



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

June 24, 2021

Honorable Tony L. Dearman
Director
Bureau of Indian Education
1849 C Street, NW
Washington, DC 20240

Dear Director Dearman:

I am writing to advise you of the U. S. Department of Education's (Department) 2021 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that the Bureau of Indian Education (BIE) needs assistance 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) 2019 State Performance Plan/Annual Performance Report (SPP/APR), other Entity-reported data, and other publicly available information.

With the FFY 2019 SPP/APR submission, the Office of Special Education Programs (OSEP) requested that States and Entities report whether and how the data collection for any indicator was impacted by the COVID-19 pandemic. Specifically, OSEP requested that States and Entities include in the narrative for each impacted indicator: (1) the impact on data completeness, validity, and/or reliability for the indicator; (2) an explanation of how COVID-19 specifically impacted the State's or Entity's ability to collect and verify the data for the indicator; and (3) any steps the State or Entity took to mitigate the impact of COVID-19 on the data collection and verification. OSEP appreciates States' and Entities' level of transparency regarding the impact of COVID-19 on the data reported in the FFY 2019 SPP/APR. When making determination decisions for 2021, OSEP considered all information submitted that related to the impact of the COVID-19 pandemic. For 2021 determinations, no State or Entity received a determination of "Needs Intervention" due solely to data impacted by COVID-19.

OSEP is continuing to use both results and compliance data in making determinations for outlying areas, freely associated States, and the Bureau of Indian Education (the Entities) in 2021, as it did for determinations in 2020.¹ The BIE's 2021 determination is based on the data reflected in the Entity's "2021 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each Entity and consists of:

- (1) a Compliance Matrix that includes scoring on Compliance Indicators and other compliance factors;

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 2022 determination under IDEA section 616(d).

- (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 Entity’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 2021: 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 2021, OSEP used results data related to:

- (1) the percentage of CWD who graduated with a regular high school diploma; and
- (2) 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 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) the BIE’s RDA Matrix;
- (2) the HTDMD document; and
- (3) a spreadsheet entitled “2021 Data Rubric Part B,” which shows how OSEP calculated the BIE’s “Timely and Accurate State-Reported Data” score in the Compliance Matrix.

As noted above, the BIE’s 2021 determination is Needs Assistance. A State’s or Entity’s 2021 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State’s or Entity’s determination would also be Needs Assistance if its RDA Determination percentage is 80% or above but the Department has imposed Specific Conditions on the State’s or Entity’s last three IDEA Part B grant awards (for FFYs 2018, 2019, and 2020), and those Specific Conditions are in effect at the time of the 2021 determination. While the BIE’s RDA percentage is 32.5%, for 2021 determinations, the Department is issuing a determination of “Needs Assistance” instead of Needs Intervention” given that the BIE’s low RDA percentage is directly attributable to the BIE’s FFY 2019 SPP/APR assessment data and compliance data under Indicator 11 (timely initial evaluation), which were both directly impacted by the COVID-19 pandemic as explained further below.

Specifically, the BIE was unable to collect valid and reliable assessment data because it was not able to administer its reading/language arts and mathematics assessments in FFY 2019 as a result of the COVID-19 pandemic. Therefore, the BIE was unable to report data on the participation of

children with disabilities in the general statewide assessment, and this element of the Results Matrix could not be scored. In addition, because OSEP does not use the National Assessment of Educational Progress (NAEP) data in making the BIE's determinations (see footnote 1), the BIE could only be scored on the exiting data elements of the Results Matrix. Therefore, its results matrix score of 25% is based on two elements, whereas the results component of the BIE's 2020 determination was based on four elements. Further, the BIE received a score of one for Indicator 11 on the Compliance Matrix, and the BIE provided information regarding the impact of the COVID-19 pandemic in its explanation of its timely initial evaluation data under Indicator 11. Specifically, the BIE reported that, due to COVID-19, it could not obtain data from 24 schools because of school staff's lack of computers for access to the Native American Student Information System and lack of reliable Internet access, teacher turnover, tribal executive orders, school closures, and the passing of several special education staff members due to COVID-19. Given the impact of the COVID-19 pandemic on the BIE's Indicator 11 data and assessment data, including the effect on the BIE's results score due to the lack of assessment data and NAEP data, OSEP is issuing its determination for the BIE to be "Needs Assistance."

The BIE's IDEA Part B grant award has been under Specific Conditions from FFY 2007 through FFY 2020. Under the Specific Conditions on the BIE's FFY 2020 IDEA Part B grant award, the BIE was required to submit a corrective action plan (CAP) and quarterly progress reports that address the steps the BIE will take to: (1) implement a fiscal monitoring system to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of IDEA Part B funds; (2) 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); (3) 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; and (4) ensure that all students with disabilities enrolled in San Felipe Pueblo Elementary School and other BIE-funded schools 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). OSEP will continue to impose Specific Conditions on the BIE's FFY 2021 IDEA Part B grant award because the BIE failed to complete all of the corrective actions contained in Section C of the 2020-2021 CAP. The specific reporting requirements and other required actions will be described in OSEP's FFY 2021 IDEA Part B grant award documents.

States and Entities were required to submit Phase III Year Five of the SSIP by April 1, 2021. 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 provide technical assistance with the BIE as it implements the SSIP, which is due on February 1, 2022.

As a reminder, the BIE must report annually to the public, by posting on its agency'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 2019 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 the 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 its 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 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,



David Cantrell, PhD
Acting Director
Office of Special Education Programs

cc: Dr. Eugene Thompson, Director of Special Education