

Utah IDEA Part B 2012 Revised Determination Decision
Enclosure A: Basis for Revised Determination and Required Actions

Basis for Revising the “Needs Intervention” Determination

As stated in its June 28, 2012 determination letter to Utah, the basis for the Office of Special Education Programs’ (OSEP’s) June 2012 determination was that Utah’s Federal fiscal year (FFY) 2010 Annual Performance Report (APR) data for compliance Indicator 13 regarding secondary transition reflected a very low level of compliance at 12.41%.

Under Indicator 13, Utah is required to provide data on the percent of youth, aged 16 and above, with individualized education programs (IEPs) that include appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student’s transition service needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services were to be discussed, and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority. As further stated in OSEP’s June 28, 2012 determination letter, Indicator 13 is a critical indicator, since inclusion of appropriate postsecondary goals and transition services in a student’s IEP supports the student in making a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment, and independent living.

During the October 2, 2012 hearing, the State reported that it had calculated its FFY 2010 Indicator 13 data based on guidance issued after July 2009 that required IEPs that address transition services to have multiple postsecondary goals, instead of at least one postsecondary goal.¹ Utah argued that, had it relied on guidance issued in July 2009 that States were supposed to have used to calculate their FFY 2010 Indicator 13 data and that required IEPs that address transition services to include an appropriate measurable postsecondary goal *or* goals that covers education or training, employment, and, as needed, independent living, its FFY 2010 Indicator 13 data would have demonstrated a much higher level of compliance.²

¹ Specifically, Utah reported in its revised FFY 2010 APR that it had relied on OSEP’s letter to Dr. Carol Ann Heath, dated August 21, 2009. During the hearing, Utah asserted that it had also relied on other guidance issued after July 2009 by OSEP and the National Secondary Transition Technical Assistance Center (NSTTAC) that required IEPs that address transition services to include: (1) a postsecondary goal or goals for education and training, (2) a postsecondary goal for employment, and (3) a postsecondary goal for independent living, when appropriate.

² Utah reported in its revised FFY 2010 APR that it had not relied on guidance from OSEP reflected in the July 2009 NSTTAC Indicator 13 checklist, which States were supposed to have used to calculate their FFY 2010 Indicator 13 data. The July 2009 NSTTAC Indicator 13 checklist required IEPs that address transition services to include “an appropriate measurable postsecondary goal or goals that covers education or training, employment, and, as needed, independent living.”

In light of Utah's arguments that it had miscalculated its FFY 2010 Indicator 13 data, the Department offered Utah the opportunity to recalculate its FFY 2010 data for Indicator 13 using guidance that required at least one postsecondary goal instead of multiple postsecondary goals. On December 19, 2012, and December 24, 2012, Utah submitted a revised FFY 2010 APR and State Performance Plan (SPP), in which Utah explained that it had recalculated the FFY 2010 data for Indicator 13 based on guidance that required at least one postsecondary goal, resulting in a compliance level of 58% instead of 12.41%. Utah also explained why it had not reviewed the same number of IEPs in its revised FFY 2010 APR that it had reviewed in its original FFY 2010 APR.³ Finally, Utah has posted to its Web site its revised FFY 2010 APR and SPP.

Having considered all of the information that Utah presented, the Assistant Secretary, Michael K. Yudin, determined that Utah's FFY 2010 data of 58% for Indicator 13, as reported in its revised FFY 2010 APR, meet the criteria for a 2012 determination of "needs assistance" under Part B of the IDEA. Accordingly, he revised Utah's 2012 determination to "needs assistance."

Basis for the New Determination of "Needs Assistance"

The specific factor affecting the Department's revised determination of "needs assistance" for Utah was that Utah's FFY 2010 data for Indicator 13, which measures compliance with secondary transition requirements, reflect 58% compliance. Although Utah reported correction of all of its FFY 2009 findings for Indicator 13, as indicated in OSEP Memorandum 09-02, dated October 17, 2008, we did not consider a State to be in substantial compliance for Indicator 13 based on correction of FFY 2009 findings of noncompliance if its reported FFY 2010 data for Indicator 13 were below 75%. See Enclosure C, "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2012: Part B." For this reason, we are unable to determine that Utah met requirements for FFY 2010 under IDEA section 616(d).

We note other areas that reflect a high level of performance, including that Utah reported valid and reliable data for all indicators and a high level of compliance for Indicators 4B (0%), 9 (0%), 10 (0%), 11 (94.58%), 12 (99.6%), 15 (99.83%), 16 (100%), and 20 (97.7%). We hope that Utah will be able to demonstrate that it meets requirements in its FFY 2011 APR.

The enclosed revised Response Table, Enclosure B, provides OSEP's analysis of the State's revised FFY 2010 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions the State made 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. The only revisions to the FFY 2010 APR Response Table issued in June 2012 are to Indicator 13.

