



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

Honorable Robert Scott
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

JUN 28 2012

Dear Commissioner Scott:

Thank you for the timely submission of Texas' Federal fiscal year (FFY) 2010 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)(2)(A)(iii), Texas needs intervention in implementing 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 2010 APR and revised SPP, other State-reported data, information obtained through continuous improvement visits, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2012: Part B" for further details.

The specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for Texas were that it did not provide valid and reliable data for Indicators 4B and 17.

Indicator 4B measures the percent of districts that have (a) a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with individualized education programs (IEPs); and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. Indicator 4B requires States to report on an analysis that they are required to do by 34 CFR §300.170 and provides important information to OSEP, the State and the public on whether discrepancies, by race or ethnicity, in the rate of certain disciplinary measures may be accountable to inconsistent application of IDEA protections. Without valid and reliable data for this critical indicator, the State is unable to identify and correct problems in these areas that lead to significant discrepancies by race and ethnicity in the administration of discipline and the public is unable to determine if the State is in compliance with these requirements. As the 2009-2010 Civil Rights Data Collection conducted by the Department's Office for Civil Rights makes clear, at the national level significant discrepancies continue to exist in the rates of discipline for children with disabilities and children in certain race and ethnic groups. <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>

In its APR, Texas reported that it had identified 16 districts with significant discrepancies, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs, but it had not completed the analysis required by Indicator 4B. The

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State reported that it would report on its completion of the analysis required by Indicator 4B and 34 CFR §300.170 in the next APR.

For Indicator 17, which measures compliance with the requirement in 34 CFR §300.515 that a State must ensure that final due process decisions are issued in a timely manner, the State's reported data are 100%. However, OSEP's January 31, 2012 Continuous Improvement Visit Letter found that the State had not demonstrated that the State's CDRMS database was properly calculating hearing timelines in cases where parties have waived the resolution process, adjusted the resolution process or the issue involved an expedited due process complaint. The State has not demonstrated that the CDRMS database, from which the State's Indicator 17 data are reported, properly calculated due process hearing timelines in these instances. Therefore, the State's data are not valid and reliable. Without valid and reliable data for this critical indicator, the State is unable to ensure that it is timely issuing due process hearing decisions and the public is unable to determine if the State is in compliance with these requirements. We hope that Texas will be able to demonstrate that it meets requirements in the next APR.

The enclosed table provides OSEP's analysis of the State's FFY 2010 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 2010 data; (2) whether such data met the State's FFY 2010 targets and reflect progress or slippage from the 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 Right IDEA" Web site at: <http://therightidea.tadnet.org/technicalassistance>. 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.

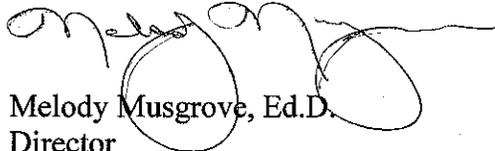
As you know, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A), your State must report annually to the public on the performance of each local educational agency (LEA) located in the State on the targets in the SPP as soon as practicable, but no later than June 1, 2012. In 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 Right IDEA" Web site at: <http://therightidea.tadnet.org/determinations>. Finally, please ensure that your updated SPP is posted on the State educational agency's Web site 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 the Assistant Secretary to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Alexa Posny, Assistant Secretary, United States Department of Education, 400 Maryland

Avenue SW, Washington, DC 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 Texas' 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. Marion Crayton, your OSEP State Contact, at 202-245-6474.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", written over a circular stamp or seal.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education