

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) 2007 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to an area of noncompliance that OSEP first identified in its March 30, 2001 Ohio Monitoring Report (Report) for which the State has failed to date to demonstrate compliance. Specifically, the State has failed to ensure that a free appropriate public education (FAPE) is made available to each child with a disability entering the Part B program from the Part C program by the child's third birthday, including ensuring that an individualized education program (IEP) or, if appropriate, an individualized family service plan (IFSP), has been developed and is being implemented by the child's third birthday, as required by 34 CFR §300.124(b) and 20 U.S.C. 1412(a)(9).

The State's FFY 2005, FFY 2006 and FFY 2007 Part B grant awards were made subject to Special Conditions related to this issue. The FFY 2005 and FFY 2006 grant award Special Conditions contain a more complete history of the State's efforts to achieve compliance between March 30, 2001 and May 31, 2006. As reported in the FFY 2006 APR and in the Progress Reports Ohio submitted as required in the FFY 2007 grant award, the State continues to report significant progress in addressing this issue, but it has not yet demonstrated substantial compliance with 34 CFR §300.124(b) and 20 U.S.C. 1412(a)(9). Therefore, OSEP is imposing Special Conditions on the State's FFY 2007 grant award. Under the FFY 2007 Special Conditions, Ohio was required to submit data on identified noncompliance, and its action to prevent noncompliance, including enforcement actions. The State submitted statewide data in its Progress Reports indicating that:

1. For the period July 1, 2004 to June 30, 2005, the State reported that it reviewed all 615 districts' 2004-2005 records through onsite data verification visits. The number and percent of districts that had corrections verified and those not in compliance for 2004-2005 as of December 2006 were: 284 districts (46%) were compliant; 168 districts (27%) were 'in continuous improvement'; and 164 districts (27%) were noncompliant. The State also reported that noncompliant districts were directed to obtain technical assistance from the Special Education Regional Resource Center (SERRC); required to work with the SERRC to review the interagency agreement with Part C partners and develop a corrective action plan; or required to participate in a meeting with the ODE and Ohio Department of Health (ODH) consultants to evaluate interagency agreements, identify effective strategies for transition, and develop a corrective action plan.
2. For the period July 1, 2005 to June 30, 2006, the State reported that it reviewed all 615 districts' 2005-2006 records through onsite data verification visits. The number and percent of districts that had corrections verified and those not in compliance for 2005-2006 as of December 2006 were: 354 districts (58%) were compliant – a 54% increase over the number of districts in compliance for 2004-2005; 122 districts (20%) were 'in

continuous improvement'; and 99 districts (16%) were noncompliant. Noncompliant districts were directed to obtain technical assistance from the SERRC; required to work with the SERRC to review the interagency agreement with Part C partners and develop a corrective action plan; or required to participate in a meeting with the ODE and ODH consultants to evaluate interagency agreements, identify effective strategies for transition, and develop a corrective action plan. The State reported that as of December 2006, 74% of the three-year-olds transitioning from Part C to Part B had IEPs in place by the third birthday.

3. For the period January 1, 2007 through April 30, 2007, the State reported that it monitored 109 local entities, and described the actions that the State was taking to prevent noncompliance. Ohio reported that the selection of districts for the spring 2007 review was based upon the percent of IEPs not completed within the required timelines. Data verifications that were conducted between January 1, 2007 and April 30, 2007, focused on districts with potential systemic issues. Selection was based upon noncompliance for the previous two years indicating a potential systemic issue. Systemic issues that warranted a review in the spring of 2007 included: (a) districts with less than 75% compliance in both 2004-2005 and 2005-2006; (b) districts with less than 75% compliance in 2005-2006 and less than 100% in 2004-2005; and (c) districts with fewer than five children transitioning and less than half the IEPs completed on time. In its most recent Progress Report, dated May 29, 2008, the State reported that of the 109 districts selected for onsite reviews between January 2007 and April 2007, 108 (99%) was in compliance and that the remaining districts were required to direct 30% of its 2008-2009 Federal IDEA funds to address transition issues.

4. For the period July 1, 2007 through December 15, 2007, the State reported in its May 29, 2008 Progress Report, that 975 out of 1010 (96.5%) Part B eligible children transitioned from Part C to Part B and had an IEP developed and implemented by the child's third birthday.

The State's data for January 1, 2007 through April 30, 2007 and July 1, 2007 through December 15, 2007 show significant improvement in the number of children with IEPs that are implemented by the child's third birthday. However, the State did not provide the information required in the May 2007 Progress Report. The Special Conditions enclosure that was attached to the 2007 IDEA Part B grant award required the State to provide Progress Reports on the number of children with IEPs that are implemented by the child's third birthday as of each reporting date (i.e., February 1, 2008 and June 1, 2008). The State's submissions of progress reports only provide data from July 1, 2007 to December 15, 2007. As such, OSEP can not yet determine whether the State is in substantial compliance with the Part C to Part B transition requirements as set forth in 34 CFR §300.124(b) and 20 U.S.C. 1412(a)(9).

2. Nature of the Special Conditions

Pursuant to the Special Conditions, the State must provide two Progress Reports, the first must be submitted by October 1, 2008 and the second report must be provided with the FFY 2007 APR that the State will submit by February 1, 2009.

For the October 1, 2008 Progress Report, ODE must submit the following information:

1. The number of Part B eligible children who transitioned from Part C to Part B from July 1, 2007 through June 30, 2008.
2. Of those children, the number and percentage who had an IEP developed and implemented by their third birthday.

For the February 1, 2008 Progress Report, ODE must submit the following information:

1. The number of Part B eligible children who transitioned from Part C to Part B from July 1, 2008 through December 31, 2008.
2. Of those children, the number and percentage who had an IEP developed and implemented by their third birthday.

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 from the Part C program to the Part B program have an IEP, or, if appropriate, and IFSP, developed and implemented by the child's third birthday.

4. Method of Requesting Reconsideration

The State can write to the Office of Special Education Programs Acting Director, Patricia Guard, 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 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: Daniel Schreier
400 Maryland Ave., SW
Washington, DC 20202-2550