



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

JUN - 3 2010

Honorable Patricia Wright  
Superintendent of Public Instruction  
Virginia Department of Education  
P.O. Box 2120  
Richmond, Virginia 23218

Dear Superintendent Wright:

Thank you for the timely submission of Virginia'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), Virginia 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 2008 APR and revised SPP, other State-reported data, information obtained through verification visits 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 Programs' (OSEP's) determination of needs assistance for Virginia include that the State's FFY 2008 data reflect 89.5% compliance for Indicator 15 and 93% compliance for Indicator 17. For these reasons, we are unable to determine that Virginia met requirements for FFY 2008 under IDEA section 616(d).

OSEP notes other areas that reflect a high level of performance, which include that Virginia reported valid and reliable data for all indicators and compliance for Indicator 9 (0%), Indicator 10 (0%), Indicator 11 (97.5%), Indicator 12 (99%), Indicator 16 (100%) and Indicator 20 (100%). We hope that Virginia 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 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.

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/>. 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, 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 local educational agency (LEA) located in the State on the targets in the SPP as soon as practicable, but no later

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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 Planning Calendar website 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).

OSEP's January 15, 2010 verification visit letter found that aspects of the State's method for determining significant disproportionality based on race and ethnicity were inconsistent with 34 CFR §300.646. OSEP's letter required the State to provide:

1. An explanation for the statistical basis of the factor described in requiring that "No race category in the general population be greater than 90%," or if the State could not provide a statistical basis for this factor, then its revised definition of significant disproportionality removing that factor; and
2. A copy of its revised definition of significant disproportionality demonstrating that it does not rely on: (1) percent in previously identified problem area decreased in 2008; (2) at least one race is overrepresented in five disability categories; and (3) severe discrepancy in suspension and expulsion (Indicator 4A data), when determining significant disproportionality as required by 34 CFR §300.646(b) with respect to the identification of children, as children with disabilities, or the placement in particular educational settings of such children.

In its March 11, 2010 response, the State provided a copy of its revised definition of significant disproportionality that meets the requirements of 34 CFR §300.646. No further action is required.

In the verification visit letter, OSEP stated that it could not determine whether the State was in compliance with the requirements in 34 CFR §§300.160 and 300.320(a)(6) as they apply to districtwide assessments. OSEP's letter required the State to provide a description of the steps it will take to determine whether any school divisions are conducting districtwide assessments, and if so, whether those school divisions are complying with Part B requirements. In its March 11, 2010 response, the State reported that it will conduct a survey of LEAs to determine if the LEAs conduct districtwide assessments, and if the LEAs report that such assessments are conducted, it will seek assurance that they comply with IDEA requirements specified at 34 CFR §300.160. The State did not indicate when it would be conducting this survey however. By November 1, 2010, the State must provide OSEP with the results of its survey of the LEAs and the status of assurances demonstrating compliance with 34 CFR §300.160 from any LEA conducting districtwide assessments. Further, with its FFY 2009 APR, due February 1, 2011, the State must provide information on compliance with 34 CFR §300.160 for those LEAs conducting districtwide assessments, including whether the State has received an assurance of compliance from those LEAs.

OSEP's January 15, 2010 verification visit letter found that the State's practice of calculating State-level maintenance of effort (MOE) based solely upon State educational agency (SEA) expenditures for special education and related services for children with disabilities is in violation of 34 CFR §300.163(a). OSEP's letter required that the State provide:

1. A separate written assurance that the State has met the IDEA MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163 and has included in its calculations funds other agencies provide to the SEA for special education and related services, funds other agencies provide directly to LEAs for special education and related services, and funds other agencies directly pay to staff or contractors for the delivery of special education and related services pursuant to an IEP; and
2. A copy of the correspondence in which the SEA has informed its State audit office of the need to review under the State's Single Audit, conducted under the Single Audit Act, the State's procedures to comply with the tracking of the amount of State financial support provided (made available) to meet the IDEA MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163.

In its March 11, 2010 response, the State provided a separate written assurance that the State has met the MOE requirements in IDEA section 612(a)(18) and 34 CFR §300.163 and a copy of the correspondence with the State audit office. No further action is required.

OSEP is committed to supporting Virginia'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 Jennifer Finch, your OSEP State Contact, at 202-245-6610.

Sincerely,



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

Enclosures

cc: State Director of Special Education