

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 Ohio'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 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, an 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 Annual Performance Report (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, in which 123 (95%) self-reported 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 expected additional data from the year-end data collection that would be available in August 2005.

In its October 31, 2005 interim report under the FFY 2005 Special Conditions, the State reported data and analysis demonstrating continued noncompliance in this area. In the May 31, 2006 final report under the FFY 2005 Special Conditions, Ohio reported data collected through its Education Management Information System indicating that 37.6% of eligible children transitioning from early intervention (Part C) had an IEP in effect prior to or on the child's third birthday. The State reported that 61 school district on-site reviews were conducted in Spring, 2006, representing 17% of the 349 school districts that reported in the States Education Management Information System. The record reviews demonstrated that 71% of the children had an IEP by their third birthday.

2. Nature of the Special Conditions

Pursuant to these Special Conditions, the State must provide two Progress Reports, the first with the FFY 2005 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 above finding:

- (1) The number and percentage of local entities where noncompliance was identified between July 1, 2004 and June 30, 2005, for which the State has verified correction by December 31, 2006. For any 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

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 12C for the reporting period of July 1, 2005 - June 30, 2006.

noncompliance, and of the strategies that the State has implemented to address those factors)²;

- (2) The number of local entities monitored between July 1, 2005 and June 30, 2006 for compliance with this requirement and the number and percentage of entities for which noncompliance was identified with the above requirement;
- (3) The number of local entities monitored between July 1, 2006 and December 31, 2006 for compliance with this requirement, and the number and percentage of entities for which noncompliance was identified with the above requirement; and
- (4) To the extent that the State continues to identify systemic noncompliance in the entities monitored in the periods described in (2) and (3) above, the State must include the actions that the State is taking to prevent such noncompliance.

B. In the second Progress Report, due on June 1, 2007, the State must provide for the above finding, the following updated information:

- (1) For noncompliance identified between July 1, 2004 and June 30, 2005 and not corrected by December 31, 2006, the number and percentage of local entities 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);

- (2) The number and percentage of local entities where noncompliance was identified between July 1, 2005 and June 30, 2006, for which the State has verified correction by April 30, 2007. For any findings of noncompliance that were issued before April 30, 2006 and 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
- (3) The number of local entities monitored between January 1, 2007 and April 30, 2007, and the number and percentage of local entities for which noncompliance was identified. To the extent that the State continues to identify systemic noncompliance, include the actions that the State is taking to prevent such noncompliance.

² The State's May 31, 2006 letter to OSEP states that, "Districts with less than 50% compliance will be referred to the Early Childhood Coordinators at the SERRCs to provide leadership in (1) examining the reasons for non-compliance, (2) conducting joint discussions with Part C service coordinators, and (3) facilitate the development of a written corrective action plan. This statement implies that the State is not requiring correction of all identified noncompliance concerning the provision of FAPE by a child's third birthday. The State is responsible for ensuring correction of all identified noncompliance, including in local districts with more than 50% compliance.

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, Ohio provides documentation, satisfactory to the Department, that it is ensuring 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 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

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