Required Actions

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 have reported annually (i.e., by June 1, 2012) to the public on the performance

³ Utah reported that its revised FFY 2010 data for Indicator 13 were based on a review of 127 IEPs, instead of the 137 IEPs that were reviewed in the original FFY 2010 APR. Utah explained that 10 IEPs were no longer available because they belonged to students who had moved, graduated with a regular high school diploma, or reached the maximum age for services under the IDEA.

of each local educational agency (LEA) located in the State on the targets in the SPP for FFY 2010; Utah also must report to the public as soon as practicable on the performance of those LEAs whose FFY 2010 Indicator 13 data were revised. 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). Utah may wish to review its 2012 determinations for LEAs whose FFY 2010 Indicator 13 data were revised. For further information regarding these requirements, see "The Right IDEA" Web site at <http://therightidea.tadnet.org/determinations>.

**Utah Part B FFY 2010 SPP/APR Response Table
Enclosure B**

Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>1. Percent of youth with IEPs graduating from high school with a regular diploma. [Results Indicator]</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2010 reported data for this indicator are 85.1%. These data represent progress from the FFY 2009 data of 81%. The State did not meet its FFY 2010 target of 85.7%.</p> <p>The State reported the required graduation rate calculation and timeline established by the Department under the Elementary and Secondary Education Act (ESEA). This means that the State submitted the most recent graduation data that the State reported to the Department as part of its Consolidated State Performance Report (CSPR).</p>	<p>OSEP looks forward to the State's data demonstrating improvement in performance in the FFY 2011 APR, due February 1, 2013.</p> <p>In reporting data for this indicator in the FFY 2011 APR, States must use the same data they used for reporting to the Department under Title I of the Elementary and Secondary Education Act (ESEA), using the adjusted cohort graduation rate required under the ESEA.</p>
<p>2. Percent of youth with IEPs dropping out of high school. [Results Indicator]</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2010 reported data for this indicator are 4.2%. These data represent progress from the FFY 2009 data of 4.5%. The State met its FFY 2010 target of 5.55%.</p>	<p>OSEP appreciates the State's efforts to improve performance.</p>
<p>3. Participation and performance of children with IEPs on statewide assessments: A. Percent of the districts with a disability subgroup that meets the State's minimum "n" size that meet the State's AYP targets for the disability subgroup. [Results Indicator]</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2010 reported data for this indicator are 81.37%. These data represent slippage from the FFY 2009 data of 93%. The State met its FFY 2010 target of 72%.</p>	<p>OSEP appreciates the State's efforts to improve performance.</p>
<p>3. Participation and performance of children with IEPs on statewide</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p>	<p>OSEP appreciates the State's efforts to improve performance.</p>

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<p>assessments: B. Participation rate for children with IEPs. [Results Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 99.56% for language arts and 99.42% for math. The State met its FFY 2010 targets of 95%.</p> <p>The State provided a Web link to 2010 publicly-reported assessment results.</p> <p>OSEP's FFY 2009 SPP/APR Response Table, dated June 20, 2011, required the State to a Web link that demonstrates it has reported to the public on the statewide assessments of children with disabilities in accordance with 34 CFR §300.160(f), within 90 days of the State's receipt of the response table. On August 17, 2011 OSEP received an email from Glenna Gallo with the following link(s): http://www.schools.utah.gov/data/Educational-Data/Special-Education.aspx . Based upon our review of this link, we have determined that the State corrected the noncompliance with the requirements of 34 CFR §300.160(f) identified in the response table, and that no further action is required.</p>																													
<p>3. Participation and performance of children with disabilities on statewide assessments: C. Proficiency rate for children with IEPs against grade level, modified and alternate academic achievement standards. [Results Indicator]</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's reported data for this indicator are:</p> <table border="1" data-bbox="550 950 1583 1188"> <thead> <tr> <th><u>Grade</u></th> <th><u>FFY 2009 Data</u></th> <th><u>FFY 2010 Data</u></th> <th><u>FFY 2010 Target</u></th> <th><u>FFY 2009 Data</u></th> <th><u>FFY 2010 Data</u></th> <th><u>FFY 2010 Target</u></th> </tr> </thead> <tbody> <tr> <td></td> <td align="center" colspan="3"><u>Language Arts</u></td> <td align="center" colspan="3"><u>Math</u></td> </tr> <tr> <td align="center">3-8</td> <td align="center">48.96%</td> <td align="center">51%</td> <td align="center">83%</td> <td align="center">45.95%</td> <td align="center">46.43%</td> <td align="center">45%</td> </tr> <tr> <td align="center">10-12</td> <td align="center">50.63%</td> <td align="center">53.58%</td> <td align="center">82%</td> <td align="center">37.53%</td> <td align="center">25.67%</td> <td align="center">40%</td> </tr> </tbody> </table> <p>These data represent progress and slippage from the FFY 2009 data. The State met part of its FFY 2010 targets.</p> <p>The State provided a Web link to 2010 publicly-reported assessment results.</p> <p>OSEP's FFY 2009 SPP/APR Response Table, dated June 20, 2011, required the State to a Web link that demonstrates it has reported to the public on the statewide assessments of children with disabilities in accordance with 34 CFR §300.160(f), within 90 days of the State's receipt of the response table. On August 17, 2011 OSEP received an email</p>	<u>Grade</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>		<u>Language Arts</u>			<u>Math</u>			3-8	48.96%	51%	83%	45.95%	46.43%	45%	10-12	50.63%	53.58%	82%	37.53%	25.67%	40%	<p>OSEP appreciates the State's efforts to improve performance and looks forward to the State's data demonstrating improvement in performance in the FFY 2011 APR.</p>
<u>Grade</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>																								
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	<p>from Glenna Gallo with the following link(s): http://www.schools.utah.gov/data/Educational-Data/Special-Education.aspx . Based upon our review of this link, we have determined that the State corrected the noncompliance with the requirements of 34 CFR §300.160(f) identified in the response table, and that no further action is required.</p>	
<p>4. Rates of suspension and expulsion: A. Percent of districts that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and [Results Indicator]</p>	<p>The State’s FFY 2010 reported data for this indicator are 0%. These data remain unchanged from the FFY 2009 data of 0%. The State met its FFY 2010 target of 0%. The State reported its definition of “significant discrepancy.” The State reported that no districts were identified as having a significant discrepancy, in the rate of suspensions and expulsions of greater than ten days in a school year for children with IEPs. The State reported that 26 of 112 districts did not meet the State-established minimum “n” size of 30 students with disabilities enrolled in the LEA.</p>	<p>OSEP appreciates the State’s efforts to improve performance.</p>
<p>4. Rates of suspension and expulsion: B. 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 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. [Compliance Indicator]</p>	<p>The State’s FFY 2010 reported data for this indicator are 0%. These data remain unchanged from the FFY 2009 data of 0%. The State met its FFY 2010 target of 0%. The State reported its definition of “significant discrepancy.” The State reported that one district was identified as having a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than ten days in a school year for children with IEPs. The State reported that it reviewed the districts’ 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, as required by 34 CFR §300.170(b) for the districts identified with significant discrepancies in FFY 2010. The State did not identify any noncompliance through this review. The State reported that 30 of 112 districts did not meet the State-established minimum “n” size requirement of 30 students with disabilities in each race/ethnicity category.</p>	<p>OSEP appreciates the State’s efforts regarding this indicator.</p>

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<p>5. Percent of children with IEPs aged 6 through 21 served:</p> <p>A. Inside the regular class 80% or more of the day;</p> <p>B. Inside the regular class less than 40% of the day; or</p> <p>C. In separate schools, residential facilities, or homebound/hospital placements.</p> <p>[Results Indicator]</p>	<p>The State's reported data for this indicator are:</p> <table border="1" data-bbox="550 367 1583 841"> <thead> <tr> <th></th> <th><u>FFY 2009 Data</u></th> <th><u>FFY 2010 Data</u></th> <th><u>FFY 2010 Target</u></th> <th><u>Progress</u></th> </tr> </thead> <tbody> <tr> <td>A. % Inside the regular class 80% or more of the day</td> <td align="center">53.58</td> <td align="center">54.98</td> <td align="center">54.12</td> <td align="center">1.40%</td> </tr> <tr> <td>B. % Inside the regular class less than 40% of the day</td> <td align="center">15.06</td> <td align="center">14.2</td> <td align="center">14.91</td> <td align="center">0.86%</td> </tr> <tr> <td>C. % In separate schools, residential facilities, or homebound/hospital placements</td> <td align="center">3.06</td> <td align="center">3.08</td> <td align="center">3.06</td> <td align="center">-0.02%</td> </tr> </tbody> </table> <p>These data represent progress for 5A and 5B from the FFY 2009 data. The State met its FFY 2010 targets for 5A and 5B, but did not meet its FFY 2010 target for 5C.</p>		<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>Progress</u>	A. % Inside the regular class 80% or more of the day	53.58	54.98	54.12	1.40%	B. % Inside the regular class less than 40% of the day	15.06	14.2	14.91	0.86%	C. % In separate schools, residential facilities, or homebound/hospital placements	3.06	3.08	3.06	-0.02%	<p>OSEP appreciates the State's efforts to improve performance and looks forward to the State's data demonstrating improvement in performance in the FFY 2011 APR.</p>
	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>Progress</u>																		
A. % Inside the regular class 80% or more of the day	53.58	54.98	54.12	1.40%																		
B. % Inside the regular class less than 40% of the day	15.06	14.2	14.91	0.86%																		
C. % In separate schools, residential facilities, or homebound/hospital placements	3.06	3.08	3.06	-0.02%																		
<p>6. Percent of children aged 3 through 5 with IEPs attending a:</p> <p>A. Regular early childhood program and receiving the majority of special education and related services in the regular early childhood program; and</p> <p>B. Separate special education class, separate school or residential facility.</p> <p>[Results Indicator; New]</p>	<p>The State is not required to report on this indicator in the FFY 2010 APR.</p>	<p>The State must provide FFY 2011 baseline data, an FFY 2012 target, and improvement activities through FFY 2012 in the SPP that it submits with the FFY 2011 APR.</p>																				
<p>7. Percent of preschool children age 3 through 5 with IEPs who</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p>	<p>OSEP appreciates the State's efforts to improve performance.</p>																				

