

Enclosure D

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Colorado's Federal Fiscal Year (FFY) 2007 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to the failure to correct specific areas of noncompliance that OSEP identified in its March 30, 2001 Colorado Monitoring Report (Report), as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §300.600.¹ Specifically, OSEP found that the State failed to correct noncompliance related to the provision of: (a) services and supports to meet the needs of children with disabilities, as required by 34 CFR §300.300 (300.101); (b) needed psychological counseling services, as required by 34 CFR §§300.300 (300.101) and 300.24 (300.34); and (c) adequate supports for children with behavior disorders, as required by 34 CFR §§300.300 (300.101) and 300.346(a)(2)(i) (300.324(a)(2)(i)).²

Enclosure D to OSEP's FFY 2006 grant award letter details the history relating to the identification and correction of noncompliance regarding these issues. That letter required Colorado to submit two Progress Reports, the first with the FFY 2005 Annual Performance Report (APR) due February 1, 2007, and the second by June 1, 2007. Each Progress Report was to address, separately, the failure to correct noncompliance with the above requirements. The State provided the required Reports.

In its April 26, 2007 letter to the State responding to the State's first Progress Report, OSEP asked the State to clarify, in its Progress Report due June 1, 2007, the State's standard for determining when noncompliance has been corrected. In its June 1, 2007 Progress Report, Colorado stated:

The CDE defines compliance as the Administrative Units having policies and procedures in place that align with the Individuals with Disabilities Education Act (IDEA) as well as Colorado's Exceptional Children's Educational Act (ECEA). CDE's monitoring process, then, collects and examines evidence to determine whether or not those policies and procedures are being implemented consistently and appropriately. AUs that have any compliance issues receive a citation and must develop a correction action plan to ensure correction within one year. This plan is subject to CDE approval. The major factors that are examined are adequacy, timing, sustainability and potential institutionalization of the plan. Within one year of the original citation, the AU must provide clear and compelling evidence that the corrective action plan has been implemented in order to clear the citation.

Colorado provided two examples of how it implements its standard of correction. In the first example, the State monitored a district to determine whether prior noncompliance related to the provision of transition services had been corrected. The State reported that it reviewed the

¹ The Special Conditions address only those areas of noncompliance in the Report that remain outstanding.

² The citations within the parentheses refer to the final regulations governing Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004. 7 Fed. Reg. 46540 (August 14, 2006).

district's program for transition services and conducted a file review to examine documentation of transition services in Individualized Educational Programs (IEPs). The State compared the data to its previous record review and concluded that the noncompliance had been corrected because "the data had significantly improved, indicating that policies and procedures were in effect."

While an examination of policies and procedures is an appropriate part of a State's monitoring procedures, the State's standard of "significant improvement" is vague. Under this standard, the State could find compliance even if the district remains out of compliance. For example, a finding that, in a particular district, the percentage of IEPs with required transition services was 40% would not merit a finding of correction of noncompliance, even if the district's previous data had indicated that only 5% of IEPs contained required transition services. Under this scenario, the State should properly conclude that the district had "significantly improved," but nevertheless remained out of compliance.

In the second example, Colorado reported that it monitored a district to determine whether prior noncompliance related to the provision of adequate services to meet student needs had been corrected. As part of its review, the State focused on whether "in fact, staff were providing the services specified on the IEPs." OSEP is satisfied by the method the State used to gather data in this example to determine whether noncompliance had been corrected, although it is unclear whether the State's determination of correction was based on a finding of "significant improvement" in this instance.

In its June 1, 2007 Progress Report, the State also submitted 6 Tables, which included information on the status of correction of noncompliance broken down by Administrative Unit (AU) and the type of noncompliance, as requested in OSEP's July 3, 2006 grant award letter. This data indicated that 54 out of 56 citations of noncompliance had been corrected by May 15, 2007. However, because the State did not use the proper standard to determine correction of noncompliance, OSEP is unable to conclude that the State has satisfied the Special Conditions imposed on it in the FFY 2006 grant award letter.

2. Nature of the Special Conditions

Pursuant to these Special Conditions, the State must provide, by November 30, 2007, documentation that the findings of correction reported in the Tables attached to its June 1, 2007 Progress Report were based on the State's determination that the files reviewed were in compliance with relevant IDEA requirements that formed the basis of the original findings of noncompliance.

If, after reviewing the information and data in the Tables, the State determines that some or all of the noncompliance that the State had reported as corrected was not corrected, the State must provide two Progress Reports, the first due November 30, 2007³, and the second by June 1, 2008. Each Progress Report must address, separately, the failure to correct noncompliance with the requirement to provide (a) services and supports to meet the needs of children with disabilities; (b) needed psychological counseling services; and (c) adequate supports for children with

³ In addition to the specific reporting requirements set forth with this enclosure, the State must also, as part of its FFY 2006 APR, due by February 1, 2008, provide the required data for Indicator 15 for the reporting period of July 1, 2006 - June 30, 2007.

behavior disorders, as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §300.600; 34 CFR §300.101; 34 CFR §300.34; and 34 CFR §300.324(a)(2)(i).

A. In the first Progress Report, due on November 30, 2007, the State must provide for each of the three areas in which it has failed to correct noncompliance:

- (1) Updated correction data for the FFY 2003 findings of noncompliance in the 11 AUs for which the State had not verified correction by December 31, 2006. For findings of noncompliance that were not corrected by December 31, 2006, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors); and
- (2) Updated correction data for the FFY 2004 findings of noncompliance in the 10 AUs for which the State had not verified correction by December 31, 2006. For findings of noncompliance that were not corrected by December 31, 2006, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors).

B. In the second Progress Report, due on June 1, 2008, the State must provide, for each of the three areas in which it had failed to correct noncompliance, the following updated information:

- (1) For noncompliance not corrected by December 31, 2006, the number and percentage of the 11 AUs monitored in FFY 2003 for which the State has verified correction by March 31, 2008.

For any findings of noncompliance that were not corrected by March 31, 2008, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors); and

- (2) For noncompliance identified in FFY 2004 and not corrected by December 31, 2006, the number and percentage of the AUs for which the State has verified correction by March 31, 2008.

For any findings of noncompliance that were not corrected by March 31, 2008, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors).

3. Evidence Necessary for Conditions To Be Removed

The Department will remove these Special Conditions if, at any time prior to the expiration of the grant year, Colorado provides documentation, satisfactory to the Department, that it has

submitted data demonstrating the correction of noncompliance regarding the failure to correct identified noncompliance with respect to the failure to provide (a) services and supports to meet the needs of children with disabilities; (b) needed psychological counseling services; and (c) adequate supports for children with behavior disorders, as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §300.600; 34 CFR §300.101; 34 CFR §300.34; and 34 CFR §300.324(a)(2)(i).

4. Method of Requesting Reconsideration

The State can write to Patricia Guard if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports and Documentation

All reports and documentation that are required to be submitted by [State] to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Debra Jennings
400 Maryland Ave, SW
Washington, DC 20202-2550