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

JUL 01 2013

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) 2011 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA).

The U. S. Department of Education (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 2011 APR and revised SPP, other State-reported data, and other publicly available information. The State's data are reflected in a new 2013 Compliance Matrix (Compliance Matrix), described below.

Your State's determination is based on the data reflected in the enclosed "2013 Part C Compliance Matrix" that the Office of Special Education Programs (OSEP) completed based on the State's data. Also enclosed is the document entitled, "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2013: Part C," which provides a detailed description of how OSEP evaluated States' data using the Compliance Matrix. The Compliance Matrix reflects the compliance data summarized in the State's FFY 2011 APR/SPP Response Table. The specific reason for New York's determination of "needs assistance" is that while New York's Compliance Matrix percentage, at 66.67%, was below the criterion of 75%, the State did not also meet any of the three additional criteria for a determination of "needs intervention" (which are described in the enclosed "How the Department Made Determinations under Sections 616(d)(2) and 642 of the Individuals with Disabilities Education Act in 2013: Part C").

The enclosed New York FFY 2011 Response Table provides OSEP's analysis of the State's FFY 2011 APR and revised SPP. The Response Table includes: (1) the Indicators; (2) the Results Data Summary; (3) the Results Data Summary Notes; (4) the Compliance Data Summary; and (5) the Compliance Data Summary Notes. In the Results Data Summary and the Compliance Data Summary, the Response Table sets forth, by indicator, the State's: (1) reported FFY 2010 data; (2) reported FFY 2011 data; and (3) FFY 2011 target(s), in a concise "dashboard" format. The Compliance Data Summary also includes a column that reflects the number of findings of noncompliance identified by the State in FFY 2010, and the correction of those findings. In the

"Notes" sections following the Results Data Summary and the Compliance Data Summary, OSEP has provided more detailed information regarding specific indicators, including, where appropriate, information regarding: (1) the State's correction of any remaining findings of noncompliance identified in years prior to FFY 2010; (2) any issues with the validity and reliability of the data that the State reported; and (3) any required actions. It is important that the State read the information for each indicator in the Results Data Summary and the Compliance Data Summary together with any Notes for that indicator.

The State's determinations for FFYs 2005, 2006, 2007, 2008, 2009, and 2010 were also needs assistance. In accordance with sections 616(e)(1) and 642 of the IDEA and 34 CFR §303.704(a), 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 the specific SPP/APR compliance indicator(s) for which the State received a score of less than two points on the attached Compliance Matrix. 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. Your State must report with its FFY 2012 APR submission, due February 1, 2014, 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 section 616 should your State not be determined to meet requirements next year. While the State's 2013 determination of needs assistance was based on the Compliance Matrix, we encourage New York to take advantage of available sources of technical assistance to also improve outcomes for children and youth with disabilities and their families.

As required by section 616(e)(7) of the IDEA and 34 CFR §303.706, the State must notify the public within the State that the Secretary of Education has taken the above enforcement action, including, at a minimum, by posting a public notice on the agency's Web site and distributing the notice to the media and through public agencies.

Pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642 and 34 CFR §303.702(b)(1)(A), 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 as soon as practicable, but no later than 120 days after the State's submission of its FFY 2011 APR. 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 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. *See*, IDEA sections 616(a)(1)(C) and 642 and 34 CFR §303.700(a)(2) and (3). 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(d)(2)(C)(ii)(I) and 642 and 34 CFR §303.702(b)(1).

As you know, OSEP is redesigning its accountability system to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Section 616 of the IDEA requires that the primary focus of IDEA monitoring must be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements. The monitoring system implemented between 2004 and 2012 placed a heavy emphasis on compliance and we are moving towards a more balanced approach that considers results as well as compliance.

OSEP is committed to several key principles to guide the development of a results-driven accountability system, including transparency, stakeholder involvement, and burden reduction. In support of these principles, we are taking a number of steps. First, we solicited input from special education, early intervention, assessment and early childhood outcomes experts, and gathered input from the public through conference calls, a blog on the Department's website, and through multiple meetings and conferences. Next, OSEP published for comment a new SPP/APR package for FFYs 2013 through 2018 that significantly reduces data collection and reporting burden and shifts the focus of the SPP/APR to improving educational results and functional outcomes for children with disabilities. Third, as explained above, this year OSEP has incorporated compliance data into a matrix that is helpful in simultaneously processing multiple sets of data, and has used this matrix in making determinations. This Compliance Matrix includes a color-coded system (green, yellow, red) which provides a visual representation of State performance. Finally, as we move forward in using results data in determinations, OSEP will provide the public with an opportunity to comment on how we will use results when making determinations in 2014 under IDEA section 616.

OSEP recognizes the State'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 as we continue our important work of improving the lives of children with disabilities and their families. 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

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

Enclosures

cc: Part C Coordinator