



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 15 2007

Honorable Wayne G. Sanstead
State Superintendent
North Dakota Department of Public Instruction
600 E. Boulevard Ave., Dept 201
Bismarck, North Dakota 58505-0440

Dear Superintendent Sanstead:

Thank you for the timely submission of North Dakota'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 North Dakota's SPP received on April 18, 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 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), North Dakota 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

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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 North Dakota reported a high level of compliance for Indicator 15 (94.49%), 16 (100%, 8 complaints) and 17 (100%, 2 hearings), the specific factors affecting OSEP's determination of needs intervention for North Dakota were that the State: 1) did not provide FFY 2004 or FFY 2005 compliance data for Indicator 12 (and did not monitor for this requirement); 2) did not demonstrate that its interim monitoring/data collection system fully addresses compliance under the specific indicators, including data collection for the correct time period; 3) did not report publicly on the number of students who participated in the regular assessment with accommodations consistent with Part B; and 4) did not provide complete data for Indicators 1, 2 and 7.

OSEP's October 18, 2005 FFY 2003 APR response letter noted that the State had not reported the overall percentage of children found eligible for preschool special education services who received services by their third birthday. OSEP directed North Dakota to submit responsive baseline data in the SPP under Indicator 12, regarding the percentage of children referred by Part C prior to age 3, who are found eligible for Part B and receive special education and related services by their third birthdays. North Dakota did not provide baseline data in the SPP for this indicator. OSEP's March 20, 2006 SPP response letter noted that North Dakota reported that it did not have the capabilities to analyze and establish the required baselines for Indicator 12, but that it was piloting a program that would allow it to compile this data. OSEP directed the State to ensure it would be able to include data in the APR due February 1, 2007, that demonstrate full compliance with the requirements of 34 CFR §300.124 (previously 34 CFR §300.121). This was also set out in OSEP's November 3, 2006 letter regarding the July 24, 2006 verification visit. In its February 1, 2007 APR submission, the State did not include data for Indicator 12. Therefore, the State has repeatedly failed to provide any data that would have allowed OSEP to assess the State's compliance with the requirement that eligible children transitioning from the Part C program to the Part B program have an individualized education program (IEP) in place and implemented by their third birthday. Without this data, OSEP and the public cannot determine whether children transitioning from Part C to Part B in North Dakota 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.

OSEP's November 3, 2006 letter regarding the July 24, 2006 verification visit required the State to submit information demonstrating that it was able to collect school district data consistent with the indicators in the SPP and as required under 20 USC 1232d(b)(3)(E), and 34 CFR §§300.149 and 300.600. The State submitted an interim plan for data collection and monitoring that did not propose annual data collections consistent with the instructions for the indicators. For Indicators 11 and 12, OSEP could not determine whether and how the State will be collecting data for all students with disabilities relevant to and consistent with the instructions for these indicators, including but not limited to the correct timeframe for the data collection. For example, the data collection for Indicator 11 is not specified and for Indicator 12 is described as covering

the period from August 1, 2006 through July 31, 2007. For Indicator 13, the proposed data collection would cover the period through July 30, 2007. These time periods are not consistent with the instructions for these indicators. As also required in OSEP's November 3, 2006 letter, by June 1, 2007 the State was to have reported publicly on the number of students with disabilities participating on the regular assessment with accommodations consistent with 20 USC 1412(a)(16)(D). As of June 11, 2007, the State had not demonstrated compliance with this requirement.

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)(1). 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.rrfcnetwork.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 North Dakota'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 Tony G. Williams, your OSEP State Contact, at 202-245-7577.

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