



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

AUG 22 2005

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

Dear Director Williams:

The purpose of this letter is to respond to the Utah Department of Health's (UDOH's) March 25, 2005 submission of its Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part C for the grant period July 1, 2003 through June 30, 2004. The APR reflects actual accomplishments that the State made during the reporting period, compared to established objectives. OSEP has designed the APR under 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 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 document data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the State's FFY 2003 APR, the State's May 25, 2005 Progress Report regarding the 45-day timeline issue, the State's revised CDR submitted in August 2004, and the State's revised procedural safeguards notice submitted October 26, 2004. OSEP has listed its comments, analysis and determinations by cluster area.

Background

In its May 3, 2004 letter regarding the State's FFY 2001 APR, OSEP identified noncompliance with the requirement to convene the initial IFSP meeting within 45 days of referral, as required by 34 CFR §§303.321(e) and 303.342(a). OSEP indicated in its May 3, 2004 letter that the State must submit a final progress report demonstrating compliance with this requirement by June 3, 2005. UDOH submitted its final progress report to OSEP on May 25, 2005.

In its September 15, 2004 letter regarding the State's FFY 2002 APR, OSEP identified five other areas of noncompliance, including: (1) General Supervision, ensuring the timely correction of identified areas of noncompliance among all local programs, as required by 34 CFR §303.501; (2) Providing all services identified on the Individualized Family Service Plan (IFSP) as required by 34 CFR §§303.344, 303.342(e) and 303.340(c); (3) Ensuring that an appropriate justification is written on the IFSP when services were not provided in the natural environment as required by 34 CFR §303.344(d)(1)(ii); (4) Including steps on the IFSP to support the transition of the child and family as required by 34 CFR §303.344(h); and (5) Holding a transition conference, with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §303.148 and 34 CFR §303.3.44(h). OSEP indicated in its September 15, 2004 letter that the State must report on its

progress in ensuring compliance with these requirements in its FFY 2003 APR, and provide a final progress report to OSEP demonstrating compliance by October 15, 2005.

In this letter, based on its review of the State's FFY 2003 APR, OSEP also identifies noncompliance, not previously identified by OSEP, with the requirement that evaluations and assessments are to be conducted in all five developmental domains as required by 34 CFR §§303.322(c)(3)(ii). As stated in this letter, the State must include data and analysis demonstrating progress toward compliance with this requirement in its State Performance Plan (SPP), due December 2, 2005, and must submit a final progress report to OSEP demonstrating compliance as soon as possible, but not later than 30 days following one year after the date of this letter.

The State also provided to OSEP a copy of its revised CDR (file review and compliance determination procedures) in its August 2004 letter, and submitted a copy of its statewide procedural safeguards notice on October 26, 2004.

General Supervision

Identification and timely correction of noncompliance

In its May 28, 2004 verification letter, OSEP indicated that it had reviewed UDOH's compliance determination protocols that stated that if a local program's performance is equal to or greater than 80%, the program was determined to be in compliance and therefore UDOH did not require the local program to develop an IP and did not conduct follow-up activities to ensure that the local program was in compliance. Because Part C regulations require that UDOH adopt and use proper methods of administering each program to ensure that the State complies with the Federal Part C requirements regarding the supervision and monitoring of programs, OSEP required UDOH to submit a revised compliance determination protocol that specifies that the lead agency ensures that local programs are in full compliance with Federal Part C requirements. UDOH, in its August 2004 letter, provided a copy of its revised CDR (file review and compliance determination procedures) to demonstrate that local programs were required to correct all identified areas of noncompliance. UDOH stated in the file review procedures that any files out of compliance for any indicator were noncompliant and a corrective action plan would be developed and implemented to ensure compliance. UDOH reported that future strategies would be implemented to ensure continuous compliance. UDOH stated that reports would be generated by the State's electronic data-base system so that local programs could monitor their progress to correct identified area(s) of noncompliance. OSEP has not identified any further concerns regarding UDOH's revised CDR.

In its September 15, 2004 letter regarding the FFY 2002 APR, OSEP identified noncompliance with the requirement that the State ensure the timely correction of identified areas of noncompliance among all local programs as required by 34 CFR §303.501. UDOH reported in its FFY 2002 APR that due to a staff vacancy at the State level, three local programs that were noncompliant were not issued a Compliance Determination Report, and did not develop an improvement plan to correct the identified areas of noncompliance. In its September 2004 letter, OSEP accepted the State's strategies, required UDOH to report on its progress in correcting the noncompliance in its FFY 2003 APR, and required UDOH to submit a final progress report demonstrating compliance by October 15, 2005. In its FFY 2003 APR, the State reported that the three programs that did not receive timely identification of noncompliance due to staff vacancies in the lead agency were remonitored during the 2003 reporting period and were issued a compliance determination report in

a timely manner (page 4). UDOH further reported in its FFY 2003 APR that those three programs developed Improvement Plans and that compliance would be demonstrated in FY 2004 (page 4). In its final progress report, due October 15, 2005, the State must report on its follow up to ensure that those three programs are in compliance.

