



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

JUN - 1 2009

Honorable Claire Poumele  
Director of Education  
American Samoa Department of Education  
PO Box 656  
Pago Pago, American Samoa 96799

Dear Director Poumele:

Thank you for the timely submission of American Samoa's Federal fiscal year (FFY) 2007 Annual Performance Report (APR under Part B of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to the APR received on April 7, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined that, under IDEA section 616(d), American Samoa needs assistance in meeting the requirements of Part B of IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2007 APR and revised SPP, other State-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2009" for further details.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for American Samoa was its inability to provide valid and reliable FFY 2007 data for Indicators 3B and 3C. Although American Samoa has demonstrated progress in developing and implementing an alternate assessment for all grades tested in districtwide assessments, it was unable to provide data for grades 5 and 7 in its FFY 2007 APR.

OSEP also considered that American Samoa's IDEA Part B grant award has been subject to Special Conditions since FFY 2005 because of the inability to report publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, as required by Part B; due to the fact that American Samoa did not have an alternate assessment for all grades tested. The Special Conditions required American Samoa to submit a final report by May 15, 2009; American Samoa submitted a progress report on May 11, 2009 as part of its FFY 2009 Part B Grant application. In the progress report, American Samoa reiterated the information provided in its FFY 2007 APR, that it was able to assess four grade levels (3, 4, 8, & 10) on the Alternate Assessment based on Alternate Achievement Standards in FFY 2007 and that it was able to assess all grade levels by January 2009 and will report all grade levels for the Alternate Assessment in the FFY 2008 APR.

OSEP also notes that the Department has designated American Samoa a high-risk grantee and has imposed Department-wide special conditions regarding the Single Audit Act on its grants to American Samoa since FFY 2004. Although American Samoa continues to work on the Department's remaining fiscal and programmatic concerns, it is anticipated that its FFY 2009 grant awards will be subject to the Department-wide special conditions again.

For these reasons, we were unable to determine that American Samoa met requirements under section 616(d). We hope that American Samoa will be able to demonstrate that it meets requirements in the FFY 2008 APR.

The enclosed table provides OSEP's analysis of the State's FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

The State's determination for the FFY 2005 and FFY 2006 APRs was also needs assistance. In accordance with section 616(e)(1) of the IDEA and 34 CFR §300.604, 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.

Pursuant to these requirements, the Secretary is continuing to require American Samoa to access technical assistance, related to American Samoa's Department-wide special conditions and status as a high-risk grantee, through the Department's Risk Management Service (RMS). Pursuant to its High-Risk Corrective Action Plan, American Samoa is required to provide RMS semiannual reports on implementation of corrective measures related to its designation as a high-risk grantee. Additionally, American Samoa is required to provide RMS with quarterly reports on implementation of internal controls and corrective actions consistent with its Payroll Attestation Corrective Action Plan (PCAP). American Samoa must report to OSEP, with its FFY 2008 APR submission, due February 1, 2010, on: (1) the technical assistance it has received from RMS; and (2) the actions the State took as a result of that technical assistance. The extent to which American Samoa takes advantage of available technical assistance may affect the actions OSEP takes under sections 616 and 642 should your State not be determined to meet requirements next year.

As required by section 616(e)(7) of the IDEA and 34 CFR §300.606, the State must notify the public within the State that the Secretary of Education has taken the above enforcement action, including, at a minimum, by posting a public notice on the agency's website and distributing the notice to the media and through public agencies. Finally, as you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in

making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.nrcnetwork.org/explorer/view/id/536>.

OSEP is committed to supporting American Samoa's efforts to improve results for children and youth with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Dr. Ken Kienas, your OSEP State Contact, at 202 – 245-7621.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

cc: State Director of Special Education