



DIFFERENTIATED MONITORING AND SUPPORT
OFFICE OF SPECIAL EDUCATION PROGRAMS
U.S. DEPARTMENT OF EDUCATION

STATE	ARKANSAS
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DATE	JANUARY 12, 2023
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IDEA	PART C
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 12, 2023

By Email

Honorable Melissa Singleton Weatherton, J.D.

Director

Division of Developmental Disabilities Services

Arkansas Department of Human Services

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Dear Director Weatherton:

The purpose of this monitoring report is to provide a summary of the results of the differentiated monitoring and support (DMS) activities conducted by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP). As part of its DMS process, States are monitored on their general supervision systems, which encompass the States' responsibility to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA).

Those requirements include 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for infants, toddlers, children, and youth with disabilities. OSEP conducted its DMS monitoring in two phases: 1) Document Request and Protocol Interviews; and 2) On-site/Virtual Visit.¹ During the DMS process, OSEP examined the State's policies, procedures, and State-level implementation of IDEA regarding the following monitoring priorities and components of general supervision:

- Monitoring and Improvement
- Data including the State Performance Plan/ Annual Performance Report (SPP/APR)
- Fiscal Management: Single Line of Responsibility
- Dispute Resolution

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these monitoring priorities and components. Specifically, OSEP conducted phone interviews with representatives

¹ For additional information on DMS, see [Resources for Grantees - Individuals with Disabilities Education Act](#).

from the State's lead agency (LA), the Arkansas Department of Human Services (ADHS),² Division of Developmental Disabilities Services (DDS), during January 2021 for the fiscal component and January through March 2022, for additional component areas.

A virtual DMS visit was conducted on May 16, May 17, and May 23-25, 2022. OSEP staff met with Tracy Turner, Coordinator for the First Connections (FC) Program, and other State personnel responsible for implementing the general supervision, data or fiscal systems, and local staff. FC staff oversee a Statewide network of independent Part C Provider Programs.³ Supervision and support are provided by the State's Program Administration staff, including a Program Manager, Data Manager, the Quality Assurance (QA) Unit and assigned monitors, the Fiscal Unit, and the Training Unit. In addition to conducting staff interviews, OSEP reviewed publicly available information, policies, and procedures, Arkansas Department of Human Services Division of Developmental Disabilities Children's Services Monitoring Manual (2017), FC Certification Standards, FC Integrated Monitoring PowerPoint presentation, and other related documents DDS submitted to OSEP.

Based on document reviews, staff interviews, and monitoring engagement activities, OSEP has identified four findings of noncompliance with IDEA. OSEP is making the following findings, listed below and described in more detail further in the monitoring report, including any required actions.

Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Monitoring and Improvement	1. OSEP finds that the State does not have a general supervision system that is, in its entirety, reasonably designed to identify and verify correction of noncompliance in a timely manner using its different components, as required under 34 C.F.R. §§ 303.120 and 303.700 through 303.702.
2. Data	2. OSEP finds that the State does not report on the identification and verified correction of noncompliance reflected in its SPP/APR data consistent with its reporting responsibilities, as required by 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2), OSEP Memo 09-02 and the SPP/APR.

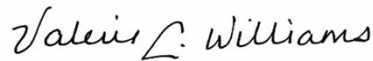
² The Arkansas Department of Human Services (ADHS) is the Lead Agency appointed by the governor to ensure the planning and implementation of the Part C Program. The Division of Developmental Disability Services (DDS), within the department is responsible for oversight and grant management. Arkansas' Part C program's official name is First Connections.

³ The State has 62 participating Early Intervention Service (EIS) providers, each designated by the lead agency as an EIS program for reporting in its State Performance Plan/Annual Performance Report (SPP/APR) under 34 C.F.R. §§ 303.700 through 303.702. Therefore, the State uses the term "Program Provider" in its IDEA Part C program to refer to its EIS providers and its EIS programs.

MONITORING COMPONENT	FINDINGS SUMMARY
3. Fiscal Management: Single Line of Responsibility	3. OSEP finds that the State does not conduct fiscal monitoring as required under 34 C.F.R. § 303.120(a)(1). In addition, OSEP finds that the State has not established effective internal controls that provide reasonable assurance of compliance by its EIS providers with "Federal statutes, regulations, and the terms and conditions of their Federal award," as required under 2 C.F.R. § 200.303.
4. Dispute Resolution	4. The State's written procedures for filing a due process complaint are inconsistent with the requirements of 34 C.F.R. § 303.441(b).

We appreciate your efforts to ensure compliance and improve results for children with disabilities. If you have any questions, please contact your OSEP State Lead.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs

cc: Part C Coordinator

Enclosure:
DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

Background:

During OSEP's DMS activities, OSEP and DDS staff discussed the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols which examine how Arkansas implements its general supervisory responsibility, including its policies and procedures to identify and ensure correction of noncompliance and improve educational results and functional outcomes for all infants and toddlers with disabilities. In addition, OSEP reviewed the State's monitoring manuals, file review tools, notices, and tracking materials.

