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

JUN 2 0 2011

Honorable Nirav R. Shah, M.D., M.P.H.
Commissioner of Health
New York State Department of Health
Corning Tower, Empire State Plaza, 14th Floor
Albany, New York 12237

Dear Commissioner Shah:

Thank you for the timely submission of New York'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).

The Department has determined that, under IDEA sections 616(d)(2)(A)(ii) and 642, New York needs assistance in implementing 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 New York were that New York's FFY 2009 data for: (1) Indicator 1, which measures the timely provision of services, reflect 76.2% compliance; (2) Indicator 7, which measures the 45-day timeline requirement, reflect 83.5% compliance; (3) Indicator 8A, which measures the transition plan requirement, reflect 90.2% compliance; (4) Indicator 8B, which measures the notification to the local educational agency requirement, reflect 87.7% compliance; (5) Indicator 8C, which measures the timely transition conference requirement, reflect 75.1% compliance; and (6) Indicator 9, which measures the timely correction of findings of noncompliance, reflect 75.2% compliance. For these reasons, we were unable to determine that New York met requirements for FFY 2009 under IDEA sections 616(d) and 642.

OSEP notes other areas that reflect a high level of performance, including that New York reported valid and reliable data for all indicators and a high level of compliance for Indicators 10 (100%), 11 (100%), and 14 (96.4%). We hope that New York will be able to demonstrate that it meets requirements with its FFY 2010 APR.

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.

The State's determinations for FFYs 2005, 2006, 2007 and 2008 were also needs assistance. In accordance with sections 616(e)(1) and 642 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 Indicator 1, which measures the timely provision of services; Indicator 7, which measures the 45-day timeline requirement; Indicator 8A, which measures the transition plan requirement; Indicator 8B, which measures the notification to the local educational agency requirement; Indicator 8C, which measures the timely transition conference requirement; and Indicator 9, which measures the timely correction of findings of noncompliance. 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. Click on specific indicators for a list of centers, documents, Web seminars and other sources of relevant technical assistance for that indicator. For the indicator(s) listed above, 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 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 New York 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 IDEA 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 Web site, distribution through the media and distribution through public agencies.

As you know, pursuant to IDEA sections 616(b)(2)(C)(ii)(l) 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)(l) and 642.

OSEP is committed to supporting New York'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 Hillary Tabor, your OSEP State Contact, at 202-245-7813.

Sincerely,

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

Enclosures

cc: Part C Coordinator