



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

June 28, 2016

Ann Marie Bledsoe Downes
Acting Director
Bureau of Indian Education
1849 C Street NW
Washington, D.C. 20240

Dear Acting Director Bledsoe Downes:

I am writing to advise you of the U. S. Department of Education's (Department) 2016 determination under section 616 of the *Individuals with Disabilities Education Act (IDEA)*. The Department has determined that the Bureau of Indian Education (the BIE) needs intervention in implementing the requirements of Part B of the *IDEA*. This determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2014 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

The BIE's 2016 determination is based on the data reflected in the BIE's "2016 Part B Compliance Matrix" (Compliance Matrix). 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 2016: Entities with Determinations Based on Compliance" (HTDMD Compliance Only).

Although OSEP is continuing to use both results data and compliance data in making determinations in 2016 for other States, the Department did not have sufficient results data to use when making 2016 determinations for the following entities: American Samoa, the Bureau of Indian Education, 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 2016 for other States, OSEP used compliance data and 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 2016 determination, OSEP did not have sufficient results data for the BIE for two reasons. First, OSEP could not use data related to regular Statewide assessments, because the BIE failed to provide FFY 2014 data on the participation rate for CWD on regular Statewide assessments. Second, OSEP could not use exiting data in making the BIE's 2016 determination, because the BIE's FFY 2013 exiting data on CWD who dropped out and CWD who graduated with a regular high school diploma were unavailable, given OSEP's suppression of the data to limit disclosure of personally identifiable information. Therefore, the BIE's 2016 determination was based only on compliance data, as it was in 2013, 2014, and 2015.

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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.

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 your entity-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 entity 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 Compliance Matrix;
- (2) the HTDMD Compliance Only document;
- (3) a spreadsheet entitled “2016 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 2014-15,” 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 entity-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, the BIE’s 2016 determination is Needs Intervention. The Department identifies an entity whose determination is based on compliance data only as needing intervention under IDEA Part B if its 2016 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 major factors contributing to the BIE’s 2016 Needs Intervention determination are: (1) the BIE’s 2016 Part B Compliance Matrix Percentage of 25%, which was based, in part, on the BIE’s low performance (63.34%) under Indicator 13 (secondary transition); and (2) the BIE’s longstanding noncompliance.

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 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. In its FFY 2014 SPP/APR, the BIE’s reported FFY 2014 data for Indicator 13 were 63.34%.

In addition, the Department has imposed Special Conditions on the BIE's last nine (FFYs 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, and 2015) IDEA Part B grant awards, and the BIE has failed to meet the Special Conditions imposed on its FFY 2015 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). Those corrective actions, which the BIE was required to complete under the Special Conditions imposed on its FFY 2015 IDEA Part B grant award, related to: (1) 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); (2) 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; and (3) the BIE's 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 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, 2014, and 2015 for its FFYs 2010, 2011, 2012, and 2013 SPP/APRs, and this is the fifth 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 CAP, 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 CAP that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2016-2017 school year under Section C of the CAP, all of the Special Conditions that will be imposed on its FFY 2016 IDEA Part B grant award. For the reasons explained in the BIE's FFY 2016 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); (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); and (4) demonstrate compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §§ 300.320(b) and 300.321(b). The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the CAP for the 2015-2016 school year, due on July 31, 2016, 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 2016 Part B grant award.

States were required to submit Phase II of the State Systemic Improvement Plan (SSIP) by April 1, 2016. OSEP appreciates the entity's ongoing work on its SSIP and its efforts to improve results for students with disabilities. We have carefully reviewed your submission and will

provide feedback in the upcoming weeks. Additionally, OSEP will continue to work with your entity as it develops Phase III of the SSIP, due April 3, 2017.

Further, the BIE must make its SPP/APR available to the public by posting it on its Web site. Within the next several days, OSEP will be finalizing a State Profile for your entity that:

- (1) will be accessible to the public;
- (2) includes links to a PDF of the entity's SPP/APR, including all of the entity'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 your entity 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/ Ruth E. Ryder

Ruth E. Ryder
Acting Director
Office of Special Education Programs

cc: BIE Director of Special Education