



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

June 28, 2017

Honorable Tony L. Dearman  
Director  
Bureau of Indian Education  
1849 C Street NW  
MS-4657-MIB  
Washington, DC 20240

Dear Director Dearman:

I am writing to advise you of the U. S. Department of Education's (Department) 2017 determination under section 616 of the *Individuals with Disabilities Education Act (IDEA)*. The Department has determined that the Bureau of Indian Education (the BIE) needs intervention 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) 2015 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

The BIE's 2017 determination is based on the data reflected in the BIE's "Part B Compliance Matrix – 2017" (Compliance Matrix). The Compliance Matrix is further explained in a document, entitled "How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act Part B in 2017: Entities with Determinations Based on Compliance" (HTDMD Compliance Only).

Although OSEP is continuing to use both results data and compliance data in making determinations in 2017 for other States, the Department did not have sufficient results data to use when making 2017 determinations for the following entities: American Samoa, the Bureau of Indian Education, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Virgin Islands. Therefore, the Department is using the criteria set forth in the HTDMD Compliance Only, which are similar to the criteria the Department used to make determinations for these entities in 2013, 2014, 2015 and 2016. In making Part B determinations in 2017 for other States, OSEP used compliance data and results data related to the participation of children with disabilities (CWD) on regular Statewide assessments, the participation and performance of CWD on the National Assessment of Educational Progress (NAEP), and exiting data on CWD who dropped out and CWD who graduated with a regular high school diploma, as reported by States under section 618 of the *IDEA*. The entities have results data available for some, but not all, of these Results Elements.

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

The Department is considering using both compliance and results data for the entities' 2018 determinations. Section 616(a)(2) of the *IDEA* requires that the primary focus of *IDEA* monitoring must be on improving educational results and functional outcomes for all children with disabilities, and ensuring that States meet the *IDEA* program requirements, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities. We believe that taking this more balanced approach, using both compliance and available results data, is consistent with this statutory provision and will allow entities to better focus on improving results for children with disabilities who they serve. As we consider using results data in determinations, OSEP will provide the entities with an opportunity to comment and provide input on how we should use results data when making determinations in 2018 under *IDEA* section 616.

You may access the results of OSEP's review of the BIE's SPP/APR and other relevant data by accessing the SPP/APR module using your entity-specific log-on information at [osep.grads360.org](http://osep.grads360.org). When you access the BIE'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 BIE is required to take. The actions that the BIE 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 BIE 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 also includes language in the "OSEP Response" and/or "Required Actions" sections.

You will also find all of the following important documents saved as attachments to the Progress Page:

- (1) the BIE's Compliance Matrix;
- (2) the HTDMD Compliance Only document;
- (3) a spreadsheet entitled "2017 Data Rubric Part B," which shows how OSEP calculated the BIE's "Timely and Accurate State-Reported Data" score in the Compliance Matrix;
- (4) a document entitled "Dispute Resolution 2015-16," which includes the *IDEA* section 618 data that OSEP used to calculate the BIE's "Timely State Complaint Decisions" and "Timely Due Process Hearing Decisions" scores in the Compliance Matrix; and
- (5) a Data Display, which presents certain entity-reported data in a transparent, user-friendly manner and is helpful for the public in getting a broader picture of the BIE's performance in key areas.

As noted above, the BIE's 2017 determination is Needs Intervention. The Department identifies an entity whose determination is based on compliance data only as needing intervention under *IDEA* Part B if its 2017 Part B Compliance Matrix Percentage is below 75%, and if the entity has either very low (below 50%) or not valid and reliable data for a Compliance Indicator, or Special Conditions for multiple years for failing to comply with key *IDEA* Part B requirements. The major factors contributing to the BIE's 2017 Needs Intervention determination are: (1) the BIE's 2017 Part B Compliance Matrix Percentage of 37.5%; and (2) the BIE's longstanding noncompliance.

