



DEPARTMENT OF HEALTH AND HUMAN SERVICES
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November 17, 2008

Ruth E. Miller, Rights Attorney
Nevada Disability Advocacy and Law Center
1311 North McCarran, #106
Sparks, NV 89431

Re: Complaint #200902

Dear Ms. Miller:

The Final Report of findings based on the investigation of your Administrative Complaint received by the Nevada IDEA Part C Office on July 16, 2008 is enclosed. Your complaint on behalf of all eligible infants and toddlers in the State alleged systemic violations of the Individuals with Disabilities Education Act (IDEA), Part C, by the Nevada Department of Health and Human Services, Health Division, Bureau of Early Intervention Services relative to the timely initiation of services as specified on Individualized Family Service Plans (IFSP) and adhering to requirements for fully informing families of their rights and procedural safeguards under the Law related to this issue.

The Nevada IDEA Part C Office has conducted a thorough investigation of the issues specified in your complaint. It is the finding of the investigation team that the State is in violation of a number of provisions of the IDEA, Part C, relative to ensuring that a system of early intervention services is available to all infants and toddlers with disabilities in the State. This includes ensuring the capacity to initiate services identified as needed on IFSPs in a timely manner as specified by state and federal law and policy. The details of the findings of this investigation and requirements for correction of violations are outlined in the enclosed report.

We apologize for the delay in the submission of this report. Your interest in, and support for, the system of services for infants and toddlers with disabilities is appreciated. We trust you will find that steps are being initiated to resolve the issues identified in this complaint in compliance with IDEA requirements. If you have further questions related to this investigation or the ensuing report, please feel free to contact the Part C office at (775) 688-0456.

Sincerely,

Michael J. Willden, Director

cc: Mary Liveratti, Deputy Director of Programs, DHHS

November 25, 2008

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Todd Butterworth, Chief Office of Disability Services
Wendy Whipple, Part C Coordinator
Richard Whitley, Administrator, Health Division
Janelle Mulvenon, Chief, Bureau of Early Intervention Services

Enclosure

REPORT OF PART C COMPLAINT INVESTIGATION
Nevada Early Intervention Services, Northwest
Complaint #200902

INTRODUCTION

A letter of complaint was received by the IDEA, Part C Office of Nevada Office of Disability Services on July 16, 2008 from the Nevada Disability and Advocacy Law Center (NDALC). The complaint was filed on behalf of all infants and toddlers, ages birth to three years, eligible for services under Part C of the Individuals with Disabilities Education Act (IDEA) in accordance with the Code of Federal Regulations (CFR) §303.511. Upon receipt of the letter, the Part C Office reviewed the complaint and determined that the alleged violation met the requirements for investigation in accordance with IDEA procedural safeguard provisions (CFR §303.510-512); therefore, a full investigation was conducted.

Complaint Issue

This complaint alleges that the Nevada Department of Health and Human Services, Health Division, Bureau of Early Intervention Services is in violation of the provisions of IDEA regarding ensuring that families have appropriate access to Procedural Safeguard provisions of IDEA and in failure to ensure that services specified in the Individualized Family Service Plan (IFSP) for eligible children are initiated in a timely manner.

Individuals Interviewed

The investigation team interviewed the following persons:

- Program Manager, NEIS Southern Region
- Program Manager, NEIS Northwest Region
- Program Manager, NEIS Northeastern Region
- Bureau Chief, Nevada Bureau of Early Intervention Services
- ASO, Nevada Bureau of Early Intervention Services

Documents Reviewed

- NDALC Communication
- The Individuals with Disabilities Education Improvement Act 2004
- Code of Federal Regulations (CFR), Part 303
- Nevada Application for Federal Funds under IDEA, Part C and Assurances
- Program Letter of Notification to Parents of Delay in Initiation of Services
- Tracking Resources and Children (TRAC) Child Data System
- Service Provider Agreements

