



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

July 18, 2018

Honorable Tony L. Dearman
Director
Bureau of Indian Education
1849 C Street, NW
MS-3609-MIB
Washington, DC 20240

Dear Director Dearman:

I am writing to advise you of the U. S. Department of Education's (Department) 2018 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) 2016 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

Protecting the rights of children with disabilities and their families is a key responsibility of States, but it is not sufficient if children are not attaining the knowledge and skills necessary to achieve the goals of *IDEA* as reflected in Congressional findings in section 601(c)(1) of the *IDEA*: equality of opportunity, full participation, independent living, and economic self-sufficiency. To address this concern, the Office of Special Education Programs (OSEP) has been using results data when making annual determinations for States under *IDEA* section 616(d) since 2014, and this year for the first time, the Department used results data when making determinations for outlying areas, freely associated States and the BIE (the Entities).

OSEP informed the Entities in their 2017 determination letters, that it was considering using both compliance and results data when making determinations in 2018. Over the past year, OSEP has solicited input from the Entities on multiple occasions; in a face to face meeting on July 19, 2017 and subsequent conference calls with technical assistance providers who shared additional questions and suggestions collected from the Entities in later meetings. After careful consideration of the input provided by each of the Entities, technical assistance providers, and other stakeholders, OSEP developed an equitable and reasonable process for using results data with compliance data in making determinations for each Entity. In early February 2018, OSEP sent a letter to the BIE's Chief State School Officer explaining how both results and compliance data would be used in making 2018 determinations.

The BIE's 2018 determination is based on the data reflected in the BIE's "2018 Part B Results-Driven Accountability Matrix" (RDA Matrix). The RDA Matrix is individualized for each State and Entity and consists of:

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- (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 BIE'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 2018: 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 the BIE. In making Part B determinations in 2018, 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.

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 <https://osep.grads360.org>. When you access your Entity's SPP/APR on the site, you will find, in applicable Indicators 1 through 16, 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 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 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 to the Progress Page:

- (1) the BIE's RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2018 Data Rubric Part B,” which shows how OSEP calculated the BIE's “Timely and Accurate State-Reported Data” score in the Compliance Matrix; and
- (4) a document entitled “Dispute Resolution 2016-17,” 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.

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 15 percent. The major factors contributing to the BIE's 2018 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 certain reading and math assessment elements, and (3) the BIE's longstanding noncompliance.

I. Major Factors Contributing to the BIE's 2018 RDA Needs Intervention Determination

A. Low Performance under Indicator 13

The data that the BIE provided in its FFY 2016 SPP/APR demonstrate continued noncompliance with the secondary transition requirements in *IDEA* section 614(d)(1)(A)(i)(VIII) and 34 CFR §§300.320(b) and 300.321(b). Under Indicator 13, the BIE 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 2016 SPP/APR, the BIE's reported FFY 2016 data for Indicator 13 were 14.98%. These data reflect significant slippage from the FFY 2015 data of 80.40% the BIE reported for Indicator 13 in its FFY 2015 SPP/APR.

The BIE's low level of compliance with the secondary transition requirements has been a Needs Intervention factor and a Special Condition¹ since June 2016. Because the BIE did not ensure compliance with the secondary transition requirements, the Department continued to impose Special Conditions on the BIE's FFY 2017 *IDEA* Part B grant award in this area. In OSEP's June 30, 2017, determination letter, 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. While OSEP recognizes the BIE's efforts to increase the validity and reliability of data it reports under Indicator 13, which the BIE explained in its FFY 2016 SPP/APR and in its quarterly progress reports submitted under the 2017-2018 CAP, the data itself is extremely low and raises serious concerns about the BIE's compliance with secondary transition requirements.

B. RDA Score of Zero for Certain Results Elements

The BIE's 2018 RDA Percentage is 15 percent, which consists of 60 percent of the BIE's Compliance Score and 40 percent of the BIE's Results Score. In the 2018 Part B Results Matrix, the BIE received a score of zero on 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

¹ Pursuant to the requirements in 2 CFR §200.207, the term "Specific Condition" is used, rather than "Special Condition," for 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.

three reporting years). As demonstrated by the section 618 exiting data reported by the BIE, too many students with disabilities drop out of school and too few 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.

In addition, the BIE received a score of zero on the average percentage of third through eighth grade children with disabilities participating in regular Statewide assessments for reading and math, because its data for those Results Elements are not valid and reliable.

C. Longstanding Noncompliance

The Department has imposed Special Conditions on the BIE's last 11 (FFY 2007- 2017) *IDEA* Part B grant awards, and the BIE has failed to meet the Special Conditions imposed on its FFY 2017 *IDEA* Part B grant award. OSEP determined that the BIE has failed to complete the corrective actions contained in Section C of its 2017-2018 CAP. Those corrective actions, which the BIE was required to complete under the Special Conditions imposed on its FFY 2017 *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 under 34 CFR §300.152(a); (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 CFR §§300.320(b) and 300.321(b).

II. 2018 RDA Determination and Enforcement Action

The BIE also received a determination of Needs Intervention in 2012, 2013, 2014, 2015, 2016 and 2017 for its FFYs 2010, 2011, 2012, 2013, 2014 and 2015 SPP/APRs, and this is the seventh 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 may take, under *IDEA* section 616(e)(2)(A), one of the three enforcement actions identified in *IDEA* section 616(e)(1) and must take one or more of the six enforcement actions identified in *IDEA* section 616(e)(2)(B).

