicated 69% of all services were provided in natural environments or documentation existed for justification based on the child's needs to be met in a setting not considered a natural environment." (Page CIV.10). It is not clear whether this data was reporting on a compliance issue because it refers to "services" and does not clarify whether it is referring to early intervention services on the IFSPs. The Part C regulations, at 34 CFR § 303.12(b), require that, to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate. The IFSP must include a statement of the natural environments in which early intervention services will be provided, and a justification of the extent, if any, to which the services will not be provided in a natural environment. See 34 CFR §303.344(d)(1)(ii). The "future activities" in the APR include the following strategies: (1) State monitoring of IFSPs will be expanded to describe justifications why children are not receiving services in natural environments, and (2) Data collected in ISIS regarding provision of early intervention services in natural environments will continue to be reviewed for accuracy. (Page CIV.11). In the next APR, due March 31, 2005, the State must provide compliance data, based on IFSP reviews, that IFSPs either indicate that early intervention services are provided, to the maximum extent appropriate, in natural environments or contain an appropriate justification for early interventions services that are

not provided in the child's natural environment (e.g., the child's outcomes cannot be met by providing services in a natural environment). If the data indicates noncompliance, the State must also include in the APR a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.

The Part C FFY 2001 and FFY 2002 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)). DHSS established a system of tracking outcome data for a sample of infants and toddlers who received early intervention services. During the reporting year, results were reported for 25 children with two data points in time (approximately one year apart). DHSS reported that the children were representative of the geographic, ethnic, socioeconomic, and disability types enrolled in the early intervention programs. Data are presented as rate of development changes, as compared to the rate of development expected. In the three areas tracked, the rate of development for infants and toddlers receiving early intervention services was higher than the expected rate of development without early intervention services. Specifically, play skill changes were at a rate 1.24 times the rate of development expected, mental skills were 1.35 times the expected rate, and motor skills were 1.19 times the expected rate. The outcome data were linked to family survey and interview data on quality of life and satisfaction with developmental changes. Data from both sources showed consistency (i.e. rate of development was higher than expected and families reported an increase in both quality of life and in satisfaction with developmental changes). DHSS staff are currently assisting the OSEP funded research and technical assistance center, Early Childhood Outcomes Center (ECO), by sharing the outcome methods and data in national conference calls and presentations to the early childhood community. OSEP appreciates this assistance. As part of the FFY 2003 APR, OSEP looks forward to reviewing the State's continued reporting of data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

Early Childhood Transition

In its January 2004 letter regarding the FFY 2001 APR, OSEP requested that DHSS submit in the FFY 2002 APR documentation and evidence of change data that transition conferences for children who are eligible for Part B were held at least 90 days before the child's third birthday, as required under 34 CFR §303.148(b)(2). In response, DHSS submitted the following data: in 2002, 38% of the files reviewed, and in 2003, 41% of the files reviewed, indicated that transition conferences were held at least 90-days before a child's third birthday for children exiting early intervention who were potentially eligible for Part B services (pages CV.5 and CV.6). The information provided by DHSS documented systemic noncompliance, not previously identified by OSEP, in ensuring that for all children who may be eligible for preschool services under Part B of the IDEA, with the approval of the family of the child, a conference was convened among the Lead

Agency, the family, and the local educational agency at least 90 days, and at the discretion of the parties, up to 6 months, before the child is eligible for preschool services, to discuss any services that the child may receive, see 34 CFR § 303.148 (b)(2)(i).

