

**ENCLOSURE D**  
**SPECIAL CONDITIONS**

Under the Individuals with Disabilities Education Act (IDEA), speech and language pathology must be available as a related service to children with disabilities who need that service to benefit from special education. (34 CFR §§300.24(b)(14) and 300.300). The Department has determined that Florida has not demonstrated compliance with all of the terms and conditions of the Federal Fiscal Year (FFY) 2004 awards under Part B of the IDEA with regard to these requirements, and under the authority of the Education Department General Administrative Regulations, at 34 CFR §80.12, is imposing Special Conditions on Florida's FFY 2005 grant awards under Part B.

As detailed in Florida's FFY 2004 grant awards, the Department imposed Special Conditions on the FFY 2004 grant awards because the Florida Department of Education (FDE) failed to correct three of the findings of noncompliance initially identified in OSEP's April 23, 2001 Florida Monitoring Report (Report):

1. Public agencies failed to provide speech and language pathology as a related service to children with disabilities who need that service to benefit from special education. 34 CFR §§300.24(b)(14) and 300.300.
2. Public agencies failed to provide psychological counseling as a related service to children with disabilities who need that service to benefit from special education. 34 CFR §§300.24(b)(14) and 300.300.
3. FDE failed to ensure that complaints received by FDE are resolved within 60 calendar days after a complaint is filed, unless an extension of time has been granted if exceptional circumstances exist with respect to a particular complaint. 34 CFR §300.661(a) and (b)(1)

FDE's FFY 2004 grant award letter required that FDE submit quarterly reports to document its progress in ensuring the correction of the noncompliance. Based on information in these quarterly reports and in FDE's FFY 2003 Part B APR submitted on March 31, 2005, the Department is satisfied that FDE met two of the three Special Conditions. Specifically, FDE ensured the provision of psychological counseling services to all students who needed them as a related service in order to benefit from special education, and demonstrated that complaints were resolved within 60 days of their receipt, unless an extension is granted for exceptional circumstances regarding the specific complaint.

The Department determined, however, that FDE did not demonstrate that all students who needed speech and language pathology services as a related service to benefit from special education received those services. As explained below, OSEP is imposing Special Conditions on the State's FFY 2005 grant award because the speech and language pathology issue is not yet fully resolved.

**I. Basis for Requiring Special Conditions**

OSEP's April 23, 2001 Florida Monitoring Report (Report) found that FDE did not ensure the provision of speech and language pathology as a related service to children with disabilities who need that service to benefit from special education. (34 CFR §§300.24(b)(14) and 300.300). Subsequently, in a September 11, 2001 response to a complaint filed with this Department's Office for Civil Rights about the provision of speech and language pathology, Florida stated that "the State has determined that speech and language service is an Exceptional Student Education program rather than a related service. Thus, a student must be determined eligible under the criteria for the special programs for students who are speech and language impaired

in order to receive direct services from a speech and language pathologist." In correspondence dated January 30, 2002 and again on October 17, 2002, OSEP advised FDE that the standard that FDE applies for the provision of speech and language services for children with disabilities is in violation of IDEA. As stated in the October 17, 2002 letter, "Although FDE, as set forth in the State Board of Education Rules 6A-6.03012, considers speech to be a special education service, FDE must also ensure that school districts provide speech and language services to any child with a disability who needs those services to benefit from special education, even if he or she does not meet the State's criteria to receive speech-language pathology services as a special education service."

In response to OSEP's 2001 Monitoring Report, FDE issued two guidance memoranda to District School Superintendents, dated April 26, 2002 and July 25, 2003 and a technical assistance paper dated February 2004. None of these documents clarified that students who need speech and language services as a related service to benefit from special education may receive these services directly from a speech pathologist regardless of whether the child meets the State's criteria for speech as a special program as established in Florida's State Board of Education Rule. In fact, each of these documents incorporate Florida's inappropriate use of categorical criteria for decision-making about which children may be eligible for speech and language pathology as a related service. The February 2004 paper, for example, notes that "If the individual education program (IEP) team determines that a student identified as autistic, developmentally delayed, traumatic brain injured, or deaf or hard-of-hearing who has a delay or absence of communication skills as documented by the initial speech/language evaluation is in need of speech or language services, such student does not have to meet the additional eligibility criteria . . . in order to receive speech or language services." Students identified as having other disabling conditions, such as students with mental retardation, are denied access to speech and language pathology services unless they meet additional eligibility criteria for those services, even if they need speech and language pathology services as a related service in order to benefit from special education.

