



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

June 30, 2015

Dr. Charles M. Roessel
Director
Bureau of Indian Education
1849 C Street NW
Washington, D.C. 20240

Dear Dr. Roessel:

I am writing to advise you of the U.S. Department of Education's (Department) 2015 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that the Bureau of Indian Education (BIE) needs intervention in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the BIE's data and information, including the Federal fiscal year (FFY) 2013 State Performance Plan/Annual Performance Report (SPP/APR), other BIE-reported data, and other publicly available information.

The BIE's 2015 determination is based on the data reflected in the BIE's "2015 Part B Compliance Matrix" (Compliance Matrix). The Compliance Matrix is individualized for each State and includes scoring on Compliance Indicators and other compliance factors and a Compliance Score. The Compliance Matrix is further explained in a document, entitled "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act Part B in 2015: Entities with Determinations Based on Compliance" (HTDMD).

Although the Office of Special Education Programs (OSEP) is continuing to use both results data and compliance data in making determinations in 2015 for other States, the Department did not have sufficient results data to use when making 2015 determinations for the following entities: American Samoa, the BIE, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands. In making Part B determinations in 2015 for other States, OSEP used results data related to the participation of children with disabilities (CWD) on regular Statewide assessments, the participation and performance of CWD on the National Assessment of Educational Progress (NAEP), and exiting data on CWD who dropped out and CWD who graduated with a regular high school diploma, as reported by States under section 618 of the IDEA. In making the BIE's 2015 determination, OSEP was unable to consider any of the results elements for the BIE for several reasons. First, OSEP could not use data on regular Statewide assessments, because the BIE failed to provide FFY 2013 data on the participation rate for CWD on regular Statewide assessments. Second, OSEP could not use NAEP data in making the BIE's 2015 determination, because the BIE's NAEP data for School Year 2012-13 are not available at this time. Third, OSEP could not use exiting data in making the BIE's 2015 determination, because the BIE failed to provide FFY 2012 exiting data on CWD who dropped out and CWD who graduated with a regular high school diploma. Therefore, the BIE's 2015 determination was based only on compliance data.

You may access the results of OSEP’s review of the BIE’s SPP/APR and other relevant data by accessing the SPP/APR module using the BIE-specific log-on information at osep.grads360.org. When you access the BIE’s SPP/APR on the site, you will find, in Indicators 1 through 16, the OSEP Response to the indicator, and any actions that the BIE is required to take. The actions that the BIE is required to take are in two places: (1) any actions related to the correction of findings of noncompliance are in the “OSEP Response” section of the indicator; and (2) any other actions that the BIE is required to take are in the “Required Actions” section of the indicator. It is important for you to review the Introduction to the SPP/APR, which may also include an OSEP Response and/or Required Actions.

You will also find all of the following important documents saved as attachments to the Progress Page: (1) the BIE’s 2015 Part B Compliance Matrix; (2) the HTDMD document; (3) a spreadsheet entitled “2015 Data Rubric Part B,” which shows how OSEP calculated the BIE’s “Timely and Accurate State-Reported Data” score in the Compliance Matrix; (4) a document entitled “Dispute Resolution 2013-14,” which includes the IDEA section 618 data that OSEP used to calculate the BIE’s “Timely State Complaint Decisions” and “Timely Due Process Hearing Decisions” scores in the Compliance Matrix; and (5) a Data Display, which presents certain BIE-reported data in a transparent, user-friendly manner and is helpful for the public in getting a broader picture of the BIE’s performance in key areas.

As noted above and further explained in the enclosures to this letter, the Department has determined that the BIE needs intervention in implementing the requirements of Part B of the IDEA. The Department identifies an entity whose determination is based on compliance data only as needing intervention under IDEA Part B if its 2015 Part B Compliance Matrix Percentage is below 75%, and if the entity has either very low (below 50%) or not valid and reliable data for a Compliance Indicator, or Special Conditions for multiple years for failing to comply with key IDEA Part B requirements. The Department has imposed Special Conditions on the BIE’s last eight (FFYs 2007, 2008, 2009, 2010, 2011, 2012, 2013, and 2014) IDEA Part B grant awards, and the BIE has failed to meet the Special Conditions imposed on its FFY 2014 IDEA Part B grant award.

