



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

JUN 15 2007

Honorable Nena S. Nena  
Secretary of Health, Education, and Social Services  
Federated States of Micronesia  
P.O. Box PS 70 Palikir  
Pohnpei State, FM 96941

Dear Secretary Nena:

Thank you for the timely submission of the Federated States of Micronesia's (FSM'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 and territories 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 the 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 FSM's efforts in preparing the FFY 2005 APR and revised SPP.

The Department has reviewed the information provided in FSM's FFY 2005 APR and revised SPP, other FSM-reported data, information obtained through monitoring visits, and other public information and has determined that, under IDEA section 616(d), FSM needs intervention in meeting the requirements of Part B of the IDEA. FSM 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 FSM's data in its SPP/APR and other publicly available information, including any compliance issues. The factors in States' and territories' 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 FSM included: (1) a 60% compliance rate for Indicator 15; (2) the failure to provide a free appropriate public education (FAPE) to children in grades 1 – 8 in the State of Chuuk; and (3) the complete lack of accommodations for children with disabilities when taking assessments, and the lack of any alternate assessments.

With respect to FSM's data for Indicator 15, FSM's exercise of general supervision, OSEP recalculated this figure to include only those findings of noncompliance identified in 2004-2005 and corrected no later than one year from identification and concluded that FSM's recalculated data for Indicator 15 is 60%. One of FSM's most critical functions under IDEA is the responsibility under 34 CFR §300.600 to monitor the implementation, and the enforcement, of Part B. A 60% rate of correcting identified noncompliance indicates that FSM is not ensuring the correction of identified noncompliance in a timely manner.

Moreover, as you are aware, OSEP made a verification visit to FSM during the week of October 16, 2006. OSEP is providing the results of its visit to FSM under separate cover. However, one of the key findings made by OSEP was that FSM had not identified that Chuuk did not consistently ensure that FAPE was available to all children with disabilities as required by 34 CFR §300.101(a). As a general rule, special education and related services are only available for children with disabilities in Chuuk when they begin high school. The systemic lack of special education and related services for an entire class of children with disabilities represents a very serious lapse of FSM's monitoring and enforcement responsibilities under Part B of IDEA. OSEP will carefully review FSM's compliance in this area. Failure to demonstrate correction of this noncompliance in FSM's FFY 2006 APR will affect OSEP's determination of FSM's status under section 616(d) of the IDEA, and will likely result in a finding of needs substantial intervention.

With respect to assessment issues, FSM is required by 34 CFR §300.160(a) and (b) to develop and implement guidelines for the provision of appropriate accommodations to permit children with disabilities to take assessments. In addition, FSM is required by 34 CFR §300.160(a) and (c) to develop and implement alternate assessments, and guidelines for the participation of children with disabilities in alternate assessments, for those children who cannot participate in regular assessments, even with accommodations. FSM reported in its FFY 2005 APR under Indicator 3 that it has not provided any accommodations to children with disabilities or provided any alternate assessments to those children with disabilities who are unable to take the regular assessment, even with accommodations. The lack of accommodations and alternate assessments undermines the ability of FSM to assess the performance of children with disabilities and demonstrates noncompliance with 34 CFR §300.160. We hope that FSM will be able to demonstrate that it meets requirements in its next APR.

The table enclosed with this letter provides OSEP's analysis of FSM's FFY 2005 APR and revised SPP and identifies, by indicator, OSEP's review and acceptance of any

revisions made by FSM to its targets, improvement activities (timelines and resources) and baseline data in FSM's SPP. It also identifies, by indicator, FSM's status in meeting its targets, and whether FSM's data reflect progress or slippage, and whether FSM corrected noncompliance and provided valid and reliable data. The table also lists, by indicator, any additional information FSM 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. FSM must provide this required information. We plan to factor into our determinations next year whether or not States and territories 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.

We hope that FSM 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 FSM 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 and territories for guidance, we would be happy to hear from you as we work to develop further mechanisms to support the States' and territories' improvement activities.

As noted above, FSM 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 FSM's efforts to improve results for children with disabilities and looks forward to working with FSM 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 Lucille Sleger, your OSEP State Contact, at 202-245-7528.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

cc: State Director of Special Education