



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

03 - 1 1009

Honorable Janie Miller
Cabinet for Health and Family Services
Office of the Secretary
275 East Main Street, 5W-A
Frankfort, KY 40621-0001

Dear Secretary Miller:

Thank you for the timely submission of Kentucky's Federal fiscal year (FFY) 2007 Annual Performance Report (APR) under Part C of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to Kentucky's APR received on April 7, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined that, under IDEA sections 616(d) and 642, Kentucky needs intervention in meeting the requirements of Part C of IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2007 APR and revised SPP, other State-reported data, information obtained through the December 2008 verification visit, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) and 642 of the IDEA in 2009" for further details.

Specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for Kentucky are that the State did not report valid and reliable data for Indicator 1 and the State lacks a monitoring system to timely correct noncompliance.

For Indicator 1, the State's data were not valid and reliable because the State's timeliness standard under this indicator is a period of time after the service initiation date on the individualized family service plan (IFSP) and is not either the IFSP initiation date or a reasonable period of time from parental consent to Part C services on the IFSP. The State indicated it is revising its standard for the FFY 2008 APR, but that it was unable to revise its standard to reflect the correct measurement for its FFY 2007 data.

For Indicator 9, OSEP's April 10, 2009 verification visit letter concluded that the State's general supervision system is not reasonably designed to correct noncompliance. The State acknowledged in its FFY 2007 APR that its current monitoring system is "unable to efficiently and effectively assist in determining timely correction of noncompliance." Additionally, in its FFY 2007 APR, the State was not able to report correction of prior findings of noncompliance identified in FFY 2004 and FFY 2005. The State's failure to correct longstanding noncompliance raises serious questions about the effectiveness of the State's general supervision system. For these reasons, OSEP determined Kentucky needs intervention.

The enclosed table provides OSEP's analysis of the State's FFY 2007 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, the State's status in meeting its targets, whether the State's data

reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

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 SPP/APR Planning Calendar website at <http://spp-apr-calendar.rrfcnetwork.org/techassistance.html>. 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, your State must report annually to the public on the performance of each early intervention services program (EIS program) located in the State on the targets in the SPP, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642. In addition, your State must review EIS program performance against targets in the State’s SPP, determine if each EIS program ‘meets requirements,’ ‘needs assistance,’ ‘needs intervention,’ or ‘needs substantial intervention’ in implementing Part C of the IDEA, and inform each EIS program of its determination. For further information regarding these requirements, see the SPP/APR Calendar at <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>. Finally, as you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, “Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA,” OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States’ APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year’s noncompliance if the State’s current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year’s APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year’s APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>.

Pursuant to section 616(d)(2)(B) of the IDEA, 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 for Special Education and Rehabilitative Services to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Andrew J. Pepin, Delegated the Authority to Assume the Duties of Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, DC 20202-2600 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 Kentucky's efforts to improve results for infants and toddlers with disabilities and their families 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 Kimberly Mitchell, your OSEP State Contact, at 202-245-7453.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator