



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

June 23, 2014

Dr. Charles M. Roessel
Director
Bureau of Indian Education
1849 C Street NW
Washington, D.C. 20240

Dear Dr. Roessel:

I am writing to advise you of the U.S. Department of Education's (Department) 2014 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that the Bureau of Indian Education needs intervention in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2012 Annual Performance Plan (APR) and revised State Performance Plan (SPP), other State-reported data, and other publicly available information.

As you know, the Office of Special Education Programs (OSEP) is implementing a revised accountability framework designed to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Section 616(a)(2) of the IDEA requires that the primary focus of IDEA monitoring be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements.

OSEP's previous accountability system placed a heavy emphasis on compliance and we have seen an improvement in States' compliance over the past seven years of IDEA determinations. OSEP's new accountability framework, called Results Driven Accountability (RDA), brings into focus the educational results and functional outcomes for children with disabilities while balancing those results with the compliance requirements of IDEA. Protecting the rights of children with disabilities and their families is a key responsibility of State educational agencies (SEAs) and local educational agencies (LEAs), but it is not sufficient if children are not attaining the knowledge and skills necessary to achieve the goals of IDEA as reflected in Congressional findings in section 601(c)(1) of the IDEA Improvement Act of 2004: equality of opportunity, full participation, independent living, and economic self-sufficiency.

From the start, OSEP committed to several key principles to guide the development of a new accountability framework, including transparency, stakeholder involvement, and burden reduction. In keeping with these principles, over the past two years we have solicited input from stakeholders on multiple occasions and published a new SPP/APR for FFYs 2013 through 2018. The revised SPP/APR significantly reduces data collection and reporting burden by States, and shifts the focus to improving educational results and functional outcomes for children with disabilities by requiring each State to develop and implement a State Systemic Improvement Plan (SSIP).

The Department is committed to supporting States in the development and implementation of the SSIP which is designed to improve results for all children, including children with disabilities, and is investing significant resources toward that commitment. OSEP is implementing a system of differentiated monitoring and support, using data on performance (i.e., results data) and other information about a State to determine the appropriate intensity, focus, and nature of the oversight and support that each State will receive as part of RDA. OSEP's technical assistance network will be a key component of differentiated support to States and, through States, to local programs. We believe that only through a coordinated effort across the education system will we positively affect the school and life trajectories of children with disabilities.

In making determinations in 2013, the Department used a compliance matrix that included compliance data on multiple factors, thereby allowing us to consider the totality of a State's compliance data. In the 2013 determination letters, OSEP informed States that it would use results data when making determinations in 2014. OSEP published a Request for Information to solicit comments regarding how results data could be used in making IDEA determinations in 2014 and beyond, and has carefully reviewed these comments in deciding how to use results data in making determinations in 2014.

Your State's 2014 determination is based on the data reflected in the State's "2014 Part B Compliance Matrix." Enclosed with this determination letter are the following: (1) the BIE's "2014 Part B Compliance Matrix;" (2) a document entitled, "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act Part B in 2014: Entities with Determinations Based on Compliance," which provides a detailed description of how OSEP evaluated these entities' data using the Compliance Matrix; (3) the BIE's FFY 2012 Response Table, which provides OSEP's analysis of the BIE's FFY 2012 APR and revised SPP; and (4) a Data Display, which presents certain BIE-reported data in a transparent, user-friendly manner. The Data Display will be posted on OSEP's Web site and will be helpful for the public in getting a broader picture of the BIE's performance in key areas.

In making States' 2014 determinations under section 616(d), OSEP has used results data on the participation of children with disabilities on regular Statewide assessments; the proficiency gap between children with disabilities and all children on regular Statewide assessments; and the performance of children with disabilities on the National Assessment of Educational Progress (NAEP). In making the BIE's 2014 determination, OSEP did not consider the BIE's Statewide assessment data, because OSEP identified a discrepancy between the number of children with disabilities reported participating in the regular Statewide assessments and the number of children with disabilities reported in the performance data on regular Statewide assessments. Due to this discrepancy, OSEP was unable to identify the appropriate denominator to use when calculating the percentage of children with disabilities who were proficient on the regular Statewide assessments. The percentage of children with disabilities proficient on the Statewide assessments differed by more than one percentage point depending on whether the denominator was based on the number of children with disabilities reported in the participation data or the number of children with disabilities reported in the performance data. Therefore, OSEP could not determine with sufficient accuracy the participation rate and proficiency gap of children with disabilities on the regular Statewide assessments. Further, OSEP could not use NAEP data in making the BIE's 2014 determination because the BIE's NAEP data are not available at this time. Therefore, the BIE's 2014 determination was based only on compliance data.

