



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

NOV 21 2005

Honorable Terrell I. Murphy
Commissioner
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Blvd., 3rd Floor
Austin, Texas 78756

Dear Commissioner Murphy:

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 Texas. As indicated in my letter to you of December 20, 2004, 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 Texas during the week of October 3, 2005.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and State-wide assessment systems to assess and improve State performance, and to protect child and family rights. The data collected through verification visits will help OSEP: (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 Part C lead agency, the Texas Department of Assistive and Rehabilitative Services (DARS), OSEP staff met with Mary Beth O'Hanlon (the State's Part C Coordinator) and members of DARS'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: (1) the State's February 25, 2005 final Progress Report; (2) the State's Annual Performance Reports for grant periods July 1, 2002 - June 30, 2003 and July 1, 2003 - June 30, 2004; (3) the State's Part C application; and (4) information from the State's website as well as other information and documents.

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.

On September 12, 2005, OSEP conducted conference calls with members of the Part C Early Childhood Intervention Advisory Council (ECI Advisory), and with parents to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, data collection and reporting. The information from these calls and the information that Ms. O'Hanlon 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 understanding of DARS's systems for general supervision, data collection and reporting for the Texas Early Intervention System.

General Supervision

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.

DARS contracts with 60 early childhood intervention agencies (ECI programs) to ensure services are available throughout the State. These ECI programs are under the auspices of the State's educational, health or human services departments. By contract, the ECI programs are responsible for provision of services under Part C. The lead agency determines and approves specific service areas and staffing patterns as part of an annual contract renewal application process. Each ECI program has an administrative, supervision and staffing structure approved by the State that fully supports operation of the ECI program. DARS is responsible for general supervision of the system, data collection and analysis, resolving complaints, planning and implementing a comprehensive system of personnel development and child find and public awareness plan. The ECI Advisory is responsible for advising and assisting DARS.

Components of the State's general supervision system: As a part of its general supervision system, the lead agency utilizes review of data reported by contracted programs, in-house review of program funding applications, in-house review of required reports, information from referral sources and other entities, on-site review based on a risk assessment, technical assistance through on-site visits, telephone and e-mail communications, informal complaint resolution and formal complaint investigation. The staff reported that training is also a critical component of the system to promote and maintain compliance and performance. The lead agency focuses training on areas of need identified through quarterly calls to the local ECI programs and from the on-site monitoring. All ECI providers except for licensed therapists are required to have a

credential certification. DARS employs six consultants and two leads that perform and supervise the monitoring of the 60 programs across the State. Monitoring includes gathering, utilizing and analyzing information from various sources to plan monitoring and technical assistance activities. Prior to monitoring on-site, the staff review financial and program information. With input from the ECI Advisory, the lead agency aggregates, analyzes and reviews the information and data collected prior to and during on-site monitoring in order to identify improvement strategies to be implemented by the agency being monitored.

The State utilizes a risk assessment process annually for routine monitoring site selection and selects programs for monitoring on an as-needed basis. An on-site monitoring review is conducted for each program at least once every three years. The lead agency generates stratified random samples of records from the Texas Kids Intervention Data System (TKIDS) for the consultants to review. Programs perform a self-assessment of their records using monitoring protocols. These self-assessments are then used to prepare for on-site monitoring visits.² Assigned consultants call each program on a quarterly basis in order to provide guidance and support, and to ensure implementation of new policies. Each call includes a discussion of any monitoring issues and corrective actions.

Identification of noncompliance: The on-site monitoring process includes interviews used to determine the overall compliance status of a program. The State has developed monitoring instruments for observations and other activities. It validates the data by looking at the convergence of the data with other sources of information, including data and performance reports, and quarterly calls with local programs.

Until recently, the State did not distinguish between compliance and best practice in its monitoring reports. During the verification visit, DARS staff acknowledged that although monitoring reports identify findings, findings do not distinguish best practices from areas of noncompliance with Federal and State Part C requirements. OSEP reviewed two ECI programs' monitoring files. There was clear documentation indicating the pre-visit data gathering, records reviewed including checklists of each area, fiscal review, observations, interviews, corrections required, responses from the programs regarding the corrections, a final report, notes, and a tracking form for completion of the corrective actions. The State had identified "findings" but did not clearly differentiate what was noncompliance. DARS staff reported that they are in the process of clarifying what percentage of findings constitutes noncompliance to ensure accurate reporting in the State Performance Plan.

Correction of noncompliance: DARS contracts with ECI programs provide it with the authority to enforce correction of identified noncompliance. In addition, DARS has statutory enforcement authority. Comprehensive monitoring reports include corrective actions and specific timelines for actions to begin immediately upon identification.

² The State is in the process of revising the self-assessment to align it with the State Performance Plan.

Corrective actions may include but are not limited to: (1) requirement of the ECI programs to review all records for certain deficiencies identified in the monitoring report; (2) required training for staff approved by the lead agency; (3) development of systems to prevent further occurrences of the noncompliance; (4) submission of IFSPs and other documentation to the State in order to verify correction; (5) report on steps taken to remediate deficiencies found; and (6) submission of staff development plans.

When DARS identifies noncompliance for an ECI program, implementation and tracking of corrective actions occurs. The ECI consultant conducts activities such as a desk review and/or on-site follow-up to ensure compliance. Correction, technical assistance, and follow-up with programs address all instances of noncompliance. The State had placed some ECI programs in a high-risk status due to non-correction of findings within a specified timeline. Once the State has designated a program as high-risk, the consultants work very closely with the program to provide technical assistance and support. Follow-up of high-risk programs will occur within that same year. In the past, the lead agency has also enforced sanctions. On page 3 of the State's Federal Fiscal Year (FFY) 2003 Annual Performance Report (APR), DARS reported that of two ECI programs placed on high-risk status in State Fiscal Year (SFY) 2003, one ECI program resolved the issues and the contract for the other ECI program was not renewed at the end of SFY 2004.

