



DHSS CORRECTIVE ACTION PLAN

IN RESPONSE TO THE OFFICE OF SPECIAL EDUCATION PROGRAMS' JANUARY 19, 2021 DIFFERENTIATED MONITORING AND SUPPORT (DMS) REPORT

OSEP Finding 1: The Delaware Department of Health and Social Services (DHSS) did not have a single line of responsibility within its department reasonably designed to ensure the general administration and supervision of programs and activities administered by its components and early intervention programs under IDEA Part C, consistent with IDEA Sections 635(a)(10) and 34 CFR §303.120(a)(1).

OSEP's finding of noncompliance was based upon both: (1) the divided structure of the state's Part C early intervention service program across two divisions of DHSS with no clear line of responsibility/authority; and (2) the lack of a "formal structure or mechanism in place to ensure that the state's policies and procedures are consistent with IDEA Part C requirements."

1. Structural Issues

a. Status at the Time of OSEP's December 2019 DMS Visit

At the time of OSEP's December 2019 DMS visit, the Program was divided between two different DHSS divisions, with the Birth to Three Office in the Division of Management Services (DMS), and Child Development Watch (CDW) in the Division of Public Health (DPH). Although the Birth to Three Office within DMS had policy, data, and monitoring responsibility, the Birth to Three Office had no authority over the operations of early intervention in CDW within DPH. The Birth to Three Office was not able to make written findings of noncompliance or to require corrective action by CDW to address noncompliance with Part C.

b. Actions that DHSS Has Already Taken

DHSS has made significant changes in the structure of the state's Part C early intervention program for infants and toddlers with disabilities and their families in order to meet the requirements for a single line of responsibility/authority and ensure compliance with the requirements of Part C.

As of July 1, 2020, the state's early intervention program is no longer divided between two separate divisions with no single line of responsibility/authority. The program, now entitled the Birth to Three Early Intervention Program (the Program), is a unified program within the Community Health Services Section in DPH. The Program has three components: (1) Birth to Three – Administration; (2) the Birth to Three Regional Program – Kent/Sussex; and (3) the Birth to Three Regional Program – New Castle. Each of the two Regional Programs includes the CDW family service coordinators (FSCs), evaluators/assessors, supervisors who are DHSS staff, and the external early intervention service provider agencies who provide early intervention services within the Region.

The Director of Community Health Services has overall responsibility for, and overall authority over, the Program. In implementing the Program statewide to ensure consistent compliance with Part C requirements, she works in collaboration with the other members of the Program's leadership team, which includes the Birth to Three Program Administrator and the Part C Coordinator (both of whom are in Birth to Three – Administration), and the CDW Program Managers for each of the two Regional Programs. A copy of the organizational chart demonstrating the unification of the Birth to Three Early Intervention Program is attached to this corrective action plan.

The members of the Birth to Three Leadership Team work together to identify topics for training and guidance. To date, the Part C Coordinator has provided Webinar training sessions for the supervisors and FSCs in both of the Regional Programs on the topic of prior written notice and informed written parental consent, and is scheduling further such sessions on compliance topics. In addition, she is conducting regularly scheduled "office hours" in which FSCs and supervisors can call in with questions, and is working to develop Frequently Asked Questions (FAQ) documents to address questions that come out of these sessions. In addition, the Part C Coordinator and Data Manager provided written guidance and a Webinar regarding requirements for timely early intervention services.

At the time of OSEP's December 2019 DMS visit, OSEP found that the Birth to Three office in DMS had the responsibility to collect monitoring data for the compliance indicators in the Annual Performance Report (APR), but that the Birth to Three Office did not have the authority to issue written findings of noncompliance when the data showed less than 100% compliance and to require CDW to achieve and demonstrate correction of the noncompliance.

On January 4, 2021, the Birth to Three Program Administrator issued formal written monitoring reports to both Regional Programs addressed to both the Regional Program – CDW Program Managers and to the external early intervention service provider agencies that provide early intervention services within the Region. Those monitoring reports required correction of the noncompliance and demonstration of correction consistent with the requirements of OSEP Memorandum 09-02. (For more detail regarding the monitoring process and corrective action, see the discussion of Finding 2, below.)