FINDINGS OF FACT

Three overarching issues have been identified:

Issue 1: Lead Agency Responsibility for Timely IFSP Implementation

The Department of Health and Human Services is the lead agency for Part C, IDEA Early Intervention Services. The Department has assigned the responsibility for the administration of statewide early intervention services to the Health Division, which provides services through state agencies within three regions, Nevada Early Intervention Services South (NEIS-S), Nevada Early Intervention Services Northwest (NEIS-NW) and Nevada Early Intervention Services Northeast (NEIS-NE). In addition, the Health Division currently has provider agreements with two community agencies in the southern region Easter Seals of Southern Nevada and REM Nevada.

In 2003, the Department created the Bureau of Early Intervention Services (BEIS) to ensure that there was one entity for early intervention statewide, that all programs operated under one uniform set of operating procedures and to ensure efficiency and efficacy of early intervention statewide. The Bureau provides the leadership to all regions of early intervention and works directly with the IDEA Part C Office to ensure that policies and practices for implementation of early intervention services are compliant with IDEA requirements.

The State of Nevada has experienced a severe and unexpected downturn in revenues in the current biennium. As a result, State-funded programs have been asked to reduce their current-year budgets by nearly 20%. Because the early intervention program represents about 75% of the Health Division's State-funded budget, there has been little option but to reduce the funds available for early intervention.

The State allocation for early intervention has increased each year from FY 2004 through FY 2009. In FY 2004 the state budget was \$7,303,829 and has increased to \$15,857,118, an increase of 117%. The federal allocation in FY 2004 was \$4,107,386 and has increased to \$4,229,447 in FY 09, an increase of 3%.

The Bureau's current capacity to serve eligible children, based on the estimated cost per child, is 1,971 IFSPs per month; current demand for services exceeds this number by several hundred children. BEIS must maintain expenditures within the budget allocated to them in the biennium through the budget process.

The deepening budget crisis continues to impact the program's ability to meet the identified needs of eligible children and their families. For FY09, early intervention programs took a budget cut of \$407,047 which was implemented at the August 2008 Interim Finance Committee. In addition programs had to cut \$80,763 from operating budgets. As of November 12, agencies have been asked to cut as much as 11% more from their budgets. In an effort to protect services to children and families, programs have targeted reductions to other areas of operation, but this is becoming increasingly difficult.

To-date, the following measures have been taken to address this issue:

- Individual decisions are made with families to utilize community providers when there is a third party funding source through private insurance or Medicaid, so that children do not have to wait for those services. Referring children to the community has created a new fiscal layer for programs to pay co-pays, track services and get invoices from parents.
- In some programs, supervisors are carrying caseloads (primarily service coordination) to compensate for the lack of available personnel resources and to alleviate the added burden for Developmental Specialists, thus allowing them to provide direct service.
- The Health Division has created issue groups to discuss concerns within regional programs and to determine if there are internal efficiencies that could be initiated.
- Regions have put together work groups to try and address the issue of children waiting and to look for internal efficiencies.
- NEIS Northwest is piloting a dedicated service coordinator approach, primarily for children who are eligible for Medicaid, as a strategy for freeing up more of the DS time to provide direct services.

- NEIS Northwest is meeting with a new community partner who could provide some services to children with a third party payment source. Funds are not available for the Northwest region to establish community agencies as stand-alone early intervention providers at this time; therefore, NEIS is still responsible for the other services on the IFSP.
- NEIS Northwest therapists that have had hours cut, due to NEIS budget constraints, have met with Health First to obtain Medicaid numbers so they can augment their availability to families by working as a direct Medicaid provider.

Issue 2: Timely Initiation of IFSP Services

Interviews conducted during this investigation, TRAC data reports, and the numbers of recent complaints filed by eligible families clearly demonstrate that the State has a significant number of eligible children for whom services specified on their IFSP are not initiated in a timely manner, as required by law. This is true for all regions of the state, though more pronounced in the urban areas. There are two primary reasons causing children to wait for services beyond the 30-day target:

1. Insufficient funds to address the current caseload across the state, and
2. Insufficient staff to manage the current caseload across the state.

