

Enclosure D

Special Conditions

I. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on DCPS' Federal Fiscal Year (FFY) 2005 grant award under Part B of the Individuals with Disabilities Education Act (IDEA)¹, related to DCPS' failure to:

1) Provide timely initial evaluations and reevaluations

- a. An initial evaluation that meets the requirements of section 614(a)(1), (b) and (c) of Part B of IDEA² must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by DCPS's policy. According to data submitted by DCPS under the FFY 2004 Special Conditions, DCPS had not achieved the goal of ensuring that all initial evaluations were completed and placements made in a timely manner. At the end of the final reporting period for FFY 2004, 318 initial evaluations and placements had not been completed in a timely manner, with an average number of overdue days of 25. This represents an increase of 56 from the number of initial evaluations and placements that had not been completed in a timely manner at the end of the final reporting period for FFY 2003.
- b. A reevaluation that meets the requirements of section 614(a)(2), (b), and (c) of Part B of IDEA³ must be completed for all children with disabilities no later than 36 months after the date on which the previous evaluation or reevaluation was completed, unless the parent and the local educational agency agree that a reevaluation is unnecessary. According to data submitted by DCPS under the FFY 2004 Special Conditions, DCPS had not achieved the goal of ensuring that all reevaluations of children with disabilities were conducted in a timely manner. At the end of the final reporting period for FFY 2004, 733 reevaluations had not been conducted in a timely manner, with an average number of overdue days of 22.⁴ This represents an increase of 160 from the number of reevaluations that had not been completed in a timely manner at the end of the final reporting period for FFY 2003.

¹ The statutory citations are to the IDEA Improvement Act of 2004 (PL 108-446), which became effective July 1, 2005. In its FFY 2005 application, DCPS assured OSEP that throughout the period of the grant award DCPS will operate consistent with PL 108-446 and applicable regulations and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible, and not later than July 1, 2006.

² Section 614(a)(1)(C)(i)(I) requires that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted within such timeframe. Page 5 of the Procedural Manual for Parents (as revised July 2005) states that "under District of Columbia law, the LEA has no more than 120 calendar days after the date a child is referred for evaluation to determine his/her eligibility for special education services, develop the individualized education program (IEP) and begin delivery of appropriate special education and related services".

³ Section 614(a)(2) requires that a reevaluation occur at least once every three years, unless the parents and the local educational agency agree that a reevaluation is unnecessary.

⁴ The information provided includes both "triennial" reevaluations and requested or ordered "out of cycle" reevaluations. SETS has been unable to provide disaggregated information in this regard.

2) Implement due process hearing decisions in a timely manner

Independent hearing officer determinations must be implemented within the time-frame prescribed by the hearing determination, or if there is no time-frame prescribed by the hearing officer, within a reasonable time-frame set by DCPS, as required by sections 615(f) and (i) of Part B of IDEA. According to data submitted by DCPS under the FFY 2004 Special Conditions, DCPS had not achieved the goal of ensuring that all due process hearing decisions were implemented in a timely manner. At the end of the final reporting period under the FFY 2004 Special Conditions, 1,475 hearing decisions had not been implemented in a timely manner. This represents a decrease of only 11 from the number of hearing decisions that had not been implemented in a timely manner at the end of the final reporting period for FFY 2003.

In an April 4, 2004 letter from Dr. Raymond Bryant to Ms. Stephanie Smith Lee, DCPS reported on procedures it has established to set reasonable timelines for those decisions that do not have a hearing officer established time frame for implementation. DCPS established time frames for implementation when the hearing officer orders DCPS: (1) to convene a multi-disciplinary team (MDT) meeting within a certain number of days after receipt of an independent educational evaluation (IEE) from the parent; (2) to provide a specific amount and type of compensatory education service; and (3) to take immediate action. For all other actions, if no due date is specified in the hearing officer decision or stated in IDEA or local statutes or regulations, DCPS will make a case-by-case decision as to an appropriate due date depending on the type of relief granted. Generally, DCPS will specify a 30- or 45-day timeline.

DCPS reported in each quarterly report that "pursuant to DCPS policy developed in response to OSEP's directive to impose timelines for certain hearing officer determinations. (HODs) where none were ordered, such "untimed" cases are, for the most part, included" in the number of HODs that had not been implemented in a timely manner at the conclusion of the reporting period. DCPS has been unable, as required in the FFY 2004 Special Conditions, to disaggregate the untimed cases from those with ordered timelines.

