



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

June 23, 2022

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) 2022 determination under Section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that Bureau of Indian Education needs assistance in implementing the requirements of Part B of the IDEA. This determination is based on the totality of Bureau of Indian Education's data and information, including the Federal fiscal year (FFY) 2020 State Performance Plan/Annual Performance Report (SPP/APR), other Entity-reported data, and other publicly available information.

With the FFY 2020 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 2020 SPP/APR. When making determination decisions for 2022, OSEP considered all information submitted that related to the impact of the COVID-19 pandemic. For 2022 determinations, as with 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 2022, as it did for determinations in 2021.<sup>1</sup> Bureau of Indian Education's 2022 determination is based on the data reflected in the Entity's "2022 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;

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<sup>1</sup> For the 2022 determinations, OSEP is using results data on the participation and performance of children with disabilities on the National Assessment of Educational Progress (NAEP) for the 50 States, the District of Columbia, and the Bureau of Indian Education. Starting in 2022, OSEP is using the NAEP data in making the BIE's 2022 determination (as indicated in the 2021 determination letters to States and Entities). OSEP is considering whether to use the available NAEP data in making Puerto Rico's 2023 determination.

- (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 2022: 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 Bureau of Indian Education. In making Part B determinations in 2022, OSEP used results data related to:

- (1) the participation and performance of CWD on the most recently administered (school year 2018-2019) National Assessment of Educational Progress (NAEP);<sup>2</sup>
- (2) the percentage of CWD who graduated with a regular high school diploma; and
- (3) the percentage of CWD who dropped out.

In 2022, States were required to submit a new SPP/APR for FFYs 2020 through 2025. The 2022 submission of the SPP/APR is the third six-year SPP and includes baseline data and measurable and rigorous targets for FFY 2020 through FFY 2025 for each indicator in the SPP/APR. OSEP has reviewed and approved your State's SPP under IDEA Section 616(b) to include measurable and rigorous targets for FFY 2025 that reflect improvement over the State's baseline data. Any action required by the State is reflected in OSEP's response.

For the Department's 2023 determinations, the Department is reviewing and considering whether and how to use existing indicators and/or other available data in making its determinations as part of its continuing effort to prioritize equity and improve results for infants, toddlers and children with disabilities. In April 2022, the Department released an equity action plan as part of its efforts to advance racial equity and support underserved communities. Examples of existing indicators that could be considered and/or be weighted differently include indicators on child find (for Part C) and/or significant discrepancy and disproportionate representation (for Part B). We will offer opportunities for input from the public, including parents, agencies that implement IDEA and other stakeholders, to provide feedback in the coming months, starting with the OSEP Leadership Conference in July 2022 as well as through email submissions and listening sessions open to the public.

As noted earlier, for its 2021 and 2022 determinations, the Department did not issue a determination of “Needs Intervention” to any State because States' SPP/APR data collections for FFY 2019 and FFY 2020 were impacted by COVID-19. OSEP is considering, but has not yet determined, whether and how a State's FFY 2021 SPP/APR data collection that was affected by COVID-19 will be considered in the Department's 2023 determinations.

You may access the results of OSEP's review of Bureau of Indian Education's SPP/APR and other relevant data by accessing the EMAPS SPP/APR reporting tool using your Entity-specific

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<sup>2</sup> This element applies only to the BIE's determination, and not to other Entities' determinations. See footnote 1.

log-on information at <https://emaps.ed.gov/suite/>. When you access Bureau of Indian Education's SPP/APR on the site, you will find, in applicable Indicators 1 through 17, 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) Bureau of Indian Education's RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled "2022 Data Rubric Part B," which shows how OSEP calculated Bureau of Indian Education's "Timely and Accurate State-Reported Data" score in the Compliance Matrix; and
- (4) a document entitled "Dispute Resolution 2020-2021," which includes the IDEA Section 618 data that OSEP used to calculate Bureau of Indian Education's "Timely State Complaint Decisions" and "Timely Due Process Hearing Decisions" scores in the Compliance Matrix.

