



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

JAN 14 2005

Dear Dr. Knickrehm:

The purpose of this letter is to respond to Arkansas's March 31, 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

OSEP's August 25, 2000 Monitoring Report identified the following eleven areas of noncompliance: (1) lack of effective monitoring procedures to ensure compliance among participating agencies under 34 CFR §303.501; (2) child find efforts among public agencies were not coordinated under 34 CFR §303.321(c); (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 under 34 CFR §303.321(d); (4) evaluators did not use informed clinical opinion in determining initial and continuing eligibility as required under 34 CFR §303.322(c)(2); (5) Arkansas Department of Human Services (ADHS) impermissibly required that children with diagnosed conditions also meet developmental delay criteria in order to be eligible for services as an infant or toddler with disabilities as defined under 34 CFR §303.16(a)(2); (6) ADHS did not ensure that all services for eligible children and their families were identified and provided under 34 CFR §303.344(d); (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 under 34 CFR §303.23(a)(2)(ii); (8) ADHS did not ensure an appropriate individualized family service plan (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 under 34 CFR §303.344 (d)(1)(ii); (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 on the IFSP under 34 CFR §§303.322(d) and 303.344; (10) ADHS did not ensure that transportation was provided to families needing transportation to enable them to receive early intervention services under 34 CFR §303.12(d)(15); and (11) ADHS did not ensure that a written transition plan was developed and implemented for each child according to requirements in the IDEA under 34 CFR §303.344(h). As noted in greater detail below, ADHS has provided data and information to address seven of the eleven findings from OSEP's 2000 Monitoring Report, and ADHS must provide further data regarding findings 1 (monitoring), 5 (eligibility for diagnosed conditions), 6 (provision of services), and 8 (natural environments).

In a letter dated April 15, 2003, OSEP responded to the State's September 2001 Improvement Plan (IP), indicating that ADHS must demonstrate correction of the noncompliance identified in OSEP's 2000 Monitoring Report by April 15, 2004. The State submitted its FFY 2001 APR on July 1, 2003, and OSEP responded to that APR in a letter dated February 23, 2004. The State also submitted a progress report under its IP on December 31, 2003, which was not reviewed by OSEP in its February 23, 2004 letter. OSEP conducted a visit to Arkansas during the week of October 27, 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA, including the extent to which the State's systems identified and corrected noncompliance. OSEP commented on its verification visit in a letter to the State dated February 24, 2004.

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 on the State's December 31, 2003 IP progress report and FFY 2002 APR are listed by cluster area.

General Supervision

OSEP's August 2000 Monitoring Report found noncompliance in this cluster because the State did not have effective monitoring procedures to ensure compliance among participating agencies. (34 CFR §303.501). The State submitted an IP in September 2001 to address the noncompliance. 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 conducted a visit to Arkansas during the week of October 27, 2003 to verify the effectiveness of the State's systems for general supervision and data collection under section 618 of IDEA, including the extent to which the State's systems identified and corrected noncompliance. In a letter to the State regarding the verification visit, dated February 24, 2004, OSEP noted that, at the time of the verification visit, ADHS was not monitoring for all requirements of Part C, nor was it monitoring the other non-ADHS entities that provide Part C services.

First, with regard to the monitoring of all Part C requirements, OSEP found during the verification visit that ADHS had made progress in ensuring that the State's monitoring tools are comprehensive and include all Part C requirements. The FFY 2002 APR provided updated data

from both the pilot and full implementation phases of the monitoring system. Several activities were launched during the pilot phase, including: (1) developing an enhanced monitoring tool that was piloted with ten State service coordinators (page 4); (2) revising an interagency agreement with Head Start to include quarterly reporting requirements for public awareness activities and parent education; (page 4) and (3) inputting data into a database for 54 licensed programs, ten State staff service coordinators and 32 independent service providers. On page 4 of the APR, ADHS included monitoring data from 35 files that were reviewed during the pilot phase. On page 4 of the FFY 2002 APR, ADHS indicated that it identified noncompliance with several Part C requirements. As a result, ADHS provided technical assistance activities targeted to specific providers based on the State's monitoring findings, and ADHS stated that compliance action plans were implemented for one State service coordinator and one community provider. As of the time that the FFY 2002 APR was prepared, the State indicated that the State service coordinator and the community provider were in the process of implementing the compliance action plans. On page 7 of the APR, ADHS also reported data from monitoring 43 of 64 service coordination entities and 272 child records. In the relevant cluster areas below, OSEP has included some of the monitoring data reported by the State.

The State reported additional activities to ensure monitoring of Part C requirements, but reported that data is not collected regarding the number of plans including justification for service outside the natural environment. As noted in the Early Intervention Services in the Natural Environment cluster area below, in the FFY 2003 APR, due March 31, 2005, ADHS must provide compliance data regarding its monitoring of that issue.

Second, with regard to the monitoring of all non-ADHS entities that provide Part C services, ADHS reported to OSEP during the verification visit that it was in the process of enhancing its monitoring system by: (1) adding a self-assessment process that would include community centers, independent service providers and service coordinators; and (2) including Children's Medical Services nurses who are serving as initial service coordinators in the system of on-site desk audits. In its February 24, 2004 letter, OSEP commented that the inclusion of these strategies into the Part C monitoring system more fully brought the Developmental Disabilities Treatment Clinic Service Centers (DDTCS) and some Children's Health Management Services (CHMS) sites under the general supervision of ADHS. However, the following statements in the State's FFY 2002 APR appear to indicate that ADHS is still not monitoring all entities that provide Part C services: (1) "Entities providing direct services only have not been monitored as of 3/31/04," and (2) "A monitoring visit has been scheduled in April for the first CHMS that is not also a DDTCS." In the FFY 2003 APR, ADHS must provide a list of non-ADHS entities monitored and a summary of findings of noncompliance identified during that monitoring.

In Attachment 1 of the FFY 2002 APR, the State reported that there was one complaint filed between July 1, 2002 and June 30, 2003, which was resolved with findings. The State also reported that there were six complaints filed between July 1, 2003 and March 31, 2004, two of which were resolved with findings, and four that were pending and still within the timelines. There were no mediation or due process hearings requested during this APR reporting period. In its February 2004 verification letter, OSEP directed ADHS to revise its prior notice forms, or create a separate prior written notice document, to address all of the regulatory content requirements under 34 CFR §303.403(b). The State submitted a copy of the current prior notice to OSEP for review on June 24, 2004. OSEP will respond separately regarding the notice.

Comprehensive Child Find/Public Awareness

OSEP's August 2000 Monitoring Report identified two areas of noncompliance in this cluster: (1) child find efforts among public agencies were not coordinated (34 CFR §303.321(c)); and (2) procedures were not in place to determine the extent to which primary referral sources disseminated information to parents, and all primary referral sources did not have appropriate and adequate information about the early intervention system (34 CFR §303.321(d)). In its February 2004 APR letter to ADHS, OSEP stated that ADHS was making progress in addressing the noncompliance in the cluster and requested that the State provide updated information on the implementation of its strategies.

ADHS' FFY 2002 APR described several strategies implemented to enhance the State's child find and public awareness efforts, including the following information. On pages 12 through 14 of the FFY 2002 APR, ADHS reported that it developed its data system to identify, by county, the number of children served and the referral sources. As of June 1, 2003, this information was entered for 1,555 children of 3,021 being served as of that date. ADHS reported that of these 1,555 children, 690 were referred by parents and 205 by physicians. The data system also identified several counties in which public awareness efforts needed to be increased. ADHS intended to review State prevalence data to continue to refine its child find efforts. The APR demonstrated that the State was able to collect data on referrals and show an increase in referrals over a nine-month period of time. On page 13 of the APR, the State reported coordination among public agencies regarding child find. OSEP appreciates ADHS' efforts to implement all IP strategies to address this area of noncompliance. OSEP did not identify additional concerns regarding this issue.

The State's December 2003 progress report identified the following numerical goal on page 4: "By 12/01/03 Spanish participants in the program will increase by 5%." The use of a goal for a racial or ethnic subgroup is inconsistent with Federal law. The State may want to examine whether and why infants and toddlers with disabilities in certain subpopulations were not referred, identified and/or determined eligible for services under Part C; however, under Title VI of the Civil Rights Act, it must do so in a race-neutral manner without the use of race- or ethnic-specific goals. If the State proposed this goal because it was concerned about the number of infants and toddlers with disabilities being served under Part C who were from a particular racial or ethnic subgroup, the State should review, and if necessary revise, its policies, procedures and practices (including monitoring) to ensure that traditionally underserved groups are not being excluded by current policies, procedures and practices.