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<p>demonstrate improved:</p> <p>A. Positive social-emotional skills (including social relationships);</p> <p>B. Acquisition and use of knowledge and skills (including early language/communication and early literacy); and</p> <p>C. Use of appropriate behaviors to meet their needs.</p> <p>[Results Indicator]</p>	<p>The State's reported data for this indicator are:</p> <table border="1" data-bbox="552 350 1583 1365"> <thead> <tr> <th data-bbox="552 350 957 451"><u>Summary Statement 1</u></th> <th data-bbox="957 350 1163 451"><u>FFY 2009 Data</u></th> <th data-bbox="1163 350 1373 451"><u>FFY 2010 Data</u></th> <th data-bbox="1373 350 1583 451"><u>FFY 2010 Target</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="552 451 957 586">Outcome A: Positive social-emotional skills (including social relationships) (%)</td> <td align="center" data-bbox="957 451 1163 586">94</td> <td align="center" data-bbox="1163 451 1373 586">94.33</td> <td align="center" data-bbox="1373 451 1583 586">94</td> </tr> <tr> <td data-bbox="552 586 957 756">Outcome B: Acquisition and use of knowledge and skills (including early language/ communication) (%)</td> <td align="center" data-bbox="957 586 1163 756">94.1</td> <td align="center" data-bbox="1163 586 1373 756">94.5</td> <td align="center" data-bbox="1373 586 1583 756">93.25</td> </tr> <tr> <td data-bbox="552 756 957 857">Outcome C: Use of appropriate behaviors to meet their needs (%)</td> <td align="center" data-bbox="957 756 1163 857">93.68</td> <td align="center" data-bbox="1163 756 1373 857">94.35</td> <td align="center" data-bbox="1373 756 1583 857">93.69</td> </tr> <tr> <th data-bbox="552 857 957 958"><u>Summary Statement 2</u></th> <th data-bbox="957 857 1163 958"><u>FFY 2009 Data</u></th> <th data-bbox="1163 857 1373 958"><u>FFY 2010 Data</u></th> <th data-bbox="1373 857 1583 958"><u>FFY 2010 Target</u></th> </tr> <tr> <td data-bbox="552 958 957 1092">Outcome A: Positive social-emotional skills (including social relationships) (%)</td> <td align="center" data-bbox="957 958 1163 1092">52.73</td> <td align="center" data-bbox="1163 958 1373 1092">56.41</td> <td align="center" data-bbox="1373 958 1583 1092">52.74</td> </tr> <tr> <td data-bbox="552 1092 957 1263">Outcome B: Acquisition and use of knowledge and skills (including early language/ communication) (%)</td> <td align="center" data-bbox="957 1092 1163 1263">51.84</td> <td align="center" data-bbox="1163 1092 1373 1263">54.78</td> <td align="center" data-bbox="1373 1092 1583 1263">49.2</td> </tr> <tr> <td data-bbox="552 1263 957 1365">Outcome C: Use of appropriate behaviors to meet their needs (%)</td> <td align="center" data-bbox="957 1263 1163 1365">67.97</td> <td align="center" data-bbox="1163 1263 1373 1365">69.82</td> <td align="center" data-bbox="1373 1263 1583 1365">67.7</td> </tr> </tbody> </table> <p>These data represent progress from the FFY 2009 data. The State met its FFY 2010 targets for this indicator.</p>	<u>Summary Statement 1</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	Outcome A: Positive social-emotional skills (including social relationships) (%)	94	94.33	94	Outcome B: Acquisition and use of knowledge and skills (including early language/ communication) (%)	94.1	94.5	93.25	Outcome C: Use of appropriate behaviors to meet their needs (%)	93.68	94.35	93.69	<u>Summary Statement 2</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	Outcome A: Positive social-emotional skills (including social relationships) (%)	52.73	56.41	52.74	Outcome B: Acquisition and use of knowledge and skills (including early language/ communication) (%)	51.84	54.78	49.2	Outcome C: Use of appropriate behaviors to meet their needs (%)	67.97	69.82	67.7	<p>The State must report progress data and actual target data for FFY 2011 with the FFY 2011 APR.</p>
<u>Summary Statement 1</u>	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>																															
Outcome A: Positive social-emotional skills (including social relationships) (%)	94	94.33	94																															
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<p>8. Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.</p> <p>[Results Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 89.5%. These data represent progress from the FFY 2009 data of 87.2%. The State met its FFY 2010 target of 87.33%.</p> <p>In its description of its FFY 2010 data, the State addressed whether the response group was representative of the population.</p>	<p>OSEP appreciates the State's efforts to improve performance.</p>
<p>9. Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.</p> <p>[Compliance Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 0%. These data remain unchanged from the FFY 2009 data of 0%. The State met its FFY 2010 target of 0%.</p> <p>The State reported that one district was identified with disproportionate representation of racial and ethnic groups in specific disability categories. The State also reported that no districts were identified with disproportionate representation of racial and ethnic groups in specific disability categories that was the result of inappropriate identification.</p> <p>The State provided its definition of "disproportionate representation."</p> <p>The State reported that 63 of 119 districts did not meet the State-established minimum "n" size requirement of ten or more students with disabilities in the group of interest and comparison group (based on child count data).</p>	<p>OSEP appreciates the State's efforts regarding this indicator.</p>
<p>10. Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.</p> <p>[Compliance Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 0%. These data remain unchanged from the FFY 2009 data of 0%. The State met its FFY 2010 target of 0%.</p> <p>The State reported that seven districts were identified with disproportionate representation of racial and ethnic groups in specific disability categories. The State also reported that no districts were identified with disproportionate representation of racial and ethnic groups in specific disability categories that was the result of inappropriate identification.</p> <p>The State provided its definition of "disproportionate representation."</p> <p>The State reported that 79 of 119 districts did not meet the State-established minimum "n" size requirement of ten or more students with disabilities in the group of interest and comparison group (based on child count data) in at least one category.</p>	<p>OSEP appreciates the State's efforts regarding this indicator.</p>

