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

JUN 2 8 2012

Honorable Carol K. Olson
Executive Director
North Dakota Department of Human Services
State Capitol, Judicial Wing
600 East Boulevard Avenue
Department 325
Bismarck, North Dakota 58505-0520

Dear Director Olson:

Thank you for the timely submission of North Dakota's Federal fiscal year (FFY) 2010 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA).

The Department has determined that, under IDEA sections 616(d)(2)(A)(iii) and 642, North Dakota needs intervention in implementing the requirements of Part C of IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2010 APR and revised SPP, other State-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) and 642 of the IDEA in 2012: Part C" for further details.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for North Dakota under Part C of the IDEA was that the State failed to provide valid and reliable data for compliance Indicator 9 (timely correction of findings of noncompliance).

Indicator 9 of the FFY 2010 APR measures the timely correction of findings of noncompliance identified in FFY 2009 (July 1, 2009 to June 30, 2010) and corrected in FFY 2010 (July 1, 2010 to June 30, 2011), as required by IDEA section 635(a)(10)(A) and 34 CFR §303.501. Under IDEA section 635(a)(10)(A) and 34 CFR §303.501, North Dakota must monitor all programs and activities (including early intervention service (EIS) programs and EIS providers) that are used to carry out Part C in North Dakota to ensure compliance with Part C requirements, enforce obligations required by Part C, and timely correct any deficiencies identified through monitoring.

The State reported in its FFY 2010 APR that it did not make findings of noncompliance in FFY 2009, even though the other State-reported compliance data indicated noncompliance. Given the lack of any timely correction data for FFY 2010, OSEP and the public cannot determine the extent to which the State is effective in ensuring the timely correction of noncompliance with Part C requirements, as required by 34 CFR §303.501. For this reason, OSEP has determined North Dakota needs intervention in implementing the requirements of Part C of the IDEA.

The enclosed table provides OSEP's analysis of the State's FFY 2010 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator: (1) the State's reported FFY 2010 data; (2) whether such data met the State's FFY 2010 targets and reflect progress or slippage from the prior year's data; (3) if applicable, that the State's data are not valid and reliable; and (4) whether the State corrected findings of noncompliance.

Your State may want to consider taking advantage of available sources of technical assistance. A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of "The Right IDEA" Web site at: http://therightidea.tadnet.org/technicalassistance. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, Web seminars and other sources of relevant technical assistance for that indicator.

As you know, pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642, your State must report annually to the public on the performance of each early intervention services program (EIS program) located in the State on the targets in the SPP. Pursuant to 34 CFR §303.702(b)(1)(A) in the final Part C regulations published on September 28, 2011, beginning with its reporting on the FFY 2011 performance of EIS programs in 2013, the State must report to the public by June 1. OSEP encourages the State to complete its reporting on the FFY 2010 performance of EIS programs as soon as practicable, if it has not already done so. In addition, your State must: (1) review EIS program performance against targets in the State's SPP; (2) determine if each EIS program "meets requirements" of IDEA 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. For further information regarding these requirements, see "The Right IDEA" Web site at: http://therightidea.tadnet.org/determinations. Finally, please ensure that your updated SPP is posted on the State lead agency's Web site and made available to the public, consistent with IDEA sections 616(b)(2)(C)(ii)(I) and 642.

Pursuant to sections 616(d)(2)(B) and 642 of the IDEA, 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 to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Dr. Alexa Posny, Assistant Secretary, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the State's determination.

OSEP is committed to supporting North Dakota'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. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Susan Kauffman, your OSEP State Contact, at 202-245-6432.

Sincerely,

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

Enclosures

cc: Part C Coordinator