With regard to performance data, according to the 618 data reports, the State has shown the following relatively stable child counts for children birth through three: 2.56% on December 1, 2001; 2.59% on December 1, 2002; and 2.46% on December 1, 2003. The national average for 2003 was 2.24%.

Family Centered Services

In its August 2000 Monitoring Report, OSEP found that 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 on the IFSP (34 CFR §303.322(d)). OSEP's February

2004 APR letter indicated that ADHS made progress in this area, but requested additional data in ADHS' next progress report.

On page 17 of the FFY 2002 APR, ADHS indicated that 229 of 272 IFSPs reviewed identified family concerns, priorities and resources. The State also reported that 238 of 272 IFSPs reviewed included family concerns translated into family outcomes on the IFSP when the families concurred in the family assessment. Other family information provided by the State in the APR was that 268 of the 272 IFSPs reviewed documented receipt of parent rights/procedural safeguards. The State also reported that 270 of 272 IFSPs reviewed were signed by the parent. The APR also indicated that State-wide training in six regions was provided regarding the family assessment. OSEP appreciates ADHS' efforts to implement all IP strategies to address this area of noncompliance. OSEP did not identify additional concerns in this cluster area.

Early Intervention Services in the Natural Environment

OSEP's August 2000 Monitoring Report identified the following six areas of noncompliance in this cluster area, three of which have been addressed by the State: (1) evaluators did not use informed clinical opinion in determining initial and continuing eligibility as required by Federal regulation (34 CFR §303.322(c)(2)); (2) ADHS impermissibly required that children with diagnosed conditions also meet developmental delay criteria in order to be eligible for services as an infant or toddler with a disability (34 CFR §303.16(a)(2)); (3) ADHS did not ensure that all services for eligible children and their families were identified on the IFSP and provided (34 CFR §303.344(d)); (4) 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 them with all service coordination activities as required by Part C (34 CFR §303.23(a)(2)(ii)); (5) ADHS did not ensure an appropriate IFSP team decision-making process in the identification of the unique needs of the child and family, including the natural environment, for the delivery of early intervention services (34 CFR §303.344(d)(ii)); and (6) ADHS did not ensure that families needing transportation to enable them to receive early intervention services were provided with transportation (34 CFR §303.12(d)(15)). As described below, from the above list, findings two, three, and five remain outstanding and must be addressed in the next APR.

1. Informed Clinical Opinion

In its 2000 Monitoring Report, OSEP found that ADHS had not ensured that evaluators appropriately use informed clinical opinion in determining initial and continuing eligibility as required by Federal regulations.

In the FFY 2001 APR, ADHS stated that it implemented and administered a series of policy changes, State-wide training and other activities to ensure compliance in this area. To address the appropriate use of informed clinical opinion in determining initial and continuing eligibility, ADHS clarified its evaluation policy and provided training to all providers. According to the FFY 2001 APR, the State also modified its monitoring forms to gather evidence that IFSP teams were using informed clinical opinion to establish eligibility as part of the evaluation and assessment process. In its February 23, 2004 response to the State's FFY 2001 APR, OSEP stated that it appeared that ADHS was making progress in this area, but indicated that the State needed to submit actual monitoring and other data and its analysis, specific to this requirement, in its next Progress Report.

The FFY 2002 APR indicated that 196 of 272 (72%) records reviewed documented the use of informed clinical opinion, and that a referral report indicated that 142 children were determined eligible based on informed clinical opinion only (page 8). On page 8, ADHS reported that an analysis of trends indicated a need for continued training in the use of informed clinical opinion and reported that it would be addressed through quarterly service coordination updates and service coordination certification and evaluation courses. OSEP appreciates ADHS' efforts to implement all IP strategies to address this area of noncompliance. OSEP did not identify additional concerns regarding this issue.

2. Established Diagnosed Condition and Eligibility

In its August 2000 Monitoring Report, OSEP found that ADHS established impermissible additional criteria for eligibility. OSEP found that children with an established diagnosed condition that had a high probability of resulting in developmental delay were required to exhibit developmental delay before being determined eligible. In its February 23, 2004 response to the State's FFY 2001 APR, OSEP stated that ADHS had indicated that it clarified its policy and procedures related to this issue and provided training for all staff and providers, but OSEP indicated that the State must provide actual monitoring and other data and its analysis, specific to this requirement, in its next progress report.