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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>11. Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.</p> <p>[Compliance Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 94.58%. These data represent slippage from the FFY 2009 data of 97.41%. The State did not meet its FFY 2010 target of 100%.</p> <p>The State reported that all seven of its findings of noncompliance identified in FFY 2009 for this indicator were corrected in a timely manner.</p>	<p>The State must demonstrate, in the FFY 2011 APR, that the State is in compliance with the timely initial evaluation requirement in 34 CFR §300.301(c)(1). Because the State reported less than 100% compliance for FFY 2010, the State must report on the status of correction of noncompliance identified in FFY 2010 for this indicator.</p> <p>When reporting on the correction of noncompliance, the State must report, in its FFY 2011 APR, that it has verified that each LEA with noncompliance identified in FFY 2010 for this indicator: (1) is correctly implementing 34 CFR §300.301(c)(1) (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has completed the evaluation, although late, for any child whose initial evaluation was not timely, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02). In the FFY 2011 APR, the State must describe the</p>

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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
		<p>specific actions that were taken to verify the correction.</p> <p>If the State does not report 100% compliance in the FFY 2011 APR, the State must review its improvement activities and revise them, if necessary to ensure compliance.</p>
<p>12. 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.</p> <p>[Compliance Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 99.6%. These data represent progress from the FFY 2009 data of 98.45%. The State did not meet its FFY 2010 target of 100%.</p> <p>OSEP's FFY 2009 SPP/APR Response Table, dated June 20, 2011, required the State to include in the FFY 2010 APR, due February 1, 2012 that it has clarified the number of LEAs with findings of noncompliance in FFY 2008 and has verified correction of all noncompliance in each those LEAs. The State provided all of the required information.</p>	<p>OSEP appreciates the State's efforts and looks forward to reviewing in the FFY 2011 APR, the State's data demonstrating that it is in compliance with the early childhood transition requirements in 34 CFR §300.124(b). Because the State reported less than 100% compliance for FFY 2010, the State must report on the status of correction of noncompliance identified in FFY 2010 for this indicator. When reporting on the correction of noncompliance, the State must report, in its FFY 2011 APR, that it has verified that each LEA with noncompliance identified in FFY 2010 for this indicator: (1) is correctly implementing 34 CFR §300.124(b) (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through</p>

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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
		<p>on-site monitoring or a State data system; and (2) has developed and implemented the IEP, although late, for any child for whom implementation of the IEP was not timely, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memo 09-02. In the FFY 2011 APR, the State must describe the specific actions that were taken to verify the correction.</p> <p>If the State does not report 100% compliance in the FFY 2011 APR, the State must review its improvement activities and revise them, if necessary to ensure compliance.</p>
<p>13. Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team</p>	<p>The State's FFY 2010 reported data for this indicator are 58%. These data represent progress from the FFY 2009 data of 54.67%. The State did not meet its FFY 2010 target of 100%.</p> <p>The State reported that all of its 66 findings of noncompliance identified in FFY 2009 were corrected.</p>	<p>The State must demonstrate, in the FFY 2011 APR, that the State is in compliance with the secondary transition requirements in 34 CFR §§300.320(b) and 300.321(b). Because the State reported less than 100% compliance for FFY 2010, the State must report on the status of correction of noncompliance identified in FFY 2010 for this indicator.</p> <p>When reporting on the correction</p>

