



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

June 25, 2020

Honorable Tony Dearman
Director, Bureau of Indian Education
U.S. Department of Interior
1849 C Street Northwest,
MS-3609 MIB
Washington, District of Columbia 20240

Dear Director Dearman:

I am writing to advise you of the U. S. Department of Education's (Department) 2020 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that the Bureau of Indian Education (the BIE) needs intervention in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the BIE's data and information, including the Federal fiscal year (FFY) 2018 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

The Office of Special Education Programs (OSEP) is continuing to use both results and compliance data in making determinations for outlying areas, freely associated States, and the BIE (the Entities) in 2020, as it did for determinations in 2019.¹ The BIE's 2020 determination is based on the data reflected in the BIE's "2020 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each State and consists of:

- (1) a Compliance Matrix that includes scoring on Compliance Indicators and other compliance factors;
- (2) a Results Matrix that includes scoring on Results Elements;
- (3) a Compliance Score and a Results Score;
- (4) an RDA Percentage based on both the Compliance Score and the Results Score; and
- (5) The BIE's Determination.

The RDA Matrix is further explained in a document, entitled "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2020:

¹ OSEP has used results data on the participation and performance of children with disabilities on the National Assessment of Educational Progress (NAEP) in making determinations for States (but not Entities) since 2014. Although the BIE is the only Entity that administers the NAEP, OSEP has not used NAEP data in making the BIE's determinations because the BIE's NAEP data were previously not available. However, given that the BIE's NAEP data are now available, OSEP is considering using the NAEP data in making the BIE's 2021 determination under IDEA section 616(d).

Freely Associated States, Outlying Areas, and the Bureau of Indian Education-Part B” (HTDMD).

The specifics of the determination procedures and criteria are set forth in the HTDMD and reflected in the RDA Matrix for the BIE. In making Part B determinations in 2020, OSEP continued to use results data related to:

- (1) the participation of children with disabilities (CWD) on regular Statewide assessments;
- (2) the percentage of CWD who graduated with a regular high school diploma; and
- (3) the percentage of CWD who dropped out.

You may access the results of OSEP’s review of the BIE’s SPP/APR and other relevant data by accessing the EMAPS SPP/APR reporting tool using your Entity-specific log-on information at <https://emaps.ed.gov/suite/>. When you access your Entity’s SPP/APR on the site, you will find, in applicable Indicators 1 through 16, the OSEP Response to the indicator and any actions that the Entity is required to take. The actions that the Entity is required to take are in two places:

- (1) 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 Entity 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 language in the “OSEP Response” and/or “Required Actions” sections.

You will also find all of the following important documents saved as attachments:

- (1) BIE’s RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2020 Data Rubric Part B,” which shows how OSEP calculated the BIE “Timely and Accurate State-Reported Data” score in the Compliance Matrix; and
- (4) a document entitled “Dispute Resolution 2018-2019,” which includes the IDEA section 618 data that OSEP used to calculate BIE’s “Timely State Complaint Decisions” and “Timely Due Process Hearing Decisions” scores in the Compliance Matrix.

As noted above, the Department has determined that the BIE needs intervention in implementing the requirements of Part B of IDEA. The Department identifies a State or Entity as needing intervention under IDEA Part B if its RDA Percentage is less than 60%. The BIE’s RDA Percentage is 32.5%. As explained below and in the enclosures to this letter, the major factors contributing to the BIE’s 2020 Needs Intervention determination are: (1) the BIE’s low performance under Indicator 13 (secondary transition requirements); (2) the BIE’s RDA score of zero for the exiting data elements; and (3) the BIE’s longstanding noncompliance.

I. Major Factors Contributing to the BIE’s 2020 RDA Needs Intervention Determination

A. Low Performance under Indicator 13

The data that the BIE provided in its FFY 2018 SPP/APR demonstrate continued noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R.

§§ 300.320(b) and 300.321(b). Under Indicator 13, the BIE was required to provide data on the percent of youth with individualized education programs (IEPs) aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services were to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority. In its FFY 2018 SPP/APR, the BIE's reported FFY 2018 data for Indicator 13 were 16.67 percent.

The BIE's low level of compliance with the secondary transition requirements has been a needs intervention factor and a Special or Specific Condition² since June 2016. Because the BIE did not ensure compliance with the secondary transition requirements, the Department continued to impose Special or Specific Conditions on the BIE's FFY 2017, FFY 2018, and FFY 2019 IDEA Part B grant awards in this area. In OSEP's June 30, 2017, July 18, 2018, and July 1, 2019 determination letters, pursuant to IDEA section 616(e)(2)(B)(i), the Secretary required the BIE to submit a corrective action plan (CAP) that addressed the actions the BIE would take to demonstrate compliance with the secondary transition requirements. Further, in OSEP's July 18, 2018, and July 1, 2019, determination letters, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), the Department directed the BIE to use \$300,000 of its FFY 2018 and its FFY 2019 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) to address its continued low level of compliance with the requirements for secondary transition and to improve the accuracy of its secondary transition data.

