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DMS Numbered Memo 2026-03
Replaces DMS Numbered Memo 2025-01

To: County Birth to 3 Program Coordinators
County Department of Human Services
Directors
County Department of Social Services
Directors
County Department of Community
Programs Directors
Long-Term Support Supervisors and
Leads

From: Deb Rathermel, Wisconsin Part C
Coordinator
Bureau of Children's Services
Division of Medicaid Services

A handwritten signature in black ink, appearing to read 'Deb Rathermel'.

Birth to 3 Program Findings of Noncompliance

Background

The federal Office of Special Education Programs (OSEP) within the U.S. Department of Education requires states to provide monitoring and oversight of programs that provide early intervention services to ensure compliance with the Individuals with Disabilities Education Act (IDEA) Part C requirements, as outlined in [34 CFR § 303.700](#). To comply with these requirements, states must identify and demonstrate timely correction of instances of noncompliance in early intervention service programs. The [OSEP State General Supervision Responsibilities Under Part B and Part C of IDEA \(PDF\)](#) established specific requirements for identifying and demonstrating timely correction of instances of noncompliance. As the IDEA Part C lead agency, the Wisconsin Department of Health Services (DHS) is tasked with ensuring implementation of these requirements and monitoring compliance of local Birth to 3 programs.

To comply with OSEP requirements, DHS is updating its standards for instances of findings of noncompliance. This memo explains how DHS may identify noncompliance that necessitate resolution within the findings of noncompliance framework. This addition does not replace the annual findings of noncompliance data review period (January through March).

Purpose

This memo details the updated procedure for local Birth to 3 program notification, verification, and correction of pre-findings and findings of noncompliance. This memo updates, incorporates information and replaces DMS Numbered Memo 2025-01, released in June 2025.

Annual Findings of Noncompliance data review period

DHS reviews data from January 1 through March 31 annually to monitor local Part C compliance. DHS issues a written finding of noncompliance to a local Birth to 3 program when the data review shows less than 100% compliance for the following indicators¹ if not corrected during a pre-finding correction period:

- Indicator 1: Timely Services
- Indicator 7: Timely Individualized Family Service Plans
- Indicator 8: Timely Transition
 - Indicator 8A: Timely Transition Planning
 - Indicator 8B: Timely Referral to the Local Education Agency (LEA)
 - Indicator 8C: Timely Transition Planning Conference

Updated definition: Findings of Noncompliance

Beginning with the memo publication, identification of noncompliance (a finding) means a DHS determination that a local program's policy, procedure, or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, another IDEA-related federal requirement, or any specific IDEA grant award terms or conditions. As such, noncompliance may be identified in any instance in which DHS observes inconsistencies with IDEA policy.

¹ <https://www.dhs.wisconsin.gov/birthto3/indicators.htm>

Updated Findings of Noncompliance processes

Areas of concern

An “area of concern” is a credible allegation regarding an IDEA policy, procedure, practice, or other requirement that raises potential implementation or compliance issues, if confirmed true. Such credible allegations (for example, information and awareness) may come from integrated monitoring activities, data reviews, stakeholder calls, media reports, dispute resolution systems, or other mechanisms that relate to IDEA implementation.

When DHS becomes aware of an area of concern with a local program’s IDEA implementation, DHS conducts its due diligence to investigate and reach a conclusion in a reasonable amount of time. DHS’ due diligence activities may include, but are not limited to:

- Conducting clarifying legal research.
- Interviewing staff, parents of children with disabilities, children with disabilities, and groups that represent the families and communities served by the local Birth to 3 programs.
- Reviewing and analyzing data or information.

If through its due diligence, DHS determines that a local Birth to 3 program is out of compliance with an applicable IDEA requirement, DHS will issue a pre-finding correction to the local Birth to 3 program.

Pre-finding corrections

A pre-finding correction may occur when DHS concludes the local Birth to 3 program has violated an IDEA requirement. Pre-finding corrections apply for both the findings of noncompliance data review and non-compliance identified after investigating an area of concern.

DHS follows the pre-finding correction process before issuing a finding of noncompliance:

- By a DHS determined date, local Birth to 3 programs must demonstrate they:
 1. Are correctly implementing the specific regulatory requirements (for example, achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated information such as data subsequently collected through monitoring, the State’s data system, or other documentation (systemic compliance). Further, as relevant, local programs may be directed to document how they have addressed the root

cause of noncompliance. Root cause correction may be documented through trainings, policy updates, or other methods to demonstrate the noncompliance is unlikely to reoccur.

2. If applicable, have corrected each individual case of child-specific noncompliance, unless the child is no longer within the local program's jurisdiction, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance). Local programs can evidence correction(s) by submitting child file documentation showing the implementation of required activity.
3. DHS verifies the correction(s) through information review and if applicable contacts the local program for additional documentation and context regarding the activities.

Issuing Findings of Noncompliance

If the local program cannot demonstrate compliance during the pre-finding correction period, DHS will issue a written notification of a finding of noncompliance. This is applicable to both the annual data review process and any other identified area of concern. The local program must then follow the DHS correction process for findings of noncompliance.

Correction of Findings of Noncompliance

The local Birth to 3 program must demonstrate correction of findings of noncompliance. The local program is required to take the following actions to correct findings of noncompliance:

- By a DHS determined date, and no later than 12 months after the dated findings of noncompliance notification letter, the local program must demonstrate system level correction and, when applicable, child-specific correction for any noncompliance identified.
- Demonstrate system level correction by providing updated information such as data subsequently collected through monitoring, the State's data system, or other documentation, including root cause correction (systemic compliance).
- If applicable, demonstrate child-specific correction by submitting child-level documentation to DHS showing the implementation of a required activity for the noncompliance.

When correcting noncompliance, both for pre-finding corrections and after a finding is issued, local Birth to 3 programs are to ensure that the correction addresses the extent and root cause of the identified noncompliance, in addition to ensuring child-specific and systemic correction. To ensure this, DHS will require that local programs provide an

explanation of all instances of noncompliance. If relevant, DHS will require documentation from the local program that they have addressed the noncompliance root cause.

Corrective action plan

DHS will issue a written decision verifying the outcome of its review of the correction. Failure to correct findings of noncompliance will result in the issuance of a corrective action plan. The local Birth to 3 program must then implement the correction process.

DHS may also consider whether the identified noncompliance was an isolated incident or a longstanding issue that was the subject of repeated corrective action plans, and whether the noncompliance showed a denial of a basic right under the IDEA.

Verification of Correction of Findings of Noncompliance

DHS ensures systemic correction by reviewing the state data system or other systems-level documentation and verifying 100% compliance. DHS examines documentation submitted by the local Birth to 3 program to ensure that child-specific correction was completed for child file(s) with identified findings of noncompliance and that the local Birth to 3 program correctly implemented regulatory requirements.

The local Birth to 3 program will receive a written notification communicating the outcome of the DHS verification review. The written notification will include the following information:

- Date finding(s) of noncompliance was given;
- Identification of finding(s) or indicator(s) involved;
- Date of DHS review;
- Systems-level correction, such as two months of data reviewed for correction verification; and
- Outcome of verification process.

Corrective action plans

Failure to correct findings of noncompliance will result in the issuance of a corrective action plan. The local Birth to 3 program must then implement the correction process.

Summary of action

This information is effective immediately and replaces any previous findings of noncompliance guidance provided by DHS.

Assistance

Local Birth to 3 programs are encouraged to direct any questions to the BCS TAC by emailing DHSBCSTAC@dhs.wisconsin.gov.