

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 Ohio's federal fiscal year (FFY) 2005 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to an area of noncompliance that OSEP identified in its March 30, 2001 Ohio Monitoring Report (Report) and where the State has failed to demonstrate correction of the noncompliance. Specifically, OSEP found that the State failed to ensure that a free appropriate public education (FAPE) was made available to each child with a disability entering the Part B program by the child's third birthday, including ensuring that an individualized education program (IEP) or, if appropriate, an individualized family service plan (IFSP) was in effect by the child's third birthday, as required by 34 CFR §300.121(c) (2004) and 20 U.S.C. 1412(a)(1) (1997). See also 20 U.S.C. 1412(a)(1) (effective July 1, 2005).

In response to OSEP's Report, the State submitted its Part B Improvement Plan on October 15, 2001. In that plan, the State proposed as targets that the percentage of eligible children transitioning from early intervention (Part C) services to receiving FAPE under Part B by the child's third birthday would increase by unspecified percentages for 2002 through 2004. OSEP's March 20, 2003 response to the State's Improvement Plan directed the State to revise its targets to ensure that within one year of the date of OSEP's letter, FAPE was made available and an IEP or, if appropriate, and IFSP was in effect by the child's third birthday, with regard to Part B eligible children transitioning from early intervention (Part C) services. The State submitted progress reports under its Improvement Plan on June 26, 2003 and November 25, 2003, but did not demonstrate correction of the noncompliance. Specifically, the State reported, on June 26, 2003, that for the 2001-2002 school year, 121 districts underwent a school improvement review, 94 submitted data and of those, 59 self-reported compliance. The November 25, 2003 report did not include compliance data on this issue.

In its FFY 2002 APR, submitted on March 31, 2004, Ohio reported data indicating continuing noncompliance and raised concerns about the reliability of the data. On pages 26 and 27 of the FFY 2002 APR, the State reported that, for 2001-2002, of the 121 scheduled school improvement reviews, 80 submitted data and of those, 59 self-reported compliance. The State did not explain the discrepancy in the data between the FFY 2002 APR and the June 26, 2003 progress report, but raised concerns about whether the self-reported checklist captured the appropriate data to determine compliance. For the 2002-2003 school year, the State reported that for the 92 districts scheduled for a school improvement review, 67 districts submitted data and of those, 52 self-reported compliance. In OSEP's December 15, 2004 letter responding to the State's FFY 2002 APR, OSEP required the State to provide, in the next APR, accurate updated data and analysis demonstrating compliance with the requirement at 34 CFR §300.121(c) (2004) for children with disabilities transitioning from Part C to Part B.

The FFY 2003 APR, submitted March 30, 2005, included new data and analysis demonstrating continued noncompliance in this area. Specifically, the State conducted a survey of all school districts providing preschool special education services (375 district surveys distributed with 99% responding) and reported that only 11% of districts were in full compliance with the requirement that eligible children who transition from Part C to Part B have an IEP in effect by the child's third birthday. This was inconsistent with the results of

the 2003-2004 self-assessments by 129 school districts, with 123 (95%) self-reporting compliance with the requirement that transitioning children have an IEP in effect by age three.

In the FFY 2003 APR, the State indicated that it is in the process of implementing changes to its Education Management Information System, to collect data at the individual child level regarding receipt of Part C services and the date of each child's IEP. The data element changes were made prior to the two data collections conducted by the State in October and June during the 2004-2005 school year. In an email responding to OSEP's request for updated information from this data collection, the State indicated that, based upon the preliminary data from October 2004, 82% did not report on these data elements. The State reported that it expects additional data from the year-end data collection that will be available in August 2005.

2. Nature of the Special Conditions

Pursuant to these Special Conditions, on or before October 31, 2005 the State must submit an interim report, and, on or before and May 31, 2006, the State must submit a final report, that must include:

(1) accurate data on compliance with the requirement that eligible children with disabilities transitioning to Part B have an IEP or, if appropriate, an IFSP, in effect by the child's third birthday; and

(2) data and other information demonstrating that the State is ensuring timely correction of all identified noncompliance with this requirement.

4. 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, Ohio provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above regarding ensuring that school districts are in compliance with the requirement that eligible children with disabilities transitioning to Part B have an IEP, or, if appropriate, an IFSP, in effect by the child's third birthday.

5. 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.

6. Submission of Reports and Documentation

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

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