

Enclosure D

Indiana 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 Indiana's Federal Fiscal Year (FFY) 2008 grant award under Part B of the Individuals with Disabilities Education Act (Part B). OSEP is imposing the following Special Conditions to ensure that the State's General Supervision system (including monitoring, complaints, hearings, etc.) corrects noncompliance as required by Part B, 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600.

The failure of the State's general supervision system to timely correct noncompliance was first addressed in OSEP's November 22, 2006 verification visit letter. In that letter, OSEP found that the State had not met its responsibility to ensure that noncompliance is corrected within one year of its identification pursuant to 34 CFR §300.149 (formerly 34 CFR §300.600). OSEP required that, in the FFY 2005 Annual Performance Report (APR) due February 1, 2007, the State submit to OSEP either: (1) documentation that the Indiana Department of Education (IDE) was implementing effective procedures for ensuring the timely correction of noncompliance, including being able to demonstrate that each special education planning district has corrected noncompliance identified more than one year previously; or (2) the State's plan for correcting and demonstrating, within one year from the date on which OSEP accepted the plan, that IDE was effectively ensuring correction of noncompliance within the one-year timeline. Additionally, as part of its response to Indicator 15 in its FFY 2005 APR, the State, consistent with the instructions for the APR, was required to provide data regarding its effectiveness in correcting noncompliance that it identified during the 2004-2005 reporting period.

In the FFY 2005 APR, the State reported "100% of noncompliance corrected within one year was not achieved." The State did not provide any data regarding the number of findings made during 2004-2005, the percent or number of findings corrected in 2005-2006, or any other documentation of its effectiveness in correction of noncompliance. Further, the State failed to submit a plan to ensure the timely correction of noncompliance, indicating only that: (1) improvement activities have been greatly expanded; (2) OSEP's verification visit helped identify areas needing improvement; (3) correction of noncompliance within 12 months would be a top priority; and 4) performance and compliance results would be posted on the State's website and would serve as notification to local districts of noncompliance and the start of the 12-month period for correcting noncompliance. OSEP's June 15, 2007 FFY 2005 SPP/APR response table required the State to provide, in the FFY 2006 APR, due February 1, 2008: (1) data demonstrating compliance with the requirements of 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600, including data on the correction of outstanding noncompliance identified in FFY 2004; and (2) in its response to Indicator 15, disaggregated by APR indicator, the status of timely correction of the noncompliance findings identified by the State during FFY 2005, and the noncompliance identified in OSEP's November 22, 2006 verification visit letter.

The State's FFY 2006 APR, submitted on February 1, 2008, demonstrates that its general supervision system is not effective at identifying and correcting noncompliance with Part B and the data the State submitted were not valid and reliable. In response to Indicator 15, the State was required to report the percent of noncompliance corrected within one year of identification, including the noncompliance identified through monitoring, complaint investigations and due

process hearings for FFY 2006 and FFY 2005. The State was also required to include data in its FFY 2006 APR on the correction of outstanding noncompliance identified in FFY 2004. Although the State described actions that it is taking to ensure identification and timely correction of noncompliance and provided data indicating 100% compliance with correction of noncompliance as required by the measurement of the indicator, the State acknowledged that the 100% correction was based only on findings of noncompliance from complaint investigations and findings of noncompliance/verifications of corrective action. The State also reported that it had no monitoring findings for either FFY 2005 or FFY 2006 because it failed to issue any letters of noncompliance to LEAs for the data it had collected in FFY 2005 or FFY 2006 that showed noncompliance.

In a memorandum to OSEP, dated June 16, 2008, and a telephone conversation on the same day, the State informed OSEP that on May 16, 2008 it issued written findings of noncompliance to 330 local educational agencies (LEAs) (700 findings total) whose verified FFY 2005 (School Year 2005-2006) and/or FFY 2006 (School Year 2006-2007) data showed noncompliance with APR Indicators 9, 10, 11, 12, and 13, and informed those LEAs that they must correct the identified noncompliance no later than one year from the May 2008 identification of that noncompliance. While these data show progress in the State's identification of noncompliance and demonstrate that the SEA expects LEAs to correct noncompliance within one year from identification, the State has not yet demonstrated that it is ensuring timely correction of noncompliance, as required by Part B, 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600. Further, the large number of findings of noncompliance that the State ultimately identified from FFY 2005 and 2006 suggests that serious noncompliance has gone uncorrected for years. In addition, we also have confirmed that the State has not issued determinations based on LEA performance in FFY 2005 on the Part B State Performance Plan/Annual Performance Report Indicators, as required by section 616(a)(1)(C)(ii) of the IDEA.

Therefore, OSEP is imposing Special Conditions on Indiana's FFY 2008 grant award under Part B.

II. Nature of the Special Conditions

Pursuant to the Special Conditions, the State must provide by June 1, 2009 data demonstrating compliance with the requirements that the State timely identifies and corrects noncompliance as soon as possible but in no case later than one year from identification as required by Part B, 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600. To document its progress in ensuring the identification and timely correction of the noncompliance, the State must submit two Progress Reports, the first with its FFY 2007 APR due on February 2, 2009 and a final Progress Report by June 1, 2009, with the following data:

1. In the first Progress Report, due February 1, 2009 with the State's FFY 2007 APR, the State must report:
 - a. the specific number of findings of noncompliance that the State made in May 2008;
 - b. the number and percent of those findings that have already been corrected by February 1, 2009;
 - c. when corrective action plans (CAPS) for the May 2008 letters of findings, and any subsequent letters of findings, were issued and the status of the CAPs, including any other actions the State has undertaken to ensure that the CAPs are being

implemented and that the noncompliance identified in the May 16, 2008 letters of findings and any subsequent letters of findings will be corrected within one year of identification; and

- d. that the State has issued determinations to LEAs for FFY 2005 and FFY 2006.
2. In the final Progress Report, due by June 1, 2009, the State must report:
 - a. the number and percent of findings that the State made on May 16, 2008 or an earlier date that have been corrected no later than one year from identification; and
 - b. any enforcement actions that the State took with any LEAs that did not correct noncompliance within one year from identification and the status of such enforcement actions.

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, Indiana provides documentation, satisfactory to the Department, that it has met the requirements and conditions set forth above, which require Indiana to submit data demonstrating compliance with the general supervision requirements that are the subject of these Special Conditions under Part B.

IV. Method of Requesting Reconsideration

The State can write to OSEP Acting Director, William W. Knudsen, 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 Indiana to the Department under these Special Conditions must be submitted to:

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