In the APR, DHSS included strategies and timelines to ensure correction of the noncompliance. The State acknowledged that there is an inconsistent understanding and implementation about roles and responsibilities for transition planning among early intervention staff and local school districts (p. CV3). In order to clarify those roles and responsibilities, DHSS indicated that it would distribute a technical assistance guideline for transition to CDW staff, local school districts and EI providers by December 2003. DHSS also indicated that it would provide transition training at staff meetings, New Castle Sequenced Transition to Education in the Public Schools (STEPS) would initiate offering transition discussions among school districts, CDW and early intervention providers, and the newly revised IFSP transition plan would be implemented statewide and used during transition conferences. DHSS also indicated that based on the data reported concerning reasons for delays in transition conferences, statewide and countywide improvement strategies would be developed. OSEP accepts these strategies, and the other strategies that DHSS included in its FFY 2002 APR to address this issue. In the next APR, DHSS must include current data and analysis demonstrating progress toward compliance, including information regarding implementation of the statewide and countywide strategies DHSS planned to develop as a result of data collected regarding the reasons for the delays. DHSS must also provide a final progress report to OSEP, with data and analysis demonstrating correction of the noncompliance, as soon as possible, but not later than 30 days following one year after the date of this letter.

The FFY 2002 APR for Part C also reported that, in 2002, 61% of transition conferences that were held included school district participation, and in 2003, 64% of the transition conferences that were held included school district participation. The Part C regulations, at 34 CFR § 303.148(a)(2)(i), require that, with the approval of the family, the Part C agency convene a conference among the lead agency, the family and the local educational agency. The Part B regulations, at 34 CFR § 300.132(c), require the LEA to participate in those meetings. If LEA participation is determined to be a cause of the delay in holding the conferences, the Part C lead agency must work with the LEAs, and ensure that the requirements of 34 CFR § 303.148(a)(2)(i) are met. OSEP is raising the issue of LEA participation at early childhood transition conferences with the Delaware Department of Education.

In the APR, DHSS indicated that it is working with the Delaware Department of Education to develop a method to track students exiting Part C who are eligible for Part B services. OSEP assumes that any Part C to Part B tracking system that Delaware develops will not involve the disclosure of personally identifiable information from student's education records or, if it will, that it is consistent with the IDEA and FERPA. OSEP has enclosed, for your information, a copy of its February 11, 2004 letter to Elder which discusses the limited disclosure of personally identifiable information for purposes of meeting IDEA's child find mandate.

Conclusion

As noted above, within 60 days from the date of this letter, the State must submit to OSEP:

1. With regard to the State's timeline for the provision of early intervention services identified on IFSPs, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan. The State's plan should address the State's findings regarding speech language services and Speech Language Pathologists, as well as any other causes of the noncompliance; and
2. With regard to the timeliness of evaluations and assessments, a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan.


In this letter, OSEP accepted the strategies that the State included in its FFY 2002 APR regarding the noncompliance in the area of transition conferences. In the next APR, DHSS must include current data and analysis demonstrating progress toward compliance, including information regarding implementation of the statewide and countywide strategies DHSS planned to develop as a result of data collected regarding the reasons for the delays. DHSS must also provide a final progress report to OSEP, with data and analysis demonstrating correction of the noncompliance, as soon as possible, but not later than 30 days following one year after the date of this letter.

In addition, in the FFY 2003 APR, due March 31, 2005, DHSS must include:

1. Data on whether initial IFSP meetings are convened within 45 days of referral to Part C. If the data indicates noncompliance with the Part C 45-day timeline requirement, the State must also include in the APR a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan;
2. Data, based on IFSP reviews, that IFSPs either indicate that early intervention services are provided, to the maximum extent appropriate, in natural environments or contain an appropriate justification for early intervention services that are not provided in the child's natural environment (e.g., the child's outcomes cannot be met by providing services in a natural environment). If the data indicates noncompliance, the State must also include in the APR a plan containing the required information, including strategies, proposed evidence of change, targets and timelines that will ensure correction of the noncompliance within a reasonable period of time not to exceed one year from the date OSEP accepts the plan; and
3. The State's continued reporting of data (whether collected through sampling, monitoring, individual IFSP review, or other methods) that demonstrate how children participating in the Part C program demonstrate improved and sustained functional abilities in the five developmental areas.

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 Kelly Worthington at (202) 245-7581.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie J. Smith Lee".

Stephanie Smith Lee
Director
Office of Special Education Programs

cc: Rosanne Griff-Cabelli
Part C Coordinator