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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps										
<p>meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.</p> <p>[Compliance Indicator]</p>		<p>of noncompliance, the State must report, in its FFY 2011 APR, that it has verified that each LEA with noncompliance identified in FFY 2010 for this indicator: (1) is correctly implementing 34 CFR §§300.320(b) and 300.321(b) (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memo 09-02. In the FFY 2011 APR, the State must describe the specific actions that were taken to verify the correction.</p> <p>If the State does not report 100% compliance in the FFY 2011 APR, the State must review its improvement activities and revise them, if necessary to ensure compliance.</p>										
<p>14. Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were:</p>	<p>The State's reported data for this indicator are:</p> <table border="1" data-bbox="548 1354 1583 1453"> <thead> <tr> <th data-bbox="548 1354 938 1453"></th> <th data-bbox="938 1354 1100 1453"><u>FFY 2009 Data</u></th> <th data-bbox="1100 1354 1262 1453"><u>FFY 2010 Data</u></th> <th data-bbox="1262 1354 1423 1453"><u>FFY 2010 Target</u></th> <th data-bbox="1423 1354 1583 1453"><u>Progress</u></th> </tr> </thead> <tbody> <tr> <td data-bbox="548 1354 938 1453"></td> <td data-bbox="938 1354 1100 1453"></td> <td data-bbox="1100 1354 1262 1453"></td> <td data-bbox="1262 1354 1423 1453"></td> <td data-bbox="1423 1354 1583 1453"></td> </tr> </tbody> </table>		<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>Progress</u>						<p>OSEP appreciates the State's efforts to improve performance.</p>
	<u>FFY 2009 Data</u>	<u>FFY 2010 Data</u>	<u>FFY 2010 Target</u>	<u>Progress</u>								

**Utah Part B FFY 2010 SPP/APR Response Table
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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues					OSEP Analysis/Next Steps
<p>A. Enrolled in higher education within one year of leaving high school; B. Enrolled in higher education or competitively employed within one year of leaving high school. C. Enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school.</p> <p>[Results Indicator]</p>	A. % Enrolled in higher education	27.56	33.2	27.6	5.64%	
	B. % Enrolled in higher education or competitively employed	54.25	68.2	54.3	13.95%	
	C. % Enrolled in higher education or in some other postsecondary education or training program; or competitively employed	71.84	80.6	71.8	8.76%	
	<p>These data represent progress from the FFY 2009 data. The State met all of its FFY 2010 targets for this indicator.</p> <p>In its description of its FFY 2010 data, the State addressed whether the response group was representative of the population.</p>					
<p>15. General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.</p> <p>[Compliance Indicator]</p>	<p>The State's FFY 2010 reported data for this indicator are 99.83%. These data represent progress from the FFY 2009 data of 99.48%. The State did not meet its FFY 2010 target of 100%.</p> <p>The State reported that 587 of 588 findings of noncompliance identified in FFY 2009 were corrected in a timely manner and that the one remaining finding was subsequently corrected by May 30, 2011.</p>					<p>OSEP appreciates the State's efforts and looks forward to reviewing in the FFY 2011 APR, the State's data demonstrating that the State timely corrected noncompliance identified in FFY 2010 in accordance with 20 U.S.C. 1232d(b)(3)(E), 34 CFR §§300.149 and 300.600(e), and OSEP Memo 09-02.</p> <p>When reporting on correction of findings of noncompliance in the FFY 2011APR, the State must report that it verified that each LEA with noncompliance</p>

**Utah Part B FFY 2010 SPP/APR Response Table
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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
		<p>identified in FFY 2010: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA, consistent with OSEP Memo 09-02. In the FFY 2011 APR, the State must describe the specific actions that were taken to verify the correction. In addition, in reporting on Indicator 15 in the FFY 2011 APR, the State must use the Indicator 15 Worksheet.</p> <p>Further, in responding to Indicators 11, 12, and 13 in the FFY 2011 APR, the State must report on correction of the noncompliance described in this table under those indicators.</p>
<p>16. Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint, or because the parent (or individual or</p>	<p>The State's FFY 2010 reported data for this indicator, as of January 31, 2012, are 100%. These data remain unchanged from the FFY 2009 data of 100 %. The State met its FFY 2010 target of 100%.</p> <p>Note that States are allowed to amend their FFY 2010 IDEA section 618 Dispute Resolution data until July 2012.</p>	<p>OSEP appreciates the State's efforts in achieving compliance with the timely complaint resolution requirements in 34 CFR §300.152.</p>