FC staff submitted the Arkansas Department of Human Services Division of Development Disabilities Children's Services Monitoring Manual (2017) and a draft of the revised monitoring manual for 2021. For OSEP's monitoring activities, OSEP reviewed and analyzed FC staff policies, practices, and procedures based on the 2017 monitoring manual.

The State's 2017 monitoring manual stated, and was confirmed during interviews with State staff, that at the beginning of each fiscal year, the FC QA Unit, in collaboration with the Data Unit and the Part C Coordinator selects local programs for on-site visits based on several factors, including, but not limited to:

- previous performance,
- failure to correct issue(s) of noncompliance,
- determination status,
- existing or previous service concerns and
- date since the last review.

In discussions with OSEP, FC staff stated that FC fulfills its monitoring responsibilities through annual on-site and virtual monitoring conducted by the Quality Assurance/Monitoring Unit (QA), and through periodic review of its Central Database System (CDS). The State also noted that it uses a combination of on-site and off-site monitoring to provide information on a program's level of compliance and results. FC staff expressed their belief that on-site and off-site monitoring activities: 1) are implemented consistently across programs; 2) identify areas of noncompliance; 3) trigger corrective actions, technical assistance, improvement strategies, fiscal decisions, and sanctions and incentives that ensure timely correction; and 4) lead to status determination of programs. FC staff stated that any program that is out of compliance in a required area is issued a "finding" of noncompliance specifying the action(s) required to correct the noncompliance and to amend procedures when necessary to ensure that the program is correctly implementing IDEA.

While the required corrective actions may differ, FC staff stated that FC ensures that any noncompliance related to APR indicators is corrected as soon as possible, but in no case more than one year from identification. In some instances, FC requires the program to develop a Corrective Action Plan. The purpose of a CAP is to address systemic issues through a review of policies and procedures and inform training and professional development activities. The State staff explained that, regardless of whether or not a CAP is imposed, the LA verifies correction of noncompliance, through a review of updated data and file reviews. FC staff reported that due to the pandemic, all monitoring activities were conducted virtually for FFY 2020 and FFY 2021.

FC staff also reported that their Part C Complaints/Dispute Resolution System is used to identify and correct noncompliance in the implementation of IDEA requirements and to identify areas that need improvement (e.g., policies, procedures, guidelines, etc.). As part of the monitoring activities, the State examines dispute resolution

data to identify issues related to performance and to help plan training and technical assistance and additional monitoring activities.

Legal Requirements:

To effectively monitor the implementation of IDEA Part C requirements, the State must have a system that is reasonably designed to ensure that the State can meet its general supervisory responsibility for monitoring the provision of IDEA Part C services as required under 34 C.F.R. §§ 303.120, 303.342(e), 303.344 and 303.700 through 303.702.

Under 34 C.F.R § 303.700(b), the primary focus of the State's monitoring activities must be on the following:

1. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities and;
2. Ensuring that EIS providers meet the IDEA program requirements, with a particular emphasis on those requirements most closely related to improving EI results for infants and toddlers with disabilities.

As part of State's focus on improving results and outcomes, the State must monitor to ensure provision of IDEA Part C services to eligible children and families. Specifically, as a part of a State's responsibilities under 34 C.F.R. § 303.120(a)(2) for monitoring and enforcement, the LA must monitor all EIS providers to ensure that IDEA Part C services are being provided consistent with the child's Individualized Family Service Plan (IFSP) and other IDEA Part C requirements. Furthermore, under 34 C.F.R. § 303.120(a)(2)(iv), the LA must ensure that any noncompliance identified through monitoring is corrected as soon as possible but no later than one year after the State identifies the noncompliance.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

During OSEP's monitoring, FC staff explained to OSEP, using examples of actual monitoring reports, the FC policies and procedures used in implementing IDEA requirements. During those discussions, FC staff indicated that during monitoring activities, FC staff conduct monitoring on compliance with requirements described in SPP/APR Indicators 1 (timely receipt of services), 7 (45-day timeline), and 8 (early childhood transition). FC staff stated and provided documentation of their "Monitoring Review Record Form" that noncompliance findings are only made related to SPP/APR compliance indicators. Under the monitoring and enforcement provisions of 34 C.F.R. § 303.120, the LA is responsible for monitoring and issuing appropriate findings of noncompliance to all EIS providers for not only the IDEA Part C requirements represented as compliance indicators in the SPP/APR process but for compliance with all the requirements of IDEA Part C. The FC monitoring process must review IES provider activities for broad compliance with Part C requirements and result in findings of noncompliance when FC identifies a violation of program requirements.

Although the State does not identify violations of other IDEA requirements as "noncompliance" in its monitoring practices, the State does include some other IDEA Part C requirements, which are identified as "State-identified Measures" in its monitoring process. Examples of "State-identified Measures" that reflect IDEA requirements and are identified in completed monitoring reports, include but are not limited to: (a) consent for screening and evaluations (b) procedural safeguards related to prior written notice, (c) IFSP Meeting, and (d) high-quality IFSP. Despite the "Monitoring Review Record Form" having a place to indicate that the "State-identified Measures" were "findings of noncompliance," FC staff indicated that their practice was to provide technical assistance and training when such an issue had been identified.