As noted above, Bureau of Indian Education's 2022 determination is Needs Assistance. A State's or Entity's 2022 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 2019, 2020, and 2021), and those Specific Conditions are in effect at the time of the 2022 determination. While the BIE's RDA percentage is 34%, for 2022 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 2020 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, due to the significant impact of the COVID-19 pandemic on the quality of the school year 2020-2021 Statewide assessment data, OSEP has determined that the data on participation rates in regular Statewide assessments will not be scored on the Results Matrix to ensure that the 2022 determinations for States and Entities are not negatively impacted by their use of COVID-19 flexibilities available with respect to assessments. 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 16 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, the passing of several special education staff members due to COVID-19. The BIE also reported that COVID-19 affected the ability of evaluators to access students. Given the impact of the COVID-19 pandemic on the BIE's Indicator 11 data and assessment 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 2021. Under the Specific Conditions on the BIE's FFY 2021 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) adopt final policies and procedures related to implementation of IDEA Part B consistent with IDEA Sections 611(h)(2)(A) and 612(a) and 34 C.F.R. § 300.708(a); (2) ensure timely correction of findings of noncompliance identified in monitoring reports; (3) issue annual determinations on the performance of all BIE-funded schools, consistent with IDEA Sections 611(h)(2)(A) and 616(a) and (e) and 34 C.F.R. §§ 300.600(a)(2), 300.708(d), and 300.716; (4) demonstrate that the BIE has revised and implemented its dispute resolution procedures and practices to be consistent with IDEA Section 615(f)(1)(B) and (k)(3) and 34 C.F.R. §§ 300.510(a), (b), and (c), 300.515(a), 300.532(a) and (c)(2), and 300.716; (5) update and implement the 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 (6) 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 2022 IDEA Part B grant award because the BIE failed to complete all of the corrective actions contained in Section C of the 2021-2022 CAP. The specific reporting requirements and other required actions will be described in OSEP's FFY 2022 IDEA Part B grant award documents.

Bureau of Indian Education's determination for 2021 was also Needs Assistance. In accordance with Section 616(e)(1) of the IDEA and 34 C.F.R. § 300.604(a), if a State or Entity is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions:

- (1) advise the State or Entity of available sources of technical assistance that may help the State or Entity address the areas in which it needs assistance and require the State or Entity to work with appropriate entities;
- (2) direct the use of State or Entity-level funds on the area or areas in which the State or Entity needs assistance; or
- (3) identify the State or Entity as a high-risk grantee and impose Specific Conditions on the State's or Entity's IDEA Part B grant award.

Pursuant to these requirements, the Secretary is advising Bureau of Indian Education of available sources of technical assistance, including OSEP-funded technical assistance centers and resources at the following websites: [Monitoring and State Improvement Planning \(MSIP\) | OSEP Ideas That Work](#), [Individuals with Disabilities Education Act \(IDEA\) Topic Areas](#), and requiring Bureau of Indian Education to work with appropriate entities. In addition, Bureau of Indian Education 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 Secretary directs Bureau of Indian Education 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 Bureau of Indian Education to access technical assistance related to those

results elements and compliance indicators for which Bureau of Indian Education received a score of zero. Bureau of Indian Education must report with its FFY 2021 SPP/APR submission, due February 1, 2023, on:

- (1) the technical assistance sources from which Bureau of Indian Education received assistance; and
- (2) the actions Bureau of Indian Education took as a result of that technical assistance.

As required by IDEA Section 616(e)(7) and 34 C.F.R. § 300.606, Bureau of Indian Education 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 its website and distributing the notice to the media and through public agencies.

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 2020 SPP/APR. In addition, the BIE must:

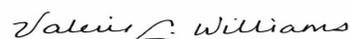
- (1) review school performance against targets in the BIE’s SPP/APR;
- (2) determine if each school “meets the requirements” of Part B, or “needs assistance,” “needs intervention,” or “needs substantial intervention” in implementing Part B of the IDEA;
- (3) take appropriate enforcement action; and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

Further, Bureau of Indian Education must make its SPP/APR available to the public by posting it on the 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 Bureau of Indian Education’s efforts to improve results for children and youth with disabilities and looks forward to working with Bureau of Indian Education 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,



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Valerie Williams  
Director  
Office of Special Education Programs

cc: Bureau of Indian Education Director of Special Education