How the Department Made Determinations under Sections 616(d) and 642 of the Individuals with Disabilities Education Act in 2012: 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 about a State. This includes the State's FFY 2010 Annual Performance Report (APR)/State Performance Plan (SPP); information from monitoring, including verification visit findings; and other public information, such as the State's performance under any existing special conditions on its FFY 2010 grant or a compliance agreement, longstanding unresolved audit findings, and other State compliance with the IDEA.

FFY 2010 APR/SPP and Other Information

In reviewing a State's FFY 2010 APR/SPP, we considered both the submission of valid and reliable data and the level of compliance, including correction of noncompliance, as described below, as included in the State's final APR/SPP. We also reviewed other information (described below) that reflect the State's compliance with IDEA requirements.

With respect to data, for Indicators 1 through 13, we examined whether the State provided valid and reliable FFY 2010 data (i.e., 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 did not have other information (such as verification visit findings or inconsistent data within the APR) demonstrating that the data were not valid and reliable 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 and looked for evidence that the State demonstrated substantial compliance through reporting FFY 2010 data that reflected a very high level of compliance (generally 95% or better). In addition, for Indicators 1, 7, and 8, a State could demonstrate substantial compliance if the State's FFY 2010 compliance data were at or above 75%, and the State reported that it had fully corrected FFY 2009 findings of noncompliance made under those respective indicators. As indicated in OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02), beginning with the Department's determinations in 2010, for Indicators 1, 7, and 8, we considered a State to have demonstrated correction of previously identified noncompliance for any findings identified in FFYs 2007, 2008, and 2009 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 of FFY 2009 findings of noncompliance if its reported FFY 2010 data were low (generally below 75%), consistent with OSEP Memo 09-02.

Indicator 9 evaluates the "timely" correction of FFY 2009 findings, so for this indicator we specifically examined both whether the State reported a high level of compliance (generally 95% or better) in timely correcting FFY 2009 findings of noncompliance, and that the State reported that it verified the correction of its FFY 2009 findings of noncompliance consistent with OSEP Memo 09-02. 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 regarding dispute resolution indicators on small numbers.

Generally, and absent any other issues (see below), we considered a State to "meet requirements" if the State: (1) Provided valid and reliable FFY 2010 data for all indicators as described above; and

(2) Demonstrated substantial compliance, as described above, for compliance Indicators 1, 7, 8, 9, 10, 11, and 14. If a State did not meet the standards for substantial compliance for only one of these compliance indicator 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 at or above 90%). In no case, however, did we place a State in "meets requirements" if it failed to provide valid and reliable FFY 2010 data (as defined above) for Indicators 1 through 13.

Generally, and absent any other issues (see below), we considered a State to be "in need of intervention" for one of three reasons that are explained further in this paragraph: very low compliance data, failure to provide valid and reliable data for a compliance indicator, or longstanding noncompliance that was the subject of Departmental enforcement for a key IDEA requirement. First, we identified a State as "in need of intervention" if the State's FFY 2010 compliance data demonstrated: (1) Very low performance for Indicators 1, 7, 8, 10 or 11 (generally below 50%, regardless of whether it reported correction of previously identified findings of noncompliance); or (2) Very low performance for Indicator 9 (generally below 50%). Second, we identified a State as "in need of intervention" if it did not provide valid and reliable (as defined above) FFY 2010 compliance data for Indicators 1, 7, 8, 9, 10, or 11. Finally, we also identified a State as "in need of intervention" if the State was subject to Departmental enforcement for multiple years for failing to comply with key IDEA requirements, the noncompliance has been longstanding, and the State's data in response to the Department's enforcement actions demonstrate continued noncompliance.

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 including verification visit reviews, and other public information, such as the State's performance under any existing special conditions on its FFY 2011 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) that affected the State's data under APR indicators, 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.

Possible Changes to Determination Factors in the Future

As a part of our efforts to focus attention more on the results of State's implementation of Parts B and C of the IDEA, OSEP is reexamining its process for making determinations under section 616 of the IDEA. We are considering how we can include State performance on results indicators in addition to those factors (described previously) that are currently considered. We will provide further details regarding our plans in the near future.