During Part C's interviews, several barriers to meeting the 30-day timeline were indicated. The State hiring freeze had a great impact on the number of children the program could serve. Other barriers to hiring sufficient staff include: delays in receiving a list of potential candidates from the Department of Personnel to schedule interviews, a lack of qualified applicants, and uncompetitive salary levels within the State system. However, as a mandated program, no children can be turned away from receiving services. Although, early intervention services are mandated, the funding to support those services is not. This is a classic federal unfunded mandate.

To-date, the following measures have been taken to address this issue:

- Hiring qualified developmental specialists to fill the vacant positions approved for hiring as stated above, will eliminate some of the children on the waiting list;
- Assigning children to play groups as openings become available if this is a service identified on the IFSP;
- Policies and procedures have been developed for staff to follow when a permanent service coordinator has received an assignment from the waiting list;
- Supervisors are closely monitoring their staff's caseloads to ensure that they are at full capacity at all times;
- Service coordinators who are assigned to complete the evaluation and assessment and develop the IFSP are responsible for maintaining contact with families while they are waiting for their services to be initiated as a follow up procedure; and
- Compensatory services are offered to the family, once a child is assigned a permanent service coordinator from the waiting list.

Issue 3: Procedural Safeguards

The Bureau has not issued a policy requiring programs to initiate a Prior Written Notice when families are waiting for services. Two programs have individually initiated procedures for issuing a letter to families which informs them that there is a waiting list, and advised them of their procedural safeguard rights. In interviews with Bureau personnel it was indicated that, from their perspective, the delay in implementing services is not a refusal by the agency but an inability by the agency to meet the timeline required for initiation of services. They are notifying families of the situation and informing them of their rights and procedural options.

Interviews with NEIS South indicated that the program is not notifying families with a standard prior written notice form when their services will not be initiated in a timely manner as identified on the IFSP. However, the program provides families with a letter informing them about the program's waiting list at the evaluation and assessment meeting, along with informing families of their parental rights and providing them with the Parent Handbook. The temporary service coordinators who are assigned to complete the child's evaluation and assessment to determine eligibility and develop the IFSP, are also responsible for maintaining contact with families in the interim of services being initiated on a monthly basis or as needed. This contact includes following up with the families as to how well service strategies are working, and providing support and additional resources as needed.

NEIS Northwest's procedure for dealing with this issue is to inform families verbally of the current situation at the time of the multidisciplinary evaluation to determine eligibility. If the child is determined eligible for services, this is again discussed with the family at the IFSP meeting. Parent rights are provided in writing and discussed at both junctures. Consistent use of this procedure has been verified by the Part-C Office through interviews with families. Individual letters are then sent to families at the beginning of each month if any service is still pending, which informs them that they are not able to initiate the service as required by law and includes information regarding their rights under IDEA to take action on their child's behalf.

NEIS Northeast informs families verbally at the evaluation and IFSP meetings of the required timelines for providing services and provides them with information about their rights under IDEA. This procedure does not include providing written notification.

At this time, neither REM nor ESSN have a procedure in place for notifying families if services cannot be implemented in a timely manner.

The Bureau had not created a statewide policy for compensatory services related to the delay in timely initiation of services. Regions were providing compensatory services on a case by case basis when families requested, or the delay had been very long. Once the programs assigned a provider to work with the family, the need for compensatory services was determined by the IFSP team, including the family. The concern expressed by the Bureau is, if the programs initiate automatic compensatory services for every child, the waiting list would grow even longer.

