



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

THE ASSISTANT SECRETARY

NOV 14 2008

Honorable Veronica C. Garcia
Secretary of Education
New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

Dear Secretary Garcia:

This letter is in response to the June 27, 2008 appeal by the New Mexico Public Education Department (NMPED) of the U. S. Department of Education's (the Department's) determination under section 616(d) of the Individuals with Disabilities Education Act (IDEA). The Department concluded in the June 6, 2008 response to NMPED's federal fiscal year 2006 (FFY 2006) Annual Performance Report (APR)/State Performance Plan (SPP) that New Mexico needed intervention in meeting the requirements of Part B of the IDEA. Part B of the IDEA provides funds to States to assist in making available a free appropriate public education to eligible children with disabilities and their families.

I provided NMPED, on August 25, 2008, with the opportunity to demonstrate why the Department should change the June 6, 2008 determination. NMPED submitted arguments and exhibits at the hearing related to the impact of the Department revising the measurement on the ability of the State to submit valid and reliable data for Indicator 11 (timely initial evaluations) of the APR. The State presented a proposal to sample the 1,846 initial evaluations conducted during FFY 2006 in order to report valid and reliable data on compliance for this indicator. The Department agreed at the conclusion of the hearing and by letter dated August 29, 2008 that NMPED would have additional time to submit data, documentation, and information related to: (1) the State's proposal to sample the FFY 2006 data for Indicator 11, including the basis for the State's determination that the sampling proposal provides valid and reliable data for this indicator; (2) the breakdown of the data from July 1, 2006 through April 2007 under the previous measurement, and from April 2007 to June 30, 2007 under the revised measurement; and (3) the State's determination of correction of noncompliance under Indicator 11 in the two districts that the State identified as noncompliant in FFY 2005. The State submitted this information on September 12, 2008.

The Department reviewed the State's supplemental submission as well as the information provided at the hearing on August 25, 2008 and in NMPED's FFY 2006 APR, and has decided that NMPED's determination under Part B of the IDEA is changed from "needs intervention" to "needs assistance."

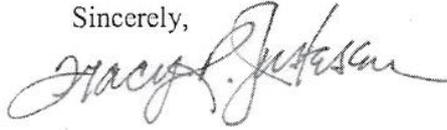
The Department determined, based upon the Department's review of the information and the opinion provided by a contractor with expertise on sampling issues, that the sampled data that NMPED reported for Indicator 11 is not valid and reliable because the largest school district in the State, Albuquerque, is not adequately represented in the sample. However, I revised the determination to "needs assistance" because NMPED reported timely correction of noncompliance identified in the FFY 2005 APR using the Department's revised standard for Indicator 11. Specifically, NMPED reported that staff conducted an on-site review of 2006-2007 student data and determined that both local educational agencies (LEAs) were at 100% compliance using parental consent and initial evaluation as the starting and ending points in the timeline measurement. Therefore, the two LEAs did not have continued noncompliance from FFY 2005 under Indicator 11. I also considered other factors in making the determination of "needs assistance" including the 92.1% compliance rate the State reported for Indicator 15 that was recalculated based on the State's supplemental submission (with one district with findings from FFY 2004 still uncorrected), and the 5.6% noncompliance rate that the State reported for Indicator 10 with two of nine districts continuing noncompliance from FFY 2005. I did not consider data, documentation, or information that was outside of the FFY 2006 APR reporting period in reaching this determination, and in accordance with the Department's previous instructions. I am attaching to this letter the revised APR response table reflecting both your latest submissions and the Department's analysis and conclusions. Additionally, the State will need to update the SPP/APR on the State's website to reflect the updated information.

The State's determination for the FFY 2005 APR also was "needs assistance." Section 616(e) of the IDEA and 34 CFR §300.604 require that if a State is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions: 1) advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance; 2) direct the use of State-level funds on the area or areas in which the State needs assistance; or 3) identify the State as a high-risk grantee and impose special conditions on the State's Part B grant award. Therefore, on behalf of the Secretary, I am advising the State of available sources of technical assistance related to Indicator 10 (disproportionate representation of racial ethnic groups in specific disability categories), Indicator 11 (timely initial evaluations) and Indicator 15 (timely correction of noncompliance). A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rrfcnetwork.org/>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, web seminars and other sources of relevant technical assistance for that indicator. Your State must report with the FFY 2007 APR submission (due February 2, 2009), for the indicators listed above, on: 1) the technical assistance sources from which the State received assistance and 2) what actions the State took as a result of that technical assistance. The extent that your State takes advantage of available technical assistance for these indicators may affect the actions we take under section 616 of the IDEA should your State not be identified as meets requirements next year. We

encourage States to take advantage of available sources of technical assistance in other areas as well, particularly if the State is reporting low compliance data for an indicator.

I appreciate the time and energy that you and your staff have devoted to the APR process as we work together to improve educational outcomes for children with disabilities. If you have any additional questions, please contact Ruth Ryder at 202-245-7513.

Sincerely,

A handwritten signature in cursive script, reading "Tracy R. Justesen". The signature is written in black ink and is positioned below the word "Sincerely,".

Tracy R. Justesen