

ENCLOSURE D
SPECIAL CONDITIONS

Under the Individuals with Disabilities Education Act (IDEA), public agencies must ensure that removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.550(b)(2)). Additionally, pursuant to IDEA, public agencies are required to ensure that the services provided to the child address all of the child's identified special education and related services needs, in accordance with the child's IEP (34 CFR §300.300(a)(3)(i)).

The Office of Special Education Programs (OSEP) Monitoring Report, issued July 26, 2001, identified four areas of noncompliance. The State failed to ensure:

1. students with disabilities are removed from the least restrictive environment (LRE) only if the child's disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily;
2. all needed related services are provided as a part of a free appropriate public education (FAPE);
3. students with disabilities placed in nonpublic schools participate in Statewide assessments; and
4. State complaint timelines are met, unless exceptional circumstances require extensions beyond the 60-day timeframe.

In OSEP's July 8, 2004 notification of approval of Maryland's Federal Fiscal Year (FFY) 2004 Eligibility Documents, OSEP expressed concern for the status of Maryland's correction of the first two of these issues. Although the State has taken some steps to resolve these issues, Maryland has not yet demonstrated compliance under Part B of the IDEA with regard to these requirements. As explained in the following section, the Department has determined that Maryland 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 regarding these requirements, and under the authority of the Education Department General Administrative Regulations, at 34 CFR §80.12, is imposing Special Conditions on Maryland's FFY 2005 grant awards under Part B.

I. Basis for Requiring Special Conditions

OSEP's July 2001 Monitoring Report (Report) found that Maryland State Department of Education (MSDE) did not: 1) ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.550(b)(2)); 2) ensure that the services provided to the child address all of the child's identified special education and related services needs, in accordance with the child's IEP (34 CFR §300.300(a)(3)(i)); 3) demonstrate that children with disabilities are included in general State and districtwide assessment programs with appropriate accommodations and modifications in the administration of the assessment, if necessary (34 CFR §300.138(a)); and 4) ensure State compliant timelines are met, unless exceptional circumstances require extensions beyond the 60-day timeframe (34 CFR §300.661(a)(b)).

In response to OSEP's 2001 Report, MSDE issued the Maryland State Improvement Plan (Improvement Plan) in September 2001 with subsequent revisions in March 2002. On August 8, 2002, OSEP approved the State's plan for implementation subject to revisions of the timelines on compliance issues to show full compliance within a year of the August 2002 letter, and to incorporate additional changes to the plan consistent with the comments contained in the August 2002 letter. The approval was also based on OSEP's understanding that Maryland's revised monitoring system was sufficient to identify and correct all areas of Part B noncompliance. MSDE was required to submit the revised Improvement Plan by August 30, 2002.

On August 28, 2002, MSDE submitted the amended Improvement Plan to address the issues in the August 2002 letter from OSEP. MSDE submitted semi-annual reports of progress on December 20, 2002 and July 2, 2003 that identified the strategies undertaken and the impact of those strategies in correcting

the identified areas of noncompliance. On December 22, 2003, OSEP informed MSDE that OSEP's review of progress reports determined that the data did not demonstrate substantial progress towards correcting noncompliance in the areas identified in OSEP's 2001 Report. MSDE was required to correct the noncompliance and submit to OSEP in a final report by January 31, 2004 data for each of the areas demonstrating noncompliance had been corrected. On January 31, 2004, MSDE submitted the final report of the Improvement Plan.

On July 23, 2004 OSEP responded to MSDE's FFY 2002 Annual Performance Report (APR) and the January 2004 final report of the Improvement Plan. OSEP's July 2004 APR letter informed MSDE that the data and information demonstrated satisfactory progress towards correcting the noncompliance related to complaint timelines, and that the data and analysis provided by the State demonstrated correction of noncompliance related to lack of participation in statewide assessments of students placed in non-public schools. However, while the State implemented the strategies for correction and reported improvements in LRE data related to placement of students with disabilities in regular education and resource room, there was insufficient evidence that placement decisions were being made consistent with the LRE requirements, and that MSDE was ensuring timely correction of identified deficiencies at the local level. In addition, MSDE presented data to indicate an increase in related service personnel and that it monitored local staffing plans to verify that vacancies had been filled. However, MSDE did not provide evidence that students were receiving all related services indicated in their IEP. MSDE was required to submit to OSEP, within 60 days of the July 23, 2004 letter, data and analysis that demonstrated noncompliance had been corrected in the two areas listed above. MSDE was informed that it could satisfy this requirement by providing documentation that subsequent to identification of noncompliance through State monitoring, local education agencies developed corrective action plans and the State conducted follow-up activities, including monitoring activities, to verify correction related to LRE and ensuring all children receive the related services as indicated on their IEPs.

On September 21, 2004, MSDE reported information about its current strategies to ensure the implementation of the LRE and related services requirements. However, MSDE was unable to provide evidence that identified noncompliance in these areas had been corrected at the local level. By letter of January 19, 2005 OSEP stated that MSDE would be required to provide monitoring information for specified LEAs showing correction of identified noncompliance with LRE and related services provisions at the time of OSEP's verification visit in March 2005. During the verification visit, OSEP interviewed staff, reviewed monitoring reports and other documents and determined that MSDE was able to identify noncompliance in these areas. However, OSEP was unable to verify the State had corrected noncompliance with regard to the LRE and provision of related services requirements. MSDE acknowledged gaps in its general supervisory system related to monitoring, reorganized its monitoring unit, and committed to forwarding OSEP updates regarding the impact on correcting the noncompliance related to the LRE and provision of related services requirements.

II. Nature of the Special Conditions

MSDE must submit to OSEP three reports according to the following schedule:

	Dates of Reporting Period	Date Quarterly Report Due to OSEP	Monitoring Visits Conducted
First Reporting Period	July 1-October 31, 2005	November 15, 2005	2003-2004 SY
Second Reporting Period	November 1-January 31, 2006	February 15, 2006	2004-2005 SY
Third Reporting Period	February 1, 2006-April 30, 2006	May 15, 2006	2004-2005 SY (continued)

Reports must include the following information:

1. Ensuring individualized placement decisions

Submit, for each monitoring report that identifies noncompliance with the obligation to ensure that students with disabilities are removed from the least restrictive environment (LRE) only if the child's disability is such that education in the regular classroom with the use of supplementary

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 12th Street, SW, Room 4169
Washington, DC 20004