Data from the Tracking Children and Resources (TRAC) data system for the first quarter of FY09 indicates: for the State-operated early intervention programs there were 453 children identified as having waited longer than 30 days for 568 services. The following is the breakdown of those services:

Waiting greater than 30 days by Service Type -- NEIS

Service Type	# of Children	Range of Days
Audiology	8	36-288
Developmental Therapy (SI)	405	32-219
Family/Training/Counseling	4	32-299
Intensive Behavioral Services	45	33-233
Medical Services	2	73-782
Nutrition	10	34-352
Occupational Therapy	22	36-154
Physical Therapy	7	33-36
Speech/Language Therapy	53	32-299
Transportation	1	231
Vision Services	11	70-468

***Children can be waiting for more than one service**

REM Nevada had a focused monitoring on October 2, 2008 to determine status on timely delivery of services. Fourteen new IFSPs were reviewed between May and August to determine if services were beginning as required by the IFSP. Of the 14 records, 7 records (50%) were noncompliant over 10 services. The monitoring revealed that REM is not documenting reasons for the delay of services, nor providing any form of notification to the family for reason of delay. The following is a breakdown for children waiting for services greater than 30 days:

Waiting greater than 30 days by Service Type – REM Nevada

Service Type	# of Children	Range of Days
Speech/Language Therapy	5	11-51
Special Instruction	2	5
Occupational Therapy	1	10
Physical Therapy	1	72
Intensive Behavioral Services	1	24

CONCLUSIONS OF LAW AND REASON

Issue 1: Lead Agency Responsibility

In order to receive Individuals with Disabilities Education Act (IDEA) funds, the Department of Health and Human Services has provided assurances to the US Office of Special Education Programs that the State has in effect a statewide system that meets the requirements of §635 of the Law (Requirements for Statewide System).

Authority: 20 USC 1435 §635. Paragraph 10

A statewide system described in §633 of the Law shall include, at a minimum the following components: ...(paragraph 10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out the requirements for statewide administration (*text compressed and paraphrased*).

Authority: 20 USC 1435 §635. Paragraph 2

A statewide system described in §633 of the Law shall include, at a minimum the following components: ... (paragraph 2) a State policy that is in effect and that ensures that appropriate early intervention services are available to all infants and toddlers with disabilities and their families (*text compressed and paraphrased*).

Authority: 34 CFR §303.340(c)

Lead agency responsibility: The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.

Authority: 34 CFR §303.342(e)

Parental consent : The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

Issue 2: Timely Initiation of IFSP Services

Authority: 34 CFR §303.344(f) (1)

Dates and duration of services: The IFSP must include (1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in Sec. 303.342; and (2) The anticipated duration of those services.

Authority: State of Nevada early intervention policy document, February 9, 2007

Early intervention services identified in an eligible child's initial and subsequent IFSPs (including IFSP reviews) will be provided to the child and family as soon as possible following the family's consent to implement the IFSP. Determination of whether or not services are provided in a timely manner will be based upon:

1. The projected date for initiation of services as determined by the IFSP team and specified on the IFSP; or
2. Within 30 days from the date the parents provided consent for the IFSP service.

Authority: 34 CFR §303.340(b)

As used in this part, individualized family service plan and IFSP mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must: (1) Be developed in accordance with Secs. 303.342 and 303.343; (2) Be based on the evaluation and assessment described in Sec. 303.322; and (3) Include the matters specified in Sec. 303.344.

Authority: 34 CFR §303.344(a)

Information about the child's status: The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development. The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

Complaint Issue 2: Procedural Safeguards

Authority: 20 USC 1435 §635. Paragraph 13

A statewide system described in §633 of the Law shall include, at a minimum the following components: (paragraph 13) Procedural safeguards with respect to programs under this part, as required by section 639 (*text compressed and paraphrased*).

34 CFR §303.403(a)

General: Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

34 CFR §303.403(b) (3) and (4)

Content of notice. The notice must be in sufficient detail to inform the parents about: (1) The action that is being proposed or refused; (2) The reasons for taking the action; (3) All procedural safeguards that are available under Secs. 303.401-303.460 of this part; and (4) The State complaint procedures under Secs. 303.510 - 303.512, including a description of how to file a complaint and the timelines under those procedures.

