



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

June 20, 2019

Honorable MaryEllen Elia
Commissioner of Education
New York State Education Department
89 Washington Ave
Albany, NY 12234

Dear Commissioner Elia:

I am writing to advise you of the U. S. Department of Education's (Department) 2019 determination under section 616 of the Individuals with Disabilities Education Act (IDEA). The Department has determined that New York 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) 2017 State Performance Plan/Annual Performance Report (SPP/APR), other State-reported data, and other publicly available information.

Your State's 2019 determination is based on the data reflected in the State's "2019 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 2019: Part B" (HTDMD).

The Office of Special Education Programs (OSEP) is continuing to use both results data and compliance data in making determinations in 2019, as it did for Part B determinations in 2014, 2015, 2016, 2017, and 2018. (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 2019, 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 2016-2017) 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.

The Secretary is considering modifying the factors the Department will use in making its determinations in June 2020 as part of its continuing emphasis on results for children with disabilities. 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 an emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

The Part B proposed determinations process will include the same compliance factors as in past years, with one addition. For the 2020 determinations, rather than weighting each compliance factor equally, OSEP is considering assigning greater weight to those compliance factors most directly related to improving results for children with disabilities. For the 2020 determinations process we are also considering, as two additional results factors, State-reported data on: preschool child outcomes and the State Systemic Improvement Plan (SSIP). Using preschool outcomes for Part B determinations is consistent with the use of the early childhood outcomes factor that has been used for Part C determinations since 2015. Use of this factor emphasizes the importance of preschool outcomes in promoting later school success for students with disabilities. The inclusion of the SSIP as a results factor in making determinations would continue OSEP's emphasis on incorporating a results-driven approach as States identify evidence-based practices that lead to improved outcomes for children and youth with disabilities. In addition, we are considering several changes to the results factors related to the participation and performance of children with disabilities on assessments, including: (1) using Statewide assessment results, rather than the NAEP performance data; (2) looking at year-to-year improvements in Statewide assessment results and taking into account the full Statewide assessment system, including alternate assessments; and (3) no longer comparing each State's assessment performance with that of other States. Finally, OSEP will be revisiting ways of measuring improvement in the graduation rate of students with disabilities. As we consider changes to how we use the data under these factors in making the Department's 2020 determinations, OSEP will provide parents, States, entities, LEAs, and other stakeholders with an opportunity to comment and provide input through OSEP's Leadership Conference in July 2019 and other meetings.

You may access the results of OSEP's review of your State's SPP/APR and other relevant data by accessing the SPP/APR module using your State-specific log-on information at osep.grads360.org. 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 to the Progress Page:

- (1) the State’s RDA Matrix;
- (2) the HTDMD document;
- (3) a spreadsheet entitled “2019 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 2017-18,” 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 2019 determination is Needs Assistance. A State’s 2019 RDA Determination is Needs Assistance if the RDA Percentage is at least 60% but less than 80%. A State would also be Needs Assistance if its RDA Determination percentage is 80% or above but the Department has imposed Special or Specific Conditions on the State’s last three IDEA Part B grant awards (for FFYs 2016, 2017, and 2018), and those Specific Conditions are in effect at the time of the 2019 determination.

The State’s determination for 2018 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 Special 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 website: <https://osep.grads360.org/#program/highlighted-resources>, 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: <http://www2.ed.gov/programs/newccp/index.html>. 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 2018 SPP/APR submission, due February 3, 2020, 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.

States were required to submit Phase III Year Three of the SSIP by April 1, 2019. OSEP appreciates the State'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 State as it implements the fourth year of Phase III of the SSIP, which is due on April 1, 2020.

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 2017 SPP/APR. In addition, your State must:

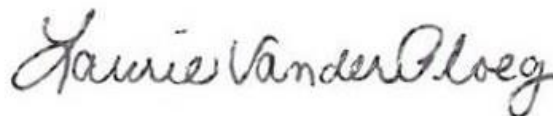
- (1) review LEA performance against targets in the State's SPP/APR;
- (2) determine if each LEA "meets the requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA;
- (3) take appropriate enforcement action; and
- (4) 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 next several days, OSEP will be finalizing a State Profile that:

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