



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

JUN - 3 2010

Honorable Kerri L. Briggs
State Superintendent
Office of the State Superintendent of Education
810 First Street, N.E.
9th Floor
Washington, D.C. 20002

Dear Superintendent Briggs:

Thank you for the timely submission of the District of Columbia's (D.C.'s) Federal fiscal year (FFY) 2008 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA).

The Department has determined that, under IDEA sections 616(d)(2)(A)(iii) and 642, D.C. needs intervention in implementing the requirements of Part C of the IDEA. The Department's determination is based on the totality of the State's data and information, including D.C.'s FFY 2008 APR and revised SPP, other State-reported data, information obtained through the November 2009 verification visit, D.C.'s submissions under the Special Conditions on D.C.'s FFY 2009 Part C grant, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) and 642 of the IDEA in 2010: Part C" for further details.

The specific factor affecting the determination by the Office of Special Education Programs (OSEP) of needs intervention for D.C. under Part C of the IDEA is that D.C. failed to report FFY 2008 data under Indicator 9 of its FFY 2008 APR regarding the requirements to timely correct findings of noncompliance in IDEA section 635(a)(10)(A) and 34 CFR §303.501. Under these provisions, the D.C. Office of the State Superintendent (D.C. OSSE), as the State-level Part C lead agency, must monitor all programs and activities (including early intervention service (EIS) programs and EIS providers) that are used to carry out Part C in D.C. to ensure compliance with Part C requirements, enforce obligations required by Part C, and correct any deficiencies identified through monitoring. D.C. OSSE utilizes EIS programs to implement the 45-day timeline requirements in Indicator 7 and EIS providers to implement the timely service provision requirements in Indicator 1. In its FFY 2008 APR, D.C. reported that, in FFY 2007, it neither monitored, nor issued any findings of noncompliance to, EIS programs and providers. Given the lack of FFY 2008 data on the timely correction of FFY 2007 findings in Indicator 9 of D.C.'s FFY 2008 APR, OSEP cannot determine whether and how effective D.C. was in timely correcting noncompliance identified in FFY 2007.

OSEP also considered the length of time and magnitude of D.C.'s failure to meet the identification and timely correction requirements in Indicator 9. The timely correction requirements in Indicator 9 are also the subject of Special Conditions on D.C.'s FFYs 2008 and 2009 Part C grant awards and the August 1, 2009 Corrective Action Plan (CAP) that was required as a result of D.C. receiving a "needs intervention" determination in OSEP's June 1, 2009 letter. Under the CAP and the FFY 2009 Special Conditions, D.C. was required to submit, and submitted, on May 14, 2010, a final Special Conditions progress report. The FFY 2009

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Special Conditions final report indicated that D.C. OSSE had issued its first three Part C findings in FFY 2008 on April 30, 2009, and an additional finding on December 7, 2009, all in the area of 45-day timeline. D.C. OSSE did not report any findings against EIS providers for the timely service provision requirements in Indicator 1. For these reasons, OSEP has determined D.C. needs intervention in implementing the requirements of Part C of the IDEA.

Though not a basis for our determination, we also note that due to problems in D.C.'s fiscal and program accountability, management systems, and related areas, the Department designated D.C. a "high risk" grantee under all grants received from the Department. D.C. continues to work on the Department's fiscal and programmatic concerns, and its FFY 2010 grant award will again be subject to Department-wide Special Conditions.

The enclosed table provides OSEP's analysis of D.C.'s FFY 2008 APR and revised SPP, and identifies by indicator OSEP's review of any revisions made by D.C. to its targets, improvement activities (timelines and resources), and baseline data in D.C.'s SPP. The table also identifies, by indicator: (1) the State's reported FFY 2008 data; (2) whether such data met the State's FFY 2008 targets and reflect progress or slippage from prior year's data; (3) if applicable, that the State's data are not valid and reliable; and (4) whether the State corrected findings of noncompliance.

