



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

JUL - 2 2009

Honorable Paul G. Pastorek
State Superintendent of Education
Louisiana Department of Education
P.O. Box 94064
Baton Rouge, Louisiana 70804

Dear Superintendent Pastorek:

This letter is in response to the June 15, 2009 appeal by the Louisiana Department of Education (LDE) 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 1, 2009 response to LDE's Federal fiscal year 2007 (FFY 2007) Annual Performance Report (APR)/State Performance Plan (SPP) that Louisiana 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.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), LDE was given the opportunity to demonstrate why the Department should change the State's determination. As set forth in the Office of Special Education Programs (OSEP) June 1, 2009 letter, the specific factors affecting the Department's determination of "needs intervention" for Louisiana were (1) that the State had failed to provide valid and reliable data for compliance Indicators 9 and 10; and (2) the State's continued failure to review policies, procedures and practices relating to the development and implementation of individualized educational programs (IEPs), the use of positive behavioral interventions and supports, and procedural safeguards to ensure compliance with the IDEA for local educational agencies (LEAs) identified, in FFY 2005, FFY 2006, and FFY 2007 with significant discrepancies in the rates of suspension and expulsions of children with disabilities, as required by 34 CFR §300.170(b). With its June 15, 2009 appeal, the State submitted a revised FFY 2007 APR, that included: (1) information regarding its review under 34 CFR §300.170(b) of LEAs' policies, procedures, and practices; and (2) information showing that the State's data for Indicators 9 and 10 included a review of data to determine both overrepresentation and underrepresentation.

The Department has reviewed the State's revised FFY 2007 APR as submitted with its June 15, 2009 appeal, and has changed the State's determination under Part B of the IDEA from "needs intervention" to "needs assistance." The specific basis for the Department's decision to revise the State's determination is set forth below.

In its June 15, 2009 letter of appeal, the State requested a hearing on the appeal. In light of the fact that the Department was able to make a decision on the State's appeal based upon the documentation that the State submitted with its appeal, it is my understanding that LDE and the Department have mutually agreed that a hearing is not necessary.

With regard to Indicator 4, the Department's June 6, 2008 FFY 2006 SPP/APR response table required that the State, in its FFY 2007 APR, due February 2, 2009, describe the review, and if appropriate, revision, of policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure compliance with the IDEA for the LEAs identified with significant discrepancies in FFY 2005 and FFY 2006. That table also required the State to clarify that the review, and if appropriate, revision of policies, practices and procedures, are conducted on an annual basis for all districts identified for that year with significant discrepancies. In the revised FFY 2007 APR that the State submitted with its June 15, 2009 appeal, the State: (1) provided information demonstrating that the State has conducted the review required under 34 CFR §300.170(b) for all LEAs identified, in FFY 2005, FFY 2006, and FFY 2007 with significant discrepancies in the rates of suspension and expulsions of children with disabilities; (2) clarified that it conducts the required review on an annual basis; and (3) reported on the results of the reviews it conducted for FFY 2005, 2006, and 2007.

With regard to Indicator 9, the Department has determined that the revised data reported for Indicator 9 in the revised APR submitted on June 15, 2009 reflect a review of data to determine both overrepresentation and underrepresentation. In that revised APR, LDE reported that it has specifically considered data regarding underrepresentation of racial and ethnic groups in special education, and determined (using a 0.2 risk ratio), based on data for FFYs 2005, 2006, and 2007¹, that no LEAs had disproportionate representation in special education. The State also reported that the data that it will report for Indicator 9 in the FFY 2008 APR will be based on both overrepresentation and underrepresentation. In the FFY 2008 APR, due February 1, 2010, the State needs to clarify that it is determining disproportionate representation based on an analysis of child count data for all students in special education, rather than relying on an analysis of data on children who received initial evaluations during the reporting period.

With regard to Indicator 10, the Department has determined that the revised data reported for Indicator 10 in the revised APR submitted on June 15, 2009 reflect a review of data to determine both overrepresentation and underrepresentation. In that revised APR, LDE reported that it has specifically considered data regarding underrepresentation of racial and ethnic groups in special education, and determined (using a 0.2 risk ratio), based on data for FFYs 2005, 2006, and 2007, that no LEAs had disproportionate representation in specific disability groups. The State also reported that the data that it will report for Indicator 10 in the FFY 2008 APR will be based on both overrepresentation and underrepresentation. In the FFY 2008 APR, due February 1, 2010, the State needs to clarify that it is determining disproportionate representation based on an analysis of child count data for all students in special education, rather than relying on an analysis of data on children who received initial evaluations during the reporting period.

Therefore, the specific factors affecting OSEP's determination of needs assistance for Louisiana were that the State reported: (1) 66% compliance for Indicator 13 and did not report correction; (2) 71% compliance for Indicator 15; and (3) 77% compliance for Indicator 16. For these reasons we were unable to determine that your State met requirements under section 616(d). We hope that the State will be able to demonstrate that it meets requirements in its next APR.

¹ In an apparent typographical error, the State reported twice that no LEAs had under-representation of any racial or ethnic group in special education for FFY 2006; it appears that the second reference should have been to FFY 2007.

I am attaching to this letter the revised APR response table reflecting both your latest submission 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 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 advising the State of available sources of technical assistance related to Indicators 13 (secondary transition), 15 (general supervision) and Indicator 16 (timely complaint resolution). 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. For the indicators listed above, your State must: (1) report with its FFY 2008 APR submission, due February 1, 2010, on the technical assistance sources from which the State received assistance, and the actions the State took as a result of that technical assistance; and (2) report to OSEP by October 1, 2009 how the technical assistance selected by the State is addressing the factors contributing to the ongoing noncompliance. The extent to which your State takes advantage of available technical assistance for these indicators may affect the actions OSEP takes under section 616 should your State not be determined to meet requirements next year. We encourage Louisiana 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.

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.

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)(1) 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.rfcnetwork.org/explorer/view/id/536>.

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,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Rodney Watson, Assistant Superintendent
Susan Wagley Batson, Acting State Director of Special Education