Dispute resolution

In its FFY 2003 APR, the State provided data regarding the distribution of the procedural safeguards notice prior to evaluations and IFSPs (Attachment GSI, Table 2). OSEP appreciates the work of the State regarding this requirement.

The State submitted a copy of the statewide procedural safeguards notice - a booklet entitled *Parent's Rights in Early Intervention* (hereinafter referred to as "Notice") on October 26, 2004. OSEP reviewed this Notice based on IDEA law in effect at the time that the notice was submitted to OSEP, prior to the IDEA amendments of 2004.¹ While many of the changes UDOH made to its Notice met the requirements of Part C, several areas remained that required changes. OSEP has indicated these changes in Attachment A to this letter.

UDOH also reported that no complaints, mediations, or due process hearings were filed during this performance period. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Personnel

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 10, 11 and in Attachment GS.IV, Table 1 and Table 2 of the FFY 2003 APR, the State included data and analysis regarding performance in this area. UDOH reported trend data that indicated 95% of the early intervention staff met the State's credentialing criteria. The remaining staff was completing their training activities and credentialing program. UDOH reported that in some regions of the State, particularly in the rural areas, recruitment of staff to fill vacancies was a challenge and could take from two to five months. UDOH identified strategies regarding staff recruitment and retention, and oversight and monitoring of the Baby Watch training and credentialing program (page 11). OSEP appreciates the work of the State regarding performance with this requirement.

Collection and timely reporting of accurate data

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 13 -14 of the FFY 2003 APR, the State included data and analysis regarding performance in this area. UDOH reported that all local programs submitted the required data sets, including the 618 data, in a timely manner, consistent with the State's contract provisions. UDOH stated that funding was obtained to develop phase two of the electronic database, Baby and Toddler Online Tracking System (BTOTS). UDOH also indicated that training was conducted and ongoing feedback was solicited from an interface user group to ensure the accuracy of the data as the State moved into full operation of BTOTS. OSEP looks forward to reviewing the State's data in this area in the SPP due December 2, 2005.

¹ It is our understanding based on the State's FFY 2005 application that the State will be updating its notice after the IDEA Part C regulations are published to reflect the changes in IDEA 04 and the applicable Part C regulations.

Comprehensive Public Awareness and Child Find System

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 16-19 of the FFY 2003 APR, the State included data and analysis regarding performance in this area. UDOH provided information regarding the State's public awareness and child find activities as required by 34 CFR §§303.320-303.323 of Part C of the IDEA. On pages 16-17 of the FFY 2003 APR, UDOH described the partnership efforts with other State, public and private agencies to implement a coordinated child find and public awareness system. Utah reported that the number of eligible children birth to three served declined from 1.75% in FFY 2002 to 1.62% in FFY 2003. (page 16). The State also reported that the number of eligible children served under one year of age decreased from .95% in FFY 2000 to .68% in FFY 2003. UDOH stated that the cumulative child count, based on the average monthly child count of 2.06%, exceeded the 1.6% annual child count submitted under section 618 of IDEA. UDOH attributed the decrease in the number of children served, including those under one year of age, partially to the change in the State's eligibility criteria and the implementation of parent fees. UDOH reported that collaborative efforts with the State's Child Protective Service were initiated, and a web-based referral system was developed on Utah's Medical Home website to maintain performance in this area. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Family Centered Services

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On pages 21-24 of the FFY 2003 APR, the State included data and analysis regarding compliance and performance in this area. UDOH provided data that indicated family assessments were being conducted and the results were used to identify and document outcomes on the IFSP as required by 34 CFR §§303.322(d) and 303.344(b). UDOH stated that all 15 local programs (100%) demonstrated compliance with the provision to conduct family assessments and write family-centered outcomes that reflected the family's daily activities on the IFSP. UDOH reported that telephone interviews were conducted with a random sample of 60 families. The results from the telephone survey indicated that: (1) families understood the services being provided; (2) services met the needs of their child and family; and (3) families knew how to contact their service coordinator and provider if the need arose. The State reported they would continue to explore strategies, such as the General Supervision Enhancement Grant (GSEG), to measure the impact of early intervention services on child and family outcomes. OSEP looks forward to reviewing the State's data in this area in the SPP, due December 2, 2005.

Early Intervention Services in Natural Environments

Service coordination

OSEP did not identify noncompliance in this area in the FFY 2002 APR. On page 25 of the FFY 2003 APR, the State included data and analysis regarding performance and compliance in this area. UDOH reported data that indicated all (100%) of the local programs demonstrated compliance with the provision to ensure that each family had a service coordinator. Utah reported the results of a telephone interview with 60 families indicating that the families knew their service coordinator and how to contact them if warranted (page 25). OSEP appreciates the work of the State in ensuring performance in this area.

