

Enclosure B

North Carolina 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 North Carolina's Federal Fiscal Year (FFY) 2006 grant award under Part C of the Individuals with Disabilities Education Act (Part C). The special conditions are imposed to ensure that:

1. All eligible infants and toddlers have evaluations and assessments and an initial Individualized Family Service Plan (IFSP) meeting within 45 days of referral to the early intervention program, as required in 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a) (45-day Timeline); and
2. All children receiving Part C services and potentially eligible for Part B have transition planning conferences, with the approval of the family, at least 90 days prior to the child's third birthday, as required in 34 CFR 303.148(b)(2)(i) (Timely Transition Conferences).

OSEP's April 7, 2004 letter accepted the State's Improvement Plan to address the above-identified areas of noncompliance that were originally identified in OSEP's October 30, 2003 letter. The April 2004 letter directed the State to submit, by October 30, 2004, a final Progress Report that demonstrated correction of the noncompliance. Due to the State's failure to provide data demonstrating compliance with these two areas, OSEP's July 6, 2005 grant award letter imposed special conditions on the State's FFY 2005 grant award. As explained more fully below, the State's final Progress Report under the FFY 2005 special conditions, submitted on April 10, 2006, provided data indicating continued noncompliance with each of these two areas. Therefore, OSEP is imposing special conditions to ensure the timely identification, evaluation and transition of infants and toddlers with disabilities under Part C.

45-Day Timeline

The State's April 10, 2006 special conditions Progress Report indicated that 80% of children (280 of 351) with new IFSPs had an IFSP either developed within the 45-day timeline, or not timely developed but the delay was due to exceptional family circumstances. In its April 2006 submission, the State indicated that two reasons for the delays are assignment of service coordinators and/or scheduling of evaluation/assessment. These data demonstrate that while the State has made progress since the FFY 2003 APR (which reported 66% compliance), there is continued noncompliance with the 45-day timeline requirements at 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a).

Timely Transition Conferences

The State's April 10, 2006 final Progress Report indicated that between October 2005 and January 2006, 55 % of children (141 of 255) had timely transition planning conferences. These data demonstrate continued noncompliance with the timely transition planning conference requirements of 34 CFR §303.148(b)(2)(i).

2. Nature of the Special Conditions

Pursuant to the Special Conditions, the State must provide data demonstrating compliance regarding these two areas by June 1, 2007. To document its progress in ensuring the correction of the noncompliance, the State must submit to OSEP two Progress Reports, the first with its FFY 2005 APR due on February 1, 2007¹ and a final Progress Report on June 1, 2007.

A. 45-day timeline

1. In the first Progress Report, due on February 1, 2007 with its FFY 2005 APR, the State must provide:
 - (a) Record review data (already being collected by the State) disaggregated by Children's Developmental Services Agency (CDSA), showing:
 - (i) The number of referrals received between July 1, 2006 and November 30, 2006;
 - (ii) The number and percentage of those infants and toddlers for whom initial evaluations and assessments: (a) were conducted within 45 days from referral; (b) were not conducted within 45 days from referral (and for these children, the number of children for whom delays were due to documented family circumstances and explanations as to why other delays occurred);
 - (iii) The number and percentage of the infants and toddlers for whom the initial IFSP meeting²: (a) was conducted within 45 days from referral; (b) was not conducted within 45 days from referral (and for these children, the number of children for whom delays were due to documented family circumstances and explanations as to why other delays occurred);
 - (b) For the eighteen findings of noncompliance regarding the 45-day timeline requirements in 34 CFR §303.321(e)(2), 303.322(e)(1), and 303.342(a) reported in Indicator 9 of North Carolina's State Performance Plan (SPP), a list, by CDSA, indicating whether the findings have been corrected, and all actions required by the State to ensure compliance;³ and
 - (c) A list, by CDSA, of the programs the State identified as being in noncompliance with the 45-day timeline requirements in 34 CFR §303.321(e)(2), 303.322(e)(1), and 303.342(a) during the FFY 2005 reporting period, whether the findings were timely corrected within one year of the State's identification, and, if not, all actions required by the State to ensure compliance.

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

² The State's standard is to develop the initial IFSP at the initial IFSP meeting. Therefore, OSEP will use these data for determining compliance with the 45-day requirement under 34 CFR §§303.321(e)(2) and 303.342(a).

³ In Indicator 9 of its SPP, the State reported that it made 18 findings of noncompliance regarding the 45-day timeline during the FFY 2004 reporting period, but the State did not report the number of findings corrected because it had not been one year since the findings were made.

2. In the second Progress Report, due on June 1, 2007, the State must provide:
 - (a) Monitoring information and data regarding any findings of noncompliance the State makes based on the record review data reported in (a) for the first Progress Report (above), whether those findings were timely corrected within one year of the State's identification, and if not, all actions required by the State to ensure compliance with Part C's 45-day timeline.
 - (b) Updated monitoring data and information through June 1, 2007, regarding the status of correction for the noncompliance reported in (b) and (c) for the first progress report (above).

B, Timely Transition Conferences

1. In the first Progress Report, due on February 1, 2007 with its FFY 2005 APR, the State must provide;
 - (a) Monitoring or record review data (already being collected by the State) disaggregated by CDSA, showing, for July 1, 2006 through November 30, 2006, the number and percentage of infants and toddlers potentially eligible for Part B for whom the transition planning conference, with the approval of the family: (a) was held at least 90 days prior to the child's third birthday; and (b) was not held at least 90 days prior to the child's third birthday (disaggregating for these children, delays that were due to documented family circumstances or other explanations as to the delay); and
 - (b) For the eighteen findings of noncompliance regarding the timely transition conference requirements in 34 CFR §303.148(b)(2)(i) reported in Indicator 9 of the State's SPP, a list, by CDSA, indicating whether the findings have been corrected, and if not, all actions required by the State to ensure timely transition conferences;⁴ and
 - (c) A list, by CDSA, of the programs the State identified as being in noncompliance with the timely transition conference requirements during the FFY 2005 reporting period, whether the findings were timely corrected within one year of the State's identification, and, if not, all actions required by the State to ensure timely transition conferences.
2. In the second progress report, due by June 1, 2007, the State must submit:
 - (a) Monitoring information and data regarding any findings of noncompliance the State makes based on the record review data reported in (a) for the first progress report (above), whether those findings were timely corrected within one year of the State's identification, and if not, all actions required by the State to ensure compliance with Part C's transition conference requirements.
 - (b) Updated monitoring data and information through June 1, 2007, regarding the status of correction of the noncompliance reported in b and c in the first progress report (above).

⁴ In Indicator 9 of its SPP, the State reported that it made 18 findings of noncompliance regarding the timely transition planning conference requirements during the FFY 2004 reporting period, but the State did not report the number of findings corrected because it had not been one year since the findings were made.

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, North Carolina provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require North Carolina to submit data demonstrating compliance related to the 45-day timeline and the timely transition conference requirements that are the subject of the special conditions under Part C.

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 North Carolina to the Department under the Special Conditions should be submitted to:

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