



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

June 30, 2015

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

Dear Commissioner Zucker:

I am writing to advise you of the U.S. Department of Education's (Department) 2015 determination under sections 616 and 642 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that New York needs assistance in implementing the requirements of Part C of the IDEA. This determination is based on the totality of the State's data and information, including the Federal fiscal year (FFY) 2013 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

Your State's 2015 determination is based on the data reflected in the State's "Part C Results-Driven Accountability Matrix: 2015" (RDA Matrix). The RDA Matrix is individualized for each State and includes each State's: (1) RDA Percentage and Determination; (2) Results Score; and (3) Compliance Score. The RDA Matrix is further explained in a document, entitled "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2015: Part C" (HTDMD).

Beginning with the 2015 determinations, the Department is using IDEA Part C results data as part of its RDA framework after soliciting and considering input from multiple stakeholders regarding this process. The Department published a Request for Information in March 2014 to solicit comments regarding how IDEA Part C results data could be used in making IDEA Part C determinations. The Department also posted online, in November 2014, a proposed process for using results elements regarding Child Outcomes data.¹ The Department carefully reviewed all comments received throughout this public input process. In 2015, the Department's IDEA Part C determinations include consideration of each State's Child Outcomes data, which measures how children who receive IDEA Part C services are improving functioning in three outcome areas that are critical to school readiness: Positive social-emotional skills; acquisition and use of knowledge and skills (including early language/communication); and use of appropriate behaviors to meet their needs. Specifically, the Department considered the data quality and the child performance levels in each State's Child Outcomes FFY 2013 data.

You may access the results of OSEP's review of your State's SPP/APR and other relevant data by accessing the SPP/APR module using your State-specific log-on information at osep.grads360.org. When you access your State's SPP/APR on the site, you will find in Indicators 1 through 10, the OSEP Response to the indicator, and any actions that the State is

¹ The November 2014 document entitled, "Results Driven Accountability: IDEA Part C Results Data in Determinations," is available at <http://www.ed.gov/edblogs/osers/2014/11/results-driven-accountability-idea-part-c-results-data-in-determinations>).

required to take. The actions that the State is required to take are in two places: (1) any actions related to the correction of findings of noncompliance are in the “OSEP Response” section of the indicator; and (2) any other actions that the State is required to take are in the “Required Actions” section of the indicator. It is important for you to review the Introduction to the SPP/APR, which may also include any OSEP response and/or Required Actions.

You will also find all of the following important documents saved as attachments to the Progress Page: (1) the State’s RDA Matrix; (2) the HTDMD document; (3) a spreadsheet entitled “2015 Data Rubric Part C,” which shows how OSEP calculated the State’s “Timely and Accurate State-Reported Data” score in the Compliance Matrix; (4) a document entitled “Dispute Resolution 2013-14,” which includes the IDEA section 618 data that OSEP used to calculate the “Timely State Complaint Decisions and Timely Due Process Hearing Decisions” scores in the Compliance Matrix; and (5) a Data Display, which presents certain State-reported data in a transparent, user-friendly manner and is helpful for the public in getting a broader picture of State performance in key areas.

As noted above, your State’s 2015 determination is Needs Assistance. A State’s 2015 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State would also be Needs Assistance if its RDA Determination percentage is 80% or above, but the Department has imposed Special Conditions on the State’s last three (FFYs 2012, 2013, and 2014) IDEA Part C grant awards, and those Special Conditions are in effect at the time of the 2015 determination.

The State’s determination for 2014 was also needs assistance. In accordance with section 616(e)(1) 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; (2) direct the use of State-level funds on the area or areas in which the State needs assistance; or (3) 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>, and requiring the State to work with appropriate entities. The Secretary directs the State to determine the results elements 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 results elements and compliance indicators for which the State received a score of zero. Your State must report with its FFY 2014 SPP/APR submission, due February 1, 2016, 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.

In 2015, States were required to submit a new SPP/APR, which included baseline data and measurable and rigorous targets for FFY 2013 through FFY 2018 for each indicator in the SPP/APR. In addition, under Indicator 11, States were required to submit a State Systemic Improvement Plan (SSIP) that included activities the State would implement to improve results for infants and toddlers with disabilities. OSEP has reviewed your State’s SPP/APR, including

Phase I of the SSIP, and determined that it meets the requirements of IDEA sections 616(b) and 642 to include measurable and rigorous targets, including targets for FFY 2018 that reflect improvement over the State’s baseline data. OSEP appreciates the State’s work on Phase I of its SSIP. This represents a significant effort to improve results for infants and toddlers with disabilities. We have carefully reviewed your submission and provided feedback during a recent conference call with the State. OSEP will continue to work with your State as it develops Phase II of the SSIP, due April 1, 2016.

As a reminder, your State must report annually to the public, by posting on the State lead agency’s web-site, on the performance of each early intervention service (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 2013 SPP/APR. In addition, your State must: (1) review EIS program performance against targets in the State’s SPP/APR; (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.

Further, your State must make its SPP/APR available to the public by posting it on the State lead agency’s web-site. Within the next several days, OSEP will be finalizing a State Profile for your State that: (1) will be accessible to the public; (2) includes links to a PDF of the State’s SPP/APR, including all of the State’s and OSEP’s attachments; and (3) the State may use to make its SPP/APR accessible to the public.

OSEP appreciates the State’s efforts to improve results for infants, toddlers, and children with disabilities and their families and looks forward to working with your State over the next year as we continue our important work. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Jennifer Miley, your OSEP State Lead, at 202-245-6049.

Sincerely,

/s/ Melody Musgrove

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

cc: Part C Coordinator