



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

Honorable Alfredo Vigil, M.D.
Secretary
New Mexico Department of Health
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MAR 17 2008

Dear Dr. Vigil:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP) verification and focused monitoring visit to New Mexico during the week of September 24, 2007. OSEP's August 17, 2007 letter informed you that OSEP is conducting verification and focused monitoring 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, Part C of the Individuals with Disabilities Education Act (IDEA). As re-authorized in 2004, IDEA requires the Department to monitor States with a focus on: (1) improving early intervention results and functional outcomes for infants and toddlers with disabilities; and (2) ensuring that States meet program requirements, particularly those most closely related to improving early intervention results for infants and toddlers with disabilities.

The purpose of our verification and focused monitoring visit is to evaluate the State's general supervision and data systems in order to assess and improve State compliance and performance, child and family outcomes, and the protection of child and family rights and to review the State's procedures for its use of IDEA funds and the timely obligation and liquidation of those funds. During the verification and focused monitoring visit, OSEP: (1) analyzed the components of the State's general supervision and data systems to determine the extent to which they are designed to ensure compliance and improve performance; and (2) targeted compliance and results issues identified in our June 15, 2007 letter responding to the New Mexico Department of Health's (NMDOH's) Federal fiscal year (FFY) 2005 Annual Performance Report (APR)/State Performance Plan (SPP).

NMDOH is the State's Part C lead agency. The Family Infant Toddler Program (FIT), within NMDOH, is responsible for administering Part C of IDEA in New Mexico. Early intervention services in New Mexico are provided through 36 early intervention service (EIS) programs, including: (1) contracts with 32 local EIS provider agencies, which operate in one of four regions; and (2) four interagency agreements with other State agencies that provide Part C services to specific populations in the entire State (New Mexico School for the Blind, New Mexico School for the Deaf, Children's Medical Services (CMS) and UNM -Center for Development and Disability, Early Childhood Evaluation Program). FIT also utilizes six professional/technical contracts for training and technical assistance (TA), focused monitoring, parent training, and public awareness. NMDOH reported in its most recent 618 Federal child

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count data submission (Fall 2006) that 3,077 infants and toddlers with disabilities received early intervention services through FIT, which represents 3.58% of the State's infants and toddlers from birth to age three. NMDOH reported in its 618 Federal Child count data that 931 at-risk infants and toddlers received Part C services through FIT.

As part of our visit to New Mexico, OSEP staff met with Andrew Gomm, NMDOH's Part C Coordinator, and State personnel responsible for: (1) NMDOH's general supervision system (including monitoring, mediation, State complaint resolution, and impartial due process hearings) and its procedures for use of IDEA Part C funds and timely obligation and liquidation of those funds; and (2) the collection and analysis by NMDOH of required State-reported data under IDEA. OSEP staff also conducted local focused monitoring, which included individual and/or group interviews with staff and parents from nine local EIS programs.¹

Prior to and during the visit, OSEP staff reviewed a number of documents, including the following: (1) New Mexico's FFY 2005 APR submitted to OSEP in February 2007; (2) New Mexico's SPP submitted to OSEP in December 2005; (3) New Mexico's grant applications under Part C of the IDEA for FFYs 2005, 2006, and 2007 which also include the Special Conditions imposed by OSEP on New Mexico's funding for the three periods above (regarding compliance with Part C's 45-day timeline and early intervention service provision requirements); (4) OSEP's Verification Visit letter to New Mexico dated February 24, 2004; (6) NMDOH's web-site including its public report of local data; (7) 24 individual infant and toddler records from Abrazos, Alta Mira, CMS, Las Cumbres, Mosaic, and UNM Pediatrics - FOCUS Program; and (8) other publicly available data sources.

OSEP's local focused monitoring addressed the following two compliance requirements that were the subject of special conditions on NMDOH's FFY 2007 Part C grant award:

1. All infants and toddlers referred to Part C have evaluations, assessments and an initial individualized family service plan (IFSP) meeting conducted within 45 days of referral to the early intervention program as required by 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a) (referred to as the 45-day timeline requirement).
2. Early intervention services listed on the child's IFSP are provided to the child and family as required by 34 CFR §303.342(e) (referred to as the EI service provision requirement).

In addition, OSEP focused on the area of transition of toddlers with disabilities at age three, specifically the transition requirements in IDEA section 637(a)(9) and applicable requirements in 34 CFR §§303.148 and 303.344(h).

¹ Of the nine EIS programs that OSEP focused on during our visit, OSEP reviewed individual child records and conducted interviews with staff from the following six EIS programs: Abrazos Family Support Services, Alta Mira Specialized Family Services, Inc., Las Cumbres Learning Services, Inc., Mosaic, UNM Pediatrics - FOCUS Program and one State agency that provides early intervention Statewide (Children's Medical Services (CMS)). Staff from the remaining three EIS programs participated in a voluntary group interview (Native American Pueblo Professional Resources (NAPPR), RCI, Inc and UNM Developmental Care Program).

Listed below is the discussion, followed by conclusions and required actions, organized by the critical elements used by OSEP to guide our review of each State's general supervision, data and IDEA fiscal systems.

General Supervision System – Discussion and Conclusions

Critical Element 1: Does the State have a general supervision system that is reasonably designed to identify noncompliance?

NMDOH reported that the State has three components for monitoring: (1) data reported by EIS programs through their local APRs, (2) local focused monitoring on-site reviews by the Division of Health Improvement (DHI), and (3) on-site verification/audit of data by NMDOH staff.

NMDOH selects local EIS programs for on-site focused monitoring based on rank ordering of data submitted through both the local APR and the Statewide electronic data system. Focused monitoring investigates noncompliance regarding only the 45-day timeline or delivery of EI service provision requirements. EIS programs are required to develop corrective action plans (CAPs) around one of these two focused monitoring areas.

NMDOH identifies trends and ranks EIS programs based on data submitted by the EIS programs through their local APRs. The local APR identifies compliance requirements related to SPP/APR Indicators 1 through 8 and is closely aligned with the APR submitted by the State to OSEP under IDEA sections 616 and 642. In its FFY 2005 APR, NMDOH reported data from these local APRs from fifteen of the EIS programs. However, during the verification visit, NMDOH reported that it does not make findings from the local APRs.

NMDOH uses its on-site validation/audit visits to validate billing information and other selected Part C data submitted to the State data system by the local EIS program.

Although these three mechanisms could enable NMDOH to identify noncompliance, OSEP has determined that the State does not have a system that is reasonably designed to identify noncompliance because the State makes findings of noncompliance with only two Part C requirements during its focused monitoring visits (45-day timeline and service provision) and does not identify noncompliance when reviewing other data such as data submitted by EIS programs in their local APRs and NMDOH verification/audit visits of EIS programs.²

In addition, during the course of interviews and review of child records with local EIS program staff regarding OSEP's focused monitoring areas (45-day timeline, early intervention service provision and transition planning), OSEP identified four other areas of noncompliance (natural environment justification, transportation, six-month review and parent consent), which NMDOH

² OSEP distributed a document titled Definitions Relevant to C-9/B-15, dated August 3, 2007, that included its definition of findings as "a written conclusion that includes the citation of the regulation/requirement and a description of the quantitative and/or qualitative data supporting a decision of compliance or noncompliance with that regulation/requirement".

appears not to review in its current focused monitoring system. These areas of noncompliance are discussed below.

As a result of OSEP's visit, NMDOH is working to address the identification of noncompliance by developing a technical assistance (TA) plan with Mountain Plains Regional Resource Center (MPRRC), the National Early Childhood Technical Assistance Center (NECTAC), and the State Interagency Coordinating Council (SICC). In this TA plan, NMDOH has an improvement activity to integrate the data from the three components of its monitoring, APR and other systems to enable NMDOH to identify noncompliance through all of those components. With its June 1, 2008 progress report that is due under its special conditions, the State must submit its revised identification procedures indicating that NMDOH is identifying noncompliance reflected in all compliance data available to the lead agency through all of the components of its monitoring system including data, local APRs, and focused monitoring.

OSEP identified the following examples of noncompliance during its visit:

1. Findings on Natural Environments/Justification/Transportation

Based on its review of records and interviews with staff at the local EIS programs, OSEP found that 10 of 12 IFSPs reviewed in three agencies (Alta Mira, Las Cumbres, Mosaic) did not include justifications where some services were not provided in the natural environment, as required by 34 CFR §§303.12(b), 303.18, 303.344(d)(1)(ii). In addition, OSEP found that in those agencies, which have a limited number of therapists, families were required to transport the child to the provider agency in order to receive Part C services, rather than having the therapist travel to provide the service in the child's home or other identified natural environments setting. In these instances, transportation was not identified as a needed service on the child's IFSP and the families were not reimbursed for transportation costs. During our visit, OSEP staff confirmed in interviews with service coordinators, EIS programs and State Part C staff, that transportation is not considered by IFSP teams when a Part C service that is identified on the IFSP is not provided in the child's home or other natural environment (such as a child's daycare). OSEP finds that this practice is inconsistent with Part C's IFSP decision-making process in 34 CFR §§303.12(d)(15), 303.343 and 303.344. Under Part C, at 34 CFR §303.12(d)(15), transportation can be an EIS when identified by the IFSP team as specifically needed to ensure provision of another needed early intervention service that is also identified on the IFSP.

NMDOH reported that it has provided technical assistance and training around IDEA requirements for natural environments. NMDOH is also working to address the requirements for natural environments in its TA plan, where the State indicated that it intends to provide further TA to the EIS programs about alternative settings that are natural environments, such as the park, the library, etc. OSEP assumes that this TA/training informs EIS providers and service coordinators that all IFSPs must either: (1) identify that each EI service is provided in the child's natural environment; or (2) include a justification for providing an EI service in another setting, which justification must be based on the child's outcomes. OSEP assumes that this TA also includes training on the availability of transportation as a service on the IFSP when identified by

the IFSP team as specifically needed to ensure provision of another needed early intervention service that is also identified on the IFSP.

2. Findings on six-month reviews and parent consent

During the local on-site visits, OSEP also identified noncompliance with the requirements for six-month reviews and parent consent. First, OSEP found that in 20 of the 24 files reviewed six-month reviews were needed, but 18 of the 20 files did not include documentation that a six-month IFSP review meeting to review IFSP progress was conducted, as required under 34 CFR §303.342(b). (Abrazos, Alta Mira, Las Cumbres, Mosaic, and UNM Focus). OSEP also identified that some IFSPs showed changes in services without an IFSP meeting being held or parent consent being obtained, as required under 34 CFR §303.342(e). Of 24 files reviewed, 13 did not have parent consent when a change occurred in service (Abrazos, Alta Mira, Las Cumbres, Mosaic, UNM Focus and CMS).

Critical Element 2: As part of its general supervision system, does the State have mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, previous monitoring results, etc.) to identify systemic noncompliance issues?

NMDOH staff reported that NMDOH does not integrate the data it collects across its systems to identify systemic noncompliance issues. NMDOH staff reported that they currently compile data collected from local APRs, IDEA section 618 data, and the State's verification/audit reports to look at general trends. In addition, as part of its review of local APRs, NMDOH compares each EIS program's performance to Statewide targets and to the performance of other EIS programs. However, NMDOH does not cross-reference data on EI service provision and 45-day timeline collected during its focused monitoring visits of local EIS programs with data on these same requirements submitted by these same programs through the local APR process. Additionally, data collected through verification/audit reports is not cross-referenced with data collected under IDEA section 618 or through the local APRs.

Based on this information, OSEP finds that NMDOH does not appear to have mechanisms in place to compile and integrate data across systems to identify systemic noncompliance issues. During the visit, NMDOH staff indicated that they plan to integrate data from the local focused monitoring visits, corrective action plans, and complaints with the data from the local APRs, the 618 data and the verification/audit reports to develop a more comprehensive look at the State system in order to identify systemic noncompliance issues Statewide.

In the FFY 2007 APR, due February 1, 2009, the State must provide, under Indicator 14, a narrative describing the mechanisms NMDOH has developed and implemented to compile and integrate data across all of its Part C data systems to identify systemic noncompliance issues, and further describe under Indicator 9 any noncompliance NMDOH has identified as a result of implementing such mechanisms.

Critical Element 3: Does the State have a system that is reasonably designed to correct identified noncompliance, including the use of State guidance, technical assistance, follow-up, and if necessary, sanctions?

During the visit, OSEP and NMDOH staff identified three issues that limit the State's ability to correct noncompliance.

First, although the State requires EIS programs that have had focused monitoring visits on EI service provision or 45-day timeline to submit CAPs, it is unclear to OSEP whether NMDOH verifies correction of noncompliance when it issues a closure letter to a local EIS program. OSEP reviewed CAPs from the following five local EIS programs: Abrazos, Alta Mira, Mosaic, Las Cumbres and UNM Focus. Although several corrective activities were listed as "accomplished" on these CAPs, NMDOH staff reported that "accomplished" represented that the local EIS program had made progress, but not that the provider had ensured compliance with applicable requirements.

Second, OSEP reviewed NMDOH's list of sanctions that may be imposed if a program fails to make requisite corrective actions related to focused monitoring visits. These sanctions include revisions of CAPs, technical assistance and training, civil and monetary penalties and termination of a contract. OSEP finds two issues related to sanctions: (1) the use of sanctions is limited only to failure to correct the two areas of noncompliance that are the subject of focused monitoring visits: EI service provision and 45-day timeline, and (2) one EIS program, PB&J Family Services, has repeatedly failed to implement required corrective actions (including developing a CAP or participating in training/TA). NMDOH staff reported that it has not imposed any further sanctions on that local EIS program.

Third, NMDOH does not require the local EIS programs to take any specific corrective action measures when the data reported in the local APRs or the information obtained during a verification/audit visit show noncompliance. Rather, NMDOH simply reports annually to OSEP and the public when the local EIS program's data meet the Statewide target, which may reflect compliance, but in many cases, does not reflect compliance.

