



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

JUN - 3 2010

Honorable Kerri L. Briggs
State Superintendent
Office of the State Superintendent of Education
810 First Street, NE
9th Floor
Washington, D.C. 20002

Dear Superintendent Briggs:

Thank you for the timely submission of the District of Columbia's (D.C.'s) Federal fiscal year (FFY) 2008 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA).

The Department has determined that, under IDEA section 616(d), D.C. needs intervention in implementing the requirements of Part B of the IDEA. The Department's determination is based on the totality of the State's data and information, including the State's FFY 2008 APR and revised SPP, other State-reported data, information obtained through the November 2009 verification visit, the State's submissions under the Special Conditions on D.C.'s FFY 2009 Part B grants, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2010: Part B" for further details.

The specific factors affecting the Office of Special Education Program's (OSEP's) determination of needs intervention include that D.C.: (1) did not provide valid and reliable FFY 2008 data for Indicator 12 (early childhood transition); (2) did not provide valid and reliable FFY 2008 data for Indicator 15 (identification and correction of noncompliance); and (3) failed to meet the Special Conditions imposed on its FFY 2009 grant award to ensure: timely initial evaluations and reevaluations; timely implementation of hearing officer determinations (HODs); identification and timely correction of noncompliance, including noncompliance regarding placement in the least restrictive environment; and that individualized education programs (IEPs) of youth aged 16 and above include the required secondary transition content.

Under Indicator 12, D.C. was required to provide data on the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays. D.C.'s FFY 2008 data are not valid and reliable because D.C. reported that "it is not clear whether the reported decrease in compliance is due to truly decreased performance or whether it results from inaccuracies in data collection and reporting." D.C. reported that its best available data indicate 8% compliance for Indicator 12. These data show that the majority of young children with disabilities in D.C. who are served in Part C and who are found eligible for Part B, are not experiencing a smooth and effective transition to Part B services.

Under Indicator 15, D.C. was required to report the number of findings of noncompliance identified in FFY 2007 (2007-2008) and the number of corrections completed as soon as possible but in no case later than one year from identification. The State's FFY 2008 data are not valid and reliable because the State acknowledged the data provided were based only on findings of

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noncompliance from complaint investigations and due process hearings. The State reported that it did not conduct any monitoring activities, other than dispute resolution activities, during FFY 2007. D.C.'s responsibility under IDEA is to implement a system of general supervision that effectively identifies and timely corrects noncompliance with the requirements of Part B of the IDEA.

In addition, D.C. failed to meet the Special Condition to ensure identification and timely correction of noncompliance, including noncompliance regarding placement in the least restrictive environment, which was first imposed on the State's FFY 2005 IDEA Part B grant and has continued to apply to each IDEA Part B grant since that time. OSEP recognizes that D.C. provided monitoring reports for ten LEAs that received onsite monitoring in May and June 2009, and notified eleven LEAs in March 2010 of their noncompliance with secondary transition requirements and required specific corrective actions. D.C. has not yet provided documentation of correction of the noncompliance identified through these activities. Therefore, D.C. has not demonstrated that it has a general supervision system that ensures correction of noncompliance in a timely manner consistent with OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02).

D.C. failed to meet the Special Condition imposed on its FFY 2009 grant award to ensure that IEPs of youth aged 16 and above include the required secondary transition content. This area of noncompliance was also included in the Memorandum of Agreement (MOA) entered into on December 7, 2009 between D.C. and the Department whereby D.C. agreed to dismiss its request for a hearing to appeal the Department's decision to withhold 20 percent of D.C.'s FFY 2009 State-level funds based on the Department's June 1, 2009 determination that D.C. needed intervention for three consecutive years. D.C. agreed to take corrective actions under specific timelines and provide regularly scheduled progress reports to OSEP and the Department agreed to release portions of the withheld funds as D.C. meets the benchmarks established in the MOA.¹ D.C. reported in the April 1, 2010 MOA progress report that of the 100 IEPs of youth aged 16 and above that D.C. reviewed in March 2010, none (0%) included the required secondary transition content. Ensuring that IEPs include the required transition content enables students to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment, and independent living.

D.C. has also failed to meet the longstanding Special Condition imposed on its FFY 2009 grant award to ensure timely initial evaluations and reevaluations and implementation of HODs. These issues were initially identified in the 1998-2001 Compliance Agreement between D.C. and the Department and have been included in the Special Conditions imposed on each IDEA Part B grant award from 2001 to the present and are included in the MOA. D.C. continues to report noncompliance with these requirements. While D.C. met the MOA benchmarks of 50% and 60% for the January 11, 2010 and April 1, 2010 reporting periods related to timely implementation of HODs, D.C. did not meet the benchmarks of 80% and 85% for reducing the

¹ Because D.C. did not meet all of the MOA benchmark targets for the first or second reporting periods, it has not been permitted to draw down any portion of the withheld FFY 2009 funds. D.C.'s third MOA progress report is due to OSEP on July 1, 2010. The Department agreed that the FFY 2009 Special Conditions would be modified to align with the reporting under the MOA to avoid duplication and reduce the burden of reporting.

backlog of HODs that were not implemented in a timely manner. D.C. reported in the April 1, 2010 MOA progress report that 60% of HODs were implemented in a timely manner and 60% of the backlog of HODs were implemented. Ensuring timely implementation of HODs is an essential part of establishing an effective due process and general supervision system.