3) Ensure placement in the LRE

All children with disabilities must be placed in the least restrictive environment (LRE) appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B of IDEA. During its March 26, 2001 compliance monitoring review of DCPS, OSEP collected data to determine whether DCPS was ensuring that all children with disabilities were placed in the least restrictive environment. OSEP determined that decisions regarding the placement of children with disabilities in the least restrictive environment were not based on the individual needs of the child, but rather on other factors. Personnel reported that placement decisions were affected by the lack of modifications and accommodations available in the regular class and the limited capacity of DCPS to serve children with disabilities along each point of the continuum of alternative placements. OSEP found that DCPS was not ensuring that children with disabilities are placed in the least restrictive environment appropriate to their individual needs.

With the implementation of DCPS' monitoring system, OSEP required, in the FFY 2004 Special Conditions that DCPS provide the results of its monitoring efforts highlighting any findings and required corrective actions related to placement of children with disabilities in the least restrictive environment, including information obtained from record reviews and staff and parent interviews. The FFY 2004 Special Conditions required DCPS to provide to OSEP by October 8, 2004 the monitoring report(s) issued as a result of its first cyclical

monitoring of the High School Division of DCPS, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556.⁵ By April 29, 2005, DCPS was to provide the data for the Middle/Junior High School Division.

The November 1, 2004 Special Conditions Quarterly Report submitted by DCPS stated that "DCPS has completed the Monitoring review of the High School highlighting findings and corrective action measures related to placement of children in the least restrictive environment." This report also stated that the "review of the middle and junior high division had started and would produce findings by April 2005." During OSEP's January 6, 2005 Improvement Plan (IP) update meeting, DCPS explained that reports from high school monitoring were delayed when a need was identified to include two public charter high schools in the cycle. As of this letter, no monitoring data has been provided to OSEP. The January 18, 2005 and the April 15, 2005 Special Conditions Quarterly Report stated that DCPS has no current information under LRE to submit. At the end of the final reporting period for FFY 2004, DCPS reported it did not issue any monitoring reports or corrective action plans to local educational agencies for the final reporting period and to date, OSEP has not received any required monitoring data from DCPS during FFY 2004.

4) Identify and Correct Deficiencies (monitoring)

OSEP conducted a review in the District of Columbia, ending the week of March 26, 2001, for the purpose of assessing compliance in the implementation of IDEA and assisting the District in developing strategies to improve results for children with disabilities. OSEP's monitoring report issued on June 18, 2002 identified several areas of noncompliance, including DCPS' failure to exercise general supervisory responsibility by identifying deficiencies under IDEA and ensuring that they are corrected in a timely manner, as required at 34 CFR §300.600 and 20 U.S.C.1232d(b)(3).

DCPS submitted an initial Improvement Plan (IP) in February 2003 to address all areas of noncompliance identified in the June 18, 2002 report and, subsequent to a three-day meeting in July 2003 with staff from OSEP, DCPS, and the Mid-South Regional Resource Center, submitted a revised IP on November 13, 2003. In the IP under General Supervision, DCPS identified the strategies that it would implement to ensure the identification and correction of IDEA deficiencies. OSEP approved the IP in a letter dated February 27, 2004. In that letter, OSEP stated that the District must ensure that all of the areas of noncompliance identified in the Monitoring Report are corrected within the timelines established by DCPS in the IP, which cannot exceed one year from February 27, 2004. Progress Reports were due on March 31, 2004 as part of the FFY 2002 APR; July 16, 2004; October 29, 2004; and a final report was due on February 27, 2005. DCPS submitted the FFY 2002 APR on April 16, 2004, but did not submit Progress Reports on July 16, 2004 or October 29, 2004. In OSEP's March 18, 2005 response to the FFY 2002 APR, OSEP directed DCPS to submit the final Progress Report as part of the FFY 2003 APR.

In the FFY 2002 APR submitted to OSEP on April 16, 2004, DCPS reported that during the period July 1, 2002 to June 30, 2003, DCPS had created a system for reviewing both IDEA requirements and requirements of the No Child Left Behind Act (NCLB) but could not ensure identification and timely correction of all IDEA-related noncompliance. DCPS reported that it had created a comprehensive monitoring system that included a review of data from the

⁵ Unless otherwise noted, the regulatory citations are to regulations currently in effect and not inconsistent with the provisions of the IDEA Improvement Act of 2004.

Special Education Tracking System (SETS); a review of hearing decisions, local-level policies and procedures and student files; building-level staff interviews; and a cyclical process for monitoring all DCPS buildings (including charter schools that are DCPS schools for special education purposes), charter schools functioning as their own LEAs, nonpublic schools in which DCPS children with disabilities are placed by DCPS, and Department of Health and Human Services programs where DCPS provides the educational component.