Thus, OSEP has determined that the State does not have a system that is reasonably designed to correct noncompliance because it does not:

- (1) Verify through its local APR or other data or methods that noncompliance is corrected by EIS programs when they report completion of CAPs,
- (2) Apply specifically identified sanctions to EIS programs whenever noncompliance is identified by NMDOH through any mechanism (not just through focused monitoring),
- (3) Identify additional sanctions appropriate for a specific local EIS program (PB&J Family Services) that has repeatedly failed to implement required corrective action measures, and
- (4) Require local EIS programs to submit CAPs or take other corrective actions (and identify those actions) to ensure correction when data submitted through the local

APRs or information obtained during a verification/audit visit show noncompliance.

Critical Element 4: Has the State 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 in a timely manner?

During OSEP's visit, we reviewed barriers to compliance with Part C's: (1) EI service provision requirements; (2) 45-day timeline requirement; and (3) transition requirements.

EI service provision

Based on information collected from interviews and record reviews with local EIS program staff, OSEP identified the following barriers to meeting the EI service provision requirements:

1. Personnel issues including (1) availability of therapists especially in rural areas, (2) scheduling, (3) vacations or illness, and (4) therapists' unwillingness to serve certain geographic areas; and
2. Family and child circumstances; including finding children who have been moved by the Family Social Services system between the time consent for services is received and the date for beginning services; and a high "no show rate" when families are required by the provider agency to transport children to the agency for specific early intervention services.

NMDOH recognizes these barriers and has identified additional barriers through its meetings with stakeholders. In the TA plan discussed in critical element 1, NMDOH also lists activities to address the barriers to EI service provision such as, evaluating the differences in the data obtained from the verification/audit visits, disseminating quarterly bulletins that address Federal and State reporting, annual orientation for service coordinators as well as other key staff on standards and regulations including, but not limited to, the definition of timely services, and holding the local EIS program administrators accountable for providing all guidance and information to the service coordinators.

At the time of OSEP's visit, NMDOH's database showed that for FFY 2007, Statewide compliance for EI service provision was 71.54%. Overall, local EIS programs are demonstrating progress ranging from 70.19% to 95%. OSEP will review, and respond to in a separate letter, the data in New Mexico's Part C FFY 2006 APR.

45-Day Timeline

Based on information collected from interviews and record reviews with local EIS programs, OSEP identified the following barriers to meeting the 45-day timeline from date of referral to the initial IFSP meeting date:

1. Family and child circumstances (including referral issues such as family mistrust of the system, frequent moves by the family or moves required by the agency in custody of the child, and specific family circumstances that either present a safety issue for the Part C personnel or delay the scheduling of appointments);
2. Agency procedures which may delay: (1) assigning a referral to a service coordinator, (2) intake being completed, and (3) providing evaluation information to the assigned service coordinator (for example, in one provider agency visited, intake is not completed until the referral has been staffed which only occurs one day a week);
3. Personnel issues including: (1) insufficient numbers of certified staff available to provide service coordination or evaluation and (2) vacations or illness.

As discussed above under EI service provision, NMDOH is addressing barriers to the 45-day timeline through its TA plan which includes activities such as: requiring local EIS program staff to participate annually in training on standards and regulations including signing off as having received the information, reviewing and revising State policy, as appropriate, developing a decision-tree around those areas that cause delays in evaluations such as hearing and vision assessments, and providing technical assistance to providers. In the TA plan, NMDOH also plans to negotiate with the State's Child Abuse Prevention and Treatment Act (CAPTA) agency, Children, Youth and Families Department (CYFD), to try and obtain parental consent for the initial evaluation at the time of referral. In addition, NMDOH and CYFD are providing training and support in how to engage with highly mobile families or those with multiple issues. With regard to personnel issues, NMDOH proposes to work with the State Interagency Coordinating Council (SICC) and MPRRC around resources for recruitment and retention of therapists.

Although the provider agencies visited were collecting reasons for not meeting the 45-day timeline, these data were not reported to NMDOH, which had not been collecting this data. NMDOH is currently collecting reasons for delay from local EIS programs and calculating the compliance percentages for Part C timelines by each local EIS program (and specifically excluding documented exceptional family circumstances). NMDOH staff indicated that for the reporting period covered by the FFY 2006 APR (July 1, 2006 to June 30, 2007) the Statewide percentage for compliance with the 45-day timeline was 81.49%. Compliance levels by local EIS programs ranged from 43.55% to 100% during this period, with 11 EIS programs reporting compliance rates at 95% or higher. OSEP will review, and respond to in a separate letter, the data in New Mexico's Part C FFY 2006 APR.