A. Directed Use of Funds

Pursuant to *IDEA* section 616(e)(1)(B) and (e)(2)(A), the Department is directing the BIE to use \$300,000 of its FFY 2018 administrative funds under *IDEA* section 611(h)(1)(A) and 34 CFR §300.710(a) to address its continued low level of noncompliance with the requirements for secondary transition and to improve the accuracy of its secondary transition data. Directing the use of funds is an appropriate enforcement action because it supports the ability of the BIE and BIE-funded schools to meet secondary transition requirements, which are critical *IDEA* requirements that directly impact a child's right to receive a free appropriate public education. The failure of a State to comply with secondary transition requirements impacts a student's ability to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment, and independent living. The amount of \$300,000 represents a significant commitment of resources that will be targeted

to ensure that the BIE and BIE-funded schools take the necessary action to increase compliance with the secondary transition requirements.

The BIE must develop, implement, and report progress on, a spending plan to expend directed funds by July 1, 2019 that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in *IDEA* section 614(d)(1)(A)(i)(VIII) and 34 CFR §§300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE must submit, along with its proposed spending plan, a report of the BIE's FFY 2017 secondary transition compliance data disaggregated by compliance item and BIE-funded school, and the BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance. The BIE's proposed spending plan must include: (1) the activities that will be carried out with those funds; (2) the costs associated with each of the activities; (3) a projected timeline for using the funds to pay the costs associated with each of the activities that demonstrates that the funds will be used by July 1, 2019; and (4) an explanation of how the activities will result in improved compliance with secondary transition requirements and improved data accuracy. The BIE must also describe the documentation it will provide to demonstrate funds were used in accordance with the FFY 2018 spending plan. In addition, to ensure that the BIE can increase compliance with the secondary transition requirements within one year, the BIE must expedite the use of the directed FFY 2018 *IDEA* Part B administrative funds and target the use of those funds for activities that are based on a careful review of the BIE's FFY 2017 secondary transition data.

B. Technical Assistance

Pursuant to *IDEA* section 616(e)(1)(A) and (e)(2)(A), the Department is advising the BIE of available sources of technical assistance, including OSEP-funded technical assistance centers and resources at <https://osep.grads360.org/#program/highlighted-resources> and requiring the BIE to work with appropriate entities. In addition, the BIE should consider accessing technical assistance from other Department-funded centers such as the Comprehensive Centers with resources at the following link: <https://www2.ed.gov/programs/newccp/index.html>. The Department directs the BIE to access technical assistance related to those exiting data elements for which the BIE received a score of zero (i.e., those exiting data elements identified on the Part B Results Matrix and described in section I.B of this letter).

The BIE must report, in the quarterly progress reports it submits for the 2018-2019 CAP, on: (1) the sources from which it received technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix; and (2) the actions the BIE took as a result of that technical assistance.

C. Corrective Action Plan

In addition, pursuant to *IDEA* section 616(e)(2)(B)(i), the Secretary is requiring the BIE to submit a CAP, because the Secretary has determined that, in combination with directing the use of funds as described above, the BIE should be able to correct the major areas of noncompliance that contributed to 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.

Therefore, the BIE must submit a CAP that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2018-2019 school year under Section C of the CAP, all of the Specific Conditions that will be imposed on its FFY 2018 *IDEA* Part B grant award. For the reasons explained in the BIE's FFY 2018 Specific 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 under 34 CFR §300.152(a) ; (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) and improve the accuracy of the secondary transition data.

In addition, as required above, the BIE must provide a report and analysis of the disaggregated FFY 2017 secondary transition compliance data, and must develop, implement, and report progress on a spending plan to expend directed funds by July 1, 2019 that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in *IDEA* section 614(d)(1)(A)(i)(VIII) and 34 CFR §§300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE must also report on: (1) the sources from which it received technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix; and (2) the actions it took as a result of that technical assistance.

The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the CAP for the 2017-2018 school year, due on July 31, 2018, as well as quarterly progress reports in accordance with the reporting and timeline requirements specified in the Specific Conditions that OSEP will impose on the BIE's FFY 2018 Part B grant award.

III. Conclusion

Pursuant to section 616(d)(2)(B) of the *IDEA* and 34 CFR §300.603(b)(2), an Entity 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 Entity's determination. To request a hearing, submit a letter to Johnny W. Collett, 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 required by *IDEA* section 616(e)(7) and 34 CFR §300.606, your Entity 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.

States and Entities were required to submit Phase III Year Two of the State Systemic Improvement Plan (SSIP) by April 2, 2018. OSEP appreciates the BIE'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 the BIE as it implements the third year of Phase III of the SSIP, which is due on April 1, 2019.

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 2016 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, the BIE must make its SPP/APR available to the public by posting it on your agency's website. Within the next several days, OSEP will be finalizing an Entity Profile 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 you can use to make your SPP/APR available 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 the BIE 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,



Ruth E. Ryder
Acting Director
Office of Special Education Programs

cc: The BIE Director of Special Education