On page 7 of the FFY 2002 APR, ADHS stated that 238 of 272 (86%) records reviewed documented appropriate determination of eligibility. In addition, on page 9 of the APR, ADHS reported that training was provided to 10 State staff service coordinators and in excess of 100 service coordination entities State-wide regarding eligibility criteria. The FFY 2002 APR stated that the analysis of monitoring and desk audit results indicated improvement. However, OSEP cannot determine whether the data provided related to children with established conditions. In the next APR, the State must provide data (from sample record reviews or other methods) that confirm that children with diagnosed conditions are automatically determined eligible and are not subject to other eligibility criteria.

3. Failure to Provide All Services Needed for Eligible Children

OSEP's August 2000 Monitoring Report indicated that ADHS did not ensure that the needs of each eligible child and the child's family were identified and that all needed services were included on the IFSP and provided (34 CFR §303.344(d)). OSEP found that eligible children were required to also meet eligibility for specific services before these services were provided to the child. Part C allows States to define eligibility; however, once a child is determined eligible, the child is entitled to all early intervention services identified on the IFSP required to meet the unique needs of the child (34 CFR §303.344(d)(ii)). ADHS' FFY 2001 APR indicated training was provided for all providers concerning eligibility requirements and that parents would be surveyed to assess satisfaction with the Part C program and early intervention services. In its response to the State's FFY 2001 APR, OSEP stated that it appeared that ADHS was making progress in this area and noted that the State was in the process of conducting a family survey; OSEP requested that the State submit monitoring and other data and analysis, specific to this requirement, in its next progress report.

On page 20 of the FFY 2002 APR, ADHS reported that it collected the results of 600 family surveys to assess whether the services included on the IFSP were provided. The State reported

in the FFY 2002 APR that of 562 parents who responded to the survey, 391 indicated that the services their child received were excellent, 93 indicated their services were very good, 38 indicated their services were good, 8 indicated their services were fair, and 11 indicated their services were poor (page 22). OSEP cannot determine whether children receive the early intervention services on their IFSPs. In the next APR, ADHS must provide data indicating that eligible children and families receive early intervention services on their IFSPs. If the data demonstrate continued noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to achieve compliance as soon as possible. Failure to provide data demonstrating substantial improvement in this compliance area may result in the State's designation as a high-risk grantee for its FFY 2005 Part C grant.

4. Service Coordination

OSEP's August 2000 Monitoring Report indicated that ADHS did not ensure that each family had one service coordinator to assist families with all service coordination activities. ADHS reported in its FFY 2001 APR that it added Children's Medical Services staff as service coordinators, a tiered system of service coordination was implemented that included both State staff and independent service coordinators, and that it would capture this data element in its desk audits. OSEP stated in its February 23, 2004 response to ADHS' FFY 2001 APR that it appeared that ADHS was making progress in this area but would need to submit in its next progress report monitoring and other data, specific to this requirement.

The FFY 2002 APR indicated that 254 of 272 (93%) records reviewed identified a single service coordinator, the name of the service coordinator, and service coordination activities (pages 7 and 22). In addition, ADHS' survey of 562 parents indicated that 502 (89%) of the parents had adequate contact with their service coordinator and 40 (7%) had inadequate contact with their service coordinator (page 22). ADHS provided training to over 107 service coordinators that emphasized the responsibilities of the service coordinator (page 22). On page 23 of the APR, the State reported that it intended to continue to monitor to ensure that all IFSPs include the name of the service coordinator, and service coordinators will continue to receive training in the responsibilities of service coordinators and the provision of supports and services to families. OSEP appreciates ADHS' efforts to implement all IP strategies to address this area of noncompliance. OSEP did not identify additional concerns regarding this issue.

5. Natural Environments

OSEP's August 2000 Monitoring Report indicated that ADHS 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)(ii), 303.12(b), and 303.18. ADHS reported in the FFY 2001 APR that it clarified its policies and procedures regarding the evaluation process and that the IFSP would be modified to collect the required information.

On pages 7 and 22 of the FFY 2002 APR, ADHS stated that 238 of 272 IFSPs reviewed included a determination of the natural environment for the child; however, ADHS noted on page 22 of the APR that the data it had collected did not fully respond to the Part C requirement at 34 CFR §303.344(d)(1)(ii). The APR reported that the "flag" used in monitoring did not accurately assess the inclusion of justification for services provided in an environment other than the natural

one. ADHS revised the monitoring tool to accurately capture the required data and indicated that the revised monitoring tool has been implemented. ADHS must submit the data it collects from the revised monitoring tool, and its analysis specific to 34 CFR §303.344(d)(1)(ii), in the next APR, due March 31, 2005. If the data demonstrate continued noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to achieve compliance as soon as possible.

6. Transportation Services Not Identified and/or Not Provided

OSEP's August 2000 Monitoring Report indicated that ADHS did not ensure that families needing transportation to enable them to receive early intervention services were provided with transportation (34 CFR §303.12(d)(15)). ADHS, in the FFY 2001 APR, indicated it would provide training to providers on the IFSP process and would survey parents to determine the adequacy of services and supports provided by the Part C program. On page 4 of the FFY 2002 APR, ADHS indicated that it reviewed records for the provision of transportation, and determined that transportation was being provided for children as an early intervention service. OSEP appreciates ADHS' efforts to implement strategies and provide information regarding this issue.

7. Early Childhood Outcomes

Instructions for the Part C FFY 2001 and FFY 2002 APRs requested data on the percentage of children participating in the Part C program who demonstrated improved and sustained functional abilities in the developmental areas listed in 34 CFR §303.322(c)(3)(ii). On page 22 of the APR, the State provided data, based on the self-assessment data collected from providers, indicating that 11,209 outcomes were achieved for 1,098 children whose IFSPs were reviewed. ADHS reported that it intended to continue to revise its self-assessment and monitoring tools to include indicators that more accurately evaluate progress regarding improved functional abilities in the five developmental areas. In the FFY 2003 APR, ADHS must submit, if available, responsive data (whether collected through sampling, monitoring, or other methods), targets for improved performance and strategies to achieve those targets for this area, or its plan to collect and report the data for the FFY 2004 APR (expected to be due March 31, 2006), including a detailed timeline of the activities necessary to implement that plan.

Early Childhood Transition

OSEP's August 2000 Monitoring Report indicated one area of noncompliance in this cluster area, that ADHS did not ensure that a written transition plan was developed and implemented for each child according to requirements in the IDEA under 34 CFR §303.344(h).

On pages 25 - 26 of the FFY 2002 APR, ADHS indicated that it collected the following information: (1) in a preliminary review of 35 records reviewed, 22 were for children 90 days before their third birthday and seven of the 22 records (32%) included a transition plan developed in a timely manner; (2) training was provided to service providers and coordinators regarding the transition requirements, supplemented by a competency-based assessment; and (3) another review of the records for 22 children within 90 days of their third birthday found that all 22 included a transition plan. OSEP appreciates ADHS' efforts to implement all IP strategies to

address this area of noncompliance. OSEP did not identify additional concerns in this cluster area.

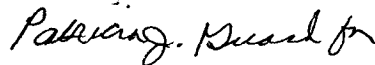
Conclusion

As noted above, in the FFY 2003 APR, due March 31, 2005, ADHS must submit:

1. A list of non-ADHS entities monitored and a summary of findings of noncompliance identified during that monitoring;
2. Data (from sample record reviews or other methods) that confirm that children with diagnosed conditions are automatically determined eligible and are not subject to other eligibility criteria;
3. Data indicating that eligible children and families receive early intervention services on their IFSPs. If the data demonstrate continued noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to achieve compliance as soon as possible. Failure to provide data demonstrating substantial improvement in this compliance area may result in the State's designation as a high risk grantee for its FFY 2005 Part C grant;
4. Data it collects from the revised monitoring tool regarding justifications for services not provided in natural environments, and its analysis specific to 34 CFR §303.344(d)(1)(ii). If the data demonstrate continued noncompliance, the State must include a plan with strategies, proposed evidence of change, targets and timelines designed to achieve compliance as soon as possible; and
5. Responsive data regarding children participating in the Part C program who demonstrated improved and sustained functional abilities (whether collected through sampling, monitoring, or other methods), targets for improved performance and strategies to achieve those targets for this area, or its plan to collect and report the data for the FFY 2004 APR (expected to be due March 31, 2006), including a detailed timeline of the activities necessary to implement that plan.

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 Ginger Johnson at (202) 245-7353.

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

cc: Regina Davenport
Acting Part C Coordinator