In addition, the Department has imposed Special Conditions on the BIE's last 10 (FFY 2007-2016) *IDEA* Part B grant awards, and the BIE has failed to meet the Special Conditions imposed on its FFY 2016 *IDEA* Part B grant award. OSEP determined that the BIE has failed to complete the corrective actions contained in Section C of its Corrective Action Plan (CAP). Those corrective actions, which the BIE was required to complete under the Special Conditions imposed on its FFY 2016 *IDEA* Part B grant award, related to: (1) the BIE's implementation of fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under *IDEA* section 611(h)(1)(A); (2) the BIE's compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5), respectively; (3) the BIE's compliance with the data reporting requirements under sections 612(a)(16)(D), 616(b)(2)(B) and 618 of the *IDEA* and 34 CFR § 300.160(f); and (4) the BIE's compliance with the secondary transition requirements under section 614(d)(1)(A)(i)(VIII) of the *IDEA* and 34 C.F.R. §§ 300.320(b) and 300.321(b). The BIE must take the steps necessary to ensure that it can report compliance with these requirements.

The BIE also received a determination of Needs Intervention in 2012, 2013, 2014, 2015, and 2016 for its FFYs 2010, 2011, 2012, 2013, and 2014 SPP/APRs, and this is the sixth consecutive year that the BIE is receiving a determination of Needs Intervention. Under *IDEA* section 616(e)(2), if the Secretary determines a State to need intervention for three or more consecutive years, the Secretary must take one or more of the six enforcement actions identified in *IDEA* section 616(e)(2)(B) and may take, under *IDEA* section 616(e)(2)(A), one of the three enforcement actions identified in *IDEA* section 616(e)(1). Accordingly, under *IDEA* section 616(e)(2)(B)(i), the Secretary is requiring the BIE to submit a CAP, because the Secretary has determined that the BIE should be able to correct the problems that are the basis for its Needs Intervention determination within one year from the date of this determination letter, and other enforcement remedies under *IDEA* section 616(e)(2)(B) are not appropriate at this time.

The BIE must submit a CAP that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2017-2018 school year under Section C of the CAP, all of the Special Conditions that will be imposed on its FFY 2017 *IDEA* Part B grant award. For the reasons explained in the BIE's FFY 2017 Special Conditions, the corrective action plan must address the steps the BIE will take to: (1) implement fiscal monitoring procedures to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under *IDEA* section 611(h)(1)(A); (2) demonstrate compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5); (3) demonstrate compliance with the data reporting requirements under sections 612(a)(16)(D), 616(b)(2)(B) and 618 of the *IDEA* and 34 CFR § 300.160(f); and (4) demonstrate compliance with the secondary transition requirements in *IDEA* section 614(d)(1)(A)(i)(VIII) and 34 CFR §§ 300.320(b) and 300.321(b). The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the CAP for the 2016-2017 school year, due on July 31, 2017, as well as quarterly progress reports in accordance with the reporting and timeline requirements specified in the Special Conditions that OSEP will impose on the BIE's FFY 2017 Part B grant award.

States were required to submit Phase III of the State Systemic Improvement Plan (SSIP) by April 3, 2017. OSEP appreciates the entity's ongoing work on its SSIP and its efforts to improve results for students with disabilities. We have carefully reviewed your submission and will provide feedback in the upcoming weeks. Additionally, OSEP will continue to work with your entity as it implements the second year of Phase III of the SSIP, which is due on April 2, 2018.

Pursuant to section 616(d)(2)(B) of the *IDEA* and 34 CFR §300.603(b)(2), a State that is determined to “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 State's determination. To request a hearing, submit a letter to Kimberly M. Richey, Acting 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 the BIE's determination.

As required by *IDEA* section 616(e)(7) and 34 CFR §300.606, the BIE must notify the public within the BIE's jurisdiction 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 2015 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 inform each school of its determination.

Further, the BIE must make its SPP/APR available to the public by posting it on its website.

Within the next several days, OSEP will be finalizing a State Profile for your entity that:

- (1) will be accessible to the public;
- (2) includes the entity's determination letter and SPP/APR, and all related entity and OSEP attachments; and
- (3) can be accessed via a URL unique to your entity, which the BIE can use to make its SPP/APR accessible to the public.

We will provide you with the unique URL when it is live.

OSEP appreciates the BIE's efforts to improve results for children and youth with disabilities and looks forward to working with your entity 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/ Ruth E. Ryder

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs

cc: BIE Director of Special Education