Transition

In three provider agencies visited, OSEP identified that when the Part B representative was not able to attend, service coordinators did not hold the transition meeting as required by IDEA section 637(a)(9) and applicable requirements at 34 CFR §303.148(b)(2)(i). Staff explained that the planning conferences were delayed in an effort to work more collaboratively with Part B. OSEP staff discussed the requirements for holding the transition planning conference and NMDOH staff agreed to issue a letter to local EIS programs outlining those requirements (with

the approval of the family of the child, convening a transition planning conference among the lead agency, the family and the local education agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for preschool services under Part B (at age three), to discuss any such services that the child may receive). In the FFY 2007 APR, due February 1, 2009, the State must report, under Indicator 8c, data demonstrating compliance with the timely transition conference requirements in 34 CFR §303.148(b)(2)(i), as modified by IDEA section 637(a)(9).

During the visit, questions were also raised regarding services for children beyond age three. OSEP will respond in separate correspondence regarding the availability of services for toddlers with disabilities who receive Part C services after they turn three.

Critical Element 5: Does the State have dispute resolution systems that ensure the timely resolution of complaints and due process hearings?

NMDOH's procedures to request due process, request mediation and file a complaint are described in the Dispute Resolution Policy and Procedures Manual. NMDOH staff reported that there have not been any requests for due process hearings or mediation, or complaints filed during calendar year 2007.

In its February 24, 2004 verification visit letter, OSEP found that the providers across the State developed their own written prior notices. In its review, NMDOH found some of the notices did not contain all of the Part C requirements. OSEP directed NMDOH to submit an assurance that all programs in the State that provide Part C services are using prior written notice materials that include all content required under 34 CFR §303.403(b). NMDOH confirmed during the week of September 24, 2007 that it had adopted a Statewide prior written notice form to be used by all EIS programs and providers.

Based on OSEP's review, it appears that New Mexico has procedures for dispute resolution systems to ensure the timely resolution of complaints and due process hearings. However, because no complaints have been filed and no due process hearings have been requested, there was no information to evaluate the implementation of such procedures.

Critical Element 6: Does the State have mechanisms that focus on improving early intervention results and functional outcomes for all infants and toddlers with disabilities?

NMDOH reported that it has implemented a Statewide system for evaluating outcomes for all eligible children. State staff reported that the FIT system (program performance, data, and public awareness) is built around ensuring improved results and outcomes for infants and toddlers with disabilities and their families. The staff reported that the results of the monitoring and technical assistance efforts by the State lead agency and its partners are to impact improved outcomes for the children with disabilities served by the FIT program.

General Supervision System – Required Actions

Based on the conclusions identified above, NMDOH must take the following actions.

With its FFY 2007 APR, due February 1, 2009, the State must report:

1. Under Indicator 9, correction of noncompliance with:
 - (a) natural environments requirements in 34 CFR §§303.12(b), 303.18, 303.344(d)(1)(ii) and transportation requirements in 34 CFR §§303.12(d)(15), 303.343 and 303.344 (by the three EIS programs listed in Critical Element 1); and
 - (b) Part C requirements for six-month IFSP reviews and parent consent in 34 CFR §303.342(b) and (e) (by the five/six EIS programs listed in Critical Element 1).
2. Under Indicator 8c, data demonstrating compliance with the timely transition conference requirements in 34 CFR §303.148(b)(2)(i) (as modified by IDEA section 637(a)(9)).
3. Under Indicator 14, a narrative describing the mechanisms NMDOH has developed and implemented to compile and integrate data across all of its Part C data systems to identify systemic noncompliance issues and, under Indicator 9, further describe any noncompliance it identified as a result of implementing such mechanisms.

In addition, as specified in Enclosure B to OSEP's July 2, 2007 grant award letter, the State must submit its second progress report regarding the 45-day timeline and service provision requirements by June 1, 2008. With that progress report, the State must also submit its revised identification and correction procedures indicating that NMDOH is:

- (1) Identifying noncompliance reflected in all compliance data available to the lead agency through all of the components of its monitoring system including data, local APRs, and focused monitoring;
- (2) Verifying through its local APR or other data or methods that noncompliance is corrected by EIS programs when they report completion of CAPs;
- (3) Applying specifically identified sanctions to EIS programs whenever noncompliance is identified by NMDOH through any mechanism (not just through focused monitoring);
- (4) Identifying additional sanctions appropriate for the specific local EIS program (PPB&J Family Services) that has repeatedly failed to implement required corrective action measures; and
- (5) Requiring local EIS programs to submit CAPs or take other corrective actions (and identify those actions) to ensure correction when data submitted through the local APRs or information obtained during a verification/audit visit shows noncompliance.

Data System – Discussion

Critical Element 1: Does the State have a data system that is reasonably designed to collect and report to the Department and the public, timely valid and reliable data and information?

