



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Kerri Briggs
Acting State Superintendent
Office of the State Superintendent
Government of the District of Columbia
Washington, D.C. 20001

JUN - 1 2009

Dear Acting Superintendent Briggs:

Thank you for the timely submission of the District of Columbia's (D.C.'s) Federal fiscal year (FFY) 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA), as amended in 2004. We also acknowledge the revisions to D.C.'s APR and SPP received on April 7, 2009. We appreciate D.C.'s efforts in preparing these documents.

The Department has determined that, under IDEA sections 616(d) and 642, D.C. needs intervention in meeting the requirements of Part C of IDEA. The Department's determination is based on the totality of D.C.'s data and information including its FFY 2007 APR and revised SPP, 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 2009" for further details.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for D.C. under Part C of the IDEA is that D.C. failed to report any data for Indicator 9 in its FFY 2007 APR regarding the timely correction of noncompliance by early intervention service (EIS) programs and EIS providers. Therefore, D.C. has failed to demonstrate compliance with the timely correction requirements in 34 CFR §303.501.

Under 34 CFR §303.501(a)(2) and (b), the D.C. Office of the State Superintendent (OSSE), as the lead agency, must monitor its programs and activities that are used to carry out Part C to ensure compliance with Part C requirements, enforce obligations required by Part C, and correct any deficiencies identified through monitoring. In its FFY 2007 APR, D.C. reported that it made no findings of noncompliance in FFY 2006 because it was unaware of the requirement to make findings for its EIS programs or providers. D.C. also did not report correction of FFY 2006 noncompliance under its individual compliance indicators, and its 2006 APR data under Indicators 1 (69%), 7 (17%), 8A (58%), and 8C (58%) indicate low levels of compliance, which could have served as the source of its findings for FFY 2006. Given the lack of any timely correction data in the D.C.'s FFY 2007 APR, OSEP cannot determine whether and how D.C. is monitoring to timely correct noncompliance with Part C requirements. The Department notes that D.C.'s FFY 2005 and 2006 APRs also failed to provide this information.

The Department notes that timely correction requirements of Part C Indicator 9 are also the subject of Special Conditions on D.C.'s FFY 2008 Part C grant award. While D.C.'s May 19, 2009 Special Conditions progress report indicates that D.C. had issued its first four findings on April 30, 2009, the report also acknowledges that D.C. would need to establish additional

mechanisms to ensure timely correction. OSEP also notes that the Department designated D.C. as a “high risk” grantee in FFY 2008 and imposed Department-wide special conditions on all Department grant funds to D.C. OSSE to ensure fiscal accountability.

The enclosed table provides OSEP’s analysis of D.C.’s FFY 2006 APR and revised SPP and identifies, by indicator, OSEP’s review of any revisions made by D.C. OSSE to its targets, improvement activities (timelines and resources) and baseline data in the SPP. The table also identifies, by indicator, D.C.’s status in meeting its targets, whether D.C.’s data reflect progress or slippage, and whether D.C. corrected noncompliance and provided valid and reliable data.

D.C.’s determination for the FFY 2005 and FFY 2006 APRs was also needs intervention. In accordance with section 616(e) of the IDEA, if a State is determined to need intervention for three or more consecutive years, the Secretary shall: (1) Require any one or more of the enforcement actions specified under needs assistance; (2) Require the State to prepare a corrective action plan or improvement plan if the problem can be corrected in one year; (3) Require the State to enter into a compliance agreement if the problem cannot be corrected in one year; (4) Withhold, in whole or in part, Part C funds; (5) Recover Part C funds under Section 452 of GEPA; or (6) Refer the matter to the Department of Justice.

Pursuant to these requirements, D.C. must submit a corrective action plan (CAP) that ensures that it can submit in its FFY 2008 IDEA Part C APR valid and reliable data for Indicator 9 and must utilize available sources of technical assistance. D.C. must submit its CAP to OSEP within 60 days from the date of this letter. The Secretary is requiring D.C. to submit a CAP because the Secretary has determined that D.C. should be able to correct the problem that is the basis for its “needs intervention” determination within one year from this letter and that other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time. Specifically, the Secretary has determined that D.C. should be able to submit with its FFY 2008 APR valid and reliable data for Indicator 9. D.C.’s CAP must include the specific actions (including utilizing available technical assistance sources) and timelines by which it will ensure that it will submit, in D.C.’s FFY 2008 APR, due February 1, 2010, valid and reliable data from FFY 2009 for Indicator 9.

As required by section 616(e)(7), 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 website, distribution through the media and distribution through public agencies.

D.C. may want to consider taking advantage of available sources of technical assistance. 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 SPP/APR Planning Calendar website at <http://spp-apr-calendar.rfcnetwork.org/techassistance.html>. 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.

As you know, D.C. must report annually to the public on the performance of each EIS program located in the District on the targets in the SPP, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642. In addition, D.C. must review EIS program performance against targets its SPP, determine if each EIS program ‘meets requirements,’ ‘needs assistance,’ ‘needs intervention,’ or ‘needs substantial intervention’ in implementing Part C of the IDEA, and inform each EIS program of its determination. For further information regarding these requirements, see the

SPP/APR Calendar at <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>. Finally, as you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for States to review the guidance in the memorandum, and to raise any questions with their OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>.

Pursuant to section 616(d)(2)(B) of the IDEA, 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 for Special Education and Rehabilitative Services to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Andrew J. Pepin, Executive Administrator, delegated the authority to perform the functions of the Assistant Secretary for OSERS, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, DC 20202-2600 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.

OSEP is committed to supporting D.C.'s efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with D.C. over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Jill Harris, your OSEP State Contact, at 202-245-7372.

Sincerely,

A handwritten signature in cursive script that reads "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator