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

Honorable Maggie Anderson
Executive Director
Department of Human Services
State Capitol, Judicial Wing
600 East Boulevard Avenue
Department 325
Bismarck, North Dakota 58505-0520

JUL 01 2013

Dear Director Anderson:

Thank you for the timely submission of North Dakota's Federal fiscal year (FFY) 2011 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part C of the Individuals with Disabilities Education Act (IDEA).

The U. S. Department of Education (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 the IDEA. The Department's determination is based on the totality of the State's data and information, including the State's FFY 2011 APR and revised SPP, other State-reported data, and other publicly available information. The State's data are reflected in a new Compliance Matrix (described below).

North Dakota's determination is based on the data reflected in the enclosed "2013 Part C Compliance Matrix" that OSEP completed based on the State's data. Also, enclosed is the document entitled, "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2013: Part C," which provides a detailed description of how OSEP evaluated North Dakota's data using the Compliance Matrix. The 2013 Compliance Matrix reflects the compliance data summarized in the State's FFY 2011 APR/SPP Response Table.

The enclosed North Dakota FFY 2011 Response Table provides OSEP's analysis of the State's FFY 2011 APR and revised SPP. The Response Table includes: (1) the Indicators; (2) the Results Data Summary; (3) the Results Data Summary Notes; (4) the Compliance Data Summary; and (5) the Compliance Data Summary Notes. In the Results Data Summary and the Compliance Data Summary, the table sets forth, by indicator, the State's: (1) reported FFY 2010 data; (2) reported FFY 2011 data; and (3) FFY 2011 target(s), in a concise "dashboard" format. The Compliance Data Summary also includes a column that reflects the number of findings of noncompliance identified in FFY 2010, and the correction of those findings. In the "Notes" sections following the Results Data Summary and the Compliance Data Summary, OSEP has provided more detailed information regarding specific indicators, including, where appropriate, information regarding: (1) the State's correction of any remaining findings of noncompliance identified in years prior to FFY 2010; (2) any issues with the validity and reliability of the data that the State reported; and (3) any required actions. It is important that the State read the information for each indicator in the Results Data Summary and the Compliance Data Summary together with any Notes for that indicator.

Determination

As further explained in the enclosed documents: "2013 Part C Compliance Matrix," "How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2013: Part C," and the North Dakota Part C FFY 2011 SPP/APR Response Table, the specific reasons for the State's determination of needs intervention are that: (1) the State's Compliance Matrix percentage, at 43.75%, is below the criterion of 75%; and (2) the State provided no FFY 2011 data for Indicator 9 (timely correction of FFY 2010 findings of noncompliance).

Indicator 9 of the FFY 2011 APR measures the timely correction of findings of noncompliance identified 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 §303.120 (which is now 34 CFR §303.120 in the Federal regulations published on September 28, 2011), 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 2011 APR that it did not make findings of noncompliance in FFY 2010, even though the other State-reported compliance data indicated noncompliance for FFY 2010. 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 §303.120.

North Dakota's determination for the FFY 2010 APR was also needs intervention. The State should review IDEA section 616(e)(2) and 34 CFR §303.704(b) regarding the potential impact of the Department's determination should the State be determined to need intervention in implementing the requirements of IDEA Part C for three consecutive years. North Dakota may want to consider taking advantage of available sources of technical assistance for Indicator 9 (timely correction). 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, which the State may wish to use in working to improve compliance and outcomes for children with disabilities and their families.

Pursuant to sections 616(d)(2)(B) and 642 of the IDEA and 34 CFR §303.703(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 to demonstrate why the Department should change the State's determination. To request a hearing, submit a letter to Michael K. Yudin, Delegated the authority to perform the functions and duties of Assistant Secretary for Special Education and Rehabilitative Services, United States Department of Education, 400 Maryland Avenue S.W., Washington, D.C. 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.

Conclusion

Pursuant to IDEA sections 616(b)(2)(C)(ii)(I) and 642 and 34 CFR §303.702(b)(1)(A), 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 2011 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 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. *See*, IDEA sections 616(a)(1)(C) and 642 and 34 CFR §303.700(a)(2) and (3). For further information regarding these requirements, see "The Right IDEA" website 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(d)(2)(C)(ii)(I) and 642 and 34 CFR §303.702(b)(1).

As you know, OSEP is redesigning its accountability system to more directly support States in improving results for infants, toddlers, children and youth with disabilities, and their families. Section 616 of the IDEA requires that the primary focus of IDEA monitoring must be on improving educational results and functional outcomes for children with disabilities, and ensuring that States meet the IDEA program requirements. The monitoring system implemented between 2004 and 2012 placed a heavy emphasis on compliance and we are moving towards a more balanced approach that considers results as well as compliance.

OSEP is committed to several key principles to guide the development of a results-driven accountability system, including transparency, stakeholder involvement, and burden reduction. In support of these principles, we are taking a number of steps. First, we solicited input from special education, early intervention, assessment, and early childhood outcomes experts, and gathered input from the public through conference calls, a blog on the Department's Web site, and through multiple meetings and conferences. Next, OSEP published for comment a new SPP/APR package for FFYs 2013 through 2018 that significantly reduces data collection and reporting burden by States, and shifts the focus of the SPP/APR to improving educational results and functional outcomes for children with disabilities. Third, as explained above, this year OSEP has incorporated compliance data into a matrix that is helpful in simultaneously processing multiple sets of data, and has used this matrix in making determinations. This Compliance Matrix includes a color-coded system (green, yellow, red) that provides a visual representation of a State's performance. Finally, as we move forward in using results data in determinations, OSEP will provide the public with an opportunity to comment on how we will use results when making determinations in 2014 under section 616.

OSEP recognizes 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 as we continue our important work of improving the lives of 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 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