



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

Honorable Carol K. Olson  
Executive Director  
Department of Human Services  
State Capitol, Judicial Wing  
600 East Boulevard Avenue  
Department 325  
Bismarck, North Dakota 58505-0520

SEP - 2 2011

Dear Director Olson:

Thank you for the submission of North Dakota's Federal fiscal year (FFY) 2009 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA).

North Dakota's submission of its FFY 2009 IDEA Part C APR and SPP was not timely. Although each State that receives funds under Part C of the IDEA was required to submit its APR and revised SPP by February 1, 2011, North Dakota did not submit the required documents to the Office of Special Education Programs (OSEP) until June 15, 2011. Under 34 CFR §80.40(b)(1), North Dakota must submit its FFY 2010 APR/SPP by the due date of February 1, 2012.

Due to North Dakota's late submission of its APR and SPP, OSEP is taking enforcement action under sections 616(g) and 642 of the IDEA. Specifically, we are advising North Dakota of technical assistance available to ensure a timely submission of its next year's APR. 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 Right IDEA" Web site at: <http://therightidea.tadnet.org/technicalassistance>. You will be directed to a list of indicators and your State should specifically review the resources and investigative questions available under Indicator 14, particularly those questions that relate to the timeliness of the State's data reports, which are located at

[http://therightidea.tadnet.org/assets/browse\\_by\\_folder?folder=171&folder\\_name=14%3A+State+Reported+Data](http://therightidea.tadnet.org/assets/browse_by_folder?folder=171&folder_name=14%3A+State+Reported+Data). The site contains resources for other specific indicators and provides a list of centers, documents, Web seminars and other sources of relevant technical assistance for each indicator.

Your State must report with its FFY 2010 APR submission, due February 1, 2012, 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 may affect the actions OSEP takes under sections 616 and 642 next year. We encourage North Dakota 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.

The Department has determined that, under IDEA sections 616(d) and 642, North Dakota 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 2009 APR and revised SPP (including targets and improvement activities for each year through FFY 2012), 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 2011: Part C" for further details.

The specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for North Dakota were that North Dakota's FFY 2009 data for: (1) Indicator 1, which measures the timely provision of services, reflect 92.16% compliance; (2) Indicator 7, which measures the 45-day timeline requirement, reflect 87.7% compliance; (3) Indicator 8A, which measures the transition plan requirement, reflect 50% compliance; (4) Indicator 8B, which measures the notification to the local educational agency requirement, reflect 67% compliance; (5) Indicator 8C, which measures the timely transition conference requirement, reflect 73% compliance; (6) Indicator 9, which measures the timely correction of findings of noncompliance, reflect 56% compliance; and (7) Indicator 14, which measures timely and accurate data reporting, reflect 83% compliance. For these reasons, we were unable to determine that North Dakota met requirements for FFY 2009 under IDEA sections 616(d) and 642.

The enclosed table provides OSEP's analysis of the State's FFY 2009 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: (1) the State's reported FFY 2009 data; (2) whether such data met the State's FFY 2009 targets and reflect progress or slippage from the 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.

As you know, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642, 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. In addition, your State 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 actions; and (4) inform each EIS program of its determination. For further information regarding these requirements, see "The Right IDEA" Web site at: <http://therightidea.tadnet.org/determinations>. Finally, please ensure that your updated SPP is posted on the State lead agency's Web site and made available to the public, consistent with IDEA sections 616(b)(2)(C)(ii)(I) and 642.

OSEP is committed to supporting North Dakota'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 Susan Kauffman, your OSEP State Contact, at 202-245-6432.

Sincerely,



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

Enclosures

cc: Part C Coordinator