

Honorable James S. Reinhard, M.D.
Commissioner
Department of Mental Health, Mental Retardation
and Substance Abuse Services
P.O. Box 1797
Richmond, Virginia 23218-2120

Dear Commissioner Reinhard:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to Virginia. As indicated in my letter to you of January 10, 2005, 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). OSEP staff conducted the Part C verification visit to Virginia during the week of April 11, 2005.

The purpose of our verification reviews of States is to determine how they use their systems for general supervision, State-reported data collection, and statewide assessment to assess and improve State performance, and to protect child and family rights. The purposes of the verification visits are to: (1) understand how these 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 general supervision systems are designed to identify and correct noncompliance and improve performance.

My staff appreciated the opportunity to meet with Deputy Commissioner Ray Ratke, Assistant Commissioner Frank Tetrick, and you at the beginning of their visit to the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), the State's Part C Lead Agency. As part of the verification visit, they also met with Shirley Ricks, Director of Children and Family Services, Mary Ann Discenza, the State's Part C Coordinator, and members of DMHMRSAS early intervention 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.

On March 9, 2005, OSEP staff participated in a meeting with Virginia's Interagency Coordinating Council (VICC) and steering committee members to hear their perspectives on the strengths and weaknesses of the State's systems for general supervision, and data collection and reporting. Prior to and during the visit, OSEP staff reviewed a number of documents, including the State's: (1) Part C Application; (2) Self-Assessment; (3) Improvement Plan; (4) Federal Fiscal Year (FFY) 2002 and 2003 Part C Annual Performance Reports (APRs); and (5) submissions of data under Section 618 of the IDEA, as well as other information and

documents.¹ OSEP also conducted a conference call on April 4, 2005 with a member from the Parent Educational Advocacy Training Center to solicit information on the strengths and weaknesses of the State's systems for general supervision, and data collection and reporting.

The information that Ms. Discenza, her staff, and consultants 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 DMHMRSAS's systems for general supervision, and data collection and reporting, for the Infant and Toddler Connection of Virginia System.

General Supervision

In looking at the State's general supervision system, OSEP collected information regarding a number of elements, including whether the State: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede 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 noncompliance; (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 results, etc.) to identify systemic issues and problems.

Structure of the Infant and Toddler Connection Early Intervention System

Virginia's Infant and Toddler Connection (a component of DMHMRSAS) delivers Part C services through contracts with 40 local lead agencies (LLAs). Thirty-two of the LLAs are Community Service Boards, and the other eight are local education agencies or other local governmental entities. Each LLA has a system manager who is responsible for local Part C services, and who is the Lead Agency's primary contact for the locality. A local interagency coordinating council (LICC) advises each LLA.

The Lead Agency's General Supervision System

The Lead Agency informed OSEP that it has a multi-faceted system for general supervision that includes the following major components: (1) the Local Contract for Continuing Participation in Part C, in which the Lead Agency sets forth specific expectations for each LLA's performance and compliance in providing Part C services; (2) the Monitoring and Measurement Improvement System (MIMS), that consists of local self-assessment and review by the Lead Agency; (3) a Family Survey system; (4) a system of technical assistance to LLAs; (5) data from the Infant and Toddler On-line Tracking System (ITOTS) data system; and (6) the system for dispute resolution.

Local Contract for Continuing Participation in Part C. Each fiscal year, the Lead Agency enters into a contract with each LLA that specifies fiscal, administrative, reporting, and

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.

compliance requirements with which the LLA must comply. The Contract requires the LLA to comply with all Part C and State requirements, require that all of its subcontractors comply with those requirements, and monitor all its contracts for such compliance. The Local Contract identifies State and local responsibilities for identifying and addressing issues of substantial recurring noncompliance. The Contract requires each LLA to collaborate with other participating agencies or providers to resolve issues locally, to the greatest extent practicable (with the support of technical assistance from the Lead Agency), prior to submitting a notice to the Lead Agency. If an LLA cannot resolve local issues of noncompliance, then it must notify the Lead Agency that there is a “substantial, recurring non-compliance issue.” The Contract further provides that, upon receiving notice from an LLA of such a noncompliance issue, the Lead Agency must respond to the LLA within 15 days, identifying the status or next steps that the Lead Agency proposes to take to resolve the noncompliance. The Contract further specifies that the Lead Agency and the LLA must then commit to making “good faith efforts” to develop plans and implement strategies to resolve the noncompliance. The Lead Agency explained to OSEP that it uses the contract to ensure that LLAs understand their responsibilities, and that its terms afford the Lead Agency the authority to sanction noncompliance by terminating the contract with an LLA. The Lead Agency informed OSEP that, notwithstanding this authority, it has actually terminated only one LLA’s contract, and that was a mutual decision rather than an imposed sanction.