DISCUSSION AND CONCLUSIONS:

The purpose for investigation of this complaint was to determine whether or not the Nevada Department of Health and Human Services, Bureau of Early Intervention Services under the administration of the Health Division has operated the statewide system of early intervention services in accordance with the provisions of the IDEA. The investigation team concluded that Nevada's system of Early Intervention is comprehensive and designed to meet all of the requirements of Part C of the IDEA. The findings of this investigation point to a lack of resources rather than the lack of a proper system. In light of the State budget crisis and the lack of personnel, the programs have done a commendable job of maintaining the service delivery system to the best of their ability.

Issue 1: Lead Agency Responsibility

Therefore, based on the information obtained through this investigation, the investigation team has determined that the State is not providing services under the provisions of the IDEA in the following instances:

1. Nevada's early intervention program is responsible for ensuring that all eligible infants and toddlers in Nevada are identified, and that a budget sufficient to serve their needs is presented in the State budget process. Although caseload projection data are tracked by the agency for the purpose of properly budgeting for the program's needs, those data were not used to budget for the needs of the agency in the current State biennium.
2. Third-party payment sources are not being fully utilized prior to the use of IDEA, Part C federal funds, to maximize the resources available for early intervention services in accordance with 34 CFR 303.522.

Issue 2: Timely Initiation of IFSP Services

Therefore, the investigation team determined the data indicates that, as of September 30, 2008, 453 children were waiting for services within the State early intervention programs, three (3) children were waiting within Easter Seals and seven (7) within REM. This, the

State is not in compliance with the provision of timely delivery of services pursuant to 34 CFR 303.344.

Issue 3: Procedural Safeguards

The investigation team determined that in some regions written notice was being given to families informing them of delays in services. The program was not refusing to provide the service, but was informing the family that the timeline for implementation could not be met. In all instances the letter informed the family of their procedural safeguard rights, and the evidence of individual child complaints indicates that families are aware of their right to file a complaint. However, this process was not consistent across all regions.

Therefore the investigation team finds that the Nevada Early Intervention Programs did not meet their obligation in notifying families of the delay of services through Prior Written Notice in compliance with 34 CFR 303.403(a and b).

CORRECTIVE ACTION PLAN

1. The Nevada Health Division must submit a Corrective Action Plan including detailed steps for addressing the timely delivery of services, timelines for implementation and identification of responsible parties, within 60 days of receipt of this report. This plan must include the steps necessary to ensure that children have access to all of their services designated on the IFSP in accordance with 34 CFR 303.342. The correction of timely delivery of services must take place as soon as possible, but in no case later than one year of the date of this report.
2. The Bureau of Early Intervention Services will issue a statewide policy which addresses the need to provide families with Prior Written Notice when services on the IFSP cannot be implemented as planned. This policy must be in effect no later than 60 days after the issuance of this report.
3. Easter Seals of Southern Nevada and REM Nevada will comply with all policies developed by the Bureau that pertain to this systemic complaint.
4. Easter Seals of Southern Nevada will comply with their Corrective Action Plan developed as a result of their self-assessment, and ensure that services are timely delivery as soon as possible, but in no case later than one year of the date of this report.
5. All early intervention programs statewide, including REM Nevada and Easter Seals of Southern Nevada will reconvene IFSP meetings for families that have been waiting for services to determine the appropriateness of compensatory services.
6. All early intervention programs statewide, including REM Nevada and Easter Seals will provide the Part-C Office with a monthly report updating the status of the corrective action plan, including the provision of compensatory services.
7. Easter Seals of Southern Nevada and REM Nevada will become Medicaid providers in accordance with their provider agreement within 90-days of issuance of this report; no federal funding may be allocated to those programs until they are in compliance with this requirement.