NMDOH reported that its Statewide data system currently uses an Access 2003 database to collect data for the FIT program and some of the IDEA Part C reporting requirements, which will be replaced in 2008 by a Statewide web-based data system. Under the Access 2003 system, EIS program data managers enter data electronically at the local level from data charts compiled by the service coordinators from child records. NMDOH reported that it uses this Statewide data system to report data for IDEA section 618 reporting requirements and some of the SPP/APR indicators (Indicators 2, 5, 6, and 7) with data for Indicators 1, 3, 8 and 9 reported from the local APRs.

NMDOH reported that since the web-based system was not yet operational, it made changes to the current data system in order to more accurately report data in the FFY 2006 APR, due February 1, 2008. NMDOH indicated that it added additional fields to collect data regarding: (1) the reasons for any delays in the timely provision of Part C services; and (2) family reasons for delays in meeting the 45-day timeline requirement. The data manager reported that NMDOH staff went on-site to provide all the provider agencies with the latest version of the current data system. OSEP will review, and respond to in a separate letter, the data in New Mexico's Part C FFY 2006 APR.

However, NMDOH reported that two provider agencies (Abrazos and PB&J Family Services) do not use the FIT program Statewide database system and instead bridge data they report to NMDOH by exporting the data into a table provided from the Statewide database system. NMDOH indicated that although it has concerns about this procedure as data fields do not always correspond, NMDOH uses its quarterly audit reports to ensure that the data are accurate. NMDOH further indicated that this problem be eliminated when the web-based system is implemented.

NMDOH reported that it ensures the validity and reliability of data reported under the Statewide electronic data system by requiring all provider agencies to conduct quarterly data audits and send the reports to NMDOH. NMDOH's data manager reported that this practice has helped improve the validity and reliability of the data because the data audits occur more frequently and focus on data reliability and validity based on a uniform checklist, a part of the audit report. During the verification visit, the NMDOH data manager demonstrated the MAXIMUS (FIT Key Information Data System) web-based data system that NMDOH planned to pilot in October 2007 and make available to all provider agencies on January 20, 2008. NMDOH reported that the web-based system would correct the inadequacies of the ACCESS data system. The data system will be able to address the reporting requirements of IDEA section 618 and of the Part C SPP/APR, including early childhood outcomes data, documented exceptional family circumstances for exceeding the 30-day timeline for delivery of IFSP services, data regarding the transition requirements, and data related to the accuracy and validity requirements in Indicator 14, which are areas not captured by the ACCESS data system. Similarly, the NMDOH data

manager demonstrated that the web-based system, unlike the ACCESS system, is configured to disallow duplicate data (with the ACCESS system, this procedure must be done manually) and to bill for all Part C services at the local level.

NMDOH reported that all provider agencies will be required to use the web-based data system and that utilizing the system will be the only way the agencies will be paid for the services they provide. NMDOH reported that it will operate the ACCESS and web-based data systems side-by-side until July 2008 when it is anticipated that the web-based system will be fully operational. NMDOH reported that it is providing extensive training on the web-based data system to pertinent staff at the local provider agencies as well as the four State agencies.

Critical Element 2: Does the State provide clear guidance and ongoing training to local EIS programs and public agencies regarding requirements and procedures for reporting data under section 618 of IDEA and the SPP/APR?

NMDOH has developed a reference manual for the data users that is located on the local provider agencies' databases. Definitions in the manual are those provided to the States by Westat. NMDOH reported that when inconsistencies in use of the definitions are identified through the quarterly data audits sent to NMDOH, the NMDOH data manager provides clarification to all users through a guidance document.

NMDOH reported that it also conducted initial Statewide training on the State's procedures for reporting data under section IDEA 618 and the SPP/APR, provides ongoing training through regional meetings and gives further guidance by memoranda from the Part C coordinator to provider agencies.

NMDOH reported that there is an on-line training available to all providers 24 hours a day, seven days a week. The NMDOH data manager reported that provider agencies have received training on data entry and reporting through this on-line system and that there is a built-in help feature within the ACCESS database application. NMDOH reported that technical assistance is also available to provider agencies from the NMDOH data manager and/or regional managers.

Once NMDOH has completed the pilot testing of the new web-based data system, it will begin Statewide training of all EIS programs. The two data systems (electronic and web-based) will be run simultaneously for six months to ensure that all required data are collected accurately.

Critical Element 3: Does the State have 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 IDEA sections 616 and 618, OSEP guidance, and State procedures?

NMDOH reported that it has implemented procedures that ensure data accuracy and that data are reported at the local level in a manner consistent with State and Federal guidance. For example, the definitions from the 618 Tables are included in the State's data manual, which is loaded on each local provider agency's database.