As further explained in the enclosures to this letter, the Department has determined that the BIE needs intervention in implementing the requirements of Part B of the IDEA. The Department identified an entity whose determination was based on compliance data only as needing intervention under IDEA Part B if its 2014 Compliance Matrix Percentage was below 75%, and if the entity had either very low (below 50%) or not valid and reliable data for a Compliance Indicator, or Special Conditions for multiple years for failing to comply with key IDEA Part B requirements. The BIE's 2014 Part B Compliance Matrix Percentage was 60%; and the Department imposed Special Conditions on the BIE's last seven IDEA Part B grant awards, and those Special Conditions are in effect at the time of the 2014 determination. Specifically, the BIE's Compliance Matrix Percentage was 60% due to its low performance on the following Compliance Indicators: Indicator 13 (Secondary transition) (77.61%) and Indicator 20 (Timely and accurate State-reported data) (85.51%). In addition, the Department imposed Special Conditions on the BIE's last seven (FFYs 2007, 2008, 2009, 2010, 2011, 2012, and 2013) IDEA Part B grant awards, and the BIE has failed to meet the Special Conditions imposed on its FFY 2013 IDEA Part B grant award.

OSEP determined that the BIE has failed to complete the corrective actions contained in Section C of its Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan. Those corrective actions, which the BIE was required to complete under the Special Conditions imposed on its FFY 2013 IDEA Part B grant award, related to the BIE's implementation of fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A), and the BIE's compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5), respectively. The BIE must take the steps necessary to ensure that it can report compliance.

Under IDEA section 616(e)(2), if the Secretary determines a State to need intervention for three or more consecutive years, the Secretary must take one or more of the six enforcement actions identified in IDEA section 616(e)(2)(B) and may take, under IDEA section 616(e)(2)(A), one of the three enforcement actions identified in IDEA section 616(e)(1). The BIE also received a determination of "needs intervention" in 2012 and 2013 for its FFYs 2010 and 2011 APRs, and this is the third consecutive year that the BIE is receiving a determination of "needs intervention." Accordingly, under IDEA section 616(e)(2)(B)(i), the Secretary is requiring the BIE to submit a corrective action plan, because the Secretary has determined that the BIE should be able to correct the problems that are the basis for its "needs intervention" determination within one year from the date of this determination letter, and other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time.

The BIE must submit a corrective action plan that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2014-2015 school year under Section C of the CAP, all of the Special Conditions that will be imposed on its FFY 2014 IDEA Part B grant award. The corrective action plan must address the steps the BIE will take to: (1) implement fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A); and (2) demonstrate compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5). The BIE must submit its corrective action plan and quarterly progress reports in accordance with the reporting and timeline requirements specified in the Special Conditions that OSEP will impose on BIE's

FFY 2014 IDEA Part B grant award. The quarterly progress reports must include: (a) a description of activities and progress for each milestone, as described in the performance metric, during the reporting period; (b) the status of each milestone scheduled to be completed during the reporting period along with specific completion dates for all tasks; (c) supporting documentation regarding completion of the milestones, including explanation of any delays and expected completion dates for all unimplemented actions; (d) updates to ensure that progress for previously completed tasks is sustained; and (e) other data or documentation as the Department may request in order to verify the completion of tasks.

As required by IDEA section 616(e)(7), the BIE must notify the public within the BIE's jurisdiction that the Secretary of Education has taken the above enforcement actions, including, at a minimum, by posting a public notice on the BIE's Web site and distributing the notice to the media and through public agencies.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Michael K. Yudin, Acting Assistant Secretary for Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue S.W., Washington, D.C. 20202 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the BIE's determination.

As a reminder, the BIE must report annually to the public on the performance of each school on the targets in the SPP as soon as practicable, but no later than 120 days after the BIE's submission of its FFY 2012 APR. In addition, the BIE must: (1) review school performance against targets in the State's SPP; (2) determine if each school "meets the requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA; (3) take appropriate enforcement action; and (4) inform each school of its determination. Finally, please ensure that your APR, updated SPP, and report on the performance of each school located in the State on the targets in the SPP are posted on the BIE's Web site and made available to the public.

OSEP appreciates the BIE's efforts to improve results for children and youth with disabilities and looks forward to working with the BIE over the next year as we continue our important work of improving the lives of children with disabilities and their families. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Matthew Schmeer, your OSEP State Contact, at 202-245-6755.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

Melody Musgrove, Ed.D
Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education