Further, State staff confirmed that after EIS providers are monitored, a "Notice of General Supervision Monitoring Results" is issued. The monitoring results notice includes findings of noncompliance issued, state-identified measures to address findings, and additional required actions. The monitoring results notice states, "When General Supervision monitoring identifies a failure to adhere to 'state-identified measures', a finding is not issued, but amendments must be made as soon as possible but no later than six (6) months." As stated above, State staff acknowledged they would provide TA and additional local training, if necessary, in such instances. However, they would not track or account for the State-identified measures as noncompliance for the purpose of reporting in the SPP/APR or otherwise. Although the monitoring documents may require amendments to policies be made within six months after a violation of a State-identified measure is detected, the FC monitoring system does treat these as findings of noncompliance and does not have a means of ensuring that noncompliance is corrected within a year, as required under 34 C.F.R. § 303.120.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by Arkansas, and interviews with staff of FC as the State LA. Based on this analysis, OSEP finds that the LA does not have policies and procedures that are reasonably designed to ensure that the State:

- Identifies and ensures timely correction of noncompliance with IDEA Part C requirements (beyond SPP/APR compliance indicators) as part of its general supervisory responsibility as required in 34 C.F.R. § 303.120 and its monitoring responsibilities in 34 C.F.R. §§ 303.700 through 303.702.

FC staff monitoring reports, technical assistance documents, and training materials only identify SPP/APR compliance Indicators 1, 7, and 8 as areas used for the identification of IDEA noncompliance, during monitoring, and the issuance of a finding. The State indicated that any noncompliance identified with a "State-Identified Measure" or IDEA requirements outside of the SPP/APR compliance indicators, would result in FC providing technical assistance to the EIS provider, without issuing formal findings of noncompliance or ensuring timely correction of non-compliance.

As a result, the State is required to implement the following required actions to address the findings of noncompliance identified above.

Required Actions

Policies and Procedures—within 90 days of the date of this letter:

- The State must submit to OSEP updated policies, procedures, or protocols documenting its process for monitoring its EIS providers on IDEA Part C requirements such as, IFSP service provision and content requirements, including its process to identify and verify correction of noncompliance consistent with Memo 09-02.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this letter:

- The State must submit evidence of correction, for example monitoring reports which identify findings of noncompliance with IDEA Part C requirements, including the timeline for correction. The State must also provide documentation of the implementation of its revised monitoring procedures and protocols.

DATA

Background:

During OSEP's DMS activities, OSEP and FC staff discussed the DMS Data and SPP/APR protocols which examine how Arkansas implements its general supervisory responsibility, including how the State collects and reports valid and reliable data in a timely manner. In addition, OSEP reviewed the State's data processing guides, training materials, FC Data PowerPoint Presentation and other relevant data reports and materials provided by the State.

FC staff reported that they use the Central Data System (CDS), which is designed around Part C requirements, to ensure compliance with IDEA by requiring key elements when entering a child record and provides a mechanism for collection and analysis of program data (including fiscal reports). The CDS is used to collect and assess data on the State level for Federal reporting, on the local level for annual local program determinations, and on the individual child record level, as part of the provider program monitoring activities. Program Providers are required to utilize all aspect of the CDS to support Part C compliance. The system has built-in alerts to remind users of Federal requirements such as quality IFSP development and compliance timelines, for example, Indicators 1 and 7, IFSP review dates, and early childhood Transition activities.

The State captures and reports data from multiple data sources including the QA monitoring staff protocols, desk audits, data from the CDS, Part C Family Surveys, and additional information from program service concerns and technical assistance visits. CDS also allows for individual child record reviews to assist in focused monitoring, fiscal reviews, and dispute resolution processes.

FC Data Unit staff have direct access to individual infant and toddler records at any given period. The CDS is set up to allow Data Unit staff to obtain child-level record data for each provider and provide clarification and guidance to its EIS providers. This also allows Lead Agency staff to address provider concerns regarding families served in the Part C program, in addition to monitoring provider caseloads.

During DMS interviews, State staff described how they prepare SPP/APR submissions. Staff confirmed that when submitting data for the purposes of reporting in the SPP/APR, for Indicators 1 and 7, they use their database for a point in time, and when reporting data for Indicators 8A, 8B, and 8C, they use data representing the full reporting year. Interviewed staff further indicated that they use data from their monitoring process when providing detailed information about the timely correction of noncompliance under these same indicators. FC staff reported in interviews that they collect and review data from their database for the purpose of reporting data in the SPP/APR; however, this subset of data is not the data used for the identification and correction of noncompliance. The identification and correction of noncompliance is based on local provider program monitoring conducted cyclically using data from the FFY in which the monitoring is conducted, e.g., "current FFY data," and findings of noncompliance are issued whenever identified through monitoring.

After completing the monitoring visit, OSEP staff compared information gathered during interviews and discussions with the State to their recent SPP/APR submissions. OSEP had previously raised questions about the State's process for verifying correction of noncompliance reflected in SPP/APR data, and in response to the State's FFY 2019 SPP/APR submissions for Indicators 8A, 8B, 8C, OSEP required the State to provide additional information in its FFY 2020 SPP/APR submission. Specifically, OSEP's responses to data submitted under these indicators stated:

The State did not report that it identified any findings of noncompliance in FFY 2018, although its FFY 2018 data reflect less than 100% compliance. In the FFY 2020 SPP/APR, the State must provide an explanation of why it did not identify any findings of noncompliance in FFY 2018.

