

**Enclosure D**  
**Special Conditions**

**1. Basis for Requiring Special Conditions**

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Colorado's Federal Fiscal Year (FFY) 2006 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to the failure to correct specific areas of noncompliance that OSEP identified in its March 30, 2001 Colorado Monitoring Report (Report), as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §300.600.<sup>1</sup> Specifically, OSEP found that the State failed to correct noncompliance related to the provision of: (a) services and supports to meet the needs of children with disabilities, as required by 34 CFR §300.300; (b) needed psychological counseling services, as required by 34 CFR §§300.300 and 300.24; and (c) adequate supports for children with behavior disorders, as required by 34 CFR §§300.300 and 300.346(a)(2)(i).

Colorado submitted an Improvement Plan on September 13, 2002, and OSEP accepted that Plan on November 12, 2002. OSEP based its approval of the State's Improvement Plan on the understanding that the Colorado Department of Education's (CDE) strategies, proposed evidence of change, and timelines were designed to ensure correction of the noncompliance within a reasonable period of time, not to exceed one year from the date OSEP approved the plan by November 12, 2003. OSEP's November 12, 2002 response required CDE to submit to OSEP Progress Reports on December 31, 2002 and July 1, 2003. CDE's December 31, 2002 and July 1, 2003 Progress Reports indicated that the findings of noncompliance remained unresolved.

OSEP's June 9, 2005 response to the CDE's FFY 2002 APR required the State to include, in its FFY 2003 APR, documentation demonstrating correction of previously identified noncompliance regarding the three areas discussed above. CDE's FFY 2003 APR did not demonstrate the correction of these three areas of noncompliance.

OSEP's October 24, 2005 response to the State's FFY 2003 APR required the State to include, in its State Performance Plan (SPP), data to clearly demonstrate that the State is ensuring correction of identified noncompliance in these areas, and informed the State that, "failure to demonstrate the correction of identified noncompliance in the remaining areas noted in the 2001 Monitoring Report may impact the State's FFY 2006 Grant Award." In its SPP and December 27, 2005 response to OSEP's October 24, 2005 letter, the State provided data indicating that, of the 11 Administrative Units monitored in FFY 2003, the State had corrected: (a) 7 out of 26 findings of noncompliance related to the provision of services and supports to meet the needs of children with disabilities; (b) 0 out of 2 findings of noncompliance related to the provision of psychological counseling services; and (c) 0 out of 3 findings of noncompliance related to the provision of positive behavioral supports. OSEP's March 27, 2006 response to the State's SPP required the State to submit, by June 1, 2006, data demonstrating correction of noncompliance that remained outstanding from OSEP's Report and informed the State that, "failure to demonstrate compliance at that time may result in the State being identified as a "high risk" grantee or otherwise affect the State's FFY 2006 grant award."

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<sup>1</sup> The Special Conditions only addresses those areas of noncompliance in the Report that remain outstanding.

On June 5, 2006, the State submitted a further Progress Report, addressing the Administrative Units monitored by CDE in FFY 2003, showing that, as of June 1, 2006: (a) 20 out of 26 citations of noncompliance related to services and supports to meet the needs of children with disabilities were corrected (77%); (b) 0 out of 2 citations of noncompliance regarding the provision of needed psychological counseling services were corrected (0%); and (c) 2 out of 3 citations of noncompliance related to the provision of adequate supports for children with behavior disorders were corrected (66%).

## 2. Nature of the Special Conditions

Pursuant to these Special Conditions, the State must provide two Progress Reports, the first with the FFY 2005 Annual Performance Report (APR) that it will submit by February 1, 2007<sup>2</sup>, and the second by June 1, 2007. Each Progress Report must address, separately, the failure to correct noncompliance with the requirement to provide (a) services and supports to meet the needs of children with disabilities; (b) needed psychological counseling services; and (c) adequate supports for children with behavior disorders, as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §§300.24; 300.300; 300.346(a)(2)(i); and 300.600.

A. In the first Progress Report, due on February 1, 2007 with its FFY 2005 APR, the State must provide for each of the three areas in which it has failed to correct noncompliance:

- (1) Updated correction data for the FFY 2003 findings of noncompliance in the 11 Administrative Units for which the State has verified correction by December 31, 2006. For findings of noncompliance that were not corrected by December 31, 2006, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors); and
- (2) The number of Administrative Units monitored during FFY 2004 for compliance with those requirements, and the number and percentage of Administrative Units for which noncompliance was identified with the above requirements. For findings of noncompliance that were not corrected by December 31, 2006, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors).

B. In the second Progress Report, due on June 1, 2007, the State must provide, for each of the three areas in which it had failed to correct noncompliance, the following updated information:

- (1) For noncompliance not corrected by December 31, 2006, the number and percentage of the 11 Administrative Units monitored in FFY 2003 for which the State has verified correction by April 30, 2007.

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<sup>2</sup> In addition to the specific reporting requirements set forth with this enclosure, the State must also, as part of its FFY 2005 APR, due by February 1, 2007, provide the required data for Indicator 15 for the reporting period of July 1, 2005 - June 30, 2006.

For any findings of noncompliance that were not corrected by April 30, 2007, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors); and

- (2) For noncompliance identified in FFY 2004 and not corrected by December 31, 2006, the number and percentage of the Administrative Units for which the State has verified correction by April 30, 2007.

For any findings of noncompliance that were not corrected by April 30, 2007, a description of the actions that the State has taken, including enforcement actions, to ensure correction of the finding(s) (this should include the results of the State's analysis of factors that have contributed to any continuing noncompliance, and of the strategies that the State has implemented to address those factors).

### **3. 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, Colorado provides documentation, satisfactory to the Department, that it has submitted data demonstrating the correction of noncompliance regarding the failure to correct identified noncompliance with respect to the failure to provide (a) services and supports to meet the needs of children with disabilities; (b) needed psychological counseling services; and (c) adequate supports for children with behavior disorders, as required by 20 U.S.C. §§1232d(b)(3) and 1412(a)(11), and 34 CFR §§300.24; 300.300; 300.346(a)(2)(i); and 300.600.

### **4. Method of Requesting Reconsideration**

The State can write to Alexa Posny 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.

### **5. Submission of Reports and Documentation**

All reports and documentation that are required to be submitted by [State] 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