



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

Dr. Charles M. Roessel
Acting Director
Bureau of Indian Education
1849 C Street NW
MS-3609 MIB
Washington, DC 20240

JUL 01 2013

Dear Acting Director Roessel:

Thank you for the timely submission of the Bureau of Indian Education's (BIE's) Federal fiscal year (FFY) 2011 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA).

The U.S. Department of Education (Department) has determined that, under IDEA section 616(d)(2)(A)(iii), the BIE "needs intervention" in implementing the requirements of Part B of the IDEA. The Department's determination is based on the totality of the BIE's data and information, including the BIE's FFY 2011 APR and revised SPP, other BIE-reported data, the BIE's submissions under the Special Conditions on the BIE's FFY 2012 IDEA Part B grant, and other publicly available information. The BIE's data are reflected in a new 2013 Compliance Matrix (Compliance Matrix), described below.

The BIE's determination is based on the data reflected in the enclosed "2013 Part B Compliance Matrix" that the Office of Special Education Programs (OSEP) completed based on the BIE's data. Also, enclosed is the document entitled, "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2013: Part B," which provides a detailed description of how OSEP evaluated the BIE's data using the Compliance Matrix. The Compliance Matrix reflects the compliance data summarized in the BIE's FFY 2011 SPP/APR Response Table.

The enclosed BIE FFY 2011 SPP/APR Response Table provides OSEP's analysis of the BIE's FFY 2011 APR and revised SPP. The Response Table includes: (1) the Indicators; (2) the Results Data Summary; (3) the Results Data Summary Notes; (4) the Compliance Data Summary; and (5) the Compliance Data Summary Notes. In the Results Data Summary and the Compliance Data Summary, the table sets forth, by indicator, the BIE's: (1) reported FFY 2010 data; (2) reported FFY 2011 data; and (3) FFY 2011 target(s), in a concise "dashboard" format. The Compliance Data Summary also includes a column that reflects the number of findings of noncompliance identified in FFY 2010, and the correction of those findings. In the "Notes" sections following the Results Data Summary and the Compliance Data Summary, OSEP has provided more detailed information regarding specific indicators, including, where appropriate, information regarding: (1) the BIE's correction of any remaining findings of noncompliance identified in years prior to FFY 2010; (2) any issues with the validity and reliability of the data that the BIE reported; and (3) any required actions. It is important that the BIE read the information for each indicator in the Results Data Summary and the Compliance Data Summary together with any Notes for that indicator.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600
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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

As further explained in the enclosed documents described above, the specific reasons for the BIE's determination of "needs intervention" are that: (1) the BIE's Compliance Matrix percentage, at 50%, is below the criterion of 75%; (2) the BIE's FFY 2011 data for Indicator 13 (secondary transition) reflect a very low level of compliance at 48.99%; and (3) the Department has imposed Special Conditions on the BIE's last six (FFY 2007, FFY 2008, FFY 2009, FFY 2010, FFY 2011, and FFY 2012) IDEA Part B grant awards, and those Special Conditions are in effect at the time of the 2013 determination.

Under Indicator 13, the BIE was required to provide data on the percent of youth with individualized education programs (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 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. See IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §§300.320(b) and 300.321(b). The BIE's FFY 2011 reported data for Indicator 13 were 48.99%. This is a critical indicator since compliance with secondary transition requirements enables a student to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment and independent living.

In addition, the BIE has failed to meet all of the Special Conditions imposed on its FFY 2012 IDEA Part B grant award. Specifically, OSEP determined that the BIE has failed to complete all of the corrective actions contained in Section C of its Program Improvement and Accountability Plan (PIAP). The objective of Section C of the PIAP is to ensure that the BIE provides a free appropriate public education (FAPE) to eligible students with disabilities in all the BIE-funded schools.

The BIE's determination for the FFY 2010 APR was also "needs intervention." The BIE should review IDEA section 616(e)(2) and 34 CFR §300.604(b) regarding the potential impact of the Department's determination should the BIE be determined to need intervention in implementing the requirements of IDEA Part B for three consecutive years. The BIE 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, which the BIE may wish to use in working to improve compliance and outcomes for children with disabilities and their families.

Pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A), the BIE must report annually to the public on the performance of each BIE funded school on the targets in the SPP as soon as practicable, but no later than 120 days after the BIE's submission of its FFY 2011 APR. In addition, the BIE must: (1) review school performance against targets in the BIE's SPP; (2) determine if each school "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 school of its determination. *See* IDEA section 616(a)(1)(C) and 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 BIE’s Web site and made available to the public, consistent with IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(B).

As you know, OSEP is redesigning its accountability system to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Section 616 of the IDEA requires that the primary focus of IDEA monitoring must be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements. The monitoring system implemented between 2004 and 2012 placed a heavy emphasis on compliance, and we are moving towards a more balanced approach that considers results as well as compliance.

OSEP is committed to several key principles to guide the development of a results-driven accountability system, including transparency, stakeholder involvement, and burden reduction. In support of these principles, we are taking a number of steps. First, we solicited input from special education, early intervention, assessment, and early childhood outcomes experts, and gathered input from the public through conference calls, a blog on the Department’s Web site, and through multiple meetings and conferences. Next, OSEP published for comment a new SPP/APR package for FFYs 2013 through 2018 that significantly reduces data collection and reporting burden by States, and shifts the focus of the SPP/APR to improving educational results and functional outcomes for children with disabilities. Third, as explained above, this year OSEP has incorporated compliance data into a matrix that is helpful in simultaneously processing multiple sets of data, and has used this matrix in making determinations. This Compliance Matrix includes a color-coded system (green, yellow, red) that provides a visual representation of a State’s performance. Finally, as we move forward in using results data in determinations, OSEP will provide the public with an opportunity to comment on how we will use results data when making IDEA determinations in 2014 under IDEA section 616.

We are also enclosing with this letter a Data Display, which presents certain State-reported data in a transparent, user-friendly manner. The Data Display will be helpful for the public in getting a broader picture of State performance in key areas.

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 Michael K. Yudin, Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services, U.S. Department of Education, 400 Maryland Avenue S.W., 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 BIE’s determination.

OSEP recognizes the BIE's efforts to improve results for children and youth with disabilities and looks forward to working with BIE over the next year as we continue our important work of improving the lives of children with disabilities and their families. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Matthew Schneer, your OSEP State Contact, at 202-245-6755.

Sincerely,

A handwritten signature in cursive script that reads "Melody Musgrove".

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

Enclosures

cc: BIE Director of Special Education