In addition, local provider agencies complete a local APR that includes data reporting under the SPP/APR indicators that NMDOH compiles in reporting the State's APR data to OSEP. NMDOH reported that these local APRs require the provider agency to address prevention of any data entry errors that were identified through the verification and audit visit, which is conducted by NMDOH or DHI staff on an annual basis with 8-10 randomly selected local agency providers. A sample of at least 10 records is reviewed during the visit to determine the accuracy and validity of the data in each of the following areas: (1) the methodology the provider agency uses in developing its local APR; (2) the data entered into the electronic ACCESS Statewide data system; (3) the billing entries and supporting documentation; and (4) the documentation in the child records for compliance with IDEA Part C and State regulations. Each provider receives a written report and is required to develop a plan of correction if irregularities or noncompliance are identified. In addition, NMDOH reported that as a part of program monitoring, NMDOH staff compares the data entered by the local provider agency to verify that the data correspond to the data received at the State level.

During the verification visit, OSEP discussed with NMDOH staff incomplete documentation regarding dates related to referrals, evaluations, and the provision of some early intervention services that OSEP noted in a few of the child records it reviewed. NMDOH indicated that it uses its data audit process to correct for incomplete documentation. In response to this discussion with OSEP, NMDOH revised its TA Plan to specifically include activities targeted at further ensuring that the information contained in child records is adequately documented.

Critical Element 4: Does the State have procedures for identifying anomalies in data that are reported to the State and correcting any inaccuracies?

During the verification visit, NMDOH staff indicated that the NMDOH data manager reviews the quarterly data audits submitted by the local provider agencies to identify data anomalies and works with the provider agencies to ensure that any data inaccuracies are corrected at the State and local levels. The quarterly data audits include, but are not limited to, review of: 45-day timeline data; IFSP dates to ensure all infants and toddlers have a current IFSP; exit data; all required data fields, e.g. gender and race; natural environment data; and verification of all data related to the December 1 child count report.

The NMDOH data manager demonstrated procedures regarding data transmission, security, and edit checks that are designed to safeguard the integrity of the data. The NMDOH data manager also indicated that he works with Westat to ensure the accuracy of the data submitted under IDEA section 618 and to resolve any questions that are asked.

Data System – Conclusions

Based on the information provided to OSEP during the verification visit, it appears that New Mexico's data system is reasonably designed to ensure the collection and reporting of timely valid and reliable data and information to OSEP and the public under IDEA sections 616 and 618.

Fiscal Management System – Discussion

Critical Element 1: Does the State have procedures that are reasonably designed to ensure appropriate use of IDEA funds at the State level?

OSEP reviewed NMDOH's procedures for using Part C funds consistent with Section 638 of IDEA. The State reported that it has mechanisms for ensuring fiscal accountability at the State level for the use of IDEA Part C funds. Mechanisms include, but are not limited to: a Governor's Executive Order; a legislatively approved budget; and a dedicated budget account for IDEA Part C funds with a unique identifier.

OSEP met with staff from different offices within NMDOH to learn how they ensure that Part C funds are expended appropriately. OSEP met with staff within the administrative service bureau of NMDOH's Developmental Disabilities Supports Division (DDSD) and the grant management office who reported that they work together to ensure that the funds are expended for appropriate activities. In addition, DDSD staff reported that internal control is exercised over expenditures to ensure compliance with program rules and regulations. They also reported that the lead agency conducts a utilization review and that the Office of Internal Audit conducts audits randomly, and as requested, if there are concerns. These staff reported no findings concerning Part C funds in the last audit.

NMDOH indicated in Section IV.B of its FFYs 2006 and 2007 Part C grant applications that it had a restricted indirect cost rate of 4.9% with the U.S. Department of Health and Human Services (HHS), its Federal cognizant agency, which rate was effective until June 30, 2007. However, during our visit, OSEP learned that NMDOH's indirect cost rate agreement with HHS is not based on a restricted rate as required by Part C's non-supplanting provisions in IDEA section 637(b)(5)(B) and 34 CFR §303.124 and in 34 CFR §§76.560 through 76.569. In a December 2007 telephone conversation subsequent to OSEP's visit, DDSD staff confirmed that NMDOH would not bill indirect costs to its Part C grant beginning with FFY 2008. However, as noted in NMDOH's FFYs 2006 and 2007 grant letter, a State lead agency may be required to adjust final audited expenditures allowable to be charged to the Part C grant once a final restricted indirect cost rate agreement is negotiated and approved. The Department has never approved the provisional rates NMDOH proposed in its FFYs 2006, 2007 or prior applications.

NMDOH financial staff reported that the Part C coordinator and other staff review the scopes of work in NMDOH's contracts with service providers to ensure that expenditures are in accordance with Part C. The Part C coordinator must approve all expenditures that are billed to Part C funds. OSEP found billing contact sheets in individual child records reviewed at local provider agencies.

