

## **How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2007: Part B**

To arrive at our determination for each State under section 616(d) of the Individuals with Disabilities Education Act (IDEA), we considered the State's FFY 2005 Annual Performance Report (APR)/State Performance Plan (SPP) submission, information from monitoring visits, including verification reviews, and other public information, such as the State's performance under any existing special conditions on its FFY 2006 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA.

### FFY 2005 APR/SPP Submissions

In reviewing the State's FFY 2005 APR/SPP submissions, we considered both data and compliance:

For data, we examined whether the State provided valid and reliable FFY 2005 data that were consistent with, or substantially the same as, the measurement for the indicator, and if not, whether the State provided a plan to collect the missing or deficient data for reporting in next year's APR/SPP submission. We did not consider data relative to Indicators 4, 9, 10, and 20. For Indicators 4, 9, and 10, many States either analyzed data for the wrong year, or conducted only a part of the analysis on the correct year's (FFY 2005) data. We will clarify the instruction for next year's APR/SPP. Indicator 20 is itself about the timeliness and accuracy of data, which we addressed through the other indicators.

For compliance, we looked at Indicators 12, 15, 16 and 17. With respect to these indicators, we looked for evidence that the State demonstrated substantial compliance either through reporting a very high level of performance (generally 95% or better) or correction of noncompliance, and if the State did not, whether it nonetheless had made progress in ensuring compliance over its FFY 2004 performance in that area. We considered progress to include reporting higher compliance numbers or reporting more accurate and complete compliance data compared to the data provided in the prior year's submission. Indicator 15 evaluates timely correction, so for this indicator we specifically examined whether the correction was timely, but we also considered whether the State subsequently corrected noncompliance. We did not consider compliance relative to the new compliance indicators (those indicators for which States were submitting SPP information for the first time) Indicators 9, 10, 11, and 13 because, as new indicators, States would not yet have had an opportunity to demonstrate substantial compliance by showing that they timely corrected noncompliance when it was identified. We did not consider Indicator 20 because there was not a clear measurement and there was wide variation in how States reported data for it. We will be addressing the measurement for this indicator in our instructions for the FFY 2006 APR. We did not consider Indicators 16 and 17 if the State reported less than 100% and fewer than 10 complaints or fully adjudicated hearings, in recognition of the problems in basing decisions on small numbers.

Generally, and absent any other issues (see below), we considered a State to meet requirements if it provided valid and reliable FFY 2005 data consistent with, or substantially the same as, the measurement for each indicator, AND demonstrated substantial compliance for Indicators 12, 15, 16, and 17. We determined that a State demonstrated substantial compliance if it provided data showing a very high level of compliance (generally 95% or better) or that it had fully corrected

previously identified noncompliance. If a State did not meet these standards on only one indicator, we considered the State to "meet requirements" if the compliance level for this indicator was high (generally 90% or better) or, for a data issue, if the State provided a plan to collect the data for next year. In no case, however, did we place a State in "meets requirements" if it failed to provide valid and reliable FFY 2005 data for compliance Indicators 12, 15, 16 and 17.

Generally, and absent any other issues (see below) we considered a State to be "in need of intervention" if it demonstrated very low performance for Indicators 12, 15, 16 or 17 (generally 50% or below) and did not demonstrate correction of the noncompliance or did not make progress over the prior year's performance. We identified States as being in need of intervention if they did not provide FFY 2005 data on these indicators (12, 15, 16 or 17). We also identified States as being in need of intervention if they did not provide valid and reliable FFY 2005 data on one of the other indicators and did not provide a plan to collect and report on the data in the FFY 2006 APR/SPP.

We determined that States that did not meet requirements and were not in need of intervention were in need of assistance, absent any other issues (see below).

We would have identified a State as "in need of substantial intervention" if its substantial failure to comply significantly affected the core requirements of the program, such as the delivery of services to children with disabilities or the State's exercise of general supervision, or if the State informed the Department that it was unwilling to comply. This year, we did not find any States to be in this category based on their APR/SPP submission because this is the first year of implementation of the requirement for States to submit APRs under section 616 of the IDEA. We recognize that all States worked hard to provide extensive information in a relatively brief period of time.

### Monitoring Data and Other Public Information

We also considered other public information available to the Department, including information from OSEP monitoring activities, performance under pre-existing special conditions, and longstanding audit findings. We did not consider a State to "meet requirements" if the State had unresolved special conditions issues,<sup>1</sup> OSEP monitoring findings, including verification visit findings, or longstanding audit issues or was under a compliance agreement. The length of time the problem had existed, the magnitude of the problem, and the State's response to the problem, including progress the State had made to correct the problem, were factors we considered in determining whether the State should be identified as "in need of assistance" or "in need of intervention." Next year we intend to look more critically at longstanding unresolved issues in determining whether any State should be identified as being "in need of substantial intervention."

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<sup>1</sup> We decided not to add special conditions to FFY 2007 grants for States that were not on special conditions for FFY 2006, although we have the authority to do so. We will consider special conditions for States that had them on their FFY 2006 grant and have not satisfied those conditions. Next year, for States that are identified as being in need of assistance for two consecutive years (this year and next), one of the possible actions the Department may take is to impose special conditions on their FFY 2008 grant.