



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

JUN 15 2007

Honorable Dwight D. Jones
Commissioner
Colorado Department of Education
201 East Colfax Avenue, Room 500
Denver, CO 80203-1799

Dear Dr. Jones:

Thank you for the timely submission of Colorado's Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA), as amended in 2004.

As you know, under IDEA section 616, each State has an SPP that evaluates the State's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation of Part B. In the revised SPP due by February 1, 2007, States were required to provide information on: (1) specific new indicators; and (2) correction of any deficiencies identified in the Office of Special Education Programs' (OSEP's) SPP response letter sent to your State last year. States were also required to submit by February 1, 2007, an APR for Federal fiscal year (FFY) 2005 that describes the State's: (1) progress or slippage in meeting the measurable and rigorous targets established in the SPP; and (2) any revisions to the State's targets, improvement activities, timelines or resources in the SPP and justifications for the revisions. We appreciate the State's efforts in preparing the FFY 2005 APR and revised SPP.

The Department has reviewed the information provided in the State's FFY 2005 APR and revised SPP, other State-reported data, information obtained through monitoring visits, and other public information and has determined that, under IDEA section 616(d), Colorado needs intervention in meeting the requirements of Part B of the IDEA. The State should review IDEA section 616(e) regarding the potential future impact of the Department's determination.

The Department's determination is based on the totality of the State's data in its SPP/APR and other publicly available information, including any compliance issues. The factors in States' FFY 2005 APR and February 1, 2007 SPP submissions that affected the Department's determinations were whether the State: (1) provided valid and reliable FFY 2005 data that reflect the measurement for each indicator, and if not, whether the State provided a plan to collect the missing or deficient data; and (2) for each compliance indicator that was not new (a) demonstrated compliance or timely corrected noncompliance, and (b) in instances where it did not demonstrate compliance, had nonetheless made progress in ensuring compliance over prior performance in that area. We also considered whether the State had other IDEA compliance issues that were identified previously through the Department's monitoring, audit or other activities, and the State's progress in resolving those problems. See the enclosure entitled "How the

Department Made Determinations under Section 616(d) of the IDEA in 2007” for further details.

Specific factors affecting OSEP’s determination of needs intervention for Colorado included the failure of the State to report valid and reliable data for two compliance indicators -- Indicators 12 and 15, and its continuing special conditions on its grant award.

With respect to Indicator 12, the State was required to report the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an Individualized Education Program (IEP) implemented by their third birthdays. Colorado provided no data for 2004 – 2005 in its State Performance Plan (SPP), and no data for 2005 – 2006 in its FFY 2005 APR for Indicator 12. OSEP’s March 27, 2006 letter in response to the State’s SPP required Colorado to provide data from both years in its FFY 2005 APR. Without these data, OSEP and the public cannot determine whether children transitioning from Part C to Part B in Colorado are receiving special education and related services by their third birthdays, or whether there are delays in the provision of needed special education and related services for these children.

With respect to Indicator 15 – the State’s exercise of general supervision – Colorado reported a compliance level of 88.6%. However, the State continues to use an incorrect measure for determining when noncompliance has been corrected, and includes only findings of systemic noncompliance when identifying and reporting on noncompliance.

As part of its responsibilities under 34 CFR §300.600, the State’s monitoring and enforcement systems must use quantifiable indicators in priority areas. Based on information provided by the State in its January 2007 Progress Report, OSEP, in a letter dated April 26, 2007, asked the State to clarify its standard for determining correction of noncompliance. In its June 1, 2007 response, the State reported that it bases a finding of correction of noncompliance on whether the school district has a State approved correction action plan in place and has provided clear and compelling evidence that the corrective action plan has been implemented. While the State provided examples of how it implements this standard, it failed to provide reliable and valid data on corrective actions. When the State makes a determination that a district has corrected noncompliance, it must find that the district is in substantial compliance with the requirement that formed the basis of the finding of noncompliance. Absent reliable and valid data for Indicator 15, OSEP and the public cannot determine whether the State is exercising one of its critical functions under IDEA – monitoring the implementation, and the enforcement, of Part B.

Colorado submitted the required Progress Reports in connection with the special conditions on its FFY 2006 grant award related to the provision of (1) services and supports to meet the needs of children with disabilities; (2) needed psychological counseling services; and (3) adequate supports for children with behavior disorders. However, OSEP is unable to remove the special conditions because, as noted above, the State’s finding of correction of noncompliance does not use valid and reliable data. Accordingly, OSEP is unable to determine whether the prior noncompliance in these

areas has been corrected. We hope that the State will be able to demonstrate that it meets requirements in its next APR.

The table enclosed with this letter provides OSEP's analysis of the State's FFY 2005 APR and revised SPP and identifies, by indicator, OSEP's review and acceptance of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. It also identifies, by indicator, the State's status in meeting its targets, and whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data. The table also lists, by indicator, any additional information the State must include in the FFY 2006 APR or, as needed, the SPP due February 1, 2008, to address the problems OSEP identified in the revised SPP or FFY 2005 APR. The State must provide this required information. We plan to factor into our determinations next year whether or not States provided the additional information requested in this table in their FFY 2006 APR, due February 1, 2008, and may take other actions as well, if the State's data, or lack of data, regarding these issues indicates continuing noncompliance.

As you know, 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 under IDEA section 616(b)(2)(C)(ii)(I). The requirement for public reporting on LEA performance is a critical provision in ensuring accountability and focusing on improved results for children with disabilities. Please have your staff notify your OSEP State Contact when and where your State makes available its public report on LEA performance. In addition, States must review LEA performance against targets in the State's SPP, especially the compliance indicators, determine if each LEA meets the requirements of the IDEA and inform each LEA of its determination. For further information regarding these requirements, see SPP/APR Guidance Materials at <http://www.rfcnetwork.org/>.

We hope that the State found helpful, and was able to benefit from, the monthly technical assistance conference calls conducted by this Office, ongoing consultation with OSEP State Contacts and OSEP-funded Technical Assistance Center staff, materials found on the IDEA 2004 website, and attendance at OSEP-sponsored conferences. OSEP will continue to provide technical assistance opportunities to assist your State as it works to improve performance under Part B of the IDEA. If you have any feedback on our past technical assistance efforts or the needs of States for guidance, we would be happy to hear from you as we work to develop further mechanisms to support State improvement activities.

As noted above, your State has been determined to Need Intervention. Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(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 for Special Education and Rehabilitative Services to demonstrate why the Department should change its determination. To request a hearing, submit a letter to John H. Hager, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5107, Potomac Center Plaza, Washington, DC 20202-2600 within 30 days of the date of this letter and provide in the letter the basis for your request.

OSEP is committed to supporting Colorado's efforts to improve results for children with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please do not hesitate to call Debra Jennings, your OSEP State Contact, at 202-245-7389.

Sincerely,

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

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education