

Part B GACP05b (18) Other

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 New Mexico's Federal Fiscal Year (FFY) 2006 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to an area of noncompliance OSEP identified in its December 21, 2004 New Mexico FFY 2002 Annual Performance Report (APR) response letter and reiterated in its August 31, 2005 New Mexico FFY 2002 APR response letter, where the State has failed to demonstrate correction of the noncompliance. OSEP's December 21, 2004 and August 31, 2005 APR response letters, are incorporated by reference herein. 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), 300.132(b) (2004) and 20 U.S.C. 1412(a)(1) (1997). See also 20 U.S.C. 1412(a)(1), (9) (effective July 1, 2005).

In the both the FFY 2002 and 2003 APR submissions, the State failed to submit any data showing the percentage or number of children transitioning from Part C to Part B who, by their third birthdays, had an IEP (or IFSP) that was developed and implemented as required by 34 CFR §§300.121(c), 300.132(b). Instead, the State included data from parent surveys demonstrating satisfaction with the transition process and data comparing, for 2002-2003 and 2003-2004, the percentage of children who started school on the first day of school (using the start date for all children) and the number of children who started school on the first day of preschool (usually one to three weeks later). In response to both submissions, OSEP instructed the State to submit the required data.

The State submitted relevant data in its State Performance Plan (SPP) indicating continuing noncompliance with 34 CFR §300.132(b). The State reported that during the 2004-2005 school year: 770 children were referred from Part C to Part B; 104 did not qualify for Part B services; 450 children were found eligible for Part B services and had an IEP developed and implemented by their third birthday; 99 children had an IEP in place 2-43 days after their third birthdays; and there were 16 children that NMPED was unable to locate.

In its January 21, 2006 Progress Report, for 2005-2006, the State reported that: 826 children were referred from Part C to Part B; 19 children were determined ineligible; 574 children were determined eligible and had IEPs or IFSPs developed and implemented by their third birthdays; and 122 children were determined eligible and had IEPs that were developed and implemented after their third birthday. The State also reported that it did not have current data on the remaining 111 children that were referred.

On May 31, 2006, the State submitted a Progress Report that included revised and updated information and data on the children referred from Part C to Part B during 2005-2006. The

State reported that of the 826 children referred, 55 children were determined ineligible, not 19 as reported in the SPP. The State was also able to account for all 111 children that it had been unable to account for in the SPP. The State reported that using the corrected data 74.2% of children with disabilities had an IEP or IFSP written and implemented by their third birthdays. The State also reported on the reasons that the 124 children did not have an IEP or an IFSP in place by their third birthdays. This data demonstrate continued noncompliance with the requirements at 34 CFR §§300.121(c), 300.132(b) (20 U.S.C. 1412(a)(1), (9)).

2. Nature of the Special Conditions

Pursuant to these Special Conditions, the State must ensure and demonstrate compliance with 34 CFR §§300.121(c), 300.132(b) (20 U.S.C. 1412(a)(1), (9)). The State must provide two Progress Reports, the first with the FFY 2005 Annual Performance Report (APR) that it will submit by February 1, 2007¹, and the second by June 1, 2007.

- a. In the first Progress Report, due on February 1, 2007 with its FFY 2005 APR, the State must provide, for the period from January 1, 2006 through, and including, December 31, 2006, data showing the percentage or number of children transitioning from Part C to Part B who, by their third birthdays, had an IEP (or IFSP) that was developed and implemented as required by 34 CFR §§300.121(c), 300.132(b) (20 U.S.C. 1412(a)(1), (9)).
- b. In the second Progress Report, due on June 1, 2007, the State must provide, for the period from January 1, 2007 through, and including, May 1, 2007, data showing the percentage or number of children transitioning from Part C to Part B who, by their third birthdays, had an IEP (or IFSP) that was developed and implemented as required by 34 CFR §§300.121(c), 300.132(b) (20 U.S.C. 1412(a)(1), (9)).

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, New Mexico provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above regarding ensuring that the State is 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.

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.

¹ 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 8C for the reporting period of July 1, 2005 - June 30, 2006.

5. Submission of Reports

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

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