When reporting FFY 2020 SPP/APR data under Indicators 8A, 8B and 8C, of the State's FFY 2020 SPP/APR the State reported:

Arkansas collects and reviews data for the purpose of state reporting on the APR, not for local provider program monitoring. Local provider program monitoring is conducted cyclically using current FFY data and findings of noncompliance are issued whenever identified through monitoring.

In the State's "Response to actions required in FFY 2019 SPP/APR" the State explained:

Arkansas collects and reviews data for the purpose of state reporting on the APR, not for local provider program monitoring. Local Provider Program Monitoring is conducted using program data for the current fiscal year, not the prior years' data reported in the APR. Cyclical provider program monitoring does result in Findings of Noncompliance whenever identified.

In response to the State's FFY 2020 SPP/APR, OSEP noted that based on the State's reporting, OSEP could not determine if the State's efforts to correct identified non-compliance under Indicators 8A, 8B, and 8C were consistent with guidance in OSEP Memo 09-02. For each indicator, OSEP required:

When reporting on the correction of noncompliance, the State must report, in the FFY 2021 SPP/APR, that it has verified that each EIS program or provider with noncompliance identified in FFY 2019 and FFY 2018: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the EIS program or provider, consistent with OSEP Memo 09-02. In the FFY 2021 SPP/APR, the State must describe the specific actions that were taken to verify the correction.

The State also reported in its FFY 2020 SPP/APR on its efforts to correct identified noncompliance for Indicators 1 and 7. Under Indicator 1, the State reported that:

A subsequent review of updated data files for each AEIS provider was conducted to verify correction of previously identified noncompliance and ensures that early intervention providers are correctly implementing the federal and state requirements...FC staff conducts each procedure in accordance with the guidance provided in OSEP Memorandum 09-02, dated October 17, 2008.

In describing how the State verified correction of noncompliance in individual cases under Indicator 1, the State reported "In each instance of a finding of untimely services, Agency staff ensured correction of noncompliance due to services not being provided timely by reviewing provider files for each individual child whose services were not started in a timely manner."

The State provided a similar description of the correction of noncompliance under indicator 7:

Verification of correction is managed by the First Connections monitoring staff. Agency staff reviewed a percentage of updated local early intervention files to determine whether infants and toddlers referred subsequent to the earlier review had an evaluation and an IFSP completed within 45 days. As required for each provider with previously identified noncompliance, First Connections staff found that 100% of the newly reviewed records had the evaluation and IFSP meeting completed within the timeframe outlined in the requirements.

In the description of how the State verified correction of noncompliance for individual cases under Indicator 7 the State indicated:

In order to verify correction of each individual case of noncompliance with the 45-day timeline requirement, the assigned staff reviewed each individual child record for the infant/toddler who did not have an evaluation, assessment and IFSP meeting within the required 45-day time frame. As directed, the Part C process to verify correction determined that each provider had corrected the noncompliance with this indicator, and that 100 % of children, who had not previously received evaluations, assessments and timely IFSP meetings had a subsequently completed evaluation and the IFSP meeting, although late.

Legal Requirements:

To meet the data reporting requirements of IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c) and 303.720 through 303.724, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

OSEP Analysis:

The State's SPP/APR reporting and monitoring systems do not identify or track noncompliance with IDEA requirements reflected in the subset of data presented in the State's SPP/APR. The State's database contains data on all children while the State's cyclical monitoring process covers a select number of files for a limited number of Part C providers each year without examination of the database data used in the SPP/APR process. Without tracking specific noncompliance reflected in the database, the State cannot report on the correction of specific noncompliance identified in the SPP/APR. The State has admitted that its cyclical monitoring process does not address evidence of noncompliance revealed during the SPP/APR process. In the State's FFY 2020 SPP/APR, the State referenced OSEP's document entitled, [Frequently Asked Questions Regarding the Identification and Correction of Noncompliance and Reporting on the Correction of Noncompliance in the SPP/APR](#) (September 3, 2008) (2008 FAQ). The specific citation quoted by the State omits important analysis; however, the 2008 FAQ does represent OSEP's long standing position on key elements of reporting on correction of noncompliance in the SPP/APR.

For instance, the response to Question 5 in the 2008 FAQ explains:

A State must account for all noncompliance, whether collected through the State's on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, State complaint or due process hearing decisions, data system, or statewide representative sample or 618 data.

Additionally, Question 8 in the 2008 FAQ directly addresses whether a State must make a finding of noncompliance if the State receives data through a database that show noncompliance with the requirements of the IDEA. The response notes:

Yes, consistent with the response to Question 5, above, a State must account for all noncompliance, whether collected through the State's on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, data system, or statewide representative sample or 618 data. If a State examines data through its database and determines that they show noncompliance with the requirements of the IDEA, the State must make a finding and require correction as soon as possible, and

in no case later than one year after the State's identification (the State's written notification to the LEA or EIS program of the finding of noncompliance).