As described above, on April 13, 2004, OSEP directed the State to submit additional documentation regarding how through monitoring, technical assistance and other guidance, the State ensures the provision of speech and language pathology services as a related service to all children who need them to benefit from special education no later than June 14, 2004. FDE's July 1, 2004 Amendment to its State Improvement Plan indicated that it would submit a legislative proposal to include speech and language services as related services to the State Board for approval at the Board's September 2004 meeting. OSEP viewed this as a very important step in resolving this issue.

OSEP's analysis of FDE's quarterly reports during 2004-2005 indicated that FDE made some progress in demonstrating compliance with the speech and language requirement. Specifically, FDE provided on-going technical assistance and training to school districts, revised the State's monitoring protocols to assess the provision of speech and language as a related service, and monitored over 10 school districts to determine whether districts were in compliance with this requirement, including one finding of noncompliance with a corrective action plan developed. FDE also reported that there has been no complaints filed pertaining to the provision of speech or language as a related service for each of the reporting periods.

FDE did not, however, succeed in meeting all of the required actions outlined in FDE's FFY 2004 grant award to demonstrate full compliance with this requirement. FDE's final report indicated that the bill, HB6007, adding speech and language as a related service did not pass the 2005 legislative session, for reasons that were unrelated to the provision regarding speech and language. FDE is optimistic that a bill to include a provision regarding speech and language will be enacted in the 2006 legislative session. Additionally, a memo regarding

changes in speech and language services and procedures FDE stated in its third report would be distributed to stakeholders in May 2005 had not been issued. Issuing clear guidance to all appropriate local school district staff regarding eligibility for and provision of speech and language pathology services consistent with IDEA is crucial for resolving this matter. Thus, while the State has provided technical assistance and training opportunities to school districts, has revised its monitoring protocols, and is implementing those revised procedures, the State has not yet revised its statute or notified all appropriate local educational agency staff that a student who needs speech and language pathology as a related service to benefit from special education must receive those services.

**II. Nature of the Special Conditions**

By July 1, 2006, Florida must demonstrate that it is in compliance with the requirements of Part B relating to: (1) 34 CFR §§300.24(b)(14) and 300.300, that public agencies provide speech and language pathology as a related service to children with disabilities who need that service to benefit from special education.

To document its progress in ensuring the correction of the noncompliance, MDOE must submit to OSEP four quarterly reports according to the following schedule:

	<b>Dates of Reporting Period</b>	<b>Date Quarterly Report Due to OSEP</b>
<b>First Reporting Period</b>	July 1-September 30, 2005	October 15, 2005
<b>Second Reporting Period</b>	October 1-December 31, 2005	January 15, 2006
<b>Third Reporting Period</b>	January 1, 2005-March 31, 2006	April 15, 2006
<b>Fourth Reporting Period</b>	April 1, 2005-June 1, 2006	June 15, 2006

Quarterly reports must include the following information:

1. By October 15, 2005, FDE must provide documentation that includes the following information:
  - a. The steps FDE has taken to inform all district superintendents, directors of special education, staffing specialists, special education providers, related services personnel and members of all IEP teams that a student with a disability who needs speech and language pathology as a related service to benefit from special education must receive that service.
  - b. FDE's progress in passage of the legislative proposal to include speech and language pathology services as a related service available to children with disabilities who need them to benefit from special education.
2. For each quarterly report, including the October 15, 2004 report, FDE must provide the following information:
  - a. A summary of any findings of noncompliance regarding the provision of speech and language pathology as a related service that FDE made through its monitoring system during the reporting period; any actions that FDE has taken to ensure the correction of such findings; and the impact of such actions. The monitoring data should include the number of students receiving speech and language therapy as a related service.
  - b. A summary of any findings of noncompliance regarding the provision of speech and language pathology as a related service that FDE made through its complaint resolution

system during the previous reporting period, any actions that FDE has taken to ensure the correction of such findings, and the impact of such actions.

3. For the second, third and fourth reports, FDE must include updates on the progress of the legislative proposal described in # 1.

### **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, FDE provides documentation, satisfactory to the Department, that it ensures the provision of speech and language pathology services and psychological counseling services to all students who need them as related services in order to benefit from special education, without regard to whether they meet other eligibility criteria for those services, and demonstrates that complaints are resolved within 60 days of their receipt, unless an extension is granted for exceptional circumstances regarding the specific complaint.

### **IV. Method of Requesting Reconsideration**

FDE may write to Troy R. Justesen if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by FDE and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

### **V. Submission of Reports**

Reports must be submitted, in accordance with the time lines included in this enclosure, to:

Sheila Friedman  
Education Program Specialist  
U.S. Department of Education  
Office of Special Education Programs  
550 12<sup>th</sup> Street, SW, Room 4169  
Washington, DC 20004