



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

SEP 13 2012

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**COMMISSIONER
OF EDUCATION**

Honorable John King
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Commissioner King:

This letter is in response to the July 13, 2012 appeal by the New York State Education Department (NYSED) of the U.S. Department of Education's (the Department's) determination under section 616(d) of the Individuals with Disabilities Education Act (IDEA). The Department concluded in the June 28, 2012 response to NYSED's Federal fiscal year 2010 (FFY 2010) Annual Performance Report (APR)/State Performance Plan (SPP) that NYSED needed intervention in meeting the requirements of Part B of the IDEA. The basis for this determination was that the APR indicated that the State had not provided valid and reliable information to the Department under Indicator 4B. Indicator 4B requires States to report on the percent of districts that have: (a) a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. For the FFY 2010 APR, the State was to have performed the Indicator 4B analysis on data from school year 2009-2010.

NYSED submitted additional information and data on July 13, 2012 and August 10, 2012 related to Indicator 4B including: (1) documentation of data calculated using an acceptable methodology for districts identified with significant discrepancies in FFY 2010 (based on 2009-2010 data); (2) letters issued to districts identified with significant discrepancies to document that policy, procedure, and practice reviews were conducted during FFY 2010 as required by 34 CFR §300.170(b); (3) copies of Corrective Action Plans (CAPs) documenting when districts were required to revise policies, procedures, or practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards; and (4) a revised FFY 2010 SPP/APR which provides the State's definition of significant discrepancy that was used for FFY 2010 data, describes the State's process for calculating significant discrepancy in FFY 2010, and reports FFY 2010 data based on the required measurement to demonstrate valid and reliable data for Indicator 4B. The State also has posted to its Web site its revised SPP and revised APR, which are consistent with the information submitted to OSEP in July and August.

The Department reviewed the State's supplemental submission of data and information, including NYSED's revised APR and revised SPP, and has changed NYSED's 2012 determination under Part B of the IDEA from "needs intervention" to "needs assistance." Our determination is based on the totality of the State's data and information including the State's FFY 2010 revised APR and revised SPP, the July and August submissions to OSEP, other State-reported data, and other publicly available information. See the enclosure entitled "How the

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Department Made Determinations under Section 616(d) of the IDEA in 2012: Part B” for further details.

The specific factors affecting our determination of needs assistance for New York were that: (1) New York’s FFY 2010 data for Indicator 13, which measures compliance with secondary transition requirements, reflect 79% compliance, and the State did not report that it corrected all FFY 2009 findings of noncompliance; (2) New York’s FFY 2010 data for Indicator 15, which measures timely correction of noncompliance, reflect 87% compliance; and (3) New York’s FFY 2010 data for Indicator 17, which measures the timeliness of impartial due process hearing decisions, reflect 84% compliance. For these reasons, we are unable to determine that New York met requirements for FFY 2010 under IDEA section 616(d).

We note other areas that reflect a high level of performance, including that the State reported valid and reliable data for all indicators and a high level of compliance for Indicators 4B (1.3%), 9 (0.9%), 10 (0.9%), 16 (100%), and 20 (97.73%). We hope that New York will be able to demonstrate that it meets requirements in its FFY 2011 APR.

The State’s determinations for FFYs 2005, 2006, 2007, 2008, and 2009 were also needs assistance. In accordance with section 616(e)(1) of the IDEA and 34 CFR §300.604(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 B grant award.

Pursuant to these requirements, we are advising the State of available sources of technical assistance related to Indicator 13, secondary transition requirements, Indicator 15, timely correction of noncompliance, and Indicator 17, timely due process hearing decisions. 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 in the first sentence of this paragraph, your State must report with its FFY 2011 APR submission, due February 1, 2013, 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. 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 section 616(e)(7) of the IDEA and 34 CFR §300.606, 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.

As you know, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A), your State must report annually to the public on the performance of each local educational agency (LEA) located in the State on the targets in the SPP as soon as practicable, but no later than June 1, 2012. In addition, your State must: (1) review LEA performance against targets in the State's SPP; (2) determine if each LEA "meets requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA; (3) take appropriate enforcement action; and (4) inform each LEA of its determination. 34 CFR §300.600(a)(2) and (3). For further information regarding these requirements, see "The Right IDEA" Web site at: <http://therightidea.tadnet.org/determinations>.

Enclosed with this letter is the revised OSEP FFY 2010 APR Response Table reflecting both your latest submissions and the Department's analysis and conclusions. The enclosed table provides OSEP's analysis of the State's FFY 2010 revised 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 2010 data; (2) whether such data met the State's FFY 2010 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.

I appreciate the time and energy that you and your staff have devoted to the APR process as we work together to improve educational outcomes for children with disabilities. If you have any additional questions, please contact Gregg Corr at 202-245-7309.

Sincerely,



Michael K. Yudin
Acting Assistant Secretary

Enclosures

cc: State Director of Education