Pursuant to contracts with DHSS, external early intervention service agencies deliver early intervention services to infants and toddlers with disabilities and their families. In February 2021, the Program posted a Request for Proposals (RFP) for new contracts for external agencies to provide early intervention services. This process provides the Program with the opportunity to develop current, comprehensive contracts that will strengthen the Program's authority to enforce compliance with Part C regulations and state policy, professional licensure and certification requirements, and continuous professional development. Comprehensive monitoring practices will also be embedded in the contracts to ensure that slippage and noncompliance are addressed on no less than a quarterly basis.

2. Formal Structure or Mechanism in Place to Ensure that the State's Policies and Procedures Are Consistent with IDEA Part C Requirements

a. Status at the Time of OSEP's December 2019 DMS Visit

At the time of OSEP's December 2019 DMS visit, DHSS did not have a comprehensive set of policies and procedures to ensure compliance with the requirements of Part C and that were applicable and enforced uniformly across both regions of the state.

In its January 19, 2021 DMS letter, OSEP noted that one of the deficiencies of the state's system for ensuring compliance was the lack of current and comprehensive policies and procedures that are aligned with Part C requirements. Also noted was that consistent enforcement by DHSS was lacking. The OSEP letter stated, "There is no formal structure or mechanism in place to ensure that CDW's policies and procedures are consistent with IDEA Part C requirements which has led to misinterpretation and misunderstanding of the IDEA regulations at the program and provider levels."

b. Actions that DHSS Has Already Taken

At the time of the December 2019 OSEP visit, DHSS had already taken action to contract for technical assistance subject matter consultants and already had in place plans to create a comprehensive set of policies and procedures. DHSS took prompt action to address the need to establish and enforce comprehensive policies and procedures that are consistent with Part C and that are applied across the state. DHSS worked with consultants to develop a comprehensive manual, addressing all Part C requirements, entitled the Birth to Three Early Intervention Program Policies and Procedures Manual (Manual).

On May 1, 2020, DHSS posted on its website the draft Manual during the months of May and June 2020 for public review and comment, and conducted two public hearings. After reviewing written comments as well as verbal comments made in the hearings, DHSS revised the Manual. DHSS also revised the draft Manual to reflect the restructuring and unification of the Program in DPH.

DHSS submitted the revised Manual to OSEP on September 22, 2020, requesting OSEP's confirmation that DHSS could begin to implement all but certain specified sections of the Manual and for a prompt response from OSEP on those sections for which OSEP review and approval are required. As of this date, DHSS has not received OSEP approval nor other formal written OSEP's response to the Manual and cover letter as submitted on September 22, 2020. While awaiting OSEP's response to the submitted Manual, DHSS is providing guidance and training to the Regional Programs based on the Part C regulations. DHSS, in collaboration with external subject matter experts, has developed several guidance documents that set forth relevant Part C requirements in an operationalized format, as well as new mandatory standardized forms for the following: (1) Invitation to an IFSP Meeting; (2) Prior Written Notice; (3) Consent to Multidisciplinary Evaluation; and (4) Consent to Multidisciplinary Assessment and Voluntary Participation in Family-Directed Assessment. The Regional Programs have been informed that statewide implementation is mandatory for the required forms and guidance documents that set forth operational processes for implementing the Part C requirements.

c. Additional Actions to Be Taken

Within 30 days from the date on which DHSS has received OSEP's approval to implement the Manual, the Birth to Three Program Administrator will disseminate the Manual to the Regional Programs and external early intervention service agencies, with a cover memorandum or letter from the Director of Community Health Services or another senior DHSS official, informing the Regional Programs and external provider agencies that their compliance with the policies and procedures in the Manual is mandatory.

Once DHSS has disseminated the Manual, it will develop and implement a schedule of targeted training for the Regional Programs and external early intervention service

provider agencies regarding implementation of the Manual. The Program has worked with and will continue to work closely with external subject matter experts in designing and delivering training and guidance. Birth to Three – Administration will collaborate with the Regional Programs and provider agencies to identify and create any needed guidance documents to support implementation of the Manual. In order to measure impact, the Program will develop and implement strategies to evaluate the effectiveness of training and guidance materials. These evaluation strategies will inform future training and technical assistance.

On or about July 1, 2021, new contracts with early intervention service agencies will be in effect that include strong and explicit language requiring that the contracting agencies must comply with Part C requirements.

Beginning in 2021, all early intervention monitoring reports and required action documents will be issued by Birth to Three – Administration leadership, to each of the two Regional Programs, with the requirement that the Programs meet all corrective action requirements and document correction consistent with the requirements of OSEP Memorandum 09-02.