B. RDA Score of Zero for Certain Results Elements

The BIE's 2020 RDA Percentage is 32.5 percent, which consists of 60 percent of the BIE's Compliance Score and 40 percent of the BIE's Results Score. In the 2020 Part B Results Matrix, the BIE received a score of zero on both exiting data elements (i.e., the percentage of children with disabilities who dropped out over the previous three reporting years, and the percentage of children with disabilities who graduated with a regular high school diploma over the previous three reporting years). As demonstrated by the section 618 exiting data reported by the BIE, a high percentage of students with disabilities drop out of BIE-funded schools, and a low percentage of students with disabilities graduate with a regular high school diploma (See Results Matrix). This means that many of the BIE's students with disabilities leaving school are not adequately prepared for further education, employment, and independent living.

C. Longstanding Noncompliance

The Department has imposed Special or Specific Conditions on the BIE's last 13 (FFY 2007–FFY 2019) IDEA Part B grant awards, and the BIE has failed to meet the Specific Conditions imposed on its FFY 2019 IDEA Part B grant award. OSEP determined that the BIE failed to complete the corrective actions contained in Section C of its 2019-2020 CAP. Those corrective

² Pursuant to the requirements in 2 C.F.R. § 200.207, the term "Specific Condition" is used, rather than "Special Condition," beginning with FFY 2018 IDEA Part B grant awards that are issued subject to additional requirements. In this letter, the term "Special Conditions" is used when referencing the BIE's IDEA Part B grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018.

actions, which the BIE was required to complete under the Specific Conditions imposed on its FFY 2019 IDEA Part B grant award, required the BIE to: (1) implement fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds; (2) demonstrate compliance with the timeline requirements for resolving State complaints under 34 C.F.R. § 300.152(a) and (b); (3) develop and implement procedures to collect and report valid and reliable data required under sections 616 and 618 of the IDEA in a timely fashion; (4) develop and implement procedures to ensure that the BIE will publicly report on the assessment of children with disabilities in the same manner and frequency as it reports on the assessment of children without disabilities, as required under 34 C.F.R. § 300.160(f); (5) develop and implement a corrective action plan that addresses the actions the BIE will take to address the noncompliance with secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and improve the accuracy of the secondary transition data; (6) develop and implement a spending plan for the use of the directed FFY 2018 and FFY 2019 IDEA Part B administrative funds to address noncompliance with the secondary transition requirements and improve the accuracy of the data, and provide evidence of the use of those directed funds; (7) improve existing data by utilizing available technical assistance resources; and (8) ensure that all students with disabilities enrolled in San Felipe Pueblo Elementary School and other BIE-funded schools covered by the expired contracts received related services in accordance with their individualized education programs (IEPs) and any compensatory services determined necessary by the IEP Teams, as required by IDEA section 612(a)(1) and 34 C.F.R. §§ 300.320 and 300.323(c)(2), and that all initial evaluations are conducted within 60 days of receiving parental consent for the evaluation in accordance with 34 C.F.R. § 300.301(c)(1); and implement procedures to ensure compliance in all other BIE-funded schools with these requirements and to prevent contractual problems that could result in a similar disruption of services in the future. In addition to the Specific Conditions, the Department withheld 20 percent (i.e., \$780,002) of the BIE's FFY 2019 IDEA Part B administrative funds, given the BIE's longstanding noncompliance with the IDEA requirements that directly affect the appropriate provision of special education and related services to children with disabilities attending BIE-funded schools, and its failure to provide required information in a timely manner. The Department also directed the BIE to use \$300,000 of its FFY 2019 IDEA Part B administrative funds to address its continued low level of compliance with secondary transition requirements and to improve the accuracy of its secondary transition data.

II. 2020 RDA Determination and Enforcement Action

The BIE also received a determination of needs intervention in 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 for its FFYs 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017 SPP/APRs, and this is the ninth consecutive year that the BIE is receiving a determination of needs intervention. Under IDEA section 616(e)(2), if the Secretary determines a State to need intervention for three or more consecutive years, the Secretary may take, under IDEA section 616(e)(2)(A), one of the three enforcement actions identified in IDEA section 616(e)(1) and must take one or more of the six enforcement actions identified in IDEA section 616(e)(2)(B).

