



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

JUN 1 2009

Honorable Mitchell Chester  
Commissioner of Education  
Massachusetts Department of Elementary  
and Secondary Education  
75 Pleasant Street  
Malden, Massachusetts 02148-5023

Dear Commissioner Chester:

Thank you for the timely submission of Massachusetts' Federal fiscal year (FFY) 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 Massachusetts' 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), Massachusetts 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, OSEP's March 5, 2009 Verification Visit letter, 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.

Specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for Massachusetts included that the State reported: (1) 82.9% compliance for Indicator 12 and did not report correction; (2) 62.2% compliance for Indicator 15; (3) 91.5% compliance for Indicator 16; and (4) 94.4% compliance for Indicator 17. OSEP considered that the State did not provide valid and reliable data for Indicator 18, but provided a plan to collect the data for reporting in next year's APR/SPP submission. OSEP also considered that the State reported uncorrected noncompliance related to Indicator 15 from FFY 2004 and FFY 2005. For these reasons, we were unable to determine that your State met requirements under section 616(d). OSEP notes the high levels of compliance reported for Indicators 9, 10, 11, 13, and 20. We hope 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 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 12 (early childhood transition), 15 (timely correction of noncompliance), 16 (complaint timelines), 17 (due process hearing timelines), and 18 (resolution sessions). 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. For the indicators listed above, your State must: (1)(a) report with its FFY 2008 APR submission, due February 1, 2010, on the technical assistance sources from which the State received assistance, and (b) 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 and lack of valid and reliable data. 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 Massachusetts 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)(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.rfcnetwork.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>.

OSEP is committed to supporting Massachusetts' 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