

## **Enclosure B**

### **New Mexico 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 New Mexico's Federal Fiscal Year (FFY) 2006 grant award under Part C of the Individuals with Disabilities Education Act (Part C) to ensure that:

- a. Evaluations and assessments and the initial Individualized Family Service Plan (IFSP) meeting are conducted within 45 days of referral, as required by 34 CFR §§303.321(e), 303.322(e) and 303.342(a) (45-day timeline); and
- b. Early intervention services listed on the child's IFSP are provided to the child and family as required by 34 CFR §303.342(e) (service provision).

New Mexico's failure to correct noncompliance with Part C's 45-day timeline and service provision requirements that were identified in OSEP's 2000 monitoring report resulted in the Department imposing Special Conditions on the State's FFY 2005 Part C grant award. OSEP's July 25, 2005 Part C FFY 2005 grant award letter required the State to submit a final progress report with data demonstrating compliance with these requirements by April 14, 2006. As detailed below, the State's June 23, 2006 final progress report provided data indicating continued noncompliance with Part C's 45-day timeline and service provision requirements.

#### **A. 45-day Timeline**

In its State Performance Plan (SPP) and June 23, 2006 progress report, the State reported that 65% to 66% of eligible infants and toddlers with IFSPs had an evaluation and an initial IFSP meeting conducted within the 45-day timeline.<sup>1</sup> The State's June 2006 progress report stated that it is requiring all provider agencies to conduct a review by August 30, 2006 of child records for State Fiscal Year 2006 (July 1, 2005 – July 30, 2006) to determine whether the 45-day timeline was exceeded due to documented family circumstances. The State's June 2006 progress report also indicated that 13 of the 27 providers listed on page 29 of the State's FFY 2003 APR had outstanding Corrective Action Plans. These data indicate continued noncompliance with Part C's 45-day timeline requirements. Therefore, OSEP is imposing special conditions on the State's FFY 2006 Part C grant award to ensure compliance with 34 CFR §§303.321(e), 303.322(e) and 303.342(a).

#### **B. Service Provision**

The State's June 23, 2006 final progress report indicated that five of the eight providers were found to be in compliance with the service provision requirements, and that three of the provider agencies still have a Corrective Action Plan in place. In its SPP, the State's baseline data, collected through its database, for Indicator 1 was 70% of infants and toddlers with Individualized Family Service Plans (IFSPs) received the early intervention services on their IFSPs in a timely manner (i.e., within 18 days). In Indicator 9 of its SPP, the State did not report any monitoring data regarding findings of noncompliance it has made regarding Part

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<sup>1</sup> The State's standard is to develop the initial IFSP at the initial IFSP meeting. Therefore, OSEP will use this data for determining compliance with the 45-day requirement under 34 CFR §§303.321(e)(2) and 303.342(a).

C's service provision requirements. These data indicate continued noncompliance with Part C's early intervention service requirement. Therefore, OSEP is imposing special conditions on the State's FFY 2006 Part C grant award to ensure compliance with 34 CFR §303.342(e).

## II. Nature of 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, NMDOH must submit to OSEP two Progress Reports, the first with its FFY 2005 APR due on February 1, 2007 and a final progress report on June 1, 2007.<sup>2</sup>

### 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. Data, broken down by provider agency, being collected in the review of child records from July 1, 2005 – July 30, 2006, showing: (a) the number of referrals received; (b) the number and percentage of those infants and toddlers for whom initial evaluations and assessments and the initial IFSP meeting were conducted within 45 days from referral; (c) the number and percentage of those infants and toddlers for whom initial evaluations and assessments and the initial IFSP meeting<sup>3</sup> 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); and (d) a description of the actions the State is taking to ensure correction of any noncompliance identified as part of this child record review; and
  - b. Updated monitoring data and information regarding the 13 providers listed in the State's June 2006 Progress Report that had less than full compliance with the 45-day timeline, including the State's analysis of the causes for those delays, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that it is corrected as soon as possible, but no later than June 1, 2007 and the status of correction.
2. In the second Progress Report, due on June 1, 2007, the State must provide:
  - a. For any of the 13 providers that had not achieved full compliance with the 45-day timeline, as specified in the State's February 1, 2007 report, updated monitoring data and information, demonstrating compliance, including the State's analysis of the causes for any delays and the specific corrective actions the State has required; and

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<sup>2</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 1 and 7 for the reporting period of July 1, 2005-June 30, 2006.

<sup>3</sup> 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 timeline requirements in 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a).

- b. Updated monitoring data and information regarding the status of correction of any findings of noncompliance the State reports in II.A.1(a)(iv) above for the first progress report.

## **B. Service Provision**

1. In the first Progress Report, due on February 1, 2007 with its FFY 2005 APR, the State must provide:
  - a. For July 1, 2006 through December 1, 2006, data already being collected in the Family Infant Toddler (FIT) Program database regarding: (a) the number and percentage of infants and toddlers with disabilities and their families who received all the Part C services identified on their IFSPs; and (b) the number and percentage of those infants and toddlers with disabilities and their families who did not receive all the Part C services identified on their IFSPs (including the number of children for whom delays were due to documented family circumstances or other explanations for the delay);
  - b. Updated monitoring data and information regarding the 3 providers listed in its June 2006 progress report that had less than full compliance with the requirement to ensure that the early intervention services listed on the IFSPs were provided, including the State's analysis of the causes for the noncompliance, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that it is corrected as soon as possible, but no later than June 1, 2007 and the status of correction; and
  - c. A list, by early intervention service program, of the programs the State identified as being in noncompliance with the service provision 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 service provision.
2. In the second Progress Report, due on June 1, 2007, the State must provide:
  - a. Updated monitoring data and information regarding the status of correction of any findings of noncompliance reported in II.B.1.a.; and
  - b. For any of the 3 providers that NMDOH reported on in its June 2006 report that have not achieved full compliance with the service provision requirement, as specified in the State's February 1, 2007 report, updated monitoring data and information, for the period November 1, 2006 through April 30, 2007, demonstrating compliance; and
  - c. Updated monitoring data and information through June 1, 2007, regarding the status of correction for the noncompliance reported in II.B.1.c above for the first progress report.

## **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, New Mexico provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require New Mexico to

submit data demonstrating compliance with each of the two areas of noncompliance that are the subject of the special conditions under Part C.

#### IV. Method of Requesting Reconsideration

The State can write to Alexa Posny, Ph.D., Director, Office of Special Education Programs, 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 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.: Ginger Johnson  
400 Maryland Ave, SW  
Washington, DC 20202-2550