



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

Honorable John Auerbach  
Commissioner  
Massachusetts Department of Public Health  
250 Washington Street, 6<sup>th</sup> Floor  
Boston, Massachusetts 02108-4619

SEP 16 2010

Dear Commissioner Auerbach:

This letter is in response to the June 14, and July 27, 2010, letters from the Massachusetts Department of Public Health (MDPH) appealing the determination of the U.S. Department of Education (the Department) under sections 616(d) and 642 of the Individuals with Disabilities Education Act (IDEA). In its June 3, 2010, response to MDPH's Federal fiscal year (FFY) 2008 Annual Performance Report (APR)/State Performance Plan (SPP), the Department determined that Massachusetts needed intervention in meeting the requirements of Part C of the IDEA. Part C of the IDEA provides funds to States to assist them in making available a comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for eligible infants and toddlers with disabilities and their families.

Pursuant to sections 616(d)(2)(B) and 642 of the IDEA, the Department provided MDPH the opportunity to demonstrate why the Department should change its determination. As set forth in June 3, 2010, letter from the Office of Special Education Programs (OSEP), the specific factor affecting OSEP's determination of needs intervention for Massachusetts was the State's failure to provide valid and reliable data for Indicator 8B. Massachusetts acknowledged in its APR that its FFY 2008 data for Indicator 8B did not reflect the measurement for that indicator. For toddlers with disabilities who are exiting the Part C program at age three and who are potentially eligible for services under Part B of the IDEA, Indicator 8B requires a State to report on the percentage of toddlers with disabilities for whom the lead agency has provided child find notification to the appropriate local educational agency (LEA) where the toddler resides. As noted in OSEP's June 3, 2010 letter, without valid and reliable data for this critical indicator, Massachusetts was not able to identify and timely correct noncompliance with these LEA notification requirements. Additionally, OSEP and the public were unable to determine whether Massachusetts was in compliance, in FFY 2008, with the requirement to ensure that LEA notification was provided as part of timely transition planning for toddlers exiting the Part C program.

MDPH noted in its June 14, 2010, appeal letter with respect to APR Indicator 8B that Massachusetts "is able to provide data to substantiate that valid and reliable data is being collected" and could submit "additional data to supplement its FFY 2008 APR data." By a letter sent July 2010, OSEP acknowledged receipt of MDPH's June 14, 2010, letter and requested that Massachusetts submit any updated or revised FFY 2008 APR data for Indicator 8B. Massachusetts submitted these data in its July 26, 2010 letter (see revised data for 8B in the enclosure).

The Department has reviewed Massachusetts' revised FFY 2008 APR data for Indicator 8B and has changed its determination under Part C of the IDEA from "needs intervention" to "meets

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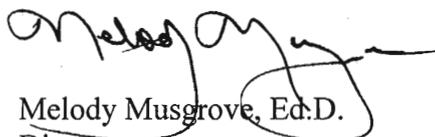
requirements” because: (1) Massachusetts provided valid and reliable FFY 2008 data reflecting the measurement for each indicator; and (2) Massachusetts reported high levels of compliance or correction of previously identified findings of noncompliance for Indicators 1, 7, 8A, 8B, 8C, 9, 10, 11, and 14. The Department has concluded that Massachusetts’ revised FFY 2008 APR data for Indicator 8B are valid and reliable data that reflect the correct measurement for Indicator 8B and such data reflect a high level of compliance for that indicator. Based upon this revised data submitted as part of the timely appeal, the Department is able to determine that Massachusetts meets requirements for FFY 2008, thereby resolving Massachusetts’ June 14, 2010 appeal and a hearing is unnecessary.

I am attaching to this letter the revised FFY 2008 APR response table reflecting both Massachusetts’ revised FFY 2008 APR Indicator 8B data and the Department’s analysis and conclusions under Indicator 8B. Massachusetts will need to update its APR/SPP on MDPH's website to reflect the revised FFY 2008 APR data for Indicator 8B.

As you know, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642, Massachusetts 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. In addition, Massachusetts must: (1) review each EIS program’s performance against targets in the State’s SPP; (2) determine if each EIS program "meets requirements" of 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 Massachusetts included revisions to baseline, targets or improvement activities in its APR submission, and OSEP accepted those revisions, please ensure that your SPP is updated accordingly and that the updated SPP is posted on MDPH's website and made available to the public, consistent with IDEA sections 616(d)(2)(C)(ii)(I) and 642.

I appreciate the time and effort that you and your staff have devoted to the APR process as we work together to improve early intervention results for infants and toddlers with disabilities. If you have any additional questions, please contact Ruth Ryder at 202-245-7513.

Sincerely,



Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs

Enclosure

cc: Ron Benham, Part C Coordinator