



SUPERINTENDENT OF PUBLIC INSTRUCTION

Randy I. Dorn Old Capitol Building · PO BOX 47200 · Olympia, WA 98504-7200 · <http://www.k12.wa.us>

September 18, 2014

Dr. Larry Nyland
Interim Superintendent
Seattle Public Schools
P.O. Box 34165, MS 32-150
Seattle, WA 98124-1165

Dear Dr. Nyland:

The purpose of this letter is to (1) declare the Seattle Public Schools (SPS) as a high risk grantee consistent with 34 CFR § 80.12, and (2) provide notice that the Office of Superintendent of Public Instruction (OSPI) will withhold a portion of the federal funding available under Part B, Sections 611 and 619 of the Individuals with Disabilities Education Act (IDEA) to SPS for the 2014-15 school year. These actions are being taken because SPS has a history of unsatisfactory performance with respect to the delivery of special education services under the IDEA, has not conformed to the terms and conditions of previous awards and required actions associated with such awards, has a management system which does not meet the management standards set forth in the United States Department of Education's General Administrative Regulations, and received a needs substantial intervention (Level 4) determination for the 2012-13 school year.

I. BACKGROUND

a. Data collection and monitoring. OSPI's special education program review team annually monitors selected school districts' implementation of Part B of the IDEA pursuant to WAC 392-172A-07010. If the program review team identifies specific instances where a district has not complied with the requirements of IDEA Part B, OSPI will notify the district of the identified non-compliance to be corrected within one year of notification of the specific non-compliance. The district then must initiate a process of corrections, including, if necessary, systemic corrections, to ensure that the non-compliance is corrected as soon as possible, but no longer than one year from the notification of non-compliance. WAC 392-172A-07010(3), 34 CFR § 300.600(e). Following that, if the district does not timely address the identified non-compliance with corrective actions, OSPI is required to institute procedures to ensure compliance. WAC 392-172A-07010(4).

Under separate rules, WAC 392-172A-07012 and 34 CFR § 300.600(a), OSPI annually reviews the data it obtains from districts through required data collection and monitoring (and other information) and, based on that information, issues a determination regarding each school district's overall compliance with the requirements of Part B of the IDEA. A "Level 1" determination means that OSPI has determined a district meets the requirements of Part B. In

contrast, a "Level 4" determination means the district needs substantial intervention in implementing the requirements of IDEA. A district's determination level triggers certain obligations. Among others, if OSPI determines that a district needs substantial intervention (Level 4), OSPI "will withhold, in whole or in part, any further payments to the district under Part B." WAC 392-172A-07012(4). *See* 34 CFR §§ 300.600(a)(3), .604(c).

Because determinations under WAC 392-172A-07012 are issued in November of an ongoing school year, OSPI expects that the district will come into compliance with IDEA Part B at the conclusion of the then-current IDEA Part B federal funding cycle.

b. The C-CAP. Following OSPI's on-site monitoring of SPS in the 2011-12 and 2012-13 school years, OSPI identified several specific instances where the District was not complying with the requirements of IDEA Part B. OSPI concluded that the non-compliance was systemic in nature and, pursuant to WAC 392-172A-07010, ordered the District in spring of 2013 to develop and implement an approved comprehensive corrective action plan (C-CAP). In addition, OSPI required the District to contract with a nationally recognized third-party consultant to provide the technical assistance and resources necessary to implement the C-CAP activities identified by the District. As provided for under WAC 392-172A-07010(3), the District was required to demonstrate substantial compliance with IDEA Part B as a result of the implementation of the C-CAP by June 30, 2014. The District did not challenge any of the conclusions or results of the program reviews in 2012 or 2013.

SPS did not retain the required third-party consultants until April of 2014, just two months before the C-CAP was to be fully implemented. The District then requested that the initial C-CAP be revised in July of 2014 in order to be successfully implemented. In an effort to accommodate the delayed start of the extensive C-CAP activities identified in 2013, provide SPS every opportunity to successfully utilize its consultants, and involve relevant stakeholders in the process in a meaningful way, OSPI agreed to extend the implementation of the C-CAP until June 30, 2015.

Subsequent to this, OSPI was provided a copy of an internal audit report as an attachment to the third-party consultant's report issued on July 21, 2014. The internal audit, dated June 17, 2014, identified several accounting, internal control, and source documentation concerns related to SPS's management of special education funds. OSPI further learned from SPS district staff on August 7, 2014 that the third-party consultant contract awarding process utilized by the SPS may have been flawed, resulting in the placement of SPS's executive director of special education on administration leave pending an internal investigation, the appointment of an interim director of special education, the expiration of the previous consultants' contract, and a new solicitation for a third-party consultant.

c. Level 4 determination. On November 1, 2013, OSPI issued its Level 4 determination for SPS's 2012-13 school year. This, again, was an assessment of the District's overall compliance with IDEA Part B, using data and information provided by the District to OSPI. From this evidence, OSPI concluded that SPS had not corrected all identified issues of non-compliance

associated with the 2011-12 school year within one year of identification. In a letter to Superintendent José Banda dated November 1, 2013, I indicated that, as a result of the Level 4 determination, "The district must demonstrate substantial compliance with the requirements of IDEA 2004 as a result of the 2013-14 implementation of the C-CAP by June 30, 2014. Otherwise, any further payments of federal IDEA funding to the district will be jeopardized." The District never objected to or challenged this determination.

