

## Tennessee's Letter of Determination 2009-10

34 CFR §300.603 requires that the U.S. Department of Education-Office of Special Education Programs (OSEP) make determinations based on information provided by the State in the State's Annual Performance Report (APR), information obtained through monitoring visits, and any other public information made available. OSEP determines if the State: Meets Requirements; Needs Assistance; Needs Intervention; or Needs Substantial Intervention in its ability to carry out the duties required of Part B of the Act.

On June 20, 2011, Tennessee's Commissioner of Education received OSEP's Determination Letter with notification that TN had been placed in the "Needs Assistance" category. The major finding of the Determination Letter is provided in the excerpt below, followed by actions taken by TN to address this finding.

Excerpts from the OSEP letter to the Commissioner of June 20, 2011:

*"The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for Tennessee was that the State did not, when reporting on indicator 15 on correction of noncompliance identified in FFY 2008 indicate that it verified that each LEA with identified noncompliance was correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system and had corrected each individual case of noncompliance, unless the child was no longer within the jurisdiction of the LEA. For this reason, we were unable to determine that Tennessee met requirements for FFY 2009 under IDEA section 616(d).*

*OSEP notes other areas that reflect a high level of performance, including that the State reported valid and reliable data for all indicators and a high level of compliance for Indicator 9/Disproportionality (0%), Indicator 10/Disproportionality by disability (0%), Indicator 11/Initial Evaluation Timelines (96.25%), Indicator 12/ IEP by third birthday (98.83%), Indicator 16/Complaints (100%), Indicator 17/Due Process Hearings(100%), and Indicator 20/Data (98.89%).*

Recap of excerpts: Indicator 15 (compliance monitoring), was the only Indicator cited by OSEP with the major issue being that additional new data or student files were not reviewed after verifying correction of original data or files identified as non-compliant during monitoring of school systems. Of the 20 indicators reviewed for TN's determination, OSEP noted that all included valid and reliable data and that 7 of these (mentioned above) included high levels of compliance..

### Background:

On February 1<sup>st</sup> of each year, all states are required to report data from the previous school year to the USDOE Office of Special Education (OSEP) on 20 educational indicators (i.e. standards) via the Annual

Performance Report (APR). Each year the APR is based on data collected from the previous school year with the exception of Indicator 15.

Data are collected and reported for Indicator 15 (*Timely Correction of Noncompliance*) from monitoring which occurred two years prior to the current year (in this case, the 2008-2009 school year) as the State must assure that all noncompliance identified at that time was corrected to 100% within 365 days of those findings (no later than the 09-10 school year). In order to address OSEP's requirement that "*each LEA with identified noncompliance was correctly implementing the specific regulatory requirement (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system and had corrected each individual case of noncompliance, unless the child was no longer within the jurisdiction of the LEA*" actions have been taken by the TDOE to ensure that all regulatory requirements for identifying and correcting noncompliance findings are addressed.

As of FFY09 (09-10 school year), the TDOE monitoring process has included the following procedures:

- Student file reviews, (includes IEP and assessment/eligibility documents)
- Documentation of individual student noncompliance,
- Verification of training for system-wide personnel on the identified findings of noncompliance,
- Verification of the systems correction of individual student noncompliance (prong 1 verification): Monitors return to the school system and review the files of students where noncompliance was previously found and confirm corrections, \*
- Verification of additional student files and data to ensure systems are correctly implementing the required regulations for all students (prong 2 verification). These verifications are conducted by monitors through the review of additional files—usually when they return to the system to verify Prong 1 corrections. \*

\*In cases where verification of Prong 1 noncompliance findings or Prong 2 additional student file reviews continue to indicate noncompliance, the state special education data system may be reviewed by monitors off-site, in lieu of continued site visits to school systems in question. As was done on-site, all student files (or data) initially found noncompliant are reviewed electronically to confirm that each instance of noncompliance has been fully corrected. As part of this continued prong 1 verification process monitors record verification dates in the data system. Additional new data and/or electronic student files, are also reviewed by monitors to verify that the district is correctly implementing specific regulatory requirements for all other students (prong 2). The verification process requires 100% compliance for both Prong 1 and Prong 2 verifications

The above procedures were provided to OSEP in the Annual Performance Report (APR) submitted on Feb 1, 2011. Noncompliance findings identified in the 2009-2010 school year, including corrections made within

365 days of the findings (2010-2011 school year) will be reported as required in the APR to be submitted to OSEP on February 1, 2012.

In summary, TDOE now has complete procedures in place to address the reasons for the determination of "needs assistance" received by the State through OSEP's June 20, 2011, Determination Letter. These procedures should result in a determination of "meets requirements" at the next OSEP review of Tennessee's APR .