



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

June 25, 2020

Honorable Shannon Tahoe
Interim Commissioner
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Interim Commissioner Tahoe:

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 New York needs intervention 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) 2018 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

Your State's 2020 determination is based on the data reflected in the State'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 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 2020: Part B" (HTDMD).

The Office of Special Education Programs (OSEP) is continuing to use both results data and compliance data in making determinations in 2020, as it did for Part B determinations in 2014, 2015, 2016, 2017, 2018, and 2019. (The specifics of the determination procedures and criteria are set forth in the HTDMD and reflected in the RDA Matrix for your State.) In making Part B determinations in 2020, OSEP continued to use results data related to:

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

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 16, 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 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 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 “2020 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 2018-2019,” 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, and as further explained in the enclosures to this letter, the Department has determined that New York needs intervention in implementing the requirements of Part B of IDEA. The Department identifies a State as needing intervention under IDEA Part B if its RDA Percentage is less than 60%. New York’s RDA Percentage is 57.92%. The major factors contributing to New York’s 2020 Needs Intervention determination are the scores of ‘0’ on the results elements for the percentage of fourth grade children with disabilities participating in regular Statewide assessments in reading and math, the percentage of eighth grade children with disabilities participating in regular Statewide assessments in reading and math, and the percentage of fourth grade children with disabilities scoring at basic or above on the NAEP in math. In addition, New York received a score of ‘0’ on Timely Due Process Hearing Decisions (52.46%) and Longstanding Noncompliance (uncorrected noncompliance identified in FFY 2013 or earlier).

OSEP notes that the State has placed the New York City Department of Education (NYCDOE) on a compliance assurance plan to address longstanding noncompliance with New York City’s provision of a free appropriate public education to children with disabilities and protection of parental and student rights. As stated in OSEP’s September 10, 2019 letter to the State, there has

been an increase in the number of due process hearing requests filed with NYCDOE, many of which have not been resolved within the 45-day timeline without having received a specific extension under 34 C.F.R. § 300.515(c). The State’s most recent dispute resolution data submitted under section 618 of IDEA provides additional evidence of this continued backlog. Therefore, OSEP will continue to address, under separate cover, the State’s general supervisory and monitoring responsibilities under sections 612(a)(11) and 616(a) of IDEA to ensure that due process complaints, impartial due process hearings, and expedited due process hearings are conducted consistent with IDEA requirements.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 C.F.R. § 300.603(b)(2), a State that is determined to be “needs intervention” or “needs 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 State’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 State’s determination.

States were required to submit Phase III Year Four of the State Systemic Improvement Plan (SSIP) by April 1, 2020. OSEP appreciates the State’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 your State as it implements the fifth year of Phase III of the SSIP, which is due on April 1, 2021.

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 2018 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,



Laurie VanderPloeg
Director
Office of Special Education Programs

cc: State Director of Special Education