Pursuant to section 616(d)(2)(B) of the IDEA and 34 C.F.R. § 300.603(b)(2), an Entity that is determined to be “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 Entity's determination. To request a hearing, submit a letter to Mark Schultz, Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services, U.S. 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 your Entity's determination

A. Directed Use of Funds

In OSEP's July 18, 2018, determination letter, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), the Department directed the BIE to use \$300,000 of its FFY 2018 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) to address its continued low level of compliance with the requirements for secondary transition and to improve the accuracy of its secondary transition data. Likewise, in OSEP's July 1, 2019, determination letter, the Department directed the BIE to use \$300,000 of its FFY 2019 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) to address the same secondary transition requirements. Further, for both the FFY 2018 directed funds and the FFY 2019 directed funds, the Department required the BIE to develop, implement, and report progress on, a spending plan to expend the directed funds, that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE was required to expend the full \$300,000 of the FFY 2018 directed funds pursuant to the spending plan by June 30, 2019, but the BIE requested, and OSEP granted, two extensions, with the second and final extension allowing the BIE to expend the FFY 2018 directed funds by April 30, 2020. As noted in OSEP's letter dated May 26, 2020, responding to the BIE's Third Quarter progress report for the CAP, the BIE must: (1) provide documentation to OSEP that \$125,000 of the FFY 2018 directed funds were expended, by April 30, 2020, for the salary of the staff member whose duties consist exclusively of supporting BIE-funded schools in compliance with secondary transition requirements; and (2) provide an assurance that the remaining balance of \$175,000, or \$300,000 if the documentation described in (1) is not provided, of the FFY 2018 directed funds will not be expended. With respect to the FFY 2019 directed funds, which the BIE was required to expend by June 30, 2020, the BIE notified OSEP on April 7, 2020, of its inability to expend the full \$300,000 of the FFY 2019 directed funds by the deadline and requested an extension. In OSEP's letter dated May 26, 2020, OSEP granted a one-year extension of the deadline, giving the BIE until June 30, 2021, to spend the \$300,000 of the FFY 2019 directed funds in accordance with a revised spending plan approved by OSEP. As a result, the BIE must: (1) provide documentation to OSEP that \$125,000 of the FFY 2019 directed funds have been expended for the salary of the staff member whose duties consist exclusively of supporting BIE-funded schools in compliance with secondary transition requirements; (2) provide a revised spending plan for the remaining \$175,000 of FFY 2019 directed funds; and (3) provide updates in the quarterly CAP reports on the expenditure of the remaining balance of FFY 2019 directed funds.

Furthermore, because the BIE's continued very low level of compliance under SPP/APR Indicator 13 (16.67%) contributed to the BIE's 2020 Needs Intervention determination under section 616 of the IDEA (see section I.A above), OSEP is directing \$600,000 of the BIE's FFY 2020 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) for the

BIE to use at the school level, not Bureau level, to improve compliance with the requirements for secondary transition and the accuracy of secondary transition data, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A). OSEP is specifically requiring the BIE to expend these FFY 2020 directed funds on secondary transition programs in BIE-funded schools with high school programs.

The BIE must develop, implement, and report progress on, a spending plan to expend the FFY 2020 directed funds by July 1, 2021 that demonstrates how the directed funds will be expended at the BIE-funded schools with high school programs and will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. No later than October 31, 2020, the BIE must submit, along with its proposed FFY 2020 spending plan, a report of the BIE's FFY 2019 secondary transition compliance data disaggregated by compliance item and BIE-funded school, and the BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance. The BIE's proposed FFY 2020 spending plan must target the use of the FFY 2020 directed funds on secondary transition programs in BIE-funded schools with high school programs, based on a careful review of the BIE's FFY 2019 secondary transition data, and must include: (1) the activities that will be carried out with those FFY 2020 directed funds; (2) the costs associated with each of the activities; (3) a projected timeline for using the FFY 2020 directed funds to pay the costs associated with each of the activities that demonstrates that the funds will be used by July 1, 2021; and (4) an explanation of how the activities will result in improved compliance with secondary transition requirements and improved accuracy of secondary transition data. The BIE must also describe the documentation it will provide to demonstrate the FFY 2020 directed funds were used in accordance with its FFY 2020 spending plan. In addition, to ensure that the BIE can increase compliance with the secondary transition requirements and improve the accuracy of its secondary transition data within one year, the BIE must expedite the use of the directed FFY 2020 IDEA Part B administrative funds.

D. Technical Assistance

Pursuant to these requirements, the Secretary is advising the BIE of available sources of technical assistance, including OSEP-funded technical assistance centers and resources at the following website: <https://osep.grads360.org/#program/highlighted-resources>, and requiring the BIE to work with appropriate entities. In addition, the BIE should consider accessing technical assistance from other Department-funded centers such as the Comprehensive Centers with resources at the following link: <https://compcenternetwork.org/states>. The Department directs the BIE to access technical assistance related to those exiting data elements for which the BIE received a score of zero (i.e., those exiting data elements identified on the Part B Results Matrix and described in section I.B of this letter).

