



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 15 2007

Honorable Thomas M. Dowd  
Director  
Office of Indian Education Programs  
Bureau of Indian Education  
1849 C Street, NW, MS3512-MIB  
Washington, DC 20240

Dear Director Dowd:

Thank you for the timely submission of the Bureau of Indian Education's (BIE'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. We also appreciate the revisions to the BIE's SPP received on April 25, 2007.

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 the BIE 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 BIE's efforts in preparing the FFY 2005 APR and revised SPP.

The Department has reviewed the information provided in the BIE's FFY 2005 APR and revised SPP, other BIE-reported data, information obtained through monitoring visits, and other public information and has determined that, under IDEA section 616(d), BIE needs assistance in meeting the requirements of Part B of the IDEA. The BIE 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 BIE'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.

400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202  
[www.ed.gov](http://www.ed.gov)

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

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 assistance for BIE included the following: (1) BIE reported 74% compliance for Indicator 15, which represents progress from FFY 2004 data; (2) BIE provided incomplete data for Indicators 1, 2 and 3 because, due to problems with the collection of assessment data in New Mexico, BIE did not receive Annual Reports, which included graduation rates, dropout rates, and assessment data, from 44 BIE funded schools in New Mexico; (3) BIE did not provide FFY 2005 data for Indicator 11 consistent with the required measurement; and (4) BIE did not provide valid and reliable data for Indicator 16. For these reasons, we were unable to determine that BIE met requirements under section 616(d). Balancing these factors were areas reflecting a high level of performance or correction, which include that BIE provided valid and reliable FFY 2005 data for Indicators 5, 8, 13, 14, 15, 17, 18 and 19. We hope that BIE will be able to demonstrate that it meets requirements in the next APR.

OSEP also considered that BIE has not yet responded to all of the findings made in OSEP's January 20, 2006 verification response letter. BIE submitted progress reports on March 15, 2006 and November 8, 2006, which addressed the status of correction in all BIE-funded schools, including tribally controlled schools, the development of draft complaint procedures, and documentation demonstrating that corrective actions resulting from complaints filed during 2004 have been completed. However, the draft complaint procedures do not incorporate the changes made to the State complaint procedures in the final regulations implementing the IDEA Improvement Act of 2004 or clarify that the 60-day timeline begins when the complaint is received by either BIE or an Education Line Office. In addition, BIE has not yet addressed the issue of "no year funds". Within 60 days of receipt of this letter, BIE must submit the information described in OSEP's analysis of Indicator 15 in the attached table.

The table enclosed with this letter provides OSEP's analysis of the BIE's FFY 2005 APR and revised SPP and identifies, by indicator, OSEP's review and acceptance of any revisions made by the BIE to its targets, improvement activities (timelines and resources) and baseline data in the BIE's SPP. It also identifies, by indicator, the BIE's status in meeting its targets, and whether the BIE's data reflect progress or slippage, and whether the BIE corrected noncompliance and provided valid and reliable data. The table also lists, by indicator, any additional information the BIE 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 BIE 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 BIE's data, or lack of data, regarding these issues indicates continuing noncompliance.

As you know, the BIE must report annually to the public on the performance of each local educational agency (LEA) of the BIE 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 the BIE makes available its public report on LEA performance. In addition, the BIE must review LEA performance against targets in the BIE'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 BIE 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 the BIE 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.

OSEP is committed to supporting the BIE's efforts to improve results for children with disabilities and looks forward to working with the BIE 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 Tony G. Williams, your OSEP State Contact, at 202-245-7577.

Sincerely,



Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

cc: State Director of Special Education