Evaluation and identification of needs

On pages 26, 27 and Attachment GS.1, Table 2 of the FFY 2003 APR, the State included data and information indicating noncompliance, not previously identified by OSEP, with the requirement that evaluations and assessments be conducted in all five developmental domains, as required by 34 CFR §303.322(c)(3)(ii). Utah reported that it identified noncompliance in 28% of the files it reviewed, and that 11 of the 15 local programs monitored by the State were required to implement an IP to ensure that evaluations and assessments were conducted in all five developmental domains. Utah stated that three of the eleven programs had demonstrated correction of the noncompliance, and that full compliance would be demonstrated in FY 2004 – 2005. In the FFY 2003 APR, the State also provided its analysis indicating that the “primary contributing factor to noncompliance was failure to complete health, vision and hearing assessments prior to the IFSP. In many instances, these were completed, but not in a timely manner. Insufficient staffing and difficulty scheduling assessments in rural and frontier areas also contributed to noncompliance” (page 26). The FFY 2003 APR included strategies, proposed evidence of change, targets, and timelines designed to ensure compliance within a reasonable period, not to exceed one year from the date of this letter. The strategies proposed by the State appear to respond to the issues the State identified in its analysis, including enabling “programs to utilize a broader set of available resources to address health, hearing and vision screening and assessments,” developing requirements for its database that would assist in documenting compliance with timely assessments in all domains, and following up on the IPs of the eight local programs with continuing noncompliance (pages 27 and 28). OSEP accepts the State’s plan in its FFY 2003 APR, including these strategies. In the SPP, the State must include data and analysis demonstrating progress toward compliance, including updated monitoring information and data regarding the eight local programs referenced in the FFY 2003 APR as being in noncompliance with this requirement. The State must also provide a final report to OSEP with data and analysis demonstrating compliance as soon as possible, but not later than 30 days following one year after the date of this letter.

Individualized family service plans (IFSPs)

OSEP has previously identified two areas of noncompliance in this area. First, in its May 3, 2004 letter regarding the FFY 2001 APR, OSEP identified noncompliance with the requirement to convene the initial IFSP meeting within 45 days of referral, as required by 34 CFR §§303.321(e) and 303.342(a). In its FFY 2001 APR, the State reported that it had found three out of eight local programs in noncompliance with this requirement. OSEP indicated in its May 2, 2004 letter that the State must submit a final progress report demonstrating compliance with this requirement by June 3, 2005. On pages 25-26 of the FFY 2003 APR, UDOH indicated that two of the three local programs corrected the noncompliance with this requirement. In its final progress report, dated May 25, 2005, UDOH indicated that all three local programs where the State had identified noncompliance in 2001 and 2002 were in full compliance with this requirement. However, in Attachment GS.1, Table 2 of the FFY 2003 APR, the State also indicated that only 269 of the 300 (90%) files reviewed by the State were in compliance with this requirement. In the SPP, the State must provide updated data regarding compliance with the requirement to convene the initial IFSP meeting within 45 days of referral. If the data shows noncompliance, then the State must also include in its SPP a plan to ensure compliance.

Second, in its September 15, 2004 letter regarding the FFY 2002 APR, OSEP identified noncompliance with the provision to ensure that all services identified on the IFSPs were provided as required by 34 CFR §§303.344, 303.342(e) and 303.340(c). OSEP's September 2004 letter indicated that the State must provide a report on the progress being made to address this noncompliance in its FFY 2003 APR, and provide a final progress report to OSEP demonstrating compliance by October 15, 2005. On page 29 of the FFY 2003 APR, UDOH indicated that five of the seven local programs where noncompliance was identified by the State during FY 2002 – 2003 have demonstrated compliance with this requirement. The State also indicated in the FFY 2003 APR that the two remaining local programs are receiving continued follow up and compliance will be demonstrated in FY 2004 – 2005. In Attachment GS.1, Table 2 of the APR, the State also reported that 231 of the 318 (73%) files reviewed by the State were in compliance with this requirement. In the final progress report, due on October 15, 2005, the State must include updated data and analysis demonstrating compliance with this requirement.

Natural environments

In its September 15, 2004 letter regarding the FFY 2002 APR, OSEP identified noncompliance with the provision to ensure that an appropriate justification is written on the IFSP when early intervention services are not provided in the natural environment as required by 34 CFR §303.344(d)(1)(ii). On pages 30-32 and in Attachment GS1 Table 2 of the FFY 2003 APR, the State included data and analysis demonstrating progress in correcting the noncompliance. UDOH reported that two of the three local programs identified by the State in FFY 2002 as being in noncompliance with this requirement demonstrated correction of the noncompliance. UDOH reported that the one remaining local program continued to implement the strategies in their IP. Utah also stated that 92% of the files reviewed in FFY 2003 demonstrated compliance with this requirement. In the final progress report, due on October 15, 2005, the State must include updated data and analysis demonstrating compliance with this requirement.