As noted above under **Actions That DHSS Has Already Taken**, external early intervention service agencies deliver early intervention services to infants and toddlers with disabilities and their families, pursuant to contracts with DHSS. In February 2021 DHSS posted an RFP for new contracts with agencies to provide early intervention services. This process provides the Program with the opportunity to develop current, comprehensive contracts that will strengthen the Program's authority to enforce compliance with Part C regulation and state policy, professional licensure and certification requirements, and continuous professional development. Comprehensive monitoring practices will also be embedded in the contracts to ensure that slippage and noncompliance are addressed on no less than a quarterly basis.

OSEP Finding 2: DHSS did not have a system reasonably designed to monitor its early intervention programs and external early intervention service provider agencies to ensure compliance with IDEA Part C of the Act, as required under IDEA Sections 616(a), 635(a)(10) and 642 and 34 CFR §§303.120(a)(2) and 303.700(a) and (b). Specifically, the DHSS monitoring system was not reasonably designed to identify, correct, and report findings of noncompliance.

OSEP's finding of noncompliance was based upon both: (1) the failure of DHSS to make formal written findings of noncompliance when a Regional Program's data for a State Performance Plan (SPP)/Annual Performance Report (APR) compliance indicator reflected less than 100% compliance or DHSS identified other noncompliance; and (2) the failure of DHSS to ensure timely correction of any identified noncompliance, consistent with the requirements of OSEP Memorandum 09-02.

1. Status at the Time of OSEP's 2019 DMS Visit

At the time of OSEP's December 2019 DMS visit, DHSS had been conducting chart audit reviews in order to collect data for compliance Indicators 1, 7, 8A, 8B¹, and 8C. However, DHSS had, for a number of years, neither: (1) issued any written findings of noncompliance to a Regional Program when its data for a compliance indicator were less than 100% or DHSS identified other noncompliance, nor (2) required the Regional Program to achieve and document correction of the noncompliance, consistent with OSEP Memorandum 09-02, as soon as possible, but no later than one year from the date on which DHSS provided written notification of the noncompliance.

¹ A report for Indicator 8B is automatically generated monthly from the DHSSCares that is shared with the local school district, Department of Education, and the Birth to Three – Administration for review and correction as needed.

2. Actions that DHSS Has Already Taken

As described above in reference to Finding 1, subsequent to the OSEP DMS Visit, DHSS developed a comprehensive Birth to Three Early Intervention Policy and Procedure Manual, including Section 8 which addresses DHSS's policies and procedures for monitoring, including those related to both the identification and the correction of noncompliance. After meeting the public participation requirements of 34 CFR §303.208(b), DHSS submitted the Manual to OSEP on September 22, 2020, but to date OSEP has not provided a formal written response.

On January 4, 2021, DHSS issued formal written monitoring reports, based on data from Federal Fiscal Year (FFY) 2019 to each of the two Regional Programs, addressed both to the Regional Program CDW Managers and to the external early intervention service provider agencies that provide early intervention services within the Region.

Each of those two monitoring reports included findings of noncompliance for: Indicator 1, timely provision of early intervention services; 7, 45-day timeline for completion of multidisciplinary evaluation, multidisciplinary assessment, and initial IFSP meeting; 8C, transition conference²; and valid, reliable, and timely data. For each of those areas of noncompliance, the reports included requirements for achieving and documenting timely correction, consistent with OSEP Memorandum 09-02, for each of the areas of noncompliance.

The reports include requirements for documenting systemic correction, as required by OSEP Memorandum 09-02; both Regional Programs had already documented individual correction before the reports were issued. In addition, for any indicator with less than 95% compliance, the Regional Program was required to participate in a root cause analysis process.

To support ongoing compliance efforts, Program Managers and leaders within the Regional Program – CDW have developed internal quality assurance activities that allow Family Service Coordinator Supervisors the opportunity to review Family Service Coordinator staff on an individual basis in order to inform training and technical assistance.

3. Additional Actions to Be Taken

The Birth to Three – Administration will continue collaborating with the Regional Programs to support correction activities. To demonstrate systemic correction for a finding of noncompliance, the Regional Program must provide updated data for two consecutive months showing 100% compliance. Once the Regional Program has provided documentation for two consecutive months of 100% compliance, the Administration team will close this finding and require no further reports. If the Regional Program has not achieved two consecutive months of 100% compliance by the time it submits the last verification report, Birth to Three – Administration will require actions, such as submission of additional reports or participation in training.