Family Survey. The Lead Agency disseminates a Statewide Family Survey, aligned with the MIMS indicator questions, on an ongoing basis to families in all 40 localities in Virginia. The Family Survey, which consists of two parts, Family Survey I and Family Survey II, is an instrument designed to collect and track individual family-level data at two points in a family’s experience in Virginia’s early intervention system at the time of: (1) the initial individualized family service plan (IFSP), and (2) transition from early intervention. The Lead Agency began use of the Survey in 2000. In 2003, a streamlined version was developed and disseminated to families. This two-stage instrument captures a family’s views about its experiences with accessing the early intervention system, preparation for and the development of an IFSP, service delivery, and transition out of early intervention. The Family Survey is integrated with the overall State monitoring system and is automated to provide immediate access to data for the State and localities.

ITOTS. The Lead Agency’s ITOTS Part C data system is described below in the Data Collection section of this letter. During the verification visit, the Lead Agency explained that it uses ITOTS data to track compliance with Part C’s 45-day timeline, and to help tailor its on-site reviews as part of the MIMS system.

MIMS. The Lead Agency explained that the MIMS process consists of four primary phases: (1) the LLA’s self-assessment; (2) State-level review; (3) the Lead Agency’s on-site visit to the LLA; and (4) development and implementation of a plan of improvement. The first “pilot” MIMS reviews of six LLAs began in 1999, 19 LLAs participated in 2000, 13 participated in 2001-2003, and the final four LLAs began the process in 2004.

The Lead Agency provides an individual orientation to each LLA before it begins its self-assessment, and Lead Agency consultants are available to assist each LLA as it proceeds through

the process. The Lead Agency has developed an extensive protocol for the self-assessment that includes indicators that address each of the 14 components of a Part C system, and that guides the local review team designated by the LLA through a file review, interview, and data review process for each component. Each LLA is directed to review either 10% of its child records or ten records, whichever is greater, as part of the self-assessment. The Lead Agency explained that the LLA is to select the records randomly.

The State review team (SRT) process then follows within two months after an LLA submits its self-assessment to the Lead Agency. Each SRT is comprised of Lead Agency personnel and/or personnel from other LLAs. Regardless of the size of an LLA, the SRT reviews eight child records (five for children that are currently receiving services and three for children who have exited the Part C program). The Lead Agency informed OSEP that its selection of records is random, and that it does not implement procedures to ensure that its sample is representative of ages or disability categories. As OSEP explained during the verification visit, it is concerned that this very small sample may not be effective in identifying noncompliance, particularly because there are no procedures to ensure a representative sample. The SRT completes a “desk audit” of the LLA’s self-assessment and other data, including Family Surveys, ITOTS, local contracts, local policies and procedures, interagency agreements, and dispute resolution data. The SRT also conducts interviews with local personnel, including service providers, the LLA coordinator, and LLA members and families.

The MIMS Consultant assigned to the LLA² then compiles all of the information from all of these data sources in preparation for the Consultant’s on-site visit to the LLA. The Lead Agency clarified that the primary purpose of the on-site visit is to analyze the data that have already been collected through the self-assessment and SRT processes, rather than to collect additional data, and that the Lead Agency does not conduct additional record reviews or interviews as part of the on-site visit. For the 36 LLAs that participated in the MIMS process in 1999 through 2003, the MIMS consultant developed a preliminary “logic model” document that the LLA and Consultant used during the on-site visit to identify strengths and systemic issues requiring improvement.

The Lead Agency informed OSEP that in 2003-2004, the State conducted an evaluation of the MIMS process and determined that, while some areas of noncompliance were identified through the logic model process used for the first 36 LLAs, the process was “superficial” and did not get at most systemic issues, particularly those relating to the decision-making processes used to determine the early intervention services a child and family needed and the settings in which they would receive them. During the verification visit, the Lead Agency informed OSEP that, beginning with the four LLAs that submitted self-assessments in 2004, it had revised the prior “logic model” process to a new “analysis framework” process, and that it was very optimistic that this new process was much more effective in “drilling down” into data and identifying systemic noncompliance issues.

