



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 15 2007

Honorable Richard F. Daines, M.D.
Commissioner of Health
New York State Department of Health
Corning Tower, Empire State Plaza
Albany, New York 12237

Dear Commissioner Richard F. Daines:

Thank you for the submission of New York's 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 appreciate the revisions to New York's SPP received on April 11, 2007.

The State's submission of its FFY 2005 APR and SPP were not timely. Although States' submissions of their APRs and SPPs were due on February 1, 2007, New York did not submit those documents to the Office of Special Education Programs (OSEP) until March 16, 2007. The State's late submission of its APR and SPP was one of the factors in OSEP's determination (described below) for the State under sections 616(d) and 642 of the IDEA. It will be important that the State submit its FFY 2006 by the due date of February 1, 2008.

As you know, under IDEA sections 616 and 642, each State has an SPP that evaluates the State's efforts to implement the requirements and purposes of Part C of the IDEA and describes how the State will improve its implementation of Part C. 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) and 642, New York needs intervention in meeting the requirements of Part C 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.

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

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.

Although the State's FFY 2005 data under Indicator 9 represent a high level of performance, specific factors affecting OSEP's determination of needs intervention for New York include: (1) for Indicator 8C, New York's FFY 2005 data reflects a very low level of performance (28.17%) with Part C's timely transition conference requirements, which data reflect regression from the State's FFY 2004 data of 81.33% and the State did not specifically report correction under this indicator; and (2) the State did not provide any FFY 2005 data that would enable us, and the public, to assess whether the State had corrected its previously identified noncompliance with Part C's natural environments individualization requirements as required by OSEP's 2006 SPP/APR response letter. Additional factors include the State's FFY 2005 data for (1) Indicator 7 (53%) and (2) Indicator 8A (67%).

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 early intervention services (EIS) program located in the State on the targets in the SPP under IDEA section 616(b)(2)(C)(ii)(I) and 642. The requirement for public reporting on EIS programs' performance is a critical provision in ensuring accountability and focusing on improved results for infants and toddlers with disabilities. Please have your staff notify your OSEP State Contact when and where your State makes available its public report on EIS program performance. In addition, States must review EIS program performance against targets in the State's SPP, especially the compliance indicators, determine if each EIS program meets the requirements of the IDEA and inform each EIS

program of its determination. For further information regarding these requirements, see the SPP/APR Guidance Materials at <http://www.rrfcnwork.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 C 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) and 642 of the IDEA, a State that is determined to Need 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 file an appeal, 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 New York's efforts to improve results for infants and toddlers 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 Alma McPherson, your OSEP State Contact, at 202-245-7443.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator