



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

JUN 15 2007

Honorable Terry Bergeson
Superintendent of Public Instruction
Washington Department of Public Instruction
P.O. Box 47200
Olympia, Washington 98504-7200

Dear Superintendent Bergeson:

Thank you for the timely submission of Washington'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 Washington's SPP received on April 18, 2007 and May 17, 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), Washington 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 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 Washington reported 100% compliance for Indicator 17 and a high level of compliance under Indicator 16 (98%), the specific factors affecting OSEP's determination of needs intervention for Washington were that: (1) the State did not provide any data on correction of noncompliance identified through monitoring for Indicator 15; and (2) the State did not provide valid and reliable baseline data for Indicator 11.

With respect to Indicator 15, although the State reported that it had identified 109 findings of noncompliance through monitoring in FFY 2004, it provided no data documenting correction of this noncompliance in FFY 2005. The State's failure to provide any data confirming timely correction in FFY 2005 of any of these 109 findings identified through monitoring in FFY 2004 is inconsistent with the State's obligation to demonstrate to OSEP and the public that the State monitors the implementation and enforcement of Part B of IDEA.

In addition to the absence of data in the FFY 2005 APR on timely correction of noncompliance identified through monitoring, the State failed to provide any updated data to OSEP, as it was requested to do in OSEP's July 3, 2006 letter transmitting Washington's FFY 2006 Part B grant awards, on the correction of longstanding noncompliance, first identified in OSEP's 1999 monitoring report to Washington, in areas related to inviting students to transition IEP meetings, providing specially designed instruction in behavior to students with behavior disorders, and providing psychological counseling services in accordance with students' IEPs at no cost to the parents. Washington did provide updated data regarding identification of noncompliance for inviting students with disabilities to transition IEP meetings under Indicator 13 in FFY 2005, and indicated that the districts involved would be required to address this issue in their corrective action/improvement plans, but provided no updated data on correction of noncompliance in this area identified in its February 1, 2006 State Performance Plan. The State did not otherwise report any data under Indicator 15 regarding correction of noncompliance in the other areas. Also, the State did not report any data under Indicator 15 on the correction of noncompliance found under Indicator 12.

With respect to Indicator 11, the State acknowledged that it did not collect data on the number of students for whom parental consent to evaluate was received who were found eligible within the State-established timeline, but reported that it began collecting this data in the 2006-2007 school year.

We hope that the State will be able to demonstrate that it meets requirements in its FFY 2006 APR.

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.rfcnetwork.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 Washington'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 Dr. Al Jones, your OSEP State Contact, at 202-245-7394.

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