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 demonstrate improved and sustained functional abilities in the developmental areas listed in 34 CFR §303.322(c)(3)(ii). On pages 33-34 of the FFY 2003 APR, UDOH reported that the Early Intervention Research Institute at Utah State University conducted a study of children enrolled in the Part C and 619 programs from 1996 to 1999. The results of the study indicated that 47% of the children previously enrolled in Part C were no longer receiving special education services in the academic years 2001-02 through 2003-04. The research concluded that Utah's early intervention program is effective in meeting the original intent of IDEA in reducing the number of children needing special education and reducing the overall educational cost. UDOH reported that several strategies were implemented to further determine child outcomes over time, including documenting progress toward achieving outcomes on IFSPs, using assessment data to track child progress, parent reports, and family surveys. UDOH also reported that it continues to collaborate with the Early Childhood Outcomes Center and with support from the General Supervision Enhancement Grant, data will be generated to quantify child outcomes. In the State's submission of its SPP on

December 2, 2005, UDOH should review its data and strategies reported in its FFY 2003 APR to address the SPP requirements related to this indicator.

Early Childhood Transition

In its September 15, 2004 letter regarding the FFY 2002 APR, OSEP identified noncompliance with the following two transition requirements: (1) including steps to support the transition of the child and family in the IFSP, consistent with 34 CFR §303.344(h), and (2) holding a transition conference, with the approval of the family, at least 90 days before the child's third birthday, as required by 34 CFR §303.148(b)(2)(i). In the FFY 2003 APR, the State reported that the two local programs that the State identified as being in noncompliance with these requirements in 2002 were monitored again in 2003 and found to be in compliance (page 36). The State also reported that, in 2003, it monitored, for transition issues, the two local programs in which transition was not reviewed during their monitoring in 2002, and found both of those programs to be in noncompliance, and required them to develop IPs. In the FFY 2003 APR, the State also reported that 91 of the 124 (73%) files it reviewed were in compliance with the requirement to include transition steps on the IFSP, and 57 of the 103 (55%) files it reviewed were in compliance with the requirement to schedule and conduct transition meetings at least 90 days before the child's third birthday. (page 37, and Attachment GS.I, Table 2). In the final progress report due on October 15, 2005, the State must include data and analysis demonstrating compliance with these requirements for the two local programs described above, and provide updated data on the number of files reviewed that are in compliance with these requirements.

Conclusion

As discussed in this letter, the State must submit to OSEP a final progress report no later than October 15, 2005 demonstrating compliance with the following areas of noncompliance that OSEP identified in its September 15, 2004 letter: (1) General Supervision, ensuring the timely correction of identified areas of noncompliance among all local programs, as required by 34 CFR §303.501; (2) Providing all services identified on the IFSP as required by 34 CFR §§303.344, 303.342(e) and 303.340(c); (3) Ensuring that an appropriate justification is written on the IFSP when services are not provided in natural environments as required by 34 CFR §303.344(d)(1)(ii); (4) Including steps on the IFSP to support the transition of the child and family as required by 34 CFR §303.344(h); and (5) Holding a transition conference, with the approval of the family, at least 90 days before the child's third birthday as required by 34 CFR §303.148(b)(2)(i).

The State must also submit the following information in its State Performance Plan (SPP), due December 2, 2005: (1) Updated data regarding compliance with the requirement to convene the initial IFSP meeting within 45 days of referral (if the data shows noncompliance, then the State must also include in its SPP a plan to ensure compliance); and (2) Data and analysis demonstrating progress toward compliance with the requirement that evaluations and assessments are to be conducted in all five developmental domains, including updated monitoring information and data regarding the eight local programs referenced in the FFY 2003 APR as being in noncompliance with that requirement.

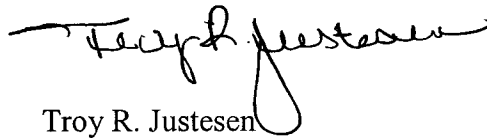
No later than 30 days following one year after the date of this letter, the State must also submit a final progress report to OSEP with data and analysis demonstrating compliance with the

requirement that evaluations and assessments are to be conducted in all five developmental domains.

IDEA 2004, §616, requires each State to submit a SPP that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators will be, for the most part, similar to 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 recognizes that the APR and its related activities represent only a portion of the work in your State, and we look forward to collaborating with you as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Alma McPherson at (202) 245-7443.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy R. Justesen". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Troy R. Justesen
Acting Director
Office of Special Education Programs

Attachment

cc: Susan Ord