

ENCLOSURE D
SPECIAL CONDITIONS

The requirements that States ensure that children with disabilities participate in State-wide and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State-wide and district-wide assessments, are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(15)-(16). The requirements regarding performance goals and indicators and the participation of children with disabilities in and reporting on the participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000. The Department has determined that Missouri has not demonstrated compliance with all of the terms and conditions of the Federal Fiscal Year (FFY) 2004 awards under Part B of 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 Missouri's FFY 2005 grant awards under Part B.

During the week of December 8, 2003, the Office of Special Education Programs (OSEP) conducted a verification visit to the Missouri Department of Elementary and Secondary Education (DESE). As part of that verification visit, OSEP staff met with DESE administrators and staff who are responsible for ensuring participation in, and the reporting of student performance on, State-wide assessments. In the May 27, 2004 letter, incorporated by reference, to DESE reporting on the results of the verification visit, OSEP made four findings of noncompliance with the requirements of Part B relating to State-wide and district-wide assessments. In its January 18, 2005 response to the State's FFY 2002 APR, incorporated by reference, OSEP accepted the State's plan for correcting the above-described areas of noncompliance. That letter further directed the State to include in its FFY 2003, data and analysis demonstrating progress toward compliance, and to submit to OSEP a final report, within 30 days following one year from the date of that letter, with data and analysis demonstrating compliance in each of those areas.

The State's FFY 2004 Part B grant awards included Special Conditions based on each of those four findings. As explained below, OSEP is imposing Special Conditions on the State's FFY 2005 Part B grant awards based on the two findings from the May 27, 2004 letter, that are not yet fully resolved. OSEP acknowledges, and these Special Conditions are intended to relate directly to, the State's plan and its on-going efforts to resolve these issues.

A. Ensuring Students with Disabilities who Participate in Alternate Assessment are Assessed in all Content Areas in which Nondisabled Students are Assessed

1. Basis for Requiring Special Conditions

In its May 2004 verification letter, OSEP found that the State had not complied with the requirements of 34 CFR §§300.138 and 300.347(a)(5), to ensure that: (a) all children with disabilities participate in State-wide assessments; and (b) if the individualized education program (IEP) team determines that a child with a disability will not participate in a particular State-wide assessment of student achievement (or part of an assessment), the child's IEP must include a statement of why the assessment is not appropriate for the child and how the child will be assessed. Specifically, OSEP found that that DESE had not ensured that children with

disabilities participated, through either the general assessment or the alternate assessment, in all parts of the State-wide assessments. DESE informed OSEP that, in order to meet the requirements of 34 CFR §300.347(a)(5), the IEP team for each child determines whether a child with a disability will participate in the MAP or the MAP-A. Then, without convening an IEP meeting, the child's special education teacher selects four of the six assessment areas (i.e., communication arts, mathematics, social studies, science, health /physical education, and fine arts), and—for each of those four areas—selects a goal from the child's IEP that will be used for the MAP-A. Thus, although third-grade children participate in the third-grade general communication arts MAP, the State does not require that each third-grade child with a disability who does not participate in the communication arts MAP, participate in the communications arts MAP-A. The teacher could, instead, choose to assess the child on goals that relate to: (1) mathematics (although there is no mathematics MAP administered in the third grade); (2) science (even if the district has not elected to assess third-grade students in the general science MAP); (3) social studies (although there is no social studies MAP for the third grade); and (4) fine arts (although there is no current administration, at any grade, of a fine arts MAP).

DESE informed OSEP in its July 26, 2004 Plan for Compliance and its FFY 2003 APR that a request for proposal was awarded to develop alternate assessments in communication arts and math grades 3-8, communication arts grade 11 and Math grade 10. Further, DESE informed OSEP that: a contract is in place; alternate assessments are being developed to correspond to all MAP assessments by 2006; and pilot scoring was recently conducted on the new MAP-A assessments. Thus, while the State has begun to implement the steps needed to correct the noncompliance, it cannot yet provide documentation that it is ensuring that all children with disabilities participated, through either the general assessment or the alternate assessment, in all parts of the State-wide assessments.

2. Nature of the Special Conditions

Pursuant to these Special Conditions, by February 17, 2006, the State must, as directed in OSEP's January 18, 2005 letter, submit to OSEP documentation that DESE has corrected the noncompliance, as described above and as also described in OSEP's May 27, 2004 verification letter, relating to ensuring that children with disabilities participate, through either the general assessment or the alternate assessment, in all parts of the State-wide assessment, pursuant to 34 CFR §§300.138 and 300.347(a)(5). This must include documentation of: (1) of the guidance that the State has provided to public agencies regarding the requirements for ensuring that students who participate in the alternate assessment are assessed in the same areas as students participating in the regular State-wide assessment; (2) the monitoring procedures that the State has implemented to determine whether public agencies are complying with these requirements; (3) the State's findings through these monitoring procedures; and (4) the status of correction in any public agency in which the State has found noncompliance with these requirements.

B. Ensuring Compliance with the Requirements Of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as They Apply to District-Wide Assessments

1. Basis for Requiring Special Conditions

In its May 2004 verification letter, OSEP found that the State had not ensured compliance with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. DESE special education and assessment administrators and staff informed OSEP that: (a) DESE does not monitor to ensure compliance with those Part B requirements as they relate to district-wide assessments, and does not know to what extent districts that have district-wide assessments are in compliance with those requirements; and (b) DESE has informed school districts that it is not appropriate to use the MAP-A as an alternate for district-

wide assessments, and does not know to what extent districts with district-wide assessments have developed alternate assessments for those assessments.

DESE indicated in its FFY 2003 APR that it has modified the Special Education Monitoring Self-Assessment to include information on district-wide assessments and that districts monitored during the 2005-2006 school year would be submitting this information with their Self-Assessment. Additionally, the State further indicated that DESE monitoring reviews during the 2004-2005 looks at assessment through the Present Level of Educational Performance which addresses State and district-wide assessment participation and the IEP which addresses what tests would be taken and the accommodations, if any, that are appropriate for each child. On page 67 of its FFY 2003 APR, the State described the steps that it is taking to revise the protocols that DESE monitors use in conducting on-site visits in order to determine whether public agencies comply with Part B requirements related to district-wide assessments. Thus while the State has developed, and is continuing to develop, procedures that it will use in the future to determine compliance with Part B requirements related to district-wide assessments, it has not yet provided documentation of: (1) implementation of such procedures; (2) the findings that DESE has made; or (3) the State's effectiveness in ensuring correction of any noncompliance.

2. Nature of the Special Conditions

Pursuant to these Special Conditions, by February 17, 2006, the State must, as directed in OSEP's January 18, 2005 letter, submit to OSEP documentation that DESE has corrected the noncompliance, as described above and in OSEP's May 27, 2004 verification letter, relating to ensuring compliance with the requirements of 34 CFR §§300.138, 300.139, and 300.347(a)(5) as they apply to district-wide assessments. This must include documentation of: (1) the guidance that the State has provided to public agencies regarding the requirements for ensuring compliance with those requirements as they apply to district-wide assessments; (2) the monitoring procedures that the State has implemented to determine whether public agencies are complying with these requirements; (3) the State's findings through these monitoring procedures; and (4) the status of correction in any public agency in which the State has found noncompliance with these requirements.

C. 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, Missouri provides documentation, satisfactory to the Department, that it has fully met the above-described Special Conditions.

D. 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.

E. Submission of Reports and Documentation

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

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