



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

JUN - 1 2009

Honorable Kevin Skenadore
Acting Director
Bureau of Indian Education
MS-3512, MIB
Washington, DC 20240

Dear Director Skenadore:

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

The Department has determined that, under IDEA section 616(d), the BIE needs intervention in meeting the requirements of Part B of IDEA. The Department's determination is based on the totality of the BIE's data and information including the BIE'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 BIE's determination for the FFY 2006 APR was also needs intervention. The BIE should review IDEA section 616(e)(2) and 34 CFR §300.604(b) regarding the potential impact of the Department's determination should the BIE be determined to need intervention for three consecutive years.

Specific factors affecting OSEP's determination of needs intervention for the BIE included that BIE (1) reported 51.43% compliance for Indicator 15, with slippage from 93%; and (2) did not provide valid and reliable data for Indicator 11 for the third consecutive year. OSEP's June 6, 2008 SPP/APR response table required BIE to provide the required data in its FFY 2007 APR. With respect to Indicator 11, BIE was required to report the percent of children with parental consent to evaluate, who were evaluated within 60 days (or a State established timeline). BIE has adopted the Federal timeline of 60 days. The required measurement includes all children for whom parental consent to evaluate was received, including children who were found ineligible for special education services. The BIE reported that its review for school year 2007-2008 "did not include students who were not determined to be eligible for special education services." Without these data, OSEP and the public cannot determine whether children with parental consent to evaluate are being evaluated within the required timeline. This is a critical indicator since children cannot begin to receive needed special education and related services until an initial evaluation is completed.

OSEP notes that BIE has not responded to the Office of the Inspector General (OIG) Audit # 06F0019 issued on March 28, 2007. Although OSEP has provided the BIE a list of the information and documentation that the BIE was required to submit in order to resolve the audit, to date, OSEP has not received the information needed to resolve the audit. OSEP also notes that the Department imposed Special Conditions on all of its grants to BIE in FFY 2007 and 2008 because of lack of satisfactory progress in implementing its Program Improvement and Accountability Plan (PIAP), which was developed in response to serious concerns raised in 2005 by the Department regarding BIE's administration of Elementary and Secondary Education Act (ESEA) and IDEA programs. At this time, BIE has not completed all of the corrective actions contained in the Program Improvement and Accountability Plan (PIAP).

We hope BIE will be able to demonstrate that it meets requirements in the next APR.

The enclosed table provides OSEP's analysis of the BIE's FFY 2006 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the BIE to its targets, improvement activities (timelines and resources) and baseline data in its revised SPP. The table also identifies, by indicator, the BIE's status in meeting its targets, whether the BIE's data reflect progress or slippage, and whether the BIE corrected noncompliance and provided valid and reliable data.

The BIE may want to consider taking advantage of available sources of technical assistance. 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/techassistance.html>. 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.

As you know, the BIE must report annually to the public on the performance of each local educational agency (LEA) located in the BIE on the targets in the SPP as soon as practicable, but no later than June 2, 2009, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(7)(i)(A). In addition, the BIE must review LEA performance against targets in the BIE's SPP, determine if each LEA 'meets requirements,' 'needs assistance,' 'needs intervention,' or 'needs substantial intervention' in implementing Part B of the IDEA and inform each LEA of its determination. For further information regarding these requirements, see the SPP/APR Calendar at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>. 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 the BIE 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.rrfcnetwork.org/explorer/view/id/656>.

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 for Special Education and Rehabilitative Services to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Andrew J. Pepin, Delegated the Authority to Assume the Duties of Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, DC 20202-2600 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.

OSEP is committed to supporting 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. 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,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education