After the LLA and Lead Agency have identified areas needing improvement (through the logic model for the first 36 LLAs, and through the analysis framework for the last four LLAs), the next step during the on-site visit is for the LLA and Lead Agency to develop jointly a “draft”

² The Lead Agency has two positions for MIMS consultants. One of those positions was vacated just after OSEP’s visit, but the Lead Agency expects to fill that vacancy within the coming months.

Plan of Improvement, with outcomes and strategies to address each identified area. Following the visit, the LLA was responsible for submitting a “final” Plan of Improvement to the Lead Agency. The State’s procedures to address “areas needing improvement” identified through the MIMS process are further described below, under “Correction of Noncompliance.”

Technical Assistance. During the verification visit, the Lead Agency emphasized that its focus in ensuring compliance has, historically, been on the provision of ongoing technical assistance, rather than imposition of sanctions. Each of the 40 LLAs are assigned to one of the Lead Agency’s three technical assistance consultants. The consultants provide statewide, regional and LLA-specific training, and conduct frequent visits and conference calls to ensure that local personnel understand the relevant legal requirements and that the consultants are knowledgeable regarding local procedures and practices. The Lead Agency has also provided extensive written guidance documents to LLA and LICC personnel. Since 2000, the Lead Agency has developed and disseminated 17 technical assistance documents to assist localities in understanding Part C requirements, and reviewed these documents at regional meetings with the 40 local system managers.

Identification of Noncompliance

In its February 27, 2004 letter responding to the State’s FFY 2001 APR (submitted May 20, 2003), OSEP requested that the State include, in its FFY 2002 APR, data and conclusions based on those data, regarding the effectiveness of its general supervision system in ensuring the correction of noncompliance. On pages 40 and 41 of the State’s FFY 2002 APR, the State provided data from its MIMS that showed it had made findings of noncompliance across a broad spectrum of Part C requirements. The State’s monitoring documents and OSEP’s verification review of the State’s monitoring system demonstrate that the Lead Agency has a monitoring system that is reasonably designed to identify, and has identified, noncompliance across the range of Part C requirements and Part C service providers.

Correction of Noncompliance

At 34 CFR §303.501(a)(2), Part C requires that the Lead Agency provide general administration and supervision of programs and activities receiving assistance under Part C and monitoring of programs and activities used by the State to carry out Part C, whether or not these programs or activities are receiving assistance under Part C, to ensure that the State complies with Part C. As part of that responsibility at 34 CFR §303.501(b), the Lead Agency must ensure the correction of any noncompliance, and enforce any obligations imposed, under Part C, on agencies, institutions and organizations used by the State to carry out Part C. As explained below, the State has not complied with these requirements.

On pages 36 and 37 of its FFY 2002 Part C APR, the State reported that localities were required to provide annual Improvement Plans, but that follow-up to these plans was an area needing improvement. On page 38, the State set a target to develop, by August 1, 2004, a plan for ensuring adequate follow-up correction plans for noncompliance within one year of the State’s identification. The State also outlined its plan to develop an internal database to track compliance with contract deliverables and local noncompliance, and to convene a committee to

assist in ongoing implementation of MIMS, and in the development of Virginia's monitoring program. However, the State's FFY 2003 Part C APR, submitted on March 23, 2005 did not include any data, analysis, or conclusions regarding the effectiveness of its procedures for ensuring that noncompliance that it identifies through its monitoring systems is corrected.

During the verification visit, the Lead Agency acknowledged that its emphasis in responding to noncompliance has been on the provision of technical assistance and collaboration, and that it recognized that this approach had not ensured the timely correction of noncompliance. The Lead Agency explained that, in its MIMS reviews of the first 36 LLAs, its reports did not clearly specify areas of noncompliance that the LLA must correct.³ Further, while, as detailed above in the description of the MIMS process, each LLA was required to develop and implement an improvement plan to address areas "needing improvement," there was no formal process for approving improvement plans, and no systematic procedures for determining whether an LLA had corrected noncompliance. Further, although as explained above, the Local Contract terms afford the Lead Agency the option of terminating an LLA's contract as a sanction, the State has never imposed such termination or any other sanctions if an LLA has not corrected noncompliance. The Lead Agency acknowledged that, as a result, noncompliance with Part C requirements (such as requirements related to the 45-day timeline and transition planning) has persisted well beyond one year from the date on which the State identified the noncompliance, and continues to persist.

OSEP finds that the State is not in compliance with 34 CFR §303.501(b) based on information provided during the verification visit and lack of data in the State's FFY 2002 APR. The State must submit a plan to OSEP within 60 days of the date of this letter, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of State-identified noncompliance consistent with the requirements of 34 CFR §303.501(b), within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan.

Dispute Resolution

During the verification visit the Lead Agency reported that it received three administrative complaints during 2004, and resolved all of them within 60 calendar days or within the extended timeline (which extension was made due to exceptional circumstances with regard to the particular complaint.) During the verification visit, the State provided documentation of the extensive follow-up activities that it implemented to ensure the implementation of corrective actions that it required in complaint decisions. The State received one mediation request and no due process hearing requests.

Data Collection

³ At the time of OSEP's April 2005 verification visit, the State had issued a report to one of the four LLAs monitored in 2004. While that report specified "evidence of change" to address areas needing improvement, the report did not clearly identify the Part C requirements with which the LLA was not in compliance.

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

Since 2001, the Lead Agency has collected the data that it reports to OSEP for child count, services, settings, and exiting through ITOTS, the Lead Agency's web-based, individual record data system. Each LLA is responsible for entering data onto an ITOTS' Individual Child Data Form (ICDF) for each infant and toddler with a disability when they begin to receive Part C services. The Lead Agency: (1) described the extensive and on-going training and support that it has provided to system managers (including an individualized orientation for each new system manager and annual training for all system managers) to ensure that they understand the rules and procedures for data reporting; (2) provided OSEP with copies of the extensive written guidance it has provided to system managers regarding data reporting; and (3) informed OSEP that it is confident that all system managers understand and follow the directions for data reporting. The Lead Agency also described the edit checks that it has built into ITOTS to prevent the entry of illogical data and duplicate entries of data regarding the same child within an LLA or across LLAs.

In some LLAs, each service coordinator enters the data for his or her caseload directly into ITOTS. In others, service coordinators provide either a hard copy of the ICDF to the system manager (after copying the information from the child's IFSP) or just provide the system manager with a copy of the IFSP; the system manager then enters the data into the web-based system. The Lead Agency acknowledged that: (1) it has no systematic procedures for monitoring the accuracy of data reporting (such as comparing, as part of an on-site visit, the data in a child's IFSP against the data reported in ITOTS for that child); (2) while there are procedures that an LLA can choose to use to review the accuracy of its data, the State does not require LLAs to implement such procedures or to certify the accuracy of their data; and (3) the Lead Agency has no way to determine the extent of inaccurate copying of data into ITOTS from IFSPs or hard copies of the ICDF, or other data-entry errors (beyond the edit checks for illogical data that it has built into the ITOTS software). Within 60 days from the date of this letter, the State must submit to OSEP its procedures for reviewing and requiring data accuracy by LLAs to ensure that the data the State collects, analyzes, and submits to OSEP are accurate and confirm in the State Performance Plan (SPP) (due December 2, 2005) the accuracy of the data the State reports in the SPP and will report in the Section 618 data report.

The Lead Agency further acknowledged that the only services and settings data that LLAs enter into ITOTS are the data from each child's initial IFSP. Thus, the services and settings data that the Lead Agency reports to OSEP for a child after his or her first year in the Part C program are from the initial IFSP, rather than—as required by section 618 and OSEP's data reporting

instructions—data from the child’s most recent IFSP. Within 60 days from the date of this letter, the State must submit to OSEP its plan for ensuring that the State’s next submission of services and settings data under Section 618 (expected deadline February 2006) represent the most recent IFSP data for each child.

The Lead Agency informed OSEP that each LLA submits its personnel data to the Lead Agency by entering full-time equivalent data for each discipline into a paper form, and sending that form to the Lead Agency.

Conclusion

Within 60 days of the date of this letter, the State must submit:

1. Its plan, including strategies, proposed evidence of change, targets and timelines designed to ensure correction of the noncompliance with the requirements of 34 CFR 303.501, as soon as possible, within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan;
2. Its procedures for reviewing and requiring data accuracy by LLAs to ensure that the data the State collects, analyzes, and submits to OSEP are accurate and confirm in the State Performance Plan (SPP) (due December 2, 2005) the accuracy of the data the State reports in the SPP and will report in the Section 618 data report.
3. Its plan for ensuring that the State’s next submission of services and settings data consist of current accurate data for each child.

We appreciate the cooperation and assistance provided by your staff during our visit, and look forward to our continued collaboration with Virginia to support your work to improve results for children with disabilities and their families.

Sincerely,

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Ms. Shirley Ricks
Ms. Mary Ann Discenza