

## **How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act in 2010: Part B**

In making our determination for each State under section 616(d) of the Individuals with Disabilities Education Act (IDEA), we considered the totality of the information we have available about a State. This includes the State's FFY 2008 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 2009 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA.

### FFY 2008 APR/SPP Submissions

In reviewing the States' FFY 2008 APR/SPP submissions, we considered both the submission of valid and reliable data and the level of compliance, and if the State's compliance data were above 75%, whether the State corrected all previously identified findings of noncompliance.

With respect to data, for Indicators 1 through 5, 7 through 12, and 15 through 19, we examined whether the State provided valid and reliable FFY 2008 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/or the approved SPP, and whether we had information demonstrating that the data were not correct or the State indicated that the data were not valid and reliable).

With respect to compliance, we examined Indicators 9, 10, 11, 12, 15, 16, 17, and 20. With respect to these indicators, we looked for evidence that the State demonstrated substantial compliance either through reporting FFY 2008 data that reflected a very high level of compliance (generally 95% or better) or, for Indicators 9, 10, 11, and 12, if the State's FFY 2008 compliance data were above 75%, whether it had fully corrected previously identified findings of noncompliance. If the State did not demonstrate either a very high level of compliance or full correction, we examined whether it nonetheless had maintained current levels, or made progress in ensuring compliance over its performance for that indicator as reported in its FFY 2007 SPP/APR submission. We considered "progress" to include reporting a higher level of compliance or reporting more accurate and complete compliance data compared to the data provided in the prior year's submission. Indicator 15 evaluates "timely" correction of FFY 2007 findings, so for this indicator we specifically examined whether the correction was timely. For the other compliance indicators, we considered both whether the State timely corrected its findings of noncompliance identified in FFY 2007 and whether the State subsequently corrected findings of noncompliance. We did not consider Indicators 16 and 17 if the State reported less than 100% compliance, but fewer than 10 complaints or 10 fully adjudicated hearings, in recognition of the inequities 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 2008 data consistent with, or substantially the same as, the measurement for each indicator and/or the approved SPP, and demonstrated substantial compliance for Indicators 9, 10, 11, 12, 15, 16, 17, and 20. We determined that a State demonstrated substantial compliance if it provided data showing a very high level of compliance (generally 95% or better) for these indicators, or if it had fully corrected previously identified findings of noncompliance for Indicators 9 and 10 (if the State's FFY 2008 compliance data for these indicators were 25% or below), and for Indicators 11 and 12 (if the State's FFY 2008

compliance data for these indicators were above 75%). As indicated in OSEP's Memorandum, 09-02, dated October 17, 2008 (OSEP Memo 09-02), beginning with the Department's determinations in 2010, for Indicators 9, 10, 11 and 12, we considered a State to have demonstrated correction of previously identified noncompliance for any findings identified in FFY 2007 if the State verified correction of those findings consistent with OSEP Memo 09-02. In addition, we did not consider a State to be in substantial compliance for a compliance indicator based on correction if its reported FFY 2008 data were low (generally 75% or lower), consistent with OSEP Memo 09-02. If a State did not meet these standards for substantial compliance for only one compliance indicator (including Indicators 15 and 20) and there were no other factors (see below), we considered the State to "meet requirements" if the compliance level for that indicator was high (generally 90% or better). In no case, however, did we place a State in "meets requirements" if it failed to provide valid and reliable FFY 2008 data (as defined above) for compliance Indicators 9, 10, 11, 12, 15, 16, or 17. We also considered whether the State, when it reported under Indicator 4A: (1) made clear that, if it identified any districts as having significant discrepancies in the discipline of children with disabilities, it reviewed and, if appropriate revised (or required the LEA to revise) its 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 (2) if the State identified any noncompliance in policies, procedures or practices in these areas as a result of this review, it corrected the noncompliance.

Generally, and absent any other issues (see below), we considered a State to be "in need of intervention" if its data demonstrated very low performance for Indicators 9, 10, 11, 12, 15, 16 or 17 (generally 50% or below, or in the case of Indicators 9 and 10, 50% or above, and such performance did not represent progress (as defined above) over the prior year's compliance data), regardless of whether it demonstrated correction of previously identified findings of noncompliance. We also identified a State "in need of intervention" if it did not provide any FFY 2008 data for Indicators 9, 10, 11, 12, 15, 16 or 17 or if the data for these indicators were not valid and reliable (as defined above).

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.

Absent any other issues (see below), 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."

#### Monitoring Data and Other Public Information

We also considered other public information available to the Department, including 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 2009 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance data under the IDEA. We did not consider a State to "meet requirements" if the State had unresolved special

conditions that were imposed as a result of the State being designated as a “high risk” grantee, outstanding OSEP monitoring findings, including verification visit findings, or longstanding audit issues or a compliance agreement. In determining whether the State should be identified as “in need of assistance,” “in need of intervention,” or “in need of substantial intervention,” we considered 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. Finally, for States with a current Compliance Agreement covering the requirements of one or more indicators during the reporting period, we did not consider the State to be “in need of intervention” based on those same indicators if the Compliance Agreement provided for the State to demonstrate compliance beyond the reporting period.