



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

June 23, 2014

Howard Zucker, M.D., J.D.
Acting Commissioner
New York State Department of Health
Corning Tower, Empire State Plaza, 14th Floor
Albany, NY 12237

Dear Acting Commissioner Zucker:

I am writing to advise you of the U. S. Department of Education's (Department) 2014 determination, under sections 616 and 642 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that New York needs assistance in meeting the requirements of Part C of the IDEA. This determination is based on the totality of the State's data and information, including the State's Federal fiscal year (FFY) 2012 Annual Performance Report (APR) and revised State Performance Plan (SPP), other State-reported data, and other publicly available information.

As you know, the Office of Special Education Programs (OSEP) is implementing a revised accountability framework designed to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Sections 616(a)(2) and 642 of the IDEA require that the primary focus of IDEA monitoring be on improving early intervention results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements.

OSEP's previous accountability system placed a heavy emphasis on compliance and we have seen an improvement in States' compliance over the past seven years of IDEA determinations. OSEP's new accountability framework, called Results Driven Accountability (RDA), brings into focus the early intervention results and functional outcomes for children with disabilities while balancing those results with the compliance requirements of the IDEA. Protecting the rights of infants and toddlers with disabilities and their families is a key responsibility of State lead agencies and local early intervention services (EIS) programs and providers, but it is not sufficient if infants and toddlers are not meeting the developmental goals that maximize their capacity to live independently in society.

From the start, OSEP committed to several key principles to guide the development of a new accountability framework, including transparency, stakeholder involvement, and burden reduction. In keeping with those principles, over the past two years we have solicited input from stakeholders on multiple occasions and published a new SPP/APR for FFYs 2013 through 2018. The revised SPP/APR significantly reduces data collection and reporting burden by States, and shifts the focus to improving early intervention results and functional outcomes for infants and toddlers with disabilities by requiring each State to develop and implement a State Systemic Improvement Plan (SSIP).

The Department is committed to supporting States in the development and implementation of the SSIP which is designed to improve results for all children, including children with disabilities, and is investing significant resources toward that commitment. OSEP is implementing a system of differentiated monitoring and support, using data on performance (i.e., results data) and other information about a State to determine the appropriate intensity, focus, and nature of the oversight and support that each State will receive as part of RDA. OSEP's technical assistance network will be a key component of differentiated support to States and, through States, to local EIS programs and providers. We believe that only through a coordinated effort across the early childhood and education systems will we positively affect the early childhood, school, and life trajectories of infants, toddlers, and young children with disabilities.

In making determinations in 2013, the Department used a compliance matrix that included compliance data on multiple factors, thereby allowing us to consider the totality of a State's compliance data. In the 2013 determination letters, OSEP informed States that it would use results data when making its determinations in 2014. In winter 2014, OSEP published a Request for Information to solicit comments regarding how results data could be used in making IDEA determinations in 2014 and beyond. OSEP carefully reviewed these comments and plans to use results data as part of its determination process for IDEA Part C in 2015. For the 2014 IDEA Part C determinations, the Department is continuing to use the compliance matrix to consider the totality of a State's compliance data.

Your State's 2014 determination is based on the data reflected in the State's "2014 Part C Compliance Matrix." Enclosed with this determination letter are the following: (1) the State's "2014 Part C Compliance Matrix;" (2) a document entitled, "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2014: Part C," which provides a detailed description of how OSEP evaluated States' data using the Compliance Matrix; (3) your State's FFY 2012 Response Table, which provides OSEP's analysis of your State's FFY 2012 APR and revised SPP; and (4) a Data Display which presents certain State-reported data in a transparent, user-friendly manner. The Data Display will be posted on OSEP's Web site and will be helpful for the public in getting a broader picture of State performance in key areas.

As noted above, the State's 2014 determination is Needs Assistance. A State's 2014 determination is Needs Assistance if its matrix percentage was at least 75%, but less than 90%, or was below 75%, but the State does not also meet one of the following criteria for Needs Intervention: (1) compliance is below 50% for one or more of the following Compliance Indicators (Indicators 1, 7, 8A, 8B, 8C, or 9); or for timely State complaint decisions or timely due process hearing decisions; (2) the State provided no data or did not provide valid and reliable data for Compliance Indicators 1, 7, 8A, 8B, 8C, or 9; or (3) the State has been subject to Special Conditions for multiple years for failing to comply with key IDEA requirements, the noncompliance has been long-standing, the State's data in response to the Department's FFY 2013 Special Conditions demonstrate continued noncompliance, and those Special Conditions are in effect at the time of the Department's 2014 determination.

The State's determination for 2013 was also needs assistance. In accordance with sections 616(e)(1) and 642 of the IDEA and 34 C.F.R. § 303.704(a), if a State is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions: (1) advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance and require the State to work with

appropriate entities; or (2) identify the State as a high-risk grantee and impose Special Conditions on the State's IDEA Part C grant award.

Pursuant to these requirements, the Secretary is advising the State of available sources of technical assistance, including OSEP-funded technical assistance centers and resources at the following Web site: <https://osep.grads360.org/#program/highlighted-resources> (link goes live July 18, 2014), and requiring the State to work with appropriate entities. The Secretary directs the State to determine the results and/or compliance indicators, and improvement strategies, on which it will focus its use of available technical assistance, in order to improve its performance. We strongly encourage the State to access technical assistance related to those compliance indicators for which the State received a score of zero. Your State must report with its FFY 2013 SPP/APR submission, due February 2, 2015, on: (1) the technical assistance sources from which the State received assistance; and (2) the actions the State took as a result of that technical assistance.

As a reminder, your State must report annually to the public on the performance of each EIS program located in the State on the targets in the SPP as soon as practicable, but no later than 120 days, after the State's submission of its FFY 2012 APR. In addition, your State must: (1) review EIS program performance against targets in the State's SPP; (2) determine if each EIS program "meets the requirements" of Part C, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part C of the IDEA; (3) take appropriate enforcement action; and (4) inform each EIS program of its determination. Finally, please ensure that your APR, updated SPP, and report on the performance of each EIS program located in the State on the targets in the SPP are posted on the State lead agency's Web site and made available to the public.

OSEP recognizes New York's efforts to improve results for infants and toddlers with disabilities and their families and looks forward to working with your State over the next year as we continue our important work of improving the lives of infants, toddlers, and children with disabilities and their families. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Hillary Tabor, your OSEP State Contact, at 202-245-7813.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

Melody Musgrove, Ed.D
Director
Office of Special Education Programs

Enclosures

cc: Part C Coordinator