**Utah Part B FFY 2010 SPP/APR Response Table
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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
<p>organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State.</p> <p>[Compliance Indicator]</p>		
<p>17. Percent of adjudicated due process hearing requests that were adjudicated within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines.</p> <p>[Compliance Indicator]</p>	<p>The State reported, as of January 31, 2012, that it did not have any fully adjudicated due process hearings during the reporting period.</p> <p>Note that States are allowed to amend their FFY 2010 IDEA section 618 Dispute Resolution data until July 2012.</p>	<p>OSEP looks forward to reviewing the State's FFY 2011 IDEA section 618 data.</p>
<p>18. Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements.</p> <p>[Results Indicator]</p>	<p>The State reported, as of January 31, 2012, that four of four resolution sessions resulted in settlement agreements.</p> <p>The State reported, as of January 31, 2012, fewer than ten resolution sessions held in FFY 2010. The State is not required to provide targets or improvement activities until any fiscal year in which ten or more resolution sessions were held.</p> <p>Note that States are allowed to amend their FFY 2010 IDEA section 618 Dispute Resolution data until July 2012.</p>	<p>OSEP looks forward to reviewing the State's data in the FFY 2011 APR.</p>
<p>19. Percent of mediations held that resulted in mediation agreements.</p> <p>[Results Indicator]</p>	<p>The State reported, as of January 31, 2012, that 5 of 6 mediations resulted in mediation agreements.</p> <p>The State reported fewer than ten mediations held in FFY 2010. The State is not required to provide targets or improvement activities until any fiscal year in which ten or more mediations were held.</p> <p>Note that States are allowed to amend their FFY 2010 IDEA section 618 Dispute</p>	<p>OSEP looks forward to reviewing the State's data in the FFY 2011 APR.</p>

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Monitoring Priorities and Indicators	Status of APR Data/SPP Revision Issues	OSEP Analysis/Next Steps
	Resolution data until July 2012.	
<p>20. State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.</p> <p>[Compliance Indicator]</p>	<p>The State revised the FFY 2012 improvement activities for this indicator and OSEP accepts those revisions.</p> <p>The State's FFY 2010 reported data for this indicator are 97.7%. These data represent progress from the FFY 2009 data of 95.24%. The State did not meet its FFY 2010 target of 100%.</p>	<p>OSEP appreciates the State's efforts and looks forward to reviewing in the FFY 2011 APR, the State's data demonstrating that it is in compliance with the timely and accurate data reporting requirements in IDEA sections 616 and 618 and 34 CFR §§76.720 and 300.601(b). If the State does not report 100% compliance in the FFY 2011 APR, the State must review its improvement activities and revise them, if necessary to ensure compliance. In reporting on Indicator 20 in the FFY 2011 APR, the State must use the Indicator 20 Data Rubric.</p>

How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2012: Part B

In making our determination for each State under section 616(d) of the Individuals with Disabilities Education Act (IDEA), we considered the totality of the information we have about a State. This includes the State's FFY 2010 Annual Performance Report (APR)/State Performance Plan (SPP); information from monitoring, including verification visit findings; and other public information, such as the State's performance under any existing special conditions on its FFY 2011 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance with the IDEA.

FFY 2010 APR/SPP and Other Information

In reviewing a State's FFY 2010 APR/SPP, we considered both the submission of valid and reliable data and the level of compliance, including correction of noncompliance, as described below, as included in the State's final APR/SPP. We also reviewed other information (described below) that reflects the State's compliance with IDEA requirements.

With respect to data, for Indicators 1 through 5, and 7 through 19, we examined whether the State provided valid and reliable FFY 2010 data (*i.e.*, the State provided all the required data, the data were for the correct year and were consistent with the required measurement and/or the approved SPP, and we did not have other information (such as verification visit findings or inconsistent data within the APR) demonstrating that the data were not valid and reliable or the State indicated that the data were not valid and reliable).

With respect to compliance, we examined Indicators 4B, 9, 10, 11, 12, 13, 15, 16, 17, and 20 and looked for evidence that the State demonstrated substantial compliance through reporting FFY 2010 data that reflected a very high level of compliance. (For Indicators 4B, 9, and 10 a very high level of compliance is generally at or below 5%. For Indicators 11, 12, 13, 16, 17 and 20 a very high level of compliance is generally at or above 95%.) In addition, for Indicators 11, 12, and 13, a State could demonstrate substantial compliance if the State's FFY 2010 compliance data were 75% or above and the State reported that it had fully corrected FFY 2009 findings of noncompliance made under those respective indicators. For Indicators 4B, 9, and 10, a State could demonstrate substantial compliance if the State's FFY 2010 compliance data were 25% or below and the State reported that it had fully corrected FFY 2009 findings of noncompliance made under those respective indicators. As indicated in OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02), beginning with the Department's determinations in 2010, for Indicators 9, 10, 11 and 12, and beginning with the Department's determinations in 2012 for Indicators 4B and 13, we considered a State to have demonstrated correction of previously identified noncompliance for any findings identified in FFY 2007, FFY 2008, and FFY 2009 if the State verified correction of those findings consistent with OSEP Memo 09-02. In addition, we did not consider a State to be in substantial compliance for a compliance indicator based on correction of FFY 2009 findings of noncompliance if its reported FFY 2010 data were low (generally below 75%, or, for Indicators 4B, 9 and 10, above 25%), consistent with OSEP Memo 09-02.