Finally, Question 9 of OSEP's 2008 FAQ, which the State referenced in its FFY 2020 SPP/APR, addresses the timing of the State's review of compliance data submitted through a database. Specifically, Question 9 asks:

If a State receives compliance data through a database on an ongoing basis, may it choose a specific point in time at which it will examine data from the database to determine whether an LEA or EIS program is in compliance and to make findings of noncompliance?

The response to Question 9 in OSEP's 2008 FAQ notes:

A State may identify one or more points in time during the SPP/APR reporting period when it will review compliance data from the database and identify noncompliance. In making compliance decisions, the State should then review all data that it has received since the last time that the State examined data from the database and made compliance decisions. A State may determine whether it will examine all data in the database or a statewide representative sample.

Information presented during the DMS visit demonstrates that the State's monitoring process examines a separate set of data than the State uses in its SPP/APR, and as a result the State has no means of providing valid and reliable data on the correction of noncompliance reflected in the SPP/APR. As explained in detail in the monitoring section above, the State reviews a small number of files from a limited set of EIS providers during its annual monitoring process. The State's monitoring process uses the standards of compliance described under Indicators 1, 7, 8A, 8B, and 8C, but it does not evaluate the data reported under those indicators in the SPP/APR.

As noted in staff responses during DMS interviews and reported in the State's SPP/APR submissions under Indicators 8A, 8B, and 8C, the State does not use the data submitted under the SPP/APR for monitoring compliance. Rather, "Local provider program monitoring is conducted cyclically using current FFY data, and findings of noncompliance are issued whenever identified through monitoring." When data collected and reviewed for the SPP/APR process reflects noncompliance with Part C requirements, the State must have a process for identifying and verifying the correction of noncompliance, as well as accurately reporting on the identification and correction of noncompliance.

Conclusion and Action Required:

OSEP finds that the State does not report on the identification and the verification of correction of noncompliance reflected in its SPP/APR data consistent with its reporting responsibilities, as required by 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2), [OSEP Memorandum 09-02: Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act](#) (October 17, 2008) and the SPP/APR.

As a result, the State is required to implement the following required actions to address the findings of noncompliance identified above.

Required Actions

Policies and Procedures—within 90 days of the date of this letter:

- The State must submit to OSEP updated policies and procedures documenting its process for identifying noncompliance reflected in SPP/APR data, verifying correction of noncompliance, and accurately reporting on both identification and verified correction of that noncompliance in the State's the SPP/APR.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this letter:

- The State must submit evidence of correction, for example, any checklists, tools, training materials, workbooks, or data reports that it has developed to ensure compliance and implementation with the data reporting requirements in IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c) and 303.720 through 303.724.

FISCAL MANAGEMENT

Background:

During OSEP's monitoring activities, OSEP and FC staff discussed the IDEA Part C single line of responsibility fiscal monitoring protocol. This protocol examines Arkansas' role in specific fiscal areas, including the general supervision, monitoring, funding, interagency coordination, and other areas necessary to meet the requirements under Part C of IDEA.

OSEP examined the State's general supervision system and fiscal monitoring activities to ensure that FC has the necessary fiscal policies, procedures, and authority to verify compliance, issue findings of noncompliance, and take appropriate enforcement actions, where required. FC is responsible for grant management, oversight, and accountability for the 62 independent Part C EIS provider programs that are certified to receive Part C funds.

OSEP also examined the Statewide system, which implements the fiscal elements of the single line of responsibility under IDEA by interviewing FC staff and reviewing the following documents: (1) The Arkansas FC Child Record Review; (2) Processing Prior Authorization Request for Developmental Evaluation Step by Step Guide; (3) FC Agency and Provider Program Responsibilities; (4) FC Authorizations Process; (5) Fiscal Process Overview; (6) 2015 FC Policies and Procedures (6) Family Rights Brochure; and (7) Certification Policy for Non-Center Based Services.

Legal Requirements:

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements.

Further, under 2 C.F.R. § 200.303, the LA must establish effective internal controls that provide reasonable assurance of compliance with "Federal statutes, regulations, and the terms and conditions of the Federal award," and the LA must monitor its compliance with the requirements of the Federal award.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

During monitoring discussions, FC staff described the agency's fiscal monitoring process conducted through the Comprehensive Data System (CDS). CDS contains built-in reports, edit checks and alerts, and captures referrals, evaluations, IFSPs, prior authorizations, transitions, and exit data. In describing their fiscal monitoring, FC staff explained that they review the provider records in the CDS system to ensure compliance with the fiscal requirements of IDEA.

FC staff further explained that they rely solely on their prior authorization process for their fiscal monitoring and oversight of Part C funds. Using the CDS, FC staff can review the services for infants/toddlers with disabilities birth to 3 years of age as required and identified on the IFSP. In addition, FC staff review the electronic records to verify funding sources, planned start and end dates of service, and that medical prescriptions for services are uploaded and attached to the request. FC staff explained that they use the Ongoing Fiscal Quality and Compliance Monitoring/Prior Authorization Processing tool when asked if there are any other tools or checklist used for fiscal monitoring. OSEP staff learned that the checklist is used in conjunction with the prior authorization process to ensure consistency of the prior authorization process and to identify

issues or noncompliance found in the review. FC staff indicated that the prior approval process is the only process used for IDEA Part C fiscal monitoring. The staff could not identify any process or internal controls for ensuring that authorized services were provided or that funds were otherwise liquidated for appropriate obligations.

