

## **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 Florida's Federal Fiscal Year (FFY) 2006 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to the Florida Department of Education's (FDE) general supervisory responsibilities concerning FDE's due process hearing system. Specifically, FDE failed to ensure that due process hearing decisions are issued within the 45-day timeline unless the hearing officer grants a specific extension of the timeline at the request of a party, as required by 20 U.S.C. 1415(f)(1)(B)(ii) and 34 CFR §300.511(a) and (c), to the extent not inconsistent with the Individuals with Disabilities Education Improvement Act of 2004.<sup>1</sup>

FDE contracts with the Florida Department of Management Services for the Division of Administrative Hearings (DOAH) to manage the due process hearing system. Administrative Law Judges (ALJs) have responsibility for conducting due process hearings.

During a verification visit to Florida in September 2003 to determine how FDE uses its general supervision system, OSEP found that FDE did not routinely monitor and enforce timelines for due process hearing decisions. OSEP initially reported this noncompliance in its January 21, 2004 verification letter to FDE. FDE's Annual Performance Report (APR) for FFY 2002, submitted on March 31, 2004, included data and analysis on the State's due process hearing system. This information, as stated in OSEP's October 4, 2004 FFY 2002 APR letter to FDE, did not show that FDE's monitoring system would be effective in ensuring that due process hearing timelines were met. In response to OSEP's verification letter and OSEP's FFY 2002 APR letter, on June 13, 2004 and December 6, 2004 respectively, FDE submitted documentation that included due process hearing data and a description of the State's procedures used to monitor due process hearing timelines. On February 28, 2005, OSEP accepted FDE's plans for ensuring compliance with the due process hearing requirements, and required FDE to come into full compliance no later than March 28, 2006.

In FDE's FFY 2003 APR and in its December 2, 2005 State Performance Plan, FDE submitted data and analysis demonstrating the State's continued failure to ensure that due process hearing decisions are issued in accordance with the due process hearing requirements. The SPP, covering the period July 1, 2004 through June 30, 2005, reported that 32% of due process hearings were fully adjudicated within the 45-day timeline, or a timeline properly extended by the hearing officer at the request of a party. In a memorandum dated March 29, 2006 from FDE to OSEP, the State provided further data and analysis indicating that, although the number and percentage of due process orders fully adjudicated within the 45-day timeline, or a timeline properly extended, increased significantly from 32% reported in the SPP to 69% for the time

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<sup>1</sup> Under the Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446 (IDEA 2004), the 45-day timeline for completion of due process hearing decisions continues to apply, unless the hearing officer extends the timeline for a specific period of time at the request of either party. IDEA 2004 changes the point at which the 45-day timeline commences based on requirements governing the resolution process.

period between July 1, 2005 and February 28, 2006, FDE is not yet in full compliance with the due process hearing requirements.<sup>2</sup>

## 2. Nature of the Special Conditions

1. By July 1, 2007, Florida must demonstrate that it is in compliance with the requirements of Part B relating to FDE's general supervisory responsibilities concerning its due process hearing system. Specifically, FDE must ensure that due process hearing decisions are issued within the 45-day timeline, as required by 20 U.S.C. 1415(f)(1)(B)(ii) and 34 CFR §300.511(a) and (c), to the extent not inconsistent with the Individuals with Disabilities Education Improvement Act of 2004. Under Part B, the decision in a due process hearing must be reached within the 45-day timeline, unless the hearing officer grants a specific extension of the timeline at the request of either party. To document its progress in ensuring the correction of the noncompliance, FDE must submit to OSEP two reports, one on February 1, 2007 and one on June 1, 2007. The report due on February 1, 2007<sup>3</sup> must include the following information: The strategies that FDE implemented during the July 1, 2006 – November 30, 2006 period to ensure that its due process hearing system is able to issue due process hearing decisions within the 45-day timeline, or within a specific extension granted at the request of a party, including the steps it has taken with DOAH to ensure that the IDEA due process timeline is met and any protocols employed to ensure timely decisions.
2. For special education due process hearing requests received by FDE between July 1, 2006 and November 30, 2006: (1) the number of due process hearing requests received by FDE; (2) the number of those hearing requests that were withdrawn or dismissed; (3) the number of hearings for which the decision was issued within the 45-day timeline; (4) the number of hearings for which the decision was issued within a specific timeline that was properly extended by the hearing officer at the request of a party; (5) the number of hearings for which a hearing decision was not issued within the 45-day timeline, or a specific timeline that was properly extended by the hearing officer at the request of a party; and (6) for each due process hearing for which the decision was issued beyond the 45-day timeline or a specific timeline that was properly extended by the hearing officer, the number of days by which FDE exceeded the required timeline.
3. To the extent to which the data that FDE submits do not document correction of the noncompliance, FDE must also include: (1) a description of the steps that FDE took during the reporting period (July 1, 2006-November 30, 2006) to ensure

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<sup>2</sup> FDE further reported in its March 29, 2006 submission to OSEP that the ALJs are not subject to the control, supervision, or direction of FDE or any party within the State government. In addition, FDE reported that the DOAH conducts hearings pursuant to Sections 120.569 and 120.57(1) of Florida Statutes. OSEP notes that these statutes appear to require an ALJ to render a final order within 90 days, unless the time period is waived or extended with the consent of the parties, a timeline that is longer than that permitted by 20 U.S.C. 1415(f)(1)(B)(ii) and 34 CFR §300.511(a) and (c), to the extent that the latter is not inconsistent with IDEA 2004.

<sup>3</sup> In addition to the specific reporting requirements set forth in this enclosure, the State must also, as part of its FFY 2005 Annual Performance Report, due by February 1, 2007, provide the required data for Indicator 17 for the reporting period of July 1, 2005-June 30, 2006.

compliance with the 45-day timeline; and (2) the additional strategies that FDE will implement during the second reporting period (December 1, 2006-March 31, 2007) to ensure correction.

The report due on June 1, 2007 must include:

1. For special education due process hearing requests received by FDE between December 1, 2006 and March 31, 2007: (1) the number of due process hearing requests received by FDE; (2) the number of those hearing requests that were withdrawn or dismissed; (3) the number of hearings for which the decision was issued within the 45-day timeline; (4) the number of hearings for which the decision was issued within a specific timeline that was properly extended by the hearing officer at the request of a party; (5) the number of hearings for which a hearing decision was not issued within the 45-day timeline, or a specific timeline that was properly extended by the hearing officer at the request of a party; and (6) for each due process hearing for which the decision was issued beyond the 45-day timeline or a specific timeline that was properly extended by the hearing officer, the number of days by which FDE exceeded the required timeline.
2. To the extent to which the data that FDE submits do not document correction of the noncompliance, FDE must also include: (1) a description of the steps that FDE took during the reporting period (December 1, 2006-March 31, 2007) to ensure compliance with the 45-day timeline requirement; and (2) the additional strategies that FDE will implement to ensure correction.

### **3. 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, Florida provides documentation, satisfactory to the Department, that it has submitted data demonstrating that due process hearing decisions are issued within 45 days, unless the hearing officer grants a specific extension of the timeline at the request of a party, consistent with 20 U.S.C.1415(f)(1)(B)(ii), and 34 CFR §300.511(a) and (c), to the extent that the latter is not inconsistent with IDEA 2004.

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

The State can write to the Office of Special Education Programs Director, Alexa Posny, at the address below, 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**

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

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