The BIE must report, in the quarterly progress reports it submits for the 2020-2021 CAP, on: (1) the sources from which it received technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix; and (2) the actions the BIE took as a result of that technical assistance.

E. Corrective Action Plan

In addition, pursuant to IDEA section 616(e)(2)(B)(i), the Secretary is requiring the BIE to submit a CAP, because the Secretary has determined that, in combination with directing the use of funds as described above, the BIE should be able to correct the major areas of noncompliance that contributed to its determination of needs intervention within one year from the date of this determination letter, and other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time.

Therefore, the BIE must submit a CAP that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2020-2021 school year under Section C of the CAP, all of the Specific Conditions that will be imposed on its FFY 2020 IDEA Part B grant award. For the reasons explained in the BIE's FFY 2020 Specific Conditions, the corrective action plan must address the steps the BIE will take to: (1) issue fiscal monitoring reports, ensure timely correction of findings of noncompliance identified in fiscal monitoring reports, and ensure verification of correction of noncompliance for which no written findings are issued, in order to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A); (2) demonstrate compliance with the requirements under 34 C.F.R. § 300.160(f) regarding public reporting of assessment data; (3) demonstrate compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b); (4) demonstrate how the directed FFY 2019 and FFY 2020 Part B administrative funds will be used to address noncompliance with the secondary transition requirements and improve the accuracy of the secondary transition data, and provide evidence of the use of those directed funds in accordance with the corresponding spending plans; and (5) demonstrate completion of all of the required actions described in the CAP and in OSEP's August 8, 2018 letter regarding the systemic problems underlying the disruption of related services and timely initial evaluations in several BIE-funded schools, including San Felipe Pueblo Elementary School.

In addition, as required above, the BIE must provide a report and analysis of the disaggregated FFY 2019 secondary transition compliance data, and must develop, implement, and report progress on a spending plan to expend the FFY 2020 directed funds by June 30, 2021, that demonstrates how the directed funds will be used in BIE-funded schools with high school programs, to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the secondary transition data.

The BIE must also report on: (1) the sources from which it received technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix; and (2) the actions it took as a result of that technical assistance.

The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the CAP for the 2019-2020 school year, due on July 31, 2020, as well as quarterly progress reports in accordance with the reporting and timeline requirements specified in the Specific Conditions that OSEP will impose on the BIE's FFY 2020 IDEA Part B grant award.

As required by IDEA section 616(e)(7) and 34 C.F.R. § 300.606, the BIE must notify the public that the Secretary of Education has taken the above enforcement actions, including, at a

minimum, by posting a public notice on the Entity’s website and distributing the notice to the media and through public agencies.

States and Entities were required to submit Phase III Year Four of the State Systemic Improvement Plan (SSIP) by April 1, 2020. OSEP appreciates the BIE’s ongoing work on its SSIP and its efforts to improve results for students with disabilities. We have carefully reviewed and responded to your submission and will provide additional feedback in the upcoming weeks. Additionally, OSEP will continue to work with BIE as it implements the fifth year of Phase III of the SSIP, which is due on April 1, 2021.

As a reminder, the BIE must report annually to the public, by posting on the BIE’s website, the performance of each school funded by the BIE on the targets in the SPP/APR as soon as practicable, but no later than 120 days after the BIE’s submission of its FFY 2018 SPP/APR. In addition, the BIE must:

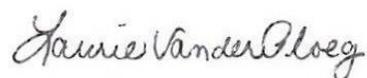
- (1) review school performance against targets in the BIE’s SPP/APR;
- (2) determine if each school “meets the requirements” of Part B, or “needs assistance,” “needs intervention,” or “needs substantial intervention” in implementing Part B of IDEA;
- (3) take appropriate enforcement action; and
- (4) inform each school of its determination.

Further, the BIE must make its SPP/APR available to the public by posting it on your agency’s website. Within the upcoming weeks, OSEP will be finalizing an Entity Profile that:

- (1) includes the Entity’s determination letter and SPP/APR, OSEP attachments, and all Entity attachments that are accessible in accordance with Section 508 of the Rehabilitation Act of 1973; and
- (2) will be accessible to the public via the ed.gov website.

OSEP appreciates the BIE’s efforts to improve results for children and youth with disabilities and looks forward to working with the BIE over the next year as we continue our important work of improving the lives of children with disabilities and their families. Please contact your OSEP State Lead if you have any questions, would like to discuss this further, or want to request technical assistance.

Sincerely,



Laurie VanderPloeg
Director
Office of Special Education Programs

cc: Bureau of Indian Education Acting Director of Special Education