

## **How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2010: Part C**

In making our determination for each State under sections 616(d) and 642 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 13, 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 1, 7, 8, 9, 10, 11, and 14. 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 1, 7, and 8, if the State's compliance data was above 75%, whether the State had fully corrected all 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 9 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 10 and 11 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 1, 7, 8, 9, 10, 11, and 14. 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 that it had fully corrected previously identified findings of noncompliance for Indicators 1, 7 and 8 (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, beginning with the Department's determinations in 2010, we considered a State to have demonstrated correction of previously identified findings of noncompliance for any findings identified in FFY 2007 if it verified correction consistent with OSEP's Memo 09-02. In addition, we did not consider a State in substantial compliance based on correction if its FFY 2008 reported data for a compliance indicator were low (generally 75% or below.) If a State did not meet these standards for substantial compliance for only one indicator (including Indicators 9 and 14) and there were no other factors (see below), we considered the State to "meet requirements" if the compliance level for this 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 for compliance Indicators 1, 7, 8, 9, 10, and 11. As discussed further below, we did not consider a State to "meet requirements" if the State had outstanding special conditions on its IDEA grant, outstanding OSEP monitoring findings, including verification visit findings, or longstanding audit issues or a compliance agreement for the reporting period.

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 1, 7, 8, 9, 10, and 11 (generally 50% or below, 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 1, 7, 8, 9, 10, and 11 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.