



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

JUR - 37510

Honorable Clyde L. Reese, III, Esq.
Commissioner
Georgia Department of Community Health
2 Peachtree Street, NW
Suite 15-470
Atlanta, GA 30303-3142

Dear Commissioner Reese:

Thank you for the timely submission of Georgia'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, Georgia 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 Georgia's FFY 2008 APR and revised SPP, other State-reported data, the Office of Special Education Programs' (OSEP's) February 23, 2009 verification visit letter, 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 OSEP of needs intervention for Georgia under Part C of the IDEA is that Georgia failed to report data under Indicator 9 in 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 Georgia Department of Community Health (DCH), as the 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 Georgia to ensure compliance with Part C requirements, enforce obligations required by Part C, and correct any deficiencies identified through monitoring. In its FFY 2008 APR, Georgia reported that, in FFY 2007, the State neither identified noncompliance by, nor issued any findings of noncompliance to, EIS programs and providers. OSEP's February 23, 2009 verification visit letter to the prior lead agency concluded that Georgia did not have a general supervision system that was reasonably designed to identify and timely correct noncompliance with Part C requirements. For these reasons, OSEP has determined that Georgia needs intervention in implementing the requirements of Part C of the IDEA.

The enclosed table provides OSEP's analysis of Georgia's FFY 2008 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by Georgia to its targets, improvement activities (timelines and resources), and baseline data in Georgia'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.

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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.

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 may take certain actions referenced in IDEA sections 616(e)(2)(A) and 642 and must take one or more of the six enforcement actions identified in IDEA section 616(e)(2)(B) and may, under IDEA section 616(e)(2)(A) take one of the three enforcement actions identified in IDEA section 616(e)(1). Georgia also received a determination of needs intervention for FFYs 2005 and 2006, and this is the third consecutive year that Georgia is receiving a determination of needs intervention. Accordingly, under IDEA sections 616(e)(2) and 642, the Secretary is requiring Georgia to submit a corrective action plan (CAP) and to utilize available sources of technical assistance.

The Secretary is requiring Georgia to submit a CAP because the Secretary has determined that Georgia 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. Georgia, in response to OSEP’s February 23, 2009 verification visit letter, submitted with its FFY 2008 APR, a list of findings identified and corrected in FFY 2008. As a result, the Secretary has determined that Georgia should be able to submit with its FFY 2009 APR valid and reliable data for Indicator 9.

Georgia 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 on timely correction of findings identified in FFY 2008 and corrected in FFY 2009 (including verification of correction consistent with OSEP Memorandum 09-02, dated October 17, 2008. Georgia’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 for Georgia to submit by October 1, 2010: (1) a list of findings identified by Georgia DCH in FFY 2008 and 2009; (2) a copy of three monitoring reports, letters, or other documents in which Georgia DCH notified an EIS program or provider of a finding of noncompliance; and (3) a summary of the data that Georgia 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 Memo 09-02.

As required by IDEA sections 616(e)(7) and 642, Georgia 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. In addition, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642, Georgia must report annually to the public on the performance of each early intervention services program (EIS program) located in Georgia on the targets in its SPP and by posting your FFY 2008 APR on the State’s website and making it available to the public, consistent with IDEA sections 616(b)(2)(C)(ii)(I) and 642. Also, Georgia must: (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.rrfnetwork.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 website 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 OSERS, 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 Georgia's efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with Georgia over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Jennifer Simpson, your OSEP State Contact for Georgia, at 202-245-6042.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive, flowing style.

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

Enclosures

cc: Part C Coordinator