



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

JUN - 1 2009

The Honorable Dwight D. Jones
Commissioner
Colorado Department of Education
201 E. Colfax Avenue, Room 500
Denver, Colorado 80203-1799

Dear Commissioner Jones:

Thank you for the timely submission of Colorado'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 Colorado's 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), Colorado needs intervention 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 intervention for Colorado was that the State did not report valid and reliable data for Indicator 12, a compliance indicator. The State is required to provide data for Indicator 12 on the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an individualized education plan (IEP) developed and implemented by their third birthday.

OSEP's May 9, 2008 verification letter required the State to provide a plan to OSEP to ensure that the State is able to collect and timely report valid and reliable data, including data for Indicator 12. The State submitted a plan on July 8, 2008 and OSEP informed the State on September 24, 2008 that its plan to collect valid and reliable data for Indicator 12 would not meet the data collection requirements for Indicator 12. The State acknowledged in its FFY 2007 APR that the State does not collect data on the date that the IEP is implemented and stated that data meeting the requirements of Indicator 12 covering FFY 2007 will be included in the FFY 2008 APR due February 1, 2010. Without valid and reliable data for this critical indicator the State is unable to identify and timely correct noncompliance with the early childhood transition requirements in 34 CFR §300.124(b), and OSEP and the public are unable to determine whether the State is in compliance with these requirements. Though not a basis for our determination this year (because the State reported progress), we are concerned with the very low level of compliance (34.4%) reported for Indicator 13. We hope that the State will be able to demonstrate that it meets requirements in its next 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 intervention. In accordance with section 616(e) of the IDEA, if a State is determined to need intervention for three or more consecutive years, the Secretary shall: (1) Require any one or more of the enforcement actions specified under needs assistance; (2) Require the State to prepare a corrective action plan or improvement plan; (3) Require the State to enter into a compliance agreement; (4) Withhold, in whole or in part, Part B funds; (5) Recover Part B funds under Section 452 of GEPA; or (6) Refer the matter to the Department of Justice.

Pursuant to these requirements, the State must submit a corrective action plan (CAP) that ensures that it can submit in its FFY 2008 APR valid and reliable data regarding Indicator 12 and must utilize available sources of technical assistance. The State must submit its CAP to OSEP within 60 days from the date of this letter.

The Secretary is requiring Colorado to submit a CAP because the Secretary has determined that the State should be able to correct the problem that is the basis for the State's "needs intervention" determination within one year from this Determination letter and that other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time. Specifically, the Secretary has determined that the State should be able to submit in its FFY 2008 APR valid and reliable data regarding Indicator 12. The State's CAP must include the specific actions (including utilizing available technical assistance sources) and timelines by which the State will ensure it will submit, with the State's FFY 2008 APR, due February 1, 2010, valid and reliable data from FFY 2008 for Indicator 12.

As required by section 616(e)(7) and 34 CFR §300.606, the State must notify the public that the Secretary of Education has taken the above enforcement action. This notification must be sufficient to notify the public within the State and may include such mechanisms as posting on the agency's website, distribution through the media and distribution through public agencies.

Your State 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.rfcnetwork.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, your State must report annually to the public on the performance of each local educational agency (LEA) located in the State 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)(1)(i)(A). In addition, your State must review LEA performance

against targets in the State'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 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.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 State's determination.

OSEP is committed to supporting Colorado'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 Daniel Schreier your OSEP State Contact, at 202-245-6552.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education