When asked if noncompliance had ever been identified through this process or if they could demonstrate that findings of noncompliance were ever identified, FC staff explained that they only make findings of noncompliance for SPP/APR compliance indicators and if “something is wrong,” providers are asked to correct the issue. As referenced in the monitoring and improvement section of this letter, the State does not issue formal findings of noncompliance beyond requirements identified as SPP/APR compliance indicators when discovered.

Moreover, upon examination of the State's fiscal monitoring checklist, OSEP observed that the only fiscal element found in addition to IDEA program requirements was one check box that was used to indicate whether or not the record “meets payor of last resort requirements as required in 314(b) of the DDS/FC rules,” providing no verification that all the IDEA system of payments requirements had been reviewed or met.⁴ Although FC was able to demonstrate some oversight through their CDS system, the State was not able to demonstrate that their system is reasonably designed to identify and correct noncompliance with the IDEA Part C fiscal requirements. Additionally, during monitoring, FC staff reported that in FFY 2020, they awarded "Mini Grants" to providers using Part C funds to purchase personal protective equipment and to expand teletherapy services in the State. Under this grant, providers were also allowed to purchase computers and other technology devices to support the provision of Part C services. The State explained that while they requested receipts, no additional internal controls activities occurred to ensure funds awarded were used for allowable purposes, as required under 34 C.F.R. § 300.221 or any activities which would provide reasonable assurances that FC staff is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the IDEA Part C, as required in 2 C.F.R. § 200.303(a) and (d).

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by Arkansas, and interviews with staff of FC staff as the State LA. Based on this analysis, OSEP finds that the LA does not have:

1. Policies and procedures that are reasonably designed to ensure that the State monitors its EIS providers for compliance with for the IDEA Part C fiscal requirements, such as payor of last resort and systems of payments, as required by 34 C.F.R. § 303.120(a); and
2. Internal controls that are reasonably designed to ensure compliance with cost principles under the Uniform Guidance and other use of funds provisions under 2 C.F.R. § 200.303.

As a result, the State is required to implement the following required actions to address the findings of noncompliance identified above.

Required Actions

Policies and Procedures—within 90 days of the date of this letter:

- The State must submit revised fiscal monitoring policies and procedures demonstrating how the LA ensures compliance with appropriate IDEA Part C fiscal requirements consistent with 34 C.F.R. §

⁴ DDS/FC Rule 314(b) System of Payments. Part C Funds may only be used when there are no other Federal, State, local, or private resources available to pay for the early intervention service.

303.120(a) and establishes internal controls to ensure compliance with cost principles under the Uniform Guidance as required under 2 C.F.R. § 200.303.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this letter:

- The State must submit evidence of correction, for example monitoring reports or other supporting documentation demonstrating the State's oversight of the fiscal requirements and implementation of internal controls as listed in corrective actions.

DISPUTE RESOLUTION

Background:

During OSEP's DMS activities, OSEP and the FC staff discussed the DMS Dispute Resolution protocols which examine how FC staff implements its general supervisory responsibility, including dispute resolution, to ensure compliance and address potential noncompliance. OSEP reviewed the State's dispute resolution policies and procedures, dispute resolution manuals, brochures, training materials, and other relevant dispute resolution reports and data provided by the State. OSEP notes that, in accordance with 34 C.F.R. § 303.430(d)(2), the State has adopted the IDEA Part B due process hearing procedures under 34 C.F.R. §§ 303.440 through 303.449.

On January 26, 2022, FC staff presented OSEP with an overview of their dispute resolution system, which included information outlining their policies and procedures, program administration, program structure, and program data for dispute resolution. OSEP continued the discussions virtually with FC staff on February 2, February 3, and February 24, 2022, covering the State's mediation, due process, and State complaint procedures.

OSEP staff reviewed all information shared during the virtual visits as well as documents submitted by FC staff. FC staff reported that the State has not had any mediation, due process, or State complaints in the last three years. The State noted that they had a total of two State complaints between 2017 and 2019. The State complaint from 2018 was ultimately dismissed as the State determined that the child was not in the FC program, the second state complaint was in 2017 and has been resolved.

FC staff reported that the lead agency has partnered with William H. Bowen School of Law at the University of Arkansas Little Rock (UALR) to handle all the dispute resolution cases using trained mediators. The State further reported that parents or guardians could also request a facilitated IFSP, which would entitle them to have a mediator conduct an IFSP meeting outside of mediation, due process, or having to file a State complaint. The facilitated IFSP meeting generally occurs within 4-7 days of the family's request for this service. UALR also provides training and brochures to parents through parent centers and Service Coordinators about due process policy and procedures in the State.

Legal Requirements:

Under 34 C.F.R. § 303.421(a), the State must ensure that prior written notice is provided to parents a reasonable time before the EIS provider proposes or refuses to initiate or change the identification, evaluation, or placement of the infant or toddler or the provision of early intervention services. Under 34 C.F.R. § 303.421(b), this notice must be in sufficient detail to inform parents about the dispute resolution procedures.

