



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

June 23, 2023

Honorable Kirsten Baesler  
State Superintendent  
North Dakota Department of Public Instruction  
600 East Boulevard Avenue, Dept. 201  
Bismarck, ND 58505

Dear Superintendent Baesler:

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 North Dakota needs assistance in implementing the requirements of Part B of the IDEA. This determination is based on the totality of the State'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.

Your State's 2023 determination is based on the data reflected in the State's "2023 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 State'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: Part B](#)" (HTDMD).

The Office of Special Education Programs (OSEP) is continuing to use both results data and compliance data in making determinations in 2023, as it did for Part B determinations in 2014-2022. (The specifics of the determination procedures and criteria are set forth in the HTDMD document and reflected in the RDA Matrix for your State.) 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;

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- (2) the participation and performance of CWD on the most recently administered (school year 2021-2022) National Assessment of Educational Progress (NAEP);<sup>1</sup>
- (3) the percentage of CWD who graduated with a regular high school diploma; and
- (4) 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 State's 2023 Compliance Matrix, no State's 2023 determination was negatively impacted solely due 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 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 by States via EMAPS.

The 2022-23 IDEA Section 618 Part B data will continue to prepopulate 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 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 will be expected to conduct data quality reviews prior to the applicable due date. OSEP will expect States 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 will be

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<sup>1</sup> For the 2023 determinations, OSEP is using results data on the participation and performance of children with disabilities on the 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.

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 your State’s SPP/APR and other relevant data by accessing the EMAPS SPP/APR reporting tool using your State-specific log-on information at <https://emaps.ed.gov/suite/>. When you access your State’s SPP/APR on the site, you will find, in Indicators 1 through 17, the OSEP Response to the indicator and any actions that the State is required to take. The actions that the State 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 State’s RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2023 Data Rubric Part B,” which shows how OSEP calculated the State’s “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 the State’s “Timely State Complaint Decisions” and “Timely Due Process Hearing Decisions” scores in the Compliance Matrix.

As noted above, the State’s 2023 determination is Needs Assistance. A State’s 2023 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State’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 last three IDEA Part B grant awards (for FFYs 2020, 2021, and 2022), and those Specific Conditions are in effect at the time of the 2023 determination.

The State’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 is determined to need assistance for two consecutive years, the Secretary must take one or more of the following actions:

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

Pursuant to these requirements, the Secretary is advising the State 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 the State to work with appropriate entities. In addition, the State 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 the State 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 the State to access technical assistance related to those results elements and compliance indicators for which the State received a score of zero. Your State must report with its FFY 2022 SPP/APR submission, due February 1, 2024, on:

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

As required by IDEA Section 616(e)(7) and 34 C.F.R. § 300.606, your State 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, your State must report annually to the public, by posting on the State educational agency's (SEA'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 State's submission of its FFY 2021 SPP/APR. In addition, your State must:

- (1) review LEA performance against targets in the State'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, your State must make its SPP/APR available to the public by posting it on the SEA's website. Within the upcoming weeks, OSEP will be finalizing a State Profile that:

- (1) includes the State's determination letter and SPP/APR, OSEP attachments, and all State 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 State's efforts to improve results for children and youth with disabilities 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. 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/

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Valerie Williams  
Director  
Office of Special Education Programs

cc: State Director of Special Education

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