UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Robert Hoffmann
Secretary
Vermont Agency of Human Services
103 South Main Street
Waterbury, Vermont 05671-0204

JUN - 1 2009

Dear Secretary Hoffmann:

Thank you for the timely submission of Vermont's Federal fiscal year (FFY) 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to Vermont's APR and SPP 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, Vermont needs assistance 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, 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.

The specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for Vermont are the following: (1) for Indicator 9, the State reported 85% compliance with the timely correction of noncompliance requirements; and (2) for Indicator 14, the State reported 92.9% compliance with the timely and accurate data reporting requirements. Vermont also reported that four FFY 2005 findings of noncompliance remain uncorrected. For these reasons, we were unable to determine that Vermont met requirements for FFY 2007 under IDEA sections 616(d) and 642.

OSEP notes other areas that reflect a high level of performance, which included that Vermont reported valid and reliable data for all indicators and high levels of compliance for Indicators 1 (97% for timely service provision), 8A (100% for IFSP transition content), 8B (95% for LEA notification), 8C (97% for timely transition conferences), and correction for Indicators 7 (45-day timeline) and 8B.

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.

The State's determination for the FFY 2005 and FFY 2006 APRs was also needs assistance. In accordance with section 616(e)(1) of the IDEA, if a State is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions: (1) advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance; (2) direct the use of

State-level funds on the area or areas in which the State needs assistance; or (3) identify the State as a high-risk grantee and impose special conditions on the State's Part C grant award.

Pursuant to these requirements, the Secretary is advising the State of available sources of technical assistance related to Indicators 9 (identification and correction of noncompliance) and 14 (timely and accurate State reported data). 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. For the indicators listed above, your State must report with its FFY 2008 APR submission, due February 1, 2010, on: (1) the technical assistance sources from which the State received assistance; and (2) the actions the State took as a result of that technical assistance. The extent to which your State takes advantage of available technical assistance for these indicators may affect the actions OSEP takes under sections 616 and 642 should your State not be determined to meet requirements next year. We encourage Vermont to take advantage of available sources of technical assistance in other areas as well, particularly if the State is reporting low compliance data for an indicator.

As required by sections 616(e)(7) and 642, the State must notify the public that the Secretary of Education has taken the above enforcement action. This notification must be sufficient to notify the public within the State and may include such mechanisms as posting on the agency's website, distribution through the media and distribution through public agencies.

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/536.

OSEP is committed to supporting Vermont'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 Ginger Sheppard, your OSEP State Contact, at 202–245-7353.

Sincerely,

Patricia J. Guard

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator