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

JUL 0 1 2013

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

Dear Commissioner King:

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 B of the Individuals with Disabilities Education Act (IDEA).

The United States Department of Education (Department) has determined that, under IDEA section 616(d)(2)(A)(ii), New York "needs assistance" in implementing the requirements of Part B 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 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 B 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 Section 616(d) of the Individuals with Disabilities Education Act in 2013: Part B," 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 New York's Compliance Matrix percentage was at least 75%, but less than 90%.

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 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) and 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.

We are also enclosing with this letter a Data Display, which presents certain State-reported data in a transparent, user-friendly manner. The Data Display will be helpful for the public in getting a broader picture of State performance in key areas.

The State's determinations for FFYs 2005, 2006, 2007, 2008, 2009, and 2010 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, 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 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 §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.

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 120 days after the State's submission of its FFY 2011 APR. In addition, your State must: (1) review LEA performance against targets in the State's SPP; (2) determine if each LEA program "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. *See*, IDEA section 616(a)(1)(C) and 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. Finally, please ensure that your updated SPP is posted on the State educational agency's Web site and made available to the public, consistent with IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(B).

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. 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 the State'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 Angela Tanner-Dean, your OSEP State Contact, at 202-245-6320.

Sincerely,

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

Enclosures

cc: State Director of Special Education