



UNITED STATES DEPARTMENT OF EDUCATION

January 30, 2008

THE DEPUTY SECRETARY

Guthrie S. Birkhead, M.D., M.P.H.  
Deputy Commissioner  
Office of Public Health  
New York Department of Health  
Corning Tower, Room 1415  
Empire State Plaza  
Albany, New York 12237

Dear Dr. Birkhead:

This letter is in response to the July 12, 2007, appeal by the New York Department of Health (NYDOH) of the U.S. Department of Education's (the Department's) June 15, 2007, determination under sections 616(d) and 642 of the Individuals with Disabilities Education Act (IDEA) that NYDOH "needs intervention" in meeting the requirements of Part C of the IDEA.

On October 3, 2007, in my capacity as Acting Assistant Secretary for Special Education and Rehabilitative Services, I provided NYDOH with the opportunity to demonstrate why the Department should change its determination. At the hearing, NYDOH, in addition to giving a presentation, requested that it be allowed to submit additional data and information to supplement its Federal fiscal year (FFY) 2005 annual performance report (APR). In response to that request, the Department issued a letter dated October 22, 2007, indicating that NYDOH could submit corrected FFY 2005 data, but that the Department would not consider data beyond that reporting period for the 2007 determination. By letter dated November 15, 2007, NYDOH submitted additional data and information.

The Department has reviewed this additional data and information along with the information and data provided in NYDOH's FFY 2005 APR and has decided that our determination with regard to NYDOH should be changed from "needs intervention" to "needs assistance" in meeting the requirements of Part C of the IDEA. Specific factors affecting this decision include the following: (1) New York provided corrected FFY 2005 data reflecting a high level of compliance for Indicators 8B (95.3% compliance in providing notice of transition) and 9 (97% compliance in timely correction of noncompliance) and timely correction of all prior year findings of noncompliance, except for the findings with regard to Indicator 8C (timely transition conferences); and (2) New York provided FFY 2005 data for each indicator. Balancing these factors was the fact that for Indicator 8C (transition conferences), New York continued to report significant noncompliance and reported only partial correction of prior findings of noncompliance.

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In reaching the “needs assistance” determination for New York, we did not consider the data NYDOH submitted on November 15, 2007, for Indicator 7 (45-day timeline) that was extrapolated from FFY 2006 data, which NYDOH reported that it had recently collected. The Department’s October 22, 2007, letter specifically indicated that additional compliance data for a period beyond the FFY 2005 reporting period would not be considered as part of the appeal.

While I am no longer the Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services due to the confirmation of Tracy R. Justesen, I am issuing the Department’s decision in the interest of continuity. Assistant Secretary Justesen concurs in the Department’s decision. We look forward to working with New York as the State continues to take steps to improve results for infants and toddlers with disabilities and their families. If you have questions about this matter, please contact me or Wendy L. Tada, my chief of staff, at (202) 401-2176.

Sincerely,



Raymond Simon

cc: Barbara McTague, Director, Division of Family Health  
Bradley Hutton, Director, Early Intervention Program  
Sandra Jensen, Esq., House Counsel, New York Department of Health