Complaints, Due Process, Mediation and Prior Notice: The State reports that during FFY 2004-2005 there were four complaints filed, two of the complaints went to mediation, during which resolution occurred prior to the 60-day timeline and the other two complaints were timely resolved. To ensure local implementation of any decisions made, the State provides technical assistance and follow-up to ensure implementation. In addition, the State provides written guidance to all programs and revises or clarifies rules and/or policies based on the results of those decisions. The State logs all complaints and complaint decisions in the ECI program's contact file.

The State reported that during FFY 2004-2005 there were no requests for due process hearings. ECI is exempt from the State's system of hearings (SOAH) because of the need for specialized knowledge under IDEA. The lead agency contracts with an individual (also utilized by the Texas Education Agency) who serves as a hearing officer, is a certified mediator and has knowledge of IDEA.

The State has developed a parent handbook on procedural safeguards and has developed a model prior written notice form for the ECI programs to use. During its on-site monitoring visits, DARS consultants review the ECI program's prior written notice document.

Effectiveness of the State's general supervision system: OSEP believes that Texas' system for general supervision comprises a reasonable approach to the identification and correction of noncompliance, however, without collecting data at the local level, OSEP could not determine whether DARS current systems are effective in identifying and

correcting noncompliance.

Data Collection Under Section 618 of the IDEA

In reviewing 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 levels 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.

TKIDS system overview: Currently the State uses TKIDS to collect the data under Section 618 of the IDEA. The State released this system in October 2001, and the lead agency used it in parallel with the previous data system throughout SFY 2002. The lead agency converted this system to a web-based application in SFY 2004 and released that version in February 2005. The 60 local early intervention programs collect and enter data using a web-based interface. All programs are under a contract to ensure that there are internal controls and procedures for security. The data manager extracts, analyzes, verifies and reports the data at the State level. Access is restricted, based on roles and responsibilities. A transmission process protects the data with encryption technology.

The lead agency provides formal classroom training for data entry personnel and supervisory staff. The data manager provided regionally-based training on the web-based TKIDS to the local programs in January and February of 2005. All programs were provided a copy of the User's Manual. The data manager also provided training to the program staff and analysts at the State level. Telephone technical assistance and a specific e-mail account that addresses TKIDS issues is available for the local programs to utilize.

Reliability and validity: The State ensures reliability through edit checks, including data definition edits and logical consistency checks, within the system. The data system includes several levels of testing, at different levels of security, before the State releases new versions. Training and technical assistance are provided to end users, who enter the data at the local level. The system uses warning flags to identify potentially out-of-range values. Throughout the data collection process, data reports are provided through a web-based reporting system. The local programs use these to check and review their data. During on-site monitoring visits, the consultants verify the data and review the processes for data collection/entry. Analysts check for completeness, accuracy, out of range values, and anomalies in trends over time.

The State ensures validity of its data. It has a data dictionary that defines the specific data elements and response options that correspond with OSEP data instructions. When the State makes changes, it disseminates special instructions and announcements to all the providers. The edit checks in the system ensure consistency and reasonableness that enforce specific requirements.

Reporting to OSEP: The State uses the same definitions provided by OSEP for all the tables in the current data collection system. The data manager uses SAS programs to aggregate the raw data from the local programs and summarize the data to the State level. Analysts verify consistency with OSEP instructions and review methodologies, computer codes and preliminary totals. The data manager disaggregates data to examine and explain unusual variations over time.

The State completes the child count, exiting, settings, and services tables similarly by using the data collection process described above. The data manager obtains the child count by a query using age and the IFSP date. Exit data include all children who exit Part C although some children upon exiting Part C may receive "follow-along services".³ The data manager collects services data on the planned services from the IFSP. The lead agency reported that it also collects setting per service data. The State uses the WESTAT formula to determine the data for settings.

The host agency collects data for the personnel table. The consultants cross check this data from service contracts and billing records.

Effectiveness of the TKIDS: The data manager reported that the State had a single audit of the data collection system conducted in SFY 2004 and there were no findings. Monitoring of local programs has revealed a minor discrepancy at times between data reported and child records. Where there are discrepancies, the State requires corrective action and provides technical assistance to the program. The lead agency identifies missing data in "error" reports sent to the local programs and requires the ECI program to make corrections directly into the data system. Subsequent analyses are made to confirm that the corrections occur.

A web-based training was initially available for all the ECI programs. All ECI programs have a user manual and technical assistance is available to the programs through a specific e-mail account maintained by the lead agency. The lead agency conducts data training annually and the ECI program directors are knowledgeable about the TKID system and train new staff on use of the system. The lead agency releases notes on any updates regularly and updates the manual twice a year.

³ Children ineligible for EI services but potentially at-risk for developmental delay may receive follow-along services in Texas under Section 638. These services help the family monitor the child's development and determine when to contact ECI for an evaluation.

OSEP believes that DARS's system for collecting and reporting data is a reasonable approach to ensuring the accuracy of the data that DARS reports to OSEP under section 618.

Conclusion

We appreciate the cooperation and assistance provided by your staff during our visit. If you have any questions about this letter, please contact Ms. Ginger Johnson, OSEP's State Contact for the Texas Part C program at 202-245-7353. We look forward to collaborating with Texas as you continue to work to improve results for children with disabilities and their families.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Mary Beth O'Hanlon
Part C coordinator