Based on OSEP's review of the District's newly-created monitoring system during the verification visit, OSEP concluded in the June 8, 2004 verification letter that it could not yet determine whether the improvement strategies identified in the IP would result in a system for general supervision that is effective in identifying noncompliance with all Part B requirements and ensuring the correction of identified noncompliance. DCPS reported during the verification visit that beginning in January 2004, DCPS would begin monitoring all high schools in the District; Middle/Junior High Schools would be monitored in the fall of 2004 and elementary schools would be monitored during the spring and fall of 2005. On page 14 of the General Supervision cluster of the FFY 2002 APR, DCPS reported that case record reviews had been conducted in all 19 of the DCPS high schools as of the submission date of the FFY 2002 APR.

On January 6, 2005, OSEP staff met with DCPS officials to review and update the IP relative to the correction of identified noncompliance. DCPS stated that except for two public charter high schools, all high schools had been monitored. At this IP meeting, DCPS assured OSEP that the monitoring data regarding the high schools was almost complete and that the review of the middle and junior high division had started and would produce findings by April 2005.

In OSEP's March 18, 2005 response to the FFY 2002 APR, OSEP required DCPS to submit in the FFY 2003 APR data and analysis demonstrating that the noncompliance identified in the monitoring report with the requirement in 34 CFR §300.600 and 20 U.S.C. 1232d(b)(3) to identify and correct deficiencies was corrected. DCPS was required to include monitoring data and reports from the high school and middle/junior high divisions, corrective actions imposed, and activities undertaken by DCPS to ensure corrective actions had been implemented and identified noncompliance had been corrected within one year of identification. DCPS was directed to provide documentation that public charter high schools and middle/junior high schools, including charter schools that are schools within DCPS and charter schools functioning as their own LEAs, had been monitored. In addition, DCPS was required to report mechanisms that it had in place for persistent noncompliance (sanctions) and how/when they were imposed.

On page 11 of the FFY 2003 APR submitted to OSEP on May 20, 2005, DCPS reported that 20 DCPS schools were monitored, but does not provide any data or analysis. DCPS failed to provide any data that demonstrates that DCPS is identifying noncompliance with the requirements of Part B of IDEA and correcting identified deficiencies in a timely manner, in accordance with section 612(a)(11) of Part B of IDEA, 34 CFR §300.600, and 20 U.S.C. 1232d(b)(3).

II. Nature of the Special Conditions

The following Special Conditions are imposed on the District of Columbia Public Schools' (DCPS's) Part B grant awards for FFY 2005:

A. Initial Evaluations and Reevaluations

1. DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:

(a) Initial Evaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had been referred for, but not provided a timely initial evaluation and placement;
- (b) The number of children referred for initial evaluation and placement whose initial evaluation and placement became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who were provided initial evaluations and placements during the reporting period;
- (d) The number of children who had not been provided a timely initial evaluations and placements at the conclusion of the reporting period; and
- (e) The percentage of timely initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period.

(b) Reevaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;
- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who had been provided triennial reevaluations during the reporting period;
- (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period; and
- (e) The percentage of timely triennial reevaluations provided to children with disabilities whose reevaluation deadline fell during the reporting period.

2. For each reporting period, DCPS must report to OSEP the strategies it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations, and, if there is no progress in reducing the number of overdue initial evaluations and placements or triennial reevaluations, DCPS must provide an explanation for this lack of progress and reevaluate the procedures it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations.
3. For each reporting period, DCPS must report the average number of days the initial evaluation and placements and reevaluations that had not been provided in a timely manner were overdue for that reporting period.

B. Implementation of Due Process Hearing Decisions

1. DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:

- (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time frame established by the hearing officer or by DCPS;
- (b) The number of children whose hearing officer determinations had not been implemented within the time frame established by the hearing officer or by DCPS (became overdue) during the reporting period;

- (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percentage of hearing officer determinations that had been implemented in a timely manner during the reporting period.
2. For each reporting period, DCPS must clarify that it is reporting in B.1. on the numbers of hearing officer determinations that include a time frame for implementation established by DCPS (because the hearing officer has not prescribed a timeframe), as well as the numbers of hearing officer determinations that include a time frame for implementation established by the hearing officer.
 3. For each reporting period, DCPS must report to OSEP the strategies it is implementing to reduce the number of children whose hearing officer determinations are not implemented in a timely manner, and address any remaining barriers to the timely implementation of hearing officer decisions (those with a time frame set by the hearing officer and those without a time frame set by the hearing officer) and the steps being taken to remove those barriers.

