How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2008: Part B

In making our determination for each State under section 616(d) of the Individuals with Disabilities Education Act (IDEA), we considered the State's FFY 2006 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 2007 grant or under a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA.

FFY 2006 APR/SPP Submissions

In reviewing the States' FFY 2006APR/SPP submissions, we considered both data and compliance:

With respect to data, for Indicators 1 through 19, we examined whether the State provided valid and reliable FFY 2006 data (e.g., the State provided all the required data, the data were for the correct year and were consistent with the required measurement, and the State did not acknowledge that its data were not valid and reliable) 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. Indicator 20 is itself about the timeliness and accuracy of data, which we addressed through the other indicators.

For compliance, we looked at Indicators 9, 10, 11, 12, 13, 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 performance in that area as reported in its FFY 2005 SPP/APR submission. 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. For the other compliance indicators, we considered whether the State timely corrected previous noncompliance, but we also considered whether the State subsequently corrected noncompliance. We did not consider Indicator 20 because the data rubric was subject to inconsistent application. We are working with our contractor and consulting with State data managers on refining the document. Next year we will consider Indicator 20 as a part of the State's compliance data. We did not consider Indicators 16 and 17 if the State reported fewer than 10 complaints or fully adjudicated hearings and reported less than 100% compliance, 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 2006 data consistent with, or substantially the same as, the measurement for each indicator, AND demonstrated substantial compliance for Indicators 9, 10, 11, 12, 13, 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 2006 data for compliance Indicators 9, 10, 11, 12, 13, 15, 16 and 17. We also considered whether the State, when it reported under Indicator 4a (1) had identified significant discrepancies in discipline of children with disabilities, (2) made clear that it reviewed policies, procedures and practices related to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, as required by 34 CFR §300.170(b), and (3) corrected noncompliance identified in these areas.

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 11, 12, 13, 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 any FFY 2006 data on Indicators 11, 12, 13, 15, 16 or 17 or if the data were not valid and reliable, e.g., the reported data were not consistent with the required measurement, were for the wrong year, or the State acknowledged that its data were not valid and reliable. We also identified States as being in need of intervention if they did not provide valid and reliable FFY 2006 data on one of the other indicators and did not provide a plan to collect and report on the data.

This year we did not identify any State as being in need of intervention if it did not provide valid and reliable FFY 2006 data on Indicators 9 and 10 in recognition of the fact that these are complicated indicators that require a multiple step analysis including, at the first step, reviewing data to determine if there is disproportionate over- or underrepresentation of children with disabilities by racial or ethnic groups in special education and related services for Indicator 9 or in specific disability categories for Indicator 10, and, at the second step, determining whether any identified disproportionate representation is the result of inappropriate identification. States have continued to have difficulty with properly completing these tasks in a timely manner. Next year, however, we will consider Indicators 9 and 10 in determining whether States should be identified as in "need of intervention." Specifically, we will consider whether a State demonstrates that it has examined child count data from FFY 2007 (reported to the Department under section 618 of the IDEA in February 2008) to identify disproportionate over- and underrepresentation of racial and ethnic groups in special education and related services, and in specific disability categories, and determined whether that disproportionate representation is the result of inappropriate identification.

We would identify 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 with an IDEA requirement. In making this determination, we would consider the impact of any longstanding unresolved issues on the State's current implementation of the program. We would also consider identifying a State "in need of substantial intervention" for failing to submit its APR/SPP.

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

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, 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," "in need of intervention," or "in need of substantial intervention."