

June 29, 2011

Dr. Alexa Posny
Assistant Secretary
United States Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Assistant Secretary Posny:

The Utah Superintendent of Public Instruction received a letter last week from the U.S. Department of Education, Office of Special Education Programs (OSEP), which included a determination that Utah “needs intervention” in implementing the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). The letter further states that the determination decision was based on the “State’s failure to provide valid and reliable data” under Indicators 12 and 15. The Utah State Office of Education (USOE) respectfully disagrees with this determination. The data submitted by the USOE to the U.S. Department of Education, OSEP, on April 15, 2011, do not support this determination. After careful review of the determination letter by USOE staff, it appears that this determination is based on a typographical error, rather than on a failure to provide “valid and reliable data”. The typographical error referred to is the last paragraph on page 88 of the FFY 2009 APR in which it states “the three LEAs that were out of compliance in FFY 2008”; the word “three” was an error not identified during proofreading and should have been “one”. The error has been corrected at this time.

USOE staff requests an opportunity to meet with you to demonstrate why the Department should change Utah’s determination from “needs intervention” to “meets requirements”. The data used as the basis for this request are as follows:

OSEP stated that “the Department’s determination is based on the **totality** [emphasis added] of the State’s data and information including the State’s FFY 2009 APR and revised SPP (including targets and improvement activities for each year through 2012), other State-reported data, and other publicly available information.”

- a. Utah’s FFY 2009 APR included data for indicators 12 and 15 indicating that one LEA had one finding of noncompliance regarding IEPs developed and implemented by the child’s third birthday for FFY 2008. This finding was corrected and verified within one year as per the guidance outlined in OSEP Memo 09-02.
 - Indicator 12 in FFY 2009:
 - Display 12-4 documented that one LEA was out of compliance in FFY 2008 and corrected the noncompliance within one year.

- Page 88 (last paragraph) initially stated that three LEAs were out of compliance, but that error was corrected midway through the paragraph to describe the fact that only one LEA was out of compliance. The word “three” was inadvertently retained on page 88 in the FFY 2009 APR. It should have been changed to “one” consistent with the latter part of the paragraph, Display 12-4, and Display 15-2, all of which clearly indicated “one” finding for “one” LEA.
- Indicator 15 in FFY 2009:
 - Display 15-2 documented that one LEA was issued a finding of noncompliance on Indicator 12 in FFY 2008 and corrected the noncompliance within one year.
- b. Utah received a monitoring visit from OSEP in October, 2010; the purpose of which was to review the State’s systems for general supervision and the collection of state-reported data. The resulting OSEP report on January 24, 2011 included the following:
 - “OSEP would like to recognize Utah’s success in achieving and maintaining a high level of compliance with the SPP compliance indicators.” OSEP’s praise followed their review of the State’s systems for collecting and reporting data submitted in the FFY 2008 APR (including indicators 12 and 15).
 - OSEP concluded that the “State’s systems for general supervision are reasonably designed to identify noncompliance in a timely manner...and to correct noncompliance in a timely manner.” In addition, the report stated the “State has a data system that is reasonably designed to collect valid and reliable data and information...and to verify that the data collected and reported reflect actual practice and performance.” At that time (five months ago), OSEP had no recommendations for improvement nor any required corrective actions for Utah.
- c. Utah’s Indicator 15 database, which is a comprehensive database used to track findings and subsequent correction of findings for all LEAs included for indicator 12 one finding in one LEA identified during FFY 2008. These data were reviewed during the OSEP Monitoring visit in October, 2010 and were found to be adequate.
- d. Utah’s publicly reported Utah Program Improvement Monitoring System (UPIPS) reports on LEAs, which are publicly posted at <http://www.schools.utah.gov/sars/Laws,-State-Rules-and-Policies/UPIPS-2008-09.aspx> also demonstrate that only one LEA had a finding on Indicator 12 (IEP developed and implemented by the child’s 3rd birthday) during FFY 2008.

Dr. Alexa Posny
Page 3
June 29, 2011

Despite OSEP's written assurance that all data were considered in making this determination, there is no evidence of that assertion (except for one word on page 88 describing Indicator 12) that the submitted data were not reliable or not valid. Considering the "**totality** [emphasis added] of the State's data and information including the State's FFY 2009 APR" the word "three", on page 88 of Utah's FFY 2009 APR is clearly a typographical error.

Utah strongly believes that this clarification is adequate for OSEP to change the current determination of "needs improvement" to "meets requirements." However, if the above clarification is not determined as sufficient to resolve this issue, the USOE is also willing to present the evidence described above to OSEP and the U.S. Department of Education during a formal hearing. Please consider this letter a specific request to correct a typographical error and subsequently notify our office or a request for an expeditious hearing or a meeting (whichever is more appropriate) to fairly resolve the error. Please contact Glenna Gallo, State Director of Special Education, at 801-538-7757 to schedule such a meeting. Thank you for your assistance with this unfortunate situation; a quick resolution allows both the USOE and OSEP to remain focused on the challenges of improving outcomes for all students with disabilities.

Sincerely,



Larry K. Shumway, Ed.D.
State Superintendent of Public Instruction

cc: Melody Musgrove, OSEP Director
Tony Williams, OSEP State Contact to Utah
Senator Orrin Hatch, United States Senate
Senator Mike Lee, United States Senate
Judy Park, USOE Associate Superintendent
Glenna Gallo, USOE Director of Special Education