

DEPARTMENT OF EDUCATION

Notice of Written Findings and Compliance Agreement

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means of bringing about such compliance. On April 4, 2002, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) entered into a compliance agreement with the Montana Office of Public Instruction (OPI). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carlos Martinez, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Room 3W212, Washington, DC 20202-6132. Telephone: (202) 260-2493.

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SUPPLEMENTARY INFORMATION: Under Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), each State, including the District of Columbia and Puerto Rico, was required to develop or adopt, by the 1997-98 school year, challenging content standards in at least reading/language arts and mathematics that describe what the State expects all students to know and be able to do. Each State also was required to develop or adopt performance standards aligned with its content standards that describe three levels of proficiency to determine how well students are mastering the content standards. Finally, by the 2000-2001

school year, each State was required to develop or adopt a set of student assessments in at least reading/language arts and mathematics that would be used to determine the yearly performance of schools in enabling students to meet the State's performance standards.

OPI submitted, and the Department approved, evidence that it has content standards in at least reading/language arts and mathematics. In November 2000, OPI submitted evidence of its final assessment system. The Department submitted that evidence to a panel of three assessment experts for peer review. Following that review, the Acting Deputy Assistant Secretary for Elementary and Secondary Education (Acting Deputy Assistant Secretary) concluded that OPI's proposed final assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law" applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

- (1) Withhold funds;
- (2) Obtain compliance through a cease and desist order;
- (3) Enter into a compliance agreement with the recipient; or
- (4) Take any other action authorized by law.

20 U.S.C. 1234c(a)(1) through (a)(4).

In a letter dated July 6, 2001 to Linda H. McCulloch, Superintendent of Public Instruction for Montana, the Acting Deputy Assistant Secretary notified OPI that, in order to remain eligible to receive Title I funds, it must enter into a compliance agreement with the Department. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements, and that a compliance agreement is a viable means for bringing about such compliance.

On April 4, 2002, the Assistant Secretary issued written findings, holding that compliance by OPI with the Title I standards and assessment requirements is genuinely not feasible until a future date. Having submitted its

assessment system for peer review in November 2000, OPI was not able to make the significant changes to its system that the Department's review required in time to meet the spring 2001 statutory deadline to have approved assessments in place. As a result, OPI administered its unapproved assessment system in 2001. The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps OPI has already taken to comply and the plan it has developed for further action. The agreement sets out the action plan that OPI must meet to come into compliance with the Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely OPI's progress in meeting the terms of the compliance agreement. The Superintendent of Public Instruction for Montana, Linda H. McCulloch, signed the agreement on April 1, 2002 and the Assistant Secretary signed the compliance agreement on April 4, 2002.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as appendix A and the compliance agreement is set forth as appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 6311)

Dated: March 12, 2003.

Eugene W. Hickok,
Under Secretary of Education.

Appendix A—Text of the Written Findings of the Assistant Secretary for Elementary and Secondary Education

I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20