C. Least Restrictive Environment

1. By October 28, 2005, DCPS must provide to OSEP the monitoring report(s) issued as a result of its first cyclical monitoring of the High School Division and the Middle/Junior High School Division, including charter schools that are public schools of DCPS, and charter schools established as LEA's, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556. In addition, DCPS must provide the same type of monitoring data for the Elementary Schools monitored during the Spring 2005 semester. The monitoring report should include the results of interviewing members of the placement teams and reviewing the individualized education programs (IEPs) of children with disabilities who do not participate for all, or part of, the day in the regular class in order to determine if these placement decisions were made consistent with the requirements in 34 CFR §§300.550-300.556.
2. environment, in accordance with 34 CFR §300.556. The monitoring report should include the results of interviewing members of the placement teams and reviewing the individualized education programs (IEPs) of children with disabilities who do not participate for all, or part of, the day in the regular class in order to determine if these placement decisions were made consistent with the requirements in 34 CFR §§300.550-300.556.
3. As part of the final quarterly report, DCPS must provide any additional monitoring report(s) issued since April 14, 2006 as a result of its monitoring, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556. In addition, DCPS must report on any follow-up activities it has carried out to ensure the corrective action plans have resulted in the correction of identified noncompliance in the area of least restrictive environment (LRE).

D. Identify and Correct Deficiencies (monitoring)

1. By October 28, 2005, DCPS must provide to OSEP the monitoring data and report(s) issued as a result of its first cyclical monitoring of the High School Division, the

Middle/Junior High School Division and for all Elementary Schools monitored during the Spring 2005 semester, including charter schools that are public schools of DCPS, and charter schools established as LEA's. The documentation must include corrective actions imposed, and activities undertaken by DCPS to ensure those corrective actions have been implemented and identified noncompliance has been corrected within one year of identification. DCPS must also report the mechanisms that it has in place for persistent noncompliance (sanctions) and how/when they are imposed.

2. By April 14, 2006, DCPS must provide to OSEP, the monitoring report(s) issued as a result of its first cyclical monitoring of the Elementary Schools during the Fall 2005 semester, including charter schools that are public schools of DCPS, and charter schools established as LEA's. The documentation must include corrective actions imposed, and activities undertaken by DCPS to ensure those corrective actions have been implemented and identified noncompliance has been corrected within one year of identification. DCPS must also report the mechanisms that it has in place for persistent noncompliance (sanctions) and how/when they are imposed.
3. As part of the final quarterly report, DCPS must provide any additional monitoring report(s) issued since April 14, 2006 as a result of its monitoring. The documentation must include corrective actions imposed, and activities undertaken by DCPS to ensure those corrective actions have been implemented and identified noncompliance has been corrected within one year of identification. DCPS must also report the mechanisms that it has in place for persistent noncompliance (sanctions) and how/when they are imposed.

One suggestion to help facilitate the reporting of the required documentation to OSEP is to complete and submit the chart below for each reporting period. DCPS may choose to report the required documentation in this manner, but regardless of the format DCPS selects, it must provide the monitoring reports and data with each quarterly submission below.

DCPS Identification and Correction of Noncompliance within One Year of Identification
 Special Condition on the FFY 2005 Grant Award
 Reporting Period:

High School Data

School/LEA	Date Monitored	Date of Report	# Fndgs	Date(s) of Follow-up Activities	# Fndgs corrected w/in 1 year	Reasons for non-correction within 1 year	Actions taken to ensure correction ASAP/Sanctions
1.							
2.							
3.							
Monitoring reports and data required							

**DUE DATES AND REPORTING PERIODS FOR QUARTERLY REPORTS UNDER A-E
THAT DCPS MUST SUBMIT TO THE U.S. DEPARTMENT OF EDUCATION**

The following are the reporting dates for providing the required information to OSEP in A-D above.

DATES OF REPORTING PERIODS	DATE OF DCPS REPORT TO THE U.S. DEPARTMENT OF EDUCATION
June 1 – September 30, 2005	October 28, 2005
October 1 – December 31, 2006	January 13, 2006
January 1 – March 31, 2006	April 14, 2006
April 1 – May 31, 2006	June 16, 2006

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the special conditions if, at any time prior to the expiration of the grant year, DCPS provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

IV. Method of Requesting Reconsideration

The State can write to Troy R. Justesen 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.

V. Submission of Reports

All reports that are required to be submitted by DCPS to the Department under the Special Conditions should be submitted, in accordance with the time lines included in this enclosure to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Paul Steenen
400 Maryland Avenue, SW
Washington, DC 20202-2550