Critical Element 2: Does the State have mechanisms for ensuring the timely obligation and liquidation of IDEA funds.

NMDOH staff reported that the New Mexico State Department of Finance must approve all funds liquidations and any available extensions. NMDOH staff reported that the administrative

service bureau of DDS and the grant management office work together to ensure that Part C funds are timely liquidated. Prior to FFY 2005, New Mexico had instances of some Part C funds lapsing (i.e. being returned to the Federal treasury for failure to liquidate within the requisite 27-month period).

During OSEP's visit, New Mexico Department of Finance and DDS staff indicated that they were not aware that Part C funds could be obligated and liquidated beyond the initial 12-month period into the *Tydings* period (which extends the obligation and liquidation period by 15 months). DDS staff confirmed that they would work with the New Mexico Department of Finance to ensure that the accounting system procedures for Part C of IDEA are adjusted to accurately reflect the appropriate obligation and liquidation period and to ensure that IDEA Part C funds do not lapse.

Fiscal Management System - OSEP Conclusions and Required Actions

Based on OSEP's review, it appears that New Mexico has procedures that are reasonably designed to ensure appropriate use of IDEA Part C funds at the State level. In addition, it appears that the State has now adopted appropriate mechanisms to ensure the timely obligation and liquidation of IDEA Part C funds. However, with respect to indirect costs, NMDOH must confirm whether its decision to not charge indirect costs to Part C funds applies to FFYs 2006 and 2007 Part C funds.

With its FFY 2008 application, NMDOH must either: (1) submit its proposed final restricted indirect cost rate agreement for FFY 2007 and any other prior years in which indirect costs were billed to Part C funds on an unrestricted basis, or (2) confirm that it will not charge indirect costs to FFYs 2006 and 2007 Part C funds and further provide the details of all adjustments made to past GAPS liquidation for FFYs 2006 and 2007 as a result of its decision to not charge indirect costs to Part C funds for those years.

Summary

With its FFY 2008 application, NMDOH must either: (1) submit its proposed final restricted indirect cost rate agreement for FFY 2007 and any other prior years in which indirect costs were billed to Part C funds on an unrestricted basis, or (2) confirm that it will not charge indirect costs to FFYs 2006 and 2007 Part C funds and further provide the details of all adjustments made to past GAPS liquidation for FFYs 2006 and 2007 as a result of its decision to not charge indirect costs to Part C funds for those years.

As specified in Enclosure B to OSEP's July 2, 2007 grant award letter, the State must submit its second progress report regarding the 45-day timeline and service provision requirements by June 1, 2008. With that progress report, the State must also submit its revised identification and correction procedures indicating that NMDOH is:

- (1) Identifying noncompliance reflected in all compliance data available to the lead agency through all of the components of its monitoring system including data,

- local APRs, and focused monitoring;
- (2) Verifying through its local APR or other data or methods that noncompliance is corrected by EIS programs when they report completion of CAPs;
 - (3) Applying specifically identified sanctions to EIS programs whenever noncompliance is identified by NMDOH through any mechanism (not just through focused monitoring);
 - (4) Identifying additional sanctions appropriate for the specific local EIS program (PPB&J Family Services) that has repeatedly failed to implement required corrective action measures; and
 - (5) Requiring local EIS programs to submit CAPs or take other corrective actions (and identify those actions) to ensure correction when data submitted through the local APRs or information obtained during a verification/audit visit shows noncompliance.

With its FFY 2007 APR, due February 1, 2009, the State must report:

1. Under Indicator 9, correction of noncompliance with:
 - (a) natural environments requirements in 34 CFR §§303.12(b), 303.18, 303.344(d)(1)(ii) and transportation requirements in 34 CFR §§303.12(d)(15), 303.343 and 303.344 (by the three EIS providers listed in Critical Element 1); and
 - (b) Part C requirements for six-month IFSP reviews and parent consent in 34 CFR §303.342(b) and (e) (by the five/six EIS providers listed in Critical Element 1).
2. Under Indicator 8c, data demonstrating compliance with the timely transition conference requirements in 34 CFR §303.148(b)(2)(i) (as modified by IDEA section 637(a)(9)); and
3. Under Indicator 14, a narrative describing the mechanisms NMDOH has developed and implemented to compile and integrate data across all of its Part C data systems to identify systemic noncompliance issues and, under Indicator 9, further describe any noncompliance it identified as a result of implementing such mechanisms.

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to collaborating with New Mexico as it continues to work to improve results for infants and toddlers with disabilities and their families.

Sincerely,



William W. Knudsen
Acting Director
Office of Special Education Programs

cc: State Part C Coordinator