Indicator 15 evaluates the "timely" correction of FFY 2009 findings, so for this indicator we specifically examined whether the State reported a very high level of compliance (generally 95% or better) in timely correcting FFY 2009 findings of noncompliance, and that the State reported that it verified the correction of its FFY 2009 findings of noncompliance consistent with OSEP Memo 09-02. We did not consider Indicators 16 and 17 if the State reported less than 100% compliance, but

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fewer than 10 complaints or 10 fully adjudicated hearings, in recognition of the inequities in basing decisions regarding dispute resolution indicators on small numbers.

Generally, and absent any other issues (see below), we considered a State to “meet requirements” if the State: (1) Provided valid and reliable FFY 2010 data, as described above, for all indicators; and (2) Demonstrated substantial compliance, as described above, for compliance Indicators 4B, 9, 10, 11, 12, 13, 15, 16, 17, and 20. If a State did not meet the standards for substantial compliance for only one compliance indicator and there were no other factors (see below), we considered the State to “meet requirements” if the compliance level for that indicator was high (generally at or above 90%, or, for Indicators 4B, 9 and 10, at or below 10%). In no case, however, did we consider a State to “meet requirements” if it failed to provide valid and reliable FFY 2010 data (as defined above) for Indicators 1 through 5 and 7 through 19. We also considered whether the State, when it reported under Indicator 4A: (1) Made clear that, if it identified any districts as having significant discrepancies in the discipline of children with disabilities, it reviewed the districts’ policies, procedures, and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, as required in section 612(a)(22)(B); and (2) If the State identified any noncompliance in policies, procedures or practices in these areas as a result of this review, it corrected the noncompliance.

Generally, and absent any other issues (see below), we considered a State to be “in need of intervention” for one of three reasons that are explained further in this paragraph: very low compliance data, failure to provide valid and reliable data for a compliance indicator, or longstanding noncompliance that was the subject of Departmental enforcement for a key IDEA requirement. First, we identified a State as “in need of intervention” if the State’s FFY 2010 compliance data demonstrated: (1) Very low performance for Indicators 4B, 9, 10, 11, 12, 13, 16 or 17 (generally below 50%, or in the case of Indicators 4B, 9, and 10, above 50%), regardless of whether it reported correction of previously identified findings of noncompliance; or (2) Very low performance for Indicator 15 (generally below 50%). Second, we identified a State as “in need of intervention” if it did not provide valid and reliable (as defined above) FFY 2010 compliance data for Indicators 4B, 9, 10, 11, 12, 13, 15, 16 or 17. Finally, we also identified a State as “in need of intervention” if the State has been subject to Departmental enforcement for multiple years for failing to comply with key IDEA requirements, the noncompliance has been long-standing, and the State’s data in response to the Department’s enforcement actions demonstrate continued noncompliance.

We would identify a State as “in need of substantial intervention” if its substantial failure to comply significantly affected the core requirements of the program, such as the delivery of services to children with disabilities or the State’s exercise of general supervision, or if the State informed the Department that it was unwilling to comply with an IDEA requirement. In making this determination, we would consider the impact of any longstanding unresolved issues on the State’s current implementation of the program. We would also consider identifying a State “in need of substantial intervention” for failing to submit its APR/SPP.

Absent any other issues (see below), we determined that States that did not “meet requirements” and were not “in need of intervention” or “in need of substantial intervention” were “in need of assistance.”

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Monitoring Data and Other Public Information

We also considered other public information available to the Department, including information from monitoring including verification visits, and other public information, such as the State's performance under any existing special conditions on its FFY 2011 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA. We did not consider a State to "meet requirements" if the State had unresolved special conditions that were imposed as a result of the State being designated as a "high risk" grantee, outstanding OSEP monitoring findings (including verification visit findings) that affected the State's data under APR indicators, longstanding audit issues, or a compliance agreement. We also did not determine a State to "meet requirements" if we had documentation that the State had not complied with the requirement in section 612(a)(18)(A) to maintain State financial support for special education and related services. The Department receives this documentation and requests for waivers of this requirement at various times, often well beyond the end of the fiscal year in which the State failed to maintain effort. The Department considers information related to a State's compliance with the requirement in section 612(a)(18)(A) in making determinations when it has final information from the State on its noncompliance and waiver request, if any.

In determining whether the State should be identified as "in need of assistance," "in need of intervention," or "in need of substantial intervention," we considered the length of time the problem had existed, the magnitude of the problem, and the State's response to the problem, including progress the State had made to correct the problem.

Possible Changes to Determination Factors in the Future

As a part of our efforts to focus attention more on the results of State's implementation of Parts B and C of the IDEA, OSEP is reexamining its process for making determinations under section 616 of the IDEA. We are considering how we can include State performance on results indicators in addition to those factors (described previously) that are currently considered. We will provide further details regarding our plans in the near future.