



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

APR 27 2015

Elizabeth R. Berlin
Acting Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Acting Commissioner Berlin:

This letter relates to the March 28, 2014 finding of the United States Department of Education (the Department) that the New York State Education Department (NYSED) is not in compliance with the Individuals with Disabilities Education Act (IDEA) Part B requirement to issue State-level review decisions for appeals of due process complaints within 30 days of receiving a request for review. 20 U.S.C. § 1415(g); 34 CFR §§ 300.514(b) and 300.515(b). On April 9, 2014, John B. King Jr., former Commissioner, requested that the Department enter into a compliance agreement. Subsequently, on July 16, 2014, the Department held a public hearing in New York City, pursuant to § 457(b)(1) of the General Education Provisions Act (GEPA), to determine whether to enter into a compliance agreement to allow NYSED to come into full compliance with the applicable requirements.

Recently, NYSED provided the Department, and published online, data and information demonstrating that NYSED has made substantial progress towards coming into full compliance with the 30-day review requirement, and showing that NYSED is issuing decisions at a pace such that NYSED may be expected to come into full compliance within a few months or even weeks. Under § 457 of GEPA, before entering into a compliance agreement, the Secretary must determine that “full compliance is genuinely not feasible until a future date.” Based on the information provided by NYSED, the Department finds that it is feasible for NYSED to come into compliance in the near future. Therefore, the Department has determined that it is not appropriate to enter into a compliance agreement with NYSED.

In the absence of a compliance agreement, NYSED must come into full compliance with the IDEA Part B requirements at 20 U.S.C. § 1415(g) and 34 CFR §§ 300.514(b) and 300.515(b) as soon as possible. In order to demonstrate compliance, NYSED must submit a report providing the status of all of NYSED’s current and backlogged due process cases for which State-level review has been requested (hereinafter referred to as “appeals”). Specifically, the data shall include, at a minimum:

- The total number of appeals pending review as of the date of the report.
- The number of pending appeals that were submitted more than 30 days before the date of the report.
- For each pending appeal, the date the appeal was submitted to NYSED.

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The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

This report will be submitted along with NYSED's Federal Fiscal Year (FFY) 2015 Part B Formula Grant Award Application, due on or before May 12, 2015. If NYSED's data report shows that NYSED is not in full compliance with the applicable requirements (*i.e.*, if NYSED has any current or backlogged appeals for which NYSED has not issued a final decision within 30 days after receiving a request for review (and for which NYSED has not granted an extension of time for good cause pursuant to 34 CFR §300.515(c))), NYSED will be required to submit an updated data report, on June 12, 2015, providing the updated data required by the previous report.

If NYSED is not in full compliance with the applicable requirements by June 12, 2015, NYSED may be subject to special conditions on its July 1, 2015 IDEA Part B grant and/or future IDEA Part B grants.

In addition to the data report due with NYSED's Part B Grant Application – and regardless of whether NYSED is or is not in full compliance with the applicable requirements by June 12, 2015 – NYSED must provide the Department with quarterly reports covering a total reporting period of one year from July 1, 2015 to June 30, 2016, providing all required data (described in more detail below) regarding the status of all of NYSED's current and backlogged appeals during the quarterly reporting periods. The quarterly reports will be due on the following dates and will cover the following quarterly reporting periods:

Quarterly Report 1

Due: October 15, 2015

Reporting all appeals submitted from July 1, 2015 to September 30, 2015

Quarterly Report 2

Due: January 15, 2016

Reporting all appeals submitted from October 1, 2015 to December 31, 2015

Quarterly Report 3

Due: April 15, 2016

Reporting all appeals submitted from January 1, 2016 to March 31, 2016

Quarterly Report 4

Due: July 15, 2016

Reporting all appeals submitted from April 1, 2016 to June 30, 2016

All quarterly reporting data shall include, at a minimum:

- The total number of appeals pending as of the last date of the reporting period (*e.g.*, for Quarterly Report 1, the number of appeals pending as of September 30, 2015).
- The number of pending appeals, as of the last date of the reporting period, that were submitted more than 30 days before the last date of the reporting period.
- For each pending appeal as of the last date of the reporting period, the date the appeal was submitted to NYSED.

If any quarterly report demonstrates that NYSED is not in compliance with the 30-day review requirement, NYSED will be required to provide an updated report within 30 days of the date of that quarterly report, providing the same required data. If the updated report demonstrates that NYSED is still not in compliance, NYSED will be subject to special conditions being placed on a future grant.

All reports may be submitted electronically to Leticia Braga, your OSEP State Contact, at leticia.braga@ed.gov, or by mail to:

Leticia Braga
U.S. Department of Education
Office of Special Education Programs
Monitoring and State Improvement Planning Division
550 12th Street, SW
Washington, DC 20202-2600

Please contact your OSEP State Contact if you have any questions regarding this letter or NYSED's upcoming reporting requirements.

Sincerely,



Sue Swenson
Acting Assistant Secretary

cc: James P. DeLorenzo, Assistant Commissioner, Office of Special Education
Richard J. Trautwein, Counsel and Deputy Commissioner of Legal Affairs
Sharon Cates-Williams, Deputy Commissioner, Performance Improvement and
Management Services