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 303.432 through 303.434;
2. The mediation requirements in 34 C.F.R. § 303.431; and
3. The due process complaint and impartial due process hearing requirements 34 C.F.R. §§ 303.440 through 303.449.

Under 34 C.F.R. § 303.441(b), when filing a due process complaint, the content of the filing must include:

1. the name of the child;
2. address and residence of the child;

3. name of the EIS provider serving the child;
4. in the case of a homeless child, available contact information and EIS provider serving the child;
5. a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. a proposed resolution of the problem to the extent known and available to the party at the time.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

During OSEP's DMS monitoring activities, which included discussions with the State and a review of documents and materials provided by the State, FC staff discussed the process for filing a State complaint and information included in their FC Family Brochure and the State's Dispute Resolution manual. The FC Family Brochure – the explanatory document provided to families explaining what needs to be included when filing a State complaint – listed two additional requirements (Name of legal (or other) representation and contact information for legal representation), beyond what was required in the State's Dispute Resolution manual. The brochure also included language that stated this information must be included in the request for a due process hearing. When asked about the additional requirements in the FC Family Brochure, FC staff stated these were not required and they would have the wording removed on the FC Family Brochure. The additional requirements were removed from the FC Family Brochure and submitted to OSEP on June 15, 2022.

The additional State requirements for filing a due process complaint (as listed on the FC Family Brochure) violate the IDEA requirements under 34 C.F.R. § 303.440. Failure to provide additional information, outside of the IDEA requirements, cannot be a basis for dismissing a due process complaint. The State may indicate that it is helpful to include such information with the complaint because it facilitates communication between the represented parties.

During the DMS monitoring visit, OSEP discussed the FC Form for Reporting a Concern (FC Form), which was identified as an informal State process for raising disputes. FC staff explained that service coordinators, EIS providers and/or parents could file a FC Form if they have a concern about an incident that occurred within the past 90 days and are requesting immediate assistance. The FC Form requires the child's name, the date of the incident, the provider(s) involved and a description of the incident. Staff indicated that filing a FC Form does not prevent service coordinators, EIS providers, or parents from filing any of the other dispute resolution procedures. The FC Form indicates that it cannot be used if a State complaint has been filed regarding the same issue. The FC Form does not contain language which references other dispute resolution procedures such as initiating mediation or filing a due process complaint.

While State's may develop informal methods of providing customer support and technical assistance, such efforts may not replace or limit the dispute resolution requirements of IDEA Part C, including provisions for initiating mediation, filing a State complaint, or filing a due process complaint under 34 C.F.R §§ 303.431, 303.434, 303.440 and 303.441. The FC Form and resulting review process may not serve as a prerequisite for seeking a formal dispute resolution and may not interfere with the ability of appropriate parties to request mediation, file a State complaint, or initiate a due process hearing. The FC Form should clearly indicate that using the informal process is not a prerequisite for seeking formal dispute resolution and explain that the State's dispute resolution policies and procedures, adopted under IDEA Part C, remain available regardless of the use or outcome of the FC Form.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by Arkansas, and interviews with, FC staff as the State LA. Based on this analysis, OSEP finds that:

1. The State's written procedures for filing a due process complaint were not consistent with the requirements of 34 C.F.R. § 303.441(b). The FC Family Brochure listed two additional requirements (Name of legal (or other) representation and contact information for legal representation) and included language that stated this information must be included to submit a letter for due process. The additional requirements to file a due process complaint (as listed on the family brochure during the monitoring visit) exceed the requirements under 34 C.F.R. § 303.441(b).
2. The State use of the FC Form for Reporting a Concern is inconsistent with 34 C.F.R §§ 303.431, 303.434, 303.340 and 34 303.441. The FC Form does not make clear that reporting a concern through the form does not limit the ability to pursue formal due process options. The FC Form is not a substitute for filing a formal complaint through mediation, due process, or a State complaint.

As a result, the State is required to implement the following required actions to address the findings of noncompliance identified above.

Required Actions

FC Form for Reporting a Concern—within 90 days of the date of this letter:

- The State must submit a revised copy of its FC Form for Reporting a Concern, including language making clear that reporting a concern through the form does not limit access to other procedural safeguards and that appropriate parties may still request one of three dispute resolution options (mediation, due process, or State complaint) and includes a statement that filing the FC Form is not a prerequisite to initiating any of the IDEA Part C dispute resolution options.

FC Family Brochure—no further action required.

- On June 15, 2022, subsequent to the conclusion of OSEP's DMS monitoring activities, the State submitted a revised version of the FC Family Brochure, which removed the two additional requirements (Name of legal (or other) representation and contact information for legal representation). Based on the review of this information, no further action is required regarding the FC Family Brochure.

APPENDIX

Monitoring and Improvement Legal Requirements:

In order to effectively monitor the implementation of Part C of the IDEA, the State must have policies and procedures that are reasonably designed to ensure that the State can meet:

1. Its general supervisory responsibility as required in 34 C.F.R. § 303.120.
2. Its monitoring responsibilities in 34 C.F.R. §§ 303.700 through 303.702, and
3. Its responsibility to annually report on performance of the State and of each Early Intervention Service (EIS) program, as provided in 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2).

