

Dated May 17, 2001

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Dear Ms. Barnett and Ms. Wounded Head:

This is in response to your letter, dated February 4, 2000, regarding South Dakota's Federal monitoring report. We apologize for the delay. This letter supercedes any previous communications to you on this issue. In your letter, you ask for clarification on the following four items:

- 1) Under General Supervision, suggestions for improved results (top of page 5 of the report) it states, "The State may want to consider procedures to ensure adequately trained staff to provide appropriate services for infants, toddlers and their families, such as, mandating requirements for early intervention service providers, providing incentives and including requirements for certification in its Comprehensive System of Personnel Development." South Dakota currently requires an early childhood special education endorsement which includes fifteen semester hours in seven competency areas. Please further explain the specific areas where you believe certification, incentives, or further regulation is recommended. We would appreciate information on any [S]tates that could be consulted as a model.

#### Response

The State is not required to address this particular item, as it is a suggestion for improvement, not a finding of noncompliance. However, this suggestion is provided based on findings in Sections III and V of the Report in the areas of early intervention services, family supports and services, and transition. Many of the findings are related to a need for staff training. It is further stated in

this suggestion (I, B, 1) that “Local administrators, service coordinators and providers in four of the five areas visited by OSEP identified as an area of need, training on: writing IFSPs, developing outcomes and strategies, family centered services, family supports and services, and transition, as well as effective child find strategies.” The report further identifies that training sessions were offered, but State administrators reported that local service providers “do not take advantage of training offered,” and “providers are not required to attend training activities.” As the State has a number of findings that may be resolved with appropriate training for early intervention providers, the State needs to identify appropriate methods to ensure needed changes occur to address noncompliance issues throughout the report, and effective training could be one method. OSEP is not in the position of suggesting specific standards and certification requirements; however, DECA may want to consult NEC\*TAS about requirements and standards in other States.

2) Under Child Find/Public Awareness #2 – Failure to use clinical opinion (pages 9 and 10 of the report) 34 CFR §303.323 is cited. This citation addresses nondiscriminatory procedures and that no single procedure is used as the sole criterion for determining a child’s eligibility under Part C. The final sentence of this area of non-compliance states, “None of the providers interviewed had ever determined a child eligible using only their clinical judgement when the child was not eligible according to the protocol.” South Dakota’s policies and procedures state, “Informed clinical opinion is used in determining a child’s eligibility. Informed clinical opinion is especially important if there are no standardized measures, or the standardized procedures are not appropriate for a given age or developmental area.” South Dakota has always interpreted informed clinical opinion to be a “collection” of all information available, including evaluation and assessment results that each evaluator and team uses to determine the needs of the child and that it is not a “sole procedure” to determine eligibility. Could you please define informed clinical opinion?

### Response

Each Statewide system of early intervention services must include the eligibility criteria and procedures, consistent with 34 CFR §303.16, that will be used by the State in carrying out programs under Part C. The State must define developmental delay by describing procedures, including the use of informed clinical opinion, that will be used to measure a child’s development. See 34 CFR §303.300. The evaluation and assessment of each child must be conducted by appropriate qualified personnel trained to utilize appropriate methods and procedures and be based on informed clinical opinion. See 34 CFR §§303.322(a), (b)(1) and (c). The State must permit the use of informed clinical opinion as a separate basis in an evaluation to establish the eligibility of a child for early intervention services. While using informed clinical opinion to establish eligibility for Part C services is especially important if there are no standardized measures or if the standardized procedures are not appropriate for a given age or developmental area, it must also be allowed as an independent basis to determine eligibility.

South Dakota’s policies and procedures state that, “Informed clinical opinion is used in determining a child’s eligibility.” However, as stated in OSEP’s monitoring report, “... providers and service coordinators told OSEP that informed clinical opinion is not considered in

determining eligibility for Part C. If a child is not eligible according to the scores from an evaluation protocol, the child would not be eligible for the early intervention program even if the evaluator believed the child was in need of services.” Early intervention staff determining eligibility told OSEP that a child must be eligible according to the criteria of a test protocol, and if the child did not demonstrate eligibility on the test, evaluators told OSEP the child would not be eligible based on their clinical opinion. The evaluation protocol is the sole determiner of eligibility in South Dakota according to the evaluators and, as they further stated, they did not use informed clinical opinion in the determination of eligibility.