As noted above under **Actions That DHSS Has Already Taken** for OSEP Finding 1, in February 2021, DHSS posted an RFP for new contracts with agencies to provide early intervention services, for contracts to be effective on or about July 1, 2021. This process provides the Program with the opportunity to develop current, comprehensive contracts that will strengthen the Program's authority to enforce compliance with Part C regulation and state policy, professional licensure and certification requirements, and continuous professional development. Comprehensive monitoring practices will also be embedded in the

² Neither report included findings of noncompliance for either Indicator 8A (transition steps and services) or Indicator 8B, because their FFY 2018 data for those indicators were 100%.

contracts to ensure that slippage and noncompliance are addressed on no less than a quarterly basis. This monitoring will begin in the Fall 2021.

The Birth to Three – Administration will be conducting monitoring activities for FFY 2020 beginning April 15, 2021 and ending May 31, 2021. Upon completion of the monitoring, the Program will promptly issue written findings for any compliance indicator below 100% or other noncompliance, requiring timely individual and systemic correction, consistent with OSEP Memorandum 09-02.

The Program has and will continue to work closely with external subject matter experts in designing monitoring and correction policies and processes, and the development of monitoring reports.

Finding 3: DHSS did not provide IDEA Part C services in a timely manner as required by 34 CFR §§303.342(e) and 303.344(f)(1) and the state consistently reported a low level of compliance under its State Performance Plan (SPP)/Annual Performance Report (APR) Indicator 1 for the last five reporting years.

Compliance Indicator 1 of the SPP/APR requires states to report annually on the extent to which early intervention services are provided in a timely manner (i.e., within 30 calendar days from the date on which the parent consented to those services). If the state's data for Indicator 1 are less than 100%, the state is not in compliance with the timely services requirement as addressed by Indicator 1.

1. Status at the Time of OSEP's December 2019 DMS Visit

As noted in OSEP's DMS letter, the state's Indicator 1 compliance data for the timely provision of early intervention services reflected a low level of compliance and persistent slippage over the six Federal Fiscal Years (FFYs) from FFY 2013 through FFY 2018, falling from 88.03% for FFY 2013 (the period from July 1, 2013 through June 30, 2014) to 55.17% for FFY 2018 (the period from July 1, 2018 through June 30, 2019).³

DHSS notes that the significant drop in FFY 2018 from previous years is due, in significant part, to a correction of the standard that the state was using in calculating the 30-day timeline for timely early intervention services. Prior to FFY 2018, DHSS was mistakenly calculating the 30-day timeline from the date of the signed Release of Information form (the consent of the parent to share information with a specific provider) to the date on which the services actually began. During the December 2019 OSEP DMS visit, OSEP informed DHSS that the 30-day timeline must begin on the date on which the parent consented to the early intervention services in the child's IFSP.

DHSS took immediate action to correct this error and used the correct measurement in calculating and reporting its Indicator 1 data for FFY 2018 in the FFY 2018 APR, which the state submitted as part of the FFY 2018 APR on February 1, 2020. While the state's initial calculation of the FFY 2018 data, using the incorrect measurement, was 90.33%, the recalculated FFY 2018 data that the state submitted as part of the APR, using the correct measurement, were 55.17%.

2. Updated Data and Actions that DHSS Has Already Taken

The state collected its Indicator 1 data for FFY 2019 (the period from July 1, 2019 through June 30, 2020), and reported those data to OSEP as part of its FFY 2019 APR, on February

³ The state's Indicator 1 data for that six-year period were: FFY 2013 – 88.03%; FFY 2014 – 76.08%; FFY 2015 – 79.00%; FFY 2016 – 79.75%; FFY 2017 – 64.54%; FFY 2018 – 55.17%. The data for FFY 2018 were submitted as part of the state's FFY 2018, subsequent to OSEP's DMS, on the due date of February 1, 2020.

1, 2021. The state's Indicator 1 data of 82.37% for FFY 2019 showed a more than 27% improvement from the FFY 2018 data of 55.17%.

The Program has provided written guidance and training to FSCs throughout the state on the requirements addressed by Indicator 1. To provide continuous opportunities for technical assistance, the Administration team has scheduled biweekly "Open Office Hours," in which it provides Regional Program staff with an opportunity to seek clarification on compliance issues, including attaining and maintaining compliance for Indicator 1.

As described above as part of the discussion of Finding 2, DHSS has developed and implemented monitoring procedures for the identification and correction of noncompliance with the timely early intervention service requirement addressed by Indicator 1. On January 4, 2021, the Birth to Three Program Administrator issued monitoring reports for each of the two early intervention service programs (Regional Program – Kent/Sussex and Regional Program – New Castle). Because FSCs and external early intervention provider agencies share in responsibility for timely service provision and both must have a role in correcting the noncompliance, the reports were issued both to the Regional programs and to the external early intervention provider agencies

In each of those two reports, DHSS made findings of noncompliance with Indicator 1's timely early intervention services requirement and is requiring demonstration of systemic correction of the noncompliance, consistent with OSEP Memorandum 09-02. As noted above, both Regional Programs had already documented individual correction before the reports were issued.

The Part C Coordinator convened root cause analysis meetings with Regional Program leadership and representatives of the external early intervention service provider agencies specifically related to findings of noncompliance for Indicator 1. The root cause analyses will inform how the Regional Programs address corrective actions at the local levels. The analyses also inform how the Administration team will incorporate systemic changes to support the Regional Programs in achieving compliance.

3. Additional Actions to Be Taken

DHSS will use root cause analysis from state and local input in identifying factors contributing to the delays in the provision of early intervention services, and strategies to overcome or mitigate those factors. DHSS will collaborate with the Interagency Coordinating Council in this ongoing root cause analysis process. Strategies derived from the root cause analysis will inform ways in which the Program continues to address compliance issues surrounding Indicator 1 and ensure that children and families receive timely services. For example, the service provider referral process is being reviewed to determine more effective and efficient ways to refer children and families to external service provider agencies, and data will be reviewed related to provider supply issues.

As noted above, DHSS will, based on a new RFP for external early intervention service agencies, execute new contracts effective on or about July 1, 2021. Those contracts will include specific requirements for compliance with Part C requirements, including specific requirements related to the timely provision of early intervention services.

The Birth to Three – Administration will be conducting monitoring activities for FFY 2020 beginning April 15, 2021 and ending May 31, 2021. This monitoring will include Indicator 1 as well as the other compliance indicators. Upon completion of the monitoring, the Program will issue timely findings of noncompliance related to Indicator 1 as necessary to each Regional Program.

As required by the OSEP DMS letter, DHSS will:

- a. With its FFY 2019 SPP/APR clarification submission due April 27, 2021, provide updated FFY 2020 data under SPP/APR Indicator 1 for the period July 1, 2020 through December 31, 2020 and the state's plan to ensure appropriate early intervention services are timely provided to all infants and toddlers with disabilities and their families;
- b. By June 1, 2021, provide updated FFY 2020 data under SPP/APR Indicator 1 for the period January 1, 2021 through May 31, 2021 and if the data demonstrate noncompliance, the state's enhanced plan to ensure appropriate early intervention services are timely to all infants and toddlers with disabilities and their families; and
- c. Issue prompt findings of noncompliance, and require individual and systemic correction of the noncompliance, if a Regional Program's compliance percentage for Indicator 1 is less than 100%. (For more detail, see the Corrective Action Plan content for Finding 2, above.)

Attachment: Birth to Three Early Intervention Program Organizational Chart

Department of Health and Social Services (DHSS)

Division of Public Health

Community Health Services
Lisa Henry, Director

Northern Health Services County Administrator
Christi Lancelotti

Program Administrator Liaison
Michelle Mathew

Southern Health Services County Administrator
Shonatesha Quail

DPH Regional Program Lead - New Castle
Child Development Watch Program Manager

Administration
Part I Coordinator (Kosina District), Assistant Part I Coordinator, Training Administrator, Data Manager, Trainer/Educator, MPA-III, Billing Coordinator, & Admin Spec

DPH Regional Program Lead - Kent/Sussex
Child Development Watch Program Manager

Birth to Three Early Intervention Regional Program - New Castle
CDW Staff (FSC, Evaluators/Assessors) & Internal Contractors

Birth to Three Early Intervention Regional Program - New Castle
Regional External H's Providers

Birth to Three Early Intervention Regional Program - Kent/Sussex
Regional External H's Providers

Birth to Three Early Intervention Regional Program - Kent/Sussex
CDW Staff (FSC, Evaluators/Assessors) & Internal Contractors