D.C. did not meet the MOA benchmarks of 75% and 80% for providing timely initial evaluations and reported 70% compliance in the April 1, 2010 MOA progress report. D.C. did not meet the MOA benchmarks of 70% and 75% for providing timely reevaluations and reported 68% compliance in the April 1, 2010 MOA progress report. D.C. did not meet the benchmarks of 45% and 55% for reducing the backlog of overdue initial evaluations and reported 17% in the April 1, 2010 MOA progress report. D.C. did not meet the benchmarks of 45% and 55% for reducing the backlog of overdue reevaluations and reported 37% in the April 1, 2010 MOA progress report. D.C. reported in its April 1, 2010 MOA progress report that 395 children had not been provided a timely initial evaluation and 399 children had not been provided a timely triennial reevaluation as of March 5, 2010. After more than ten years of documented noncompliance by D.C. with the requirements to ensure timely initial evaluations and reevaluations, and despite enforcement actions taken by the Department, including a compliance agreement, the application of special conditions, the withholding of funds, and the MOA, D.C. continues to demonstrate noncompliance with these critical IDEA requirements.

Though not a basis for our determination of needs intervention, we also note that due to problems in D.C.'s fiscal and program accountability, management systems, and related areas, the Department designated D.C. a "high risk" grantee under all grants received from the Department. D.C. continues to work on the Department's fiscal and programmatic concerns and its FFY 2010 grant award will again be subject to Department-wide Special Conditions.

The enclosed table provides OSEP's analysis of the State's FFY 2008 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: (1) the State's reported FFY 2008 data; (2) whether such data met the State's FFY 2008 targets and reflect progress or slippage from prior year's data; (3) if applicable, that the State's data are not valid and reliable; and (4) whether the State corrected findings of noncompliance.

The State's determination for the FFY 2005, 2006, and 2007 APRs was also needs intervention and this is the fourth consecutive year that D.C. is receiving a determination of needs intervention. In accordance with IDEA section 616(e)(2)(B) and 34 CFR §300.604(b), if a State is determined to need intervention for three or more consecutive years, the Secretary shall take one or more of the following actions: (1) require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year; (2) require the State to enter into a compliance agreement under Section 457 of the General Education Provisions Act (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year; (3) withhold, not less than 20 percent and not more than 50 percent of the Part B funds reserved for State-level activities for each year of the determination until the Secretary determines that the State has sufficiently addressed the area(s) in which the State needs intervention; (4) seek to recover Part B funds under Section 452 of GEPA; (5) withhold, in whole or in part, any further payments of Part B funds to the State; or (6) refer the matter for appropriate enforcement action, which may include referral to the Department of Justice. In addition, under IDEA section 616(e)(2)(A), the Secretary may take

one of the three actions specified under IDEA section 616(e)(1), (if a State is determined to need assistance for two consecutive years), which include under IDEA section 616(e)(1)(C) that the Secretary may direct the use of State-level funds under IDEA section 611(e) on the area or areas in which the State needs assistance.

Pursuant to IDEA section 616(e)(1)(C) and (2)(A), the Secretary is directing D.C. to use \$500,000 of its FFY 2010 State-level funds under IDEA section 611(e) to address the longstanding noncompliance with the requirements to conduct timely initial evaluations and reevaluations. D.C. must use \$500,000 of its FFY 2010 State-level funds to carry out initial evaluations and reevaluations for children who have not been provided a timely initial evaluation or reevaluation (i.e., to reduce the backlog of overdue evaluations and reevaluations). The Secretary authorizes D.C. to use the otherwise directed funds for other purposes if the State elects to direct local educational agencies (LEAs) that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations, to use \$500,000 of their FFY 2010 Part B funds to reduce the backlog of overdue evaluations and reevaluations.²

D.C. must report with its October 1, 2010 MOA progress report on whether it intends to: (1) use \$500,000 of its FFY 2010 State-level funds under IDEA section 611(e) to carry out initial evaluations and reevaluations for children who have not been provided a timely initial evaluation or reevaluation (i.e., to reduce the backlog of overdue evaluations); (2) direct those LEAs that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations to use \$500,000 of their FFY 2010 Part B funds to reduce the backlog of overdue evaluations and reevaluations; or (3) use a portion of its FFY 2010 State-level funds, and direct those LEAs that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations to use a portion of their FFY 2010 Part B funds, to reduce the backlog of overdue evaluations and reevaluations. D.C. must also provide information on how it will track the use of these funds to ensure they are used for the required purpose. D.C. must provide documentation to the Department by May 15, 2011, that demonstrates that it has used \$500,000 of FFY 2010 State-level funds under IDEA section 611(e), and/or has directed LEAs to use FFY 2010 Part B funds to reduce the backlog.

