

## **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 Maryland's Federal Fiscal Year (FFY) 2006 grant award under Part B of the Individuals with Disabilities Education Act (Part B). The special conditions are imposed to address the following two areas of noncompliance:

1. Ensuring the provision of a free appropriate public education for students with disabilities in the least restrictive environment and the provision of related services in accordance with the child's IEP. Specifically, MSDE failed to ensure that removal of children with disabilities from the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily (34 CFR §300.500(b)(2)).
2. Ensuring 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)).

OSEP's July 2001 Monitoring Report (Report) found the 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 complaint 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 to correct identified noncompliance, 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. OSEP's letter of January 19, 2005 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.

In OSEP's July 5, 2005 notification of approval of Maryland's FFY 2005 Eligibility Documents, the Department determined that Maryland had 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, imposed Special Conditions on Maryland's FFY 2005 grant awards under Part B. The Department informed MSDE that removal of the special

conditions would occur if at any time prior to the expiration of the grant year, Maryland provided documentation satisfactory to the Department demonstrating compliance with the requirements that individualized decision making for students with disabilities occur to ensure that they receive a free appropriate public education in the least restrictive setting and that all related services as indicated on the children's IEP are provided. MSDE was required to submit monitoring reports that identified noncompliance regarding ensuring individualized placement decisions and the provision of all related services as a part of FAPE and demonstrate that the State had:

- a) Approved (or rejected) LEA corrective action plans (CAP);
- b) Verified implementation of those LEA corrective action plans; and
- c) Followed-up with specific activities to ensure ongoing compliance in those LEAs.

The first of three reports was due on November 15, 2005. At that time, MSDE identified certain gaps in its general supervisory system related to monitoring. In the second report, which was due February 6, 2006, MSDE explained its efforts initiated during the 2004-2005 SY to meet the OSEP requirements. On May 10, 2006, MSDE submitted the final report indicating that of the eight (8) LEAs identified in OSEP's 2001 Monitoring Report:

- a) four LEAs demonstrated full compliance with the FAPE/LRE and related services requirements;
- b) two LEAs have ongoing CAPs for both the FAPE/LRE and the related services requirements with one of the two currently under court oversight and sanctions imposed by MSDE (i.e., redirecting funds);
- c) one LEA has closed the CAP for FAPE/LRE with an ongoing CAP for related services; and
- d) one LEA's final report is due September 28, 2006.

## **II. Nature of the Special Conditions**

Pursuant to the Special Conditions, Maryland must ensure that, by July 1, 2007, it has corrected noncompliance in the two areas identified above. To document its progress in ensuring the correction of the two areas of noncompliance, MSDE must submit to OSEP updated data on February 1, 2007<sup>1</sup> (for the period July 1, 2006 – November 30, 2006) and on June 1, 2007 (for the period December 1, 2006 – April 30, 2007).

- A. In the first Progress report, due by February 1, 2007, with its FFY 2005 APR, the State must provide:

Updated information on the correction of the findings of noncompliance that the State reported in its May 10, 2006 report had not yet been corrected. For any findings of noncompliance that are not yet corrected when the State

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<sup>1</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 Indicators 15 for the reporting period of July 1, 2005 – June 30, 2006.

submits the first Progress Report, 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 by June 1, 2007, the State must provide:

1. Updated information on the correction of the findings of noncompliance that the State reported in its February 1, 2007 report had not yet been corrected. For any findings of noncompliance that are not yet corrected when the State submits the second Progress Report, 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).
2. Updated information on the data provided in the State's response to Indicator 15 in the FFY 2005 APR, data on (a) the number of findings of noncompliance with Part B requirements that the State made through its monitoring during the 2004 –2005 reporting period that the State reported on February 1, 2007 had not been corrected, that have been corrected by the time of the second Progress Report; (b) for any findings of noncompliance with Part B requirements that the State made through its monitoring during the 2004-2005 not yet corrected at the time of the second Progress Report, 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).

### **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, Maryland provides documentation satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require Maryland to submit information demonstrating compliance with the requirements that individualized decision making for students with disabilities occur to ensure that they receive a free appropriate public education in the least restrictive setting and that all related services as indicated on children's IEPs are provided.

### **IV. 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.

## **V. Submission of Reports**

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

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