



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

June 23, 2023

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

Dear Director Dearman:

I am writing to advise you of the U.S. Department of Education's (Department) 2023 determination under Section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that Bureau of Indian Education needs intervention 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) 2021 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 Bureau of Indian Education (the Entities) in 2023, as it did for determinations in 2022.¹ Bureau of Indian Education's 2023 determination is based on the data reflected in Bureau of Indian Education's "2023 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;
- (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

¹ For the 2023 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 Puerto Rico. Starting in 2023, OSEP is using the NAEP data in making Puerto Rico's determination (as indicated in the 2022 determination letters to States and Entities). OSEP did not use NAEP data in making the BIE's 2023 determination because the NAEP data available for the BIE were not comparable to the NAEP data available for the 50 States, the District of Columbia, and Puerto Rico; specifically, the most recently administered NAEP for the BIE is 2019, whereas the most recently administered NAEP for the 50 States, the District of Columbia, and Puerto Rico is 2022.

(5) Bureau of Indian Education’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 2023: 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 document and reflected in the RDA Matrix for Bureau of Indian Education. In making Part B determinations in 2023, 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.

Prior to issuing the 2023 determinations, the Department asked stakeholders for input regarding how the Department might prioritize equity and improve results for infants, toddlers, children and youth with disabilities. OSEP received input through a variety of sources. For its 2023 determinations, OSEP has factored only programmatic (not Department-wide) specific conditions when scoring the Longstanding Noncompliance element of the Compliance Matrix. Also, while Indicator 4B (significant discrepancy, by race or ethnicity, in rates of suspension and expulsion for children with disabilities) continued to be a factor in each Entity’s 2023 Compliance Matrix, no Entity’s 2023 determination was negatively impacted due solely to its Indicator 4B data.

For 2024 and beyond, the Department is considering the weight of existing as well as potential additional factors in making its determinations as part of its continuing effort to prioritize equity and improve results for infants, toddlers, children, and youth with disabilities. Potential additional factors include how the Department considers assessment data, such as whether to continue including data on the participation and proficiency of CWD on the NAEP and/or whether to include data on the proficiency of CWD on Statewide assessments. Other potential factors include whether and how to consider child find under Indicators C-5 and C-6 and/or other longstanding noncompliance (such as unresolved findings issued by OSEP during and prior to FFY 2020).

Starting with the 2022-23 data submitted to EDFacts, States or Entities will submit the majority of the IDEA Section 618 data collections (i.e., Part B Child Count and Educational Environments, Part B Personnel, Part B Exiting, Part B Discipline, and Part B Assessment) via the new EDPass system. The Part B Dispute Resolution and the Part B Maintenance of Effort Reduction and Coordinated Early intervening Services data will continue to be submitted via EMAPS.

The 2022-23 IDEA Section 618 Part B data will continue to populate the Part B SPP/APR Indicators 3, 5, and 6 as they have in the past. However, please note that there will be changes to the data submission and data quality processes associated with the 2022-23 IDEA Section 618 Part B data under EDFacts Modernization. Under EDFacts Modernization, States or Entities are expected to submit high-quality IDEA Section 618 Part B data that can be published and used by the Department as of the due date for the applicable IDEA Section 618 data submission. Starting with the 2022-23 IDEA Section 618 Part B data, States or Entities will be expected to conduct data quality reviews prior to the applicable due date. OSEP will expect States or Entities to take

one of the following two actions for all business rules that are triggered in the EDPass or EMAPS system prior to the applicable due date: 1) revise the uploaded data to address the edit; or 2) provide a data note addressing why the data submission triggered the business rule. Please note that States or Entities will be unable to submit the IDEA Section 618 Part B data to the Department without taking one of these two actions. There will not be a resubmission period for the IDEA Section 618 Part B data. The 2022-23 IDEA Section 618 Part B data submitted as of the applicable due date will be used for the FFY 2022 SPP/APR and the 2024 IDEA Part B Results Matrix.

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 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 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 “2023 Data Rubric Part B,” which shows how OSEP calculated Bureau of Indian Education “Timely and Accurate State-Reported Data” score in the Compliance Matrix; and
- (4) a document entitled “Dispute Resolution 2021-2022,” 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, the Department has determined that Bureau of Indian Education 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%. Bureau of Indian Education’s RDA Percentage is 50%.

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 50%. As explained below, the major factors contributing to the BIE’s 2023 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 2023 RDA Needs Intervention Determination

A. Low Performance under Indicator 13

The data that the BIE provided in its FFY 2021 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 Bureau of Indian Education 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 2021 SPP/APR, the BIE’s reported FFY 2021 data for Indicator 13 were 46.75 percent. The BIE’s low level of compliance with the secondary transition requirements has been a needs intervention factor and/or 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 Bureau of Indian Education’s FFY 2017 through FFY 2022, IDEA Part B grant awards in this area. In OSEP’s 2017 through 2022 determination letters to the BIE, 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.

B. RDA Score of Zero for Certain Results Elements

The BIE’s 2023 RDA Percentage is 50 percent, which consists of 60 percent of the BIE’s Compliance Score and 40 percent of the BIE’s Results Score. In the 2023 Part B Results Matrix, the BIE received a score of zero for 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 IDEA 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 from BIE-funded schools 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 16 (FFY 2007 through FFY 2022) IDEA Part B grant awards, and the BIE has failed to meet the Specific Conditions imposed on its FFY 2022 IDEA Part B grant award. OSEP determined that the BIE

² Pursuant to the requirements in 2 C.F.R. § 200.208, 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.

failed to complete all of the corrective actions contained in Section C of its 2022-2023 CAP. Those corrective actions, which the BIE was required to complete under the Specific Conditions imposed on its FFY 2022 IDEA Part B grant award, required the BIE 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 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).

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: Glenna Wright-Gallo, 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.

As a reminder, Bureau of Indian Education must report annually to the public, by posting on your agency’s website, the performance of each local educational agency (LEA) located in the State on the targets in the SPP/APR as soon as practicable, but no later than 120 days after the Bureau of Indian Education submission of its FFY 2021 SPP/APR. In addition, Bureau of Indian Education must:

- (1) review LEA performance against targets in the Bureau of Indian Education’s SPP/APR;
- (2) determine if each LEA “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 LEA of its determination.

Further, Bureau of Indian Education must make its SPP/APR available to the public by posting it on your agency’s website. Within the next 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,

/s/

Valerie Williams
Director
Office of Special Education Programs

cc: Bureau of Indian Education Director of Special Education