II. HIGH RISK STATUS

a. High risk determination. The United States Department of Education's General Administrative Regulations in 34 CFR § 80.12 provide as follows:

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

- (1) Has a history of unsatisfactory performance, or
- (2) Is not financially stable, or
- (3) Has a management system which does not meet the management standards set forth in this part, or
- (4) Has not conformed to terms and conditions of previous awards, or
- (5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

- (1) Payment on a reimbursement basis;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;
- (3) Requiring additional, more detailed financial reports;
- (4) Additional project monitoring;
- (5) Requiring the grantee or subgrantee to obtain technical or management assistance; or
- (6) Establishing additional prior approvals.

For the reasons described above, OSPI has concluded that SPS is a high risk grantee. In light of its Level 4 determination, its subsequent failure to demonstrate compliance with the requirements of IDEA Part B as a result of the 2013-14 implementation of the C-CAP by June 30, 2014, and its failure to have both the required third-party consultant and a non-interim director of special education services in place to implement the revised C-CAP, SPS has shown that it has a history of unsatisfactory performance with respect to the delivery of special education services under the IDEA. Moreover, the District's non-compliance described in the

Level 4 determination, and its failure to implement the initial C-CAP in a timely manner, verify that SPS has not conformed to the terms and conditions of previous Part B awards and the required actions associated with the awards. Finally, SPS's June 17, 2014 internal audit shows that the District's management system does not meet the management standards required under the Department of Education's General Administrative Regulations, 34 CFR Part 80.

b. Special conditions. The Department of Education General Administrative Regulations provide at 34 CFR § 80.12(c) that, if an awarding agency decides to impose conditions on a high risk grantee, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

- (1) The nature of the special conditions/restrictions;
- (2) The reason(s) for imposing them;
- (3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and
- (4) The method of requesting reconsideration of the conditions/restrictions imposed.

The following oversight mechanisms, designed to assist the District in achieving substantial compliance with Part B of the IDEA and the revised C-CAP by June 30, 2015, are conditions to OSPI's award of the 2014-15 Part B grant:

- Between October 2014 and May 2015, SPS will host weekly meetings with an on-site compliance officer designated by OSPI. These meetings will be for the purpose of monitoring the District's implementation of the revised C-CAP and to provide technical and management assistance.
- Between October 2014 and May 2015, SPS will host monthly meetings with the District-selected third-party contractor, OSPI program review staff, and identified staff from the Puget Sound Educational Service District (PSESD). These meetings will be for the purpose of monitoring the District's implementation of the revised C-CAP and to provide technical and management assistance.
- SPS will submit to on-site quarterly reviews requested by OSPI for staff from the U.S. Department of Education.

These conditions must be met before the special conditions will be removed.

c. Reconsideration of conditions. If you would like OSPI to reconsider these special conditions to the District's 2014-15 Part B award, please send a letter to my attention by United States mail postmarked no later than thirty days after receiving this letter. The letter should state with particularity any law or facts the District believes OSPI has overlooked in imposing the conditions.

III. WITHHOLDING OF PART B FUNDS

a. Withholding of funds. Because SPS received a Level 4 determination for the 2012-13 school year, OSPI is required under WAC 392-172A-07012(4) to withhold payments to the District under IDEA Part B in whole or in part. Accordingly, OSPI will withhold an amount of the 2014-15 IDEA Part B grant to SPS equal to \$3,000,000. This amount includes (1) \$1,659,759, the amount of IDEA funding SPS has reserved to implement to the revised C-CAP in the District's most recent application for IDEA Part B funding in the iGrants form package 267, and (2) an additional \$1,340,241, which is an amount intended to encourage SPS to meet the foregoing special conditions without creating substantial disruption to the provision of FAPE in the District.

Upon receipt of evidence of acceptable performance within the 2014-15 grant period, OSPI may incrementally restore a portion of the withheld amount of \$3,000,000 during the 2014-15 school year. Acceptable performance will be measured by adequate progress toward the specific activities and timelines associated with the revised C-CAP. OSPI, PSESD, and the United States Department of Education will verify whether progress is adequate.

b. Opportunity for hearing regarding withholding. Under WAC 392-172-06065(2), the District has an opportunity for a hearing before a designee of the Superintendent of Public Instruction regarding OSPI's decision to partially withhold Part B funds. SPS must request the hearing no later than thirty days after receiving this notice of OSPI's action. Within thirty days following its receipt of a request, OSPI will hold a hearing to review whether OSPI's determination to withhold a portion of SPS's Part B funding is in error. At the hearing, the District will have the opportunity to provide the Superintendent's designee with documentary evidence SPS believes demonstrates that OSPI erred in reaching its determination that Part B funding should be withheld. The designee will consider any new evidence the District provides and respond in writing to the District within thirty days by affirming OSPI's initial determination, rescinding the determination, or issuing a revised determination. If the District remains unsatisfied with OSPI's determination, it will have the right to file an appeal of the determination with the Office of Administrative Hearings within thirty days of receiving OSPI's final determination.

Thank you very much for your efforts to improve special education services in Seattle Public Schools. I am hopeful that the actions being taken in this letter will enable the district to re-establish itself as a lighthouse district in special education in Washington.

Sincerely,



Douglas H. Gill, Ed.D.,
Assistant Superintendent
Special Education

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cc: Gil Mendoza, Ed.D., Deputy Superintendent, K-12 Education, OSPI
Dr. Kelly Goodsell, Executive Director, Learning, Teaching & Family Support, Puget Sound Educational Service District 121
Mr. Michael K. Yudin, Acting Assistant Secretary for Special Education and Rehabilitative Services, United States Department of Education
Mr. Phillip A. Maestri, Director, Risk Management Services, Office of the Deputy Secretary, United States Department of Education
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