OSEP determined that the BIE has failed to complete the corrective actions contained in Section C of its Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan. Those corrective actions, which the BIE was required to complete under the Special Conditions imposed on its FFY 2014 IDEA Part B grant award, related to the BIE’s implementation of fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A), and the BIE’s compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5), respectively. The BIE must take the steps necessary to ensure that it can report compliance with these requirements.

The BIE also received a determination of “needs intervention” in 2012, 2013, and 2014, for its FFYs 2010, 2011, and 2012 SPP/APRs, and this is the fourth consecutive year that the BIE is receiving a determination of “needs intervention.” Under IDEA section 616(e)(2), if the Secretary determines a State to need intervention for three or more consecutive years, the Secretary must take one or more of the six enforcement actions identified in IDEA section 616(e)(2)(B) and may take, under IDEA section 616(e)(2)(A), one of the three enforcement actions identified in IDEA section 616(e)(1). Accordingly, under IDEA section 616(e)(2)(B)(i),

the Secretary is requiring the BIE to submit a corrective action plan, because the Secretary has determined that the BIE should be able to correct the problems that are the basis for its “needs intervention” determination within one year from the date of this determination letter, and other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time.

The BIE must submit a corrective action plan that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2015-2016 school year under Section C of the CAP, all of the Special Conditions that will be imposed on its FFY 2015 IDEA Part B grant award. For the reasons explained in the BIE’s FFY 2015 Special Conditions, the corrective action plan must address the steps the BIE will take to: (1) implement fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A); (2) demonstrate compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5); and (3) demonstrate compliance with the data reporting requirements under sections 612(a)(16)(D), 616(b)(2)(B) and 618 of the IDEA and 34 CFR § 300.160(f). The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the CAP for the 2014-2015 school year, due on July 31, 2015, as well as quarterly progress reports in accordance with the reporting and timeline requirements specified in the Special Conditions that OSEP will impose on the BIE’s FFY 2015 Part B grant award.

In 2015, States were required to submit a new SPP/APR, which included baseline data and measurable and rigorous targets for FFY 2013 through FFY 2018 for each indicator in the SPP/APR. In addition, under Indicator 17, States were required to submit a State Systemic Improvement Plan (SSIP) that included activities the State would implement to improve results for children with disabilities. OSEP has reviewed the BIE’s SPP/APR, including Phase I of the SSIP, and determined that it meets the requirements of IDEA section 616(b) to include measurable and rigorous targets, including targets for FFY 2018 that reflect improvement over the BIE’s baseline data. OSEP appreciates the BIE’s work on Phase I of its SSIP. This represents a significant effort to improve results for students with disabilities. We have carefully reviewed your submission and provided feedback during a recent conference call with the BIE. OSEP will continue to work with the BIE as it develops Phase II of the SSIP, due April 1, 2016.

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, 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 the BIE’s determination.

As required by IDEA section 616(e)(7), the BIE must notify the public within the BIE’s jurisdiction that the Secretary of Education has taken the above enforcement actions, including, at a minimum, by posting a public notice on the BIE’s Web site and distributing the notice to the media and through public agencies.

As a reminder, the BIE must report annually to the public, by posting on the BIE’s Web site, the performance of each school on the targets in the SPP/APR as soon as practicable, but no later than 120 days after the BIE’s submission of its FFY 2013 SPP/APR. In addition, the BIE must:

(1) review school performance against targets in the BIE’s SPP/APR; (2) determine if each school “meets the 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.

Further, the BIE must make its SPP/APR available to the public by posting it on the BIE’s Web site. Within the next several days, OSEP will be finalizing a State Profile for the BIE that: (1) will be accessible to the public; (2) will include links to a PDF of the BIE’s SPP/APR, including all of the BIE’s and OSEP’s attachments; and (3) the BIE may use to make its SPP/APR accessible to the public. We will provide you with the link to that profile when it is live.

OSEP appreciates the BIE’s efforts to improve results for children and youth with disabilities and looks forward to working with the 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 Lead, at 202-245-6755.

Sincerely,
/s/ Melody Musgrove

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

Enclosures

cc: State Director of Special Education