Informed clinical opinion is one of the separate criteria identified in the regulations as being required to be used in an evaluation to determine eligibility, as well as the use of other procedures as stated in §303.300. The note following this regulation discusses the concern that tests and protocols may not always be applicable. Many tests and protocols were not standardized on the population of premature babies, and may not be appropriate to determine levels of development and eligibility for these children. Therefore, other procedures, including informed clinical opinion, are essential in determining eligibility for such a child. Another example of a sub-population for whom standardized tests and protocols are insufficient diagnostic criteria is the identification of young children with autism. Many children with autism pass a standardized instrument at age two to three; however, unless evaluators used their informed clinical opinion along with a standardized test, many of these children would not be identified until more severe developmental problems were identifiable.

While the Part C regulations do not expand on the definition of informed clinical opinion, DECA may want to contact NEC\*TAS to obtain technical assistance on this topic. NEC\*TAS maintains a file of definitions and procedures other States have developed for the use of informed clinical opinion in determination of eligibility for early intervention services. Several States have also submitted to NEC\*TAS procedures for the use of informed clinical opinion by appropriately qualified personnel in their states.

3) Under Section III, Part C: Early Intervention Services in Natural Environments #2, Failure to include all needed early intervention services on the IFSP (page 16), the report states, “Early intervention services may include such services as the provision of respite and other family support services.” Section 303.12 of IDEA, Part C states that early intervention services means services that “are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child’s development.” Please provide guidance on how the IFSP team would document that the need for respite care was based on the developmental needs of the child and/or on the needs of the family related to enhancing the child’s development including how the team would determine frequency and intensity.

#### Response

“Failure to include all needed Early Intervention Services on the IFSP,” in Section III, B, 2 of the Report includes the IFSP process in identifying and including early intervention services. The determination of early intervention services needed by a child and family is an IFSP team decision based on the multidisciplinary evaluation of each child, and the family-directed

identification of the needs of each child’s family to appropriately assist in the development of the child. The family assessment is not only family-directed, but must be designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the child.

For example, the family assessment could show a need that the parents may be unable to assist in the child’s early intervention program due to overwhelming family demands, and may be in need of respite services. In another example, the parent may have three children under the age of three, and although services are provided in the home, the parent cannot participate in the early intervention due to demands of the other children. Providing an in-home caretaker for the other two children during provision of services to the eligible child allows the parent to participate in early intervention services, receiving the information and training that can be used to enhance the development of the child. With information from the family assessment, the IFSP team would convene to determine services necessary to meet the needs of the child and the family to enhance the child’s development. However, respite is not intended to serve as child-care assistance in ordinary circumstances. States and IFSP team members are expected to continue to exercise judgement in identifying appropriate circumstances under which respite care is truly needed. DECA may want to contact NEC\*TAS for further assistance in the area of respite and other family support services.

4) Under Section III. Part C: Early Intervention Services in Natural Environment, #5 Failure to include transportation as an early intervention service (page 19) the report states, “Transportation as a service was found in only two of the 27 IFSPs reviewed by OSEP, and this transportation was not for ongoing early intervention, but for a specialized evaluation event.” Earlier in the report South Dakota was commended on [its] effective training program on natural environments and also encouraged to address additional training that the home and child care settings are only two of the multitude of community settings that are natural or normal for children birth to three. These statements and the regulations indicate that the majority of early intervention services are provided in the home or other natural settings. The service providers are traveling to these locations therefore, the parents are not transporting the children to a location to receive the early intervention service. The need for transportation as an early intervention service would be rare. We request clarification as to what change is requested in this area.

#### Response

“Failure to Include Transportation as an Early Intervention Service” is a noncompliance finding found under Section III, B, 5. Transportation was identified by parents and providers interviewed as a need, and parents stated, “that neither the need for transportation nor reimbursement costs were discussed during IFSP meetings.” All of the needs of the family related to obtaining early intervention services should be part of the discussion and decision-making process for development of an IFSP that would enable an eligible child and family to obtain needed services. Information from OSEP’s IFSP reviews and interviews with parents, service coordinators and providers indicates that South Dakota will fund transportation for a specialized event, but not ongoing provision of early intervention services, unless the parent knows to request transportation for a service in a non-home location chosen by the IFSP team.

Even though a majority of services may be provided in the home or a child care setting, parents and providers stated that, in general, as stated in the Report, “all of the parents interviewed in the five areas OSEP visited stated that neither the need for transportation nor reimbursement costs were discussed during IFSP meetings.” The Report further states, “service coordinators in all five areas visited stated that transportation was not addressed with every family, and in two areas it is not addressed at all. In four of the areas visited service coordinators stated there is a need for transportation, but it is not available, especially on reservations. Provision of services in the home or child care settings could be a concern if the determination of natural environments for each particular family has not been part of an IFSP team discussion or if these two locations are the only two locations considered to be “natural environments.”

We hope this response to your questions provides the necessary clarification.

Sincerely,

/signed Patricia J. Guard/

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Office of Special Education Programs