Directing the use of funds is an appropriate enforcement action because it supports D.C.'s and its LEAs' ability to timely evaluate and reevaluate children with disabilities, which are critical IDEA requirements that directly impact a child's right to receive a free appropriate public education. The failure of a State to ensure the provision of a timely initial evaluation and reevaluation results in a delay in the determination of whether a child is or continues to be a child with a disability, and in the provision of services that appropriately meet a child's current educational needs. The amount of \$500,000 represents a significant commitment of resources that will be targeted to ensure that D.C. and its LEAs take the necessary action to reduce the backlog of overdue initial evaluations and reevaluations. This will also assist D.C. in meeting the benchmarks for the MOA and may enable it to receive the FFY 2009 withheld funds.

In addition, pursuant to IDEA section 616(e)(2)(B)(i), the Secretary is requiring D.C. to submit a corrective action plan (CAP) by August 1, 2010, that is reasonably designed to address each of

² D.C. reported during the November 2009 verification visit that its system of progressive sanctions and enforcement options to address uncorrected noncompliance includes directing the LEA's use of IDEA Part B funds.

the areas in which the State needs intervention. Specifically, the CAP must address the actions D.C. will take to: (1) provide valid and reliable data for Indicator 15 with its FFY 2009 APR, due February 1, 2011; (2) provide valid and reliable data for Indicator 12 with its FFY 2009 APR; (3) demonstrate compliance with the requirement to ensure children referred by Part C prior to age 3, who are found eligible for Part B, have an IEP developed and implemented by their third birthdays (IDEA section 612(a)(9) and 34 CFR §300.124(b)); (4) demonstrate compliance with the requirement that IEPs for youth aged 16 and above include required secondary transition content (IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §300.320(b)); (5) demonstrate compliance with the requirement to implement HODs in a timely manner (IDEA sections 615(f) and (i)); (6) demonstrate compliance with the requirement to conduct timely initial evaluations and reevaluations (IDEA sections 612(a)(7) and 614(a) through (c) and 34 CFR §§300.301(c)(1) and 300.303); and (7) demonstrate that it has a general supervision system that is reasonably designed to effectively identify and correct noncompliance in a timely manner (IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, 20 U.S.C. 1232d(b)(3), and OSEP Memo 09-02).

The Secretary is requiring D.C. to submit a CAP because the Secretary has determined that, in combination with directing the use of funds, D.C. should be able to correct the problems that are the bases 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. D.C.'s CAP must include the specific actions and timelines by which the State will carry out the actions. The Department will provide technical assistance to D.C. to align the CAP with the requirements under the MOA and the required actions for early childhood transition described in the May 12, 2010 verification letter.

The Secretary also is advising the State of technical assistance available related to the following indicators: Indicator 12 (early childhood transition); Indicator 13 (secondary transition); and Indicator 15 (identification and correction of noncompliance). 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 a specific indicator for a list of centers, documents, webinars, and other sources of relevant technical assistance for that 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.

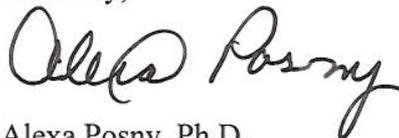
As you know, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A), your State must report annually to the public on the performance of each LEA located in the State on the targets in the SPP as soon as practicable, but no later than June 1, 2010. In addition, your State must: (1) review LEA performance against targets in the State's SPP; (2) determine if each LEA "meets requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA; (3) take appropriate enforcement action; and (4) inform each LEA of its determination. 34 CFR §300.600(a)(2) and (3). For further information regarding these requirements, see the SPP/APR Calendar at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>. Finally, if your State included revisions to baseline, targets, or improvement activities in its APR submission, and OSEP accepted those

revisions, please ensure that your SPP is updated accordingly and that the updated SPP is posted on the State's website and made available to the public, consistent with 34 CFR §300.602(b)(1)(i)(B).

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 an appropriate Department official, as designated by the Department, to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to "IDEA Determination Appeal," Office of the Assistant Secretary for the Office of Special Education and Rehabilitative Services, United States Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202 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 D.C.'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 Lisa Pagano, your OSEP State Contact, at 202-245-7413.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large initial 'A'.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education