Under IDEA sections 616(e)(2) and 642, 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). In addition, the Secretary may, under IDEA section 616(e)(2)(A), take one of the three enforcement actions identified in IDEA section 616(e)(1). D.C. also received a determination of needs intervention for FFYs 2005, 2006, and 2007, and this is the fourth consecutive year that D.C. is receiving a determination of needs intervention. Accordingly, under IDEA sections 616(e)(2) and 642, the Secretary is requiring D.C. to submit a CAP and to utilize available sources of technical assistance.

The Secretary is requiring D.C. to submit a CAP under IDEA section 616(e)(2)(B)(i) because the Secretary has determined that D.C. should be able to correct the problem that is the basis for its "needs intervention" determination by February 1, 2011 (which is within one year from this determination letter), and that other enforcement remedies identified in IDEA section 616(e)(2)(B) are not appropriate at this time. D.C., in its May 14, 2010 final progress report, provided a list of findings identified and corrected in FFY 2008. As a result, the Secretary has determined that D.C. should be able to submit with its FFY 2009 APR valid and reliable data for Indicator 9.

D.C. must submit a CAP by August 1, 2010, that ensures that it can submit with its FFY 2009 IDEA Part C APR valid and reliable data for Indicator 9. D.C.'s CAP must include the specific actions (including utilizing available technical assistance sources) and timelines by which it will ensure that it will submit, with the State's FFY 2009 APR, due February 1, 2011, valid and reliable data from FFY 2009 for Indicator 9 (i.e., timely correction of findings identified in FFY 2008). The CAP must include provisions to ensure the following information is submitted to the Department by October 1, 2010: (1) a list of all findings issued in FFY 2008, 2009 and 2010; (2) a copy of all monitoring reports issued to EIS providers and programs for any finding of noncompliance with Part C requirements identified in FFY 2008, 2009 and 2010, including findings of noncompliance with the requirements of Indicators 1, 7, and 8; and (3) a summary of the data that D.C. requires of EIS programs and providers and that it reviews to determine that

the EIS program or provider has demonstrated correction of the finding, consistent with OSEP Memorandum, 09-02, dated October 17, 2008.

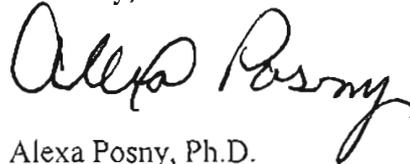
As required by IDEA sections 616(e)(7) and 642, D.C. must notify the public that the Secretary of Education has taken the above enforcement action, including, at a minimum, by posting a public notice on the State lead agency's website and distributing the notice to the media and through public agencies.

As you know, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642, D.C. must report annually to the public on the performance of each EIS program located in D.C. on the targets under Indicator 7 in its SPP and by posting your FFY 2008 APR on the State's web-site and making it available to the public, consistent with IDEA sections 616(b)(2)(C)(ii)(I) and 642. In addition, D.C. must, for Indicator 7: (1) review EIS program performance against targets in the State's SPP; (2) determine if each EIS program 'meets requirements' of IDEA Part C, or 'needs assistance,' 'needs intervention,' or 'needs substantial intervention' in implementing Part C of the IDEA; (3) take appropriate enforcement action; and (4) inform each EIS program of its determination. For further information regarding these requirements, see the SPP/APR Calendar at <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>. Finally, if your State included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that your SPP is updated accordingly and that the updated SPP is posted on the State's web-site and made available to the public, consistent with IDEA sections 616(b)(2)(C)(ii)(I) and 642.

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 an appropriate Department official, as designated by the Department, to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to "IDEA Determination Appeal", Office of the Assistant Secretary for the Office of Special Education and Rehabilitative Services, United States Department of Education, 400 Maryland Avenue SW, 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 State's determination.

OSEP is committed to supporting D.C.'s efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with D.C. over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Jill Harris, the OSEP State Contact for D.C., at 202-245-7372.

Sincerely,



Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator