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

Honorable Dan Wuori, Ph.D.
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South Carolina First Steps to School Readiness
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JUL - 1 2013

Dear Dr. Wuori:

Thank you for the timely submission of South Carolina'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)(iii) and 642, South Carolina "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 the State's FFY 2011 APR and revised SPP, other State-reported data, and other publicly available information. The totality of the State's data is reflected in a new Compliance Matrix (described below).

South Carolina's determination is based on the data reflected in the enclosed "2013 Part C Compliance Matrix" that 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 South Carolina's data using the Compliance Matrix. The 2013 Compliance Matrix reflects the compliance data summarized in the State's FFY 2011 APR/SPP Response Table.

The enclosed South Carolina 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 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 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.

Determination and Enforcement Action

As further explained in the enclosed documents: "2013 Part C Compliance Matrix," "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2013: Part C," and the South Carolina Part C FFY 2011 SPP/APR Response Table, the specific reasons for the State's determination of "needs intervention" are that: (1) the State's Compliance Matrix percentage, at 44.44%, is below the criterion of 75%; (2) the State's FFY 2011 data for Indicator 7 (Part C's 45-day timeline), reported at 22%, reflect a very low level of compliance; (3) the State provided no FFY 2011 data for Indicator 9 (timely correction of FFY 2010 findings of noncompliance); and (4) the Department has imposed Special Conditions on the last five (FFYs 2008, 2009, 2010, 2011, and 2012) IDEA Part C grant awards for South Carolina, and those Special Conditions are in effect at the time of the State's 2013 determination.

Indicator 7 of the FFY 2011 APR measures the timeliness of ensuring that children referred to Part C receive, within 45 days of referral, initial evaluations, assessments, and individualized family service plan (IFSP) meetings, as required by 34 CFR §303.310 (45-day timeline). OSEP's March 9, 2012 and January 10, 2013 letters raised concerns about whether the State was monitoring to determine whether children referred to Part C were receiving comprehensive evaluations and assessments, as required by 34 CFR §303.321. The State reported in its FFY 2011 APR that its data of 22% were low because it only included those children for whom the State was able to verify that it had conducted the initial evaluation, assessment and IFSP meeting in accordance with 34 CFR §§303.310 and 303.321. The State further explained in the FFY 2011 APR that additional children received an evaluation and initial IFSP meeting within the 45-day timeline, but the State was not able to verify if those children received an initial child and family assessment. The State's FFY 2011 data of 22% reflect a very low level of compliance with the IDEA Part C 45-day timeline requirements.

Indicator 9 of the FFY 2011 APR measures the timely correction of findings of noncompliance identified in FFY 2010 (July 1, 2010 to June 30, 2011), as required by IDEA section 635(a)(10)(A) and 34 CFR §303.501 (which is now 34 CFR §303.120 in the Federal regulations published on September 28, 2011). Under IDEA section 635(a)(10)(A) and 34 CFR §303.120, South Carolina must monitor all programs and activities (including early intervention service (EIS) programs and EIS providers) that are used to carry out Part C in South Carolina to ensure compliance with Part C requirements, enforce obligations required by Part C, and timely correct any deficiencies identified through monitoring. The State reported in its FFY 2011 APR that it did not make findings of noncompliance in FFY 2010, even though the other State-reported compliance data indicated noncompliance for FFY 2010.

The State's lack of monitoring and timely correction data has been an area of longstanding noncompliance. The State's failure to report Indicator 9 data in its APR was also the basis of the Special Conditions for multiple years of South Carolina's IDEA Part C grants. Given the lack of any timely correction data for FFY 2011, OSEP and the public cannot determine the extent to which the State is effective in ensuring the timely correction of noncompliance with Part C requirements, as required by 34 CFR §303.120.

Pursuant to sections 616(d)(2)(B) and 642 of the IDEA and 34 CFR §303.703(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 the Assistant Secretary to demonstrate

why the Department should change the State's determination. To request a hearing, submit a letter to Michael K. Yudin, Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services, United States Department of Education, 400 Maryland Avenue S.W., 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.

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 must take one or more of the six enforcement actions identified in IDEA sections 616(e)(2)(B) and 642 and may take, under IDEA sections 616(e)(2)(A) and 642, one of the three enforcement actions identified in IDEA section 616(e)(1). South Carolina also received a determination of "needs intervention" for FFYs 2009 and 2010, and this is the third consecutive year that South Carolina is receiving a determination of "needs intervention." Accordingly, under IDEA sections 616(e)(2) and 642, the Secretary is requiring South Carolina to submit a corrective action plan (CAP) and to utilize available sources of technical assistance. The Secretary is requiring South Carolina to submit a CAP because the Secretary has determined that South Carolina should be able to correct the problems that are the basis for its "needs intervention" determination by February 1, 2014 (which is within one year from this determination letter).

South Carolina must submit a CAP by August 15, 2013 that ensures that it can submit, with its FFY 2012 IDEA Part C APR, data showing compliance for Indicator 7, and valid and reliable FFY 2012 data for Indicator 9 (regarding the timely correction of findings of noncompliance identified in FFY 2011). The CAP must include the specific actions (including utilizing available technical assistance sources, see below) it will take to ensure that it will submit, with the State's FFY 2012 APR due February 1, 2014, data showing compliance for Indicator 7, and valid and reliable FFY 2012 data for Indicator 9, and the timelines for those actions.

The CAP must set forth:

(1) The specific steps that the State will take to ensure that it will be able to provide in its FFY 2012 APR, due February 1, 2014, FFY 2012 data for:

   a. Indicator 7 that reflects compliance; the State must specifically ensure that its Indicator 7 data reflect compliance with the requirements that children referred to Part C receive comprehensive evaluations and child and family assessments within the 45-day timeline in 34 CFR §§303.310 and 303.321; and

   b. Indicator 9 that is valid and reliable and reflects compliance with the timely correction requirements in 34 CFR 303.120.

(2) The specific timelines for completing each of the steps identified in each part of (1); and

(3) That the State will provide OSEP with a report by October 31, 2013 regarding the State's progress in implementing each of those steps according to the specified timelines.

As noted above, the CAP must reference how the State is utilizing available technical assistance sources. 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 Indicators 7 and 9 for a list of centers, documents, Web seminars and other sources of relevant technical assistance for those respective indicators.

As required by sections 616(e)(7) and 642 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 actions, 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.

Conclusion

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 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" website 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 Web site, 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 by States, 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) that provides a visual representation of a State's performance to improve transparency in how OSEP presents its data analysis. 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 section 616.

OSEP recognizes South Carolina's efforts to improve results for children and youth with disabilities 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 Brenda Wilkins, your OSEP State Contact, at 202-245-6920.

Sincerely,

Melody Musgrove

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

Enclosures

cc: Part C Coordinator