A State's monitoring responsibilities include monitoring compliance by its EIS programs and providers (regardless of whether Federal IDEA Part C funds) with the requirements of IDEA Part C, to ensure that the LA can effectively carry out its general supervision responsibility under IDEA Part C, consistent with 34 C.F.R. § 303.120(a)(2).

Under 34 C.F.R. § 303.700(b), the State's monitoring activities must primarily focus on:

4. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
5. Ensuring that EIS programs and providers meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities. Improving educational results and functional outcomes for all children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 303.700(d), the State also must ensure that when it identifies noncompliance with IDEA Part C requirements by EIS programs and providers, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance, as required under 34 C.F.R. § 303.700(e).

Further, under 34 C.F.R. § 303.120 the State must have a system that includes a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following: (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act; and the monitoring of programs and activities used by the State to carry out Part C of the IDEA (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the IDEA), to ensure that the State complies with Part C of the Act. The State must also have in effect a system that includes monitoring and enforcement requirements in 34 C.F.R. §§ 303.700 through 303.701 and 303.704.

In addition, under 34 C.F.R. § 303.700(a)(1), the State must monitor the implementation of IDEA Part C and under 34 C.F.R. § 303.700(a)(4) must report annually on the performance of the State and each EIS program on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the LA must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 303.700(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 303.700(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 303.701 and the priority areas described in 34 C.F.R. § 303.700(d) to analyze the performance of each EIS program located in the State. 34 C.F.R. § 303.702.

Data Legal Requirements:

To meet the data reporting requirements of IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c) and 303.720 through 303.724, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

Fiscal Management Legal Requirements:

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under Part C of the IDEA, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521. If the State LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA's identification of the noncompliance consistent with 34 C.F.R. § 303.120(a)(2)(iv) and 303.700(e). Further, under 2 C.F.R. § 200.303, the LA must establish effective internal controls that provide reasonable assurance of compliance with "Federal statutes, regulations, and the terms and conditions of the Federal award," and the LA must monitor its compliance with the requirements of the Federal award.

Dispute Resolution Legal Requirements:

Under 34 C.F.R. § 303.421(a), the State must ensure that prior written notice is provided to parents a reasonable time before the EIS provider proposes or refuses to initiate or change the identification, evaluation or placement of the infant or toddler or the provision of early intervention services. Under 34 C.F.R. § 303.421(b), this notice must be in sufficient detail to inform parents about the dispute resolution procedures.

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 303.432 through 303.434;
2. The mediation requirements in 34 C.F.R. § 303.431; and
3. The due process complaint and impartial due process hearing requirements 34 C.F.R. §§ 303.440 through 303.449.

State Complaint Procedures

Under 34 C.F.R. § 303.432, each LA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.434. Under 34 C.F.R. § 303.434, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of Part C of the Act or the Part C regulations including the facts on which the statement is based. Under 34 C.F.R. § 303.434(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Under 34 C.F.R. § 303.433(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an onsite investigation, if the LA determines that an investigation is necessary.

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
 - a. At the discretion of the public agency, a proposal to resolve the complaint; and
 - b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 303.431;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this part; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - a. Findings of fact and conclusions; and
 - b. The reasons for the LA’s final decision.

Under 34 C.F.R. § 303.433(b)(1), the State’s procedures must permit an extension of the 60-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint, or
2. The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 C.F.R. § 303.433(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Mediation

Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Under 34 C.F.R. § 303.431(b)(1), the State’s procedures must ensure that the mediation process—

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent’s right to a hearing on the parent’s due process complaint, or to deny any other rights afforded under Part C of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Under 34 C.F.R. § 303.431(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the LA or an EIS provider that is involved in the provision of early intervention services or other services to the child and may not have a personal or professional interest that conflicts with the person’s objectivity.

Under 34 C.F.R. § 303.442(b)(1), the LA must convene a resolution meeting within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 303.433. Under 34 C.F.R. § 303.510(a)(3), the resolution meeting need not be held if the parent and the LA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. § 303.442(a)(3).

Under 34 C.F.R. § 303.442(b), if the LA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Under 34 C.F.R. § 303.442(c) the 30-day resolution period may be adjusted to be shorter or longer if one of the

circumstances identified in that paragraph are present. Under 34 C.F.R. § 303.447(a), the LA agency must ensure that not later than either 30 days or 45 days (consistent with the LA's written policies and procedures adopted under 34 C.F.R. § 303.440(c)) after the expiration of the 30-day period in 34 C.F.R. § 303.442(b), or the adjusted 30-day time periods described in 34 C.F.R. § 303.442(c)) that a final decision is reached in the hearing; and a copy of the decision is mailed to each of the parties, unless under 34 C.F.R. § 303.447(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party. Any party aggrieved by the findings and decision made under 34 C.F.R. §§ 303.440 through 303.445 who does not have the right to an appeal under 34 C.F.R. § 303.446(b), and any party aggrieved by the findings and decision under 34 C.F.R. § 303.446(b), has the right to bring a civil action with respect to the due process complaint under 34 C.F.R. § 303.440.