



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

SEP 16 2010

Ms. Pat Grosz, R.N., Ph.D.
Executive Director
Infants and Young Children
1308 W. Sligh Avenue
Tampa, Florida 82485

Dear Dr. Grosz:

This letter is in response to your March 26, 2010 letter regarding the 100% standard for targets for all compliance indicators in the State's Performance Plan (SPP), which is required under sections 616 and 642 of the Individuals with Disabilities Education Act (IDEA). You indicate that you are writing to "express how the impact of standards that require 100% compliance for all [compliance indicator] targets impact the local programs that struggle to try to meet this standard given that they all are hampered with major constraints related to budget, personnel, and time" and ask that this standard be reconsidered.

Under IDEA sections 616(b) and 642, States originally submitted an SPP on December 3, 2005, and are required to update their SPPs and submit annual performance reports (APRs) under their SPPs. Each State is required to collect valid and reliable data as needed to report annually to the Secretary on each of the indicators established by the Secretary. The IDEA Part C SPP/APR includes fourteen indicators: seven compliance indicators and seven results indicators. For compliance indicators, each State is required to have a target of 100 percent. For results indicators, each State is required to establish (with stakeholder input) measurable and rigorous targets that reflect improvement over the State's baseline data.

Under IDEA sections 616(d) and 642, the Department must issue annual determinations for each State under IDEA Parts B and C, based in part on the data in the State's SPP/APR. The Department must determine if each State "meets requirements" of IDEA Part C, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part C of the IDEA, and take specific appropriate enforcement action under IDEA sections 616(e) and 642. The Department has issued determinations each year from 2007 through 2010, based on the totality of each State's data, including the data in States' SPP/APRs.

Each State must: (1) review early intervention service (EIS) program performance against each target in the State's SPP; (2) determine if each EIS program "meets requirements" of IDEA Part C, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part C of the IDEA; (3) take appropriate enforcement actions; and (4) inform each EIS program of its determination. Under IDEA sections 616(b)(2)(C)(ii) and 642, each State must report annually to the public on the performance of each of its EIS programs according to the targets identified in its SPP, and post this report on its Web site.

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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 following SPP/APR indicators are the IDEA Part C compliance indicators (i.e., they reflect legal requirements of Part C of the IDEA and its applicable regulations): (1) C-1, Timely service provision (34 CFR §§303.340(c), 303.342(e), and 303.344(f)(1)); (2) C-7, 45-day Timeline (34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a)); (3) C-8, Early childhood transition (34 CFR §303.148 as modified by IDEA section 637(a)(9)(A)); (4) C-9, Part C Timely correction (34 CFR §303.501); (5) C-10, Timely complaint resolution (34 CFR §303.512); (6) C-11, Due process hearings (34 CFR §§303.420 and 303.423(b) (if applicable)); and (7) C-14, Timely and accurate data (34 CFR §303.540). Each State must establish a 100% target for each of these compliance indicators in their SPPs.

Under the IDEA, States participating in the Part C program must ensure that infants and toddlers with disabilities receive early intervention services to meet their individual needs. The requirements of the IDEA are designed to ensure the timely identification and evaluation of, and provisions of early intervention services to, infants and toddlers with disabilities and their families. Failure to comply with these requirements could result in a failure to provide needed services to eligible children with disabilities and their families. In addition, under IDEA section 635(a)(10)(A) and 34 CFR §303.501, each State must monitor all programs and activities used by the State to implement IDEA Part C and timely correct noncompliance identified through monitoring. Neither the statute nor the regulations contemplates that there is an acceptable level of noncompliance. Therefore, we believe it is not only appropriate, but required, under the law to continue to require 100% compliance for targets for compliance indicators, and to require correction of all noncompliance, even in instances in which an EIS program demonstrates a high level of compliance.

However, while the target for SPP/APR compliance indicators must be 100% and States must ensure timely correction of noncompliance, the Department has acknowledged in its annual determination criteria the efforts of States (and EIS programs) to ensure compliance when data reflect a high level of compliance. As noted in the document entitled “How the Department Made Determinations under Section 616(d) and 642 of the IDEA in 2010: Part C,” the Department determined a State to be “meets requirements” under IDEA sections 616(d) and 642 if a State: (1) Provided valid and reliable data in its SPP/APR reflecting the measurement for each indicator; and (2) Reported high levels of compliance (95% or above), or correction of previously identified findings of noncompliance, for SPP/APR compliance indicators. This determination standard for compliance indicators reflects the efforts of States in ensuring compliance and correction.

We recognize the dedication of IDEA Part C State lead agencies and service providers across the country to ensuring the implementation of the IDEA and appreciate their commitment to improving results for infants and toddlers with disabilities. We hope this information clarifies the standard applicable to targets for compliance indicators in the SPP and supports the State’s efforts to achieve those targets.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have questions regarding Florida's SPP or APR, please do not hesitate to contact Hillary Tabor at 202-245-7813, or by email at Hillary.Tabor@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs

cc: Lynn Marie Price