



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 1, 2021

Honorable Tony Dearman
Director, Bureau of Indian Education
U.S. Department of Interior
1849 C Street Northwest,
MS-3609 MIB
Washington, District of Columbia 20240
Tony.Dearman@bie.edu

Dear Director Dearman:

We have approved the Bureau of Indian Education's (the BIE) grant application for Federal Fiscal Year (FFY) 2021 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B grant application submitted by the BIE to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 24, 2021, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. Our approval is also based on the BIE's certification in Section II.D of its FFY 2021 IDEA Part B grant application (Enclosure B), signed by you on May 21, 2021, that the BIE's provisions meet the requirements of IDEA Part B as found in Public Law 108-446, and that the BIE will operate its Part B program in accordance with all of the required assurances and certifications, consistent with 34 C.F.R. § 76.104.

In addition, consistent with section 611(h)(2) of the IDEA, the BIE provided specific assurances with the May 24, 2021, submission of its FFY 2021 IDEA Part B grant application. Specifically, the BIE provided:

1. A description of how the Secretary of the Interior will coordinate the provision of services under Part B of IDEA with LEAs, tribes and other tribal organizations, and other private and Federal service providers;
2. An assurance that the BIE will conduct public hearings and provide adequate notice of such hearings, and afford an opportunity for comment to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in 20 U.S.C. § 1411(h)(2)(A);
3. An assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with 20 U.S.C. § 1418;

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

4. An assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in a school or a program); and
5. An assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under Part B of the IDEA, and will fulfill its duties under Part B of the IDEA.

Please note that OSEP Memorandum 21-01, dated January 21, 2021, explained the impact of recent amendments to the Copyright Act, 17 U.S.C. § 121, on certain terms relevant to Assurance 23a or 23b related to accessible instructional materials as reflected in your FFY 2021 application for funds under IDEA Part B. As a result, the term “blind and other persons with print disabilities” has been removed from the Copyright Act and replaced with “eligible person,” and the term “specialized format” has been removed and replaced with the term “accessible format.” Although at this time Congress has not made conforming amendments to section 612(a)(23) of IDEA, the Department construes Assurances 23a and 23b as incorporating the terms “eligible person” and “accessible format.”

The BIE’s FFY 2021 IDEA Part B grant award is being released subject to FFY 2021 Specific Conditions, as set forth in Enclosure C. Specifically, OSEP determined that the BIE failed to complete all of the corrective actions contained in Section C of the Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan. The BIE also failed to complete all of the required actions under OSEP’s October 23, 2019, Differentiated Monitoring and Support letter and September 3, 2020, follow-up letter. Therefore, OSEP is imposing Specific Conditions on the BIE’s FFY 2021 grant award under Part B of the IDEA. The reasons for doing so and the Specific Conditions are detailed in Enclosure C. The BIE must submit its CAP and quarterly progress reports in accordance with the reporting and timeline requirements specified in the Specific Conditions in Enclosure C that OSEP is imposing on the BIE’s FFY 2021 IDEA Part B grant award. The BIE must administer this award in keeping with both the applicable provisions of Federal law and regulations and the Specific Conditions attached to the grant award document. Acceptance by the BIE of this grant award constitutes an agreement by the BIE to comply with these Specific Conditions.

Please note that as part of your grant application for FFY 2021 IDEA Part B funds, the BIE has provided a certification, pursuant to 34 C.F.R. § 76.104, that its application meets the requirements of IDEA Part B and that the BIE will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by the BIE, after OSEP approval, to information that is a part of the BIE’s IDEA Part B grant application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed is the BIE's FFY 2021 IDEA Part B section 611 grant award of \$100,005,611 under the Consolidated Appropriations Act, 2021 (Public Law 116-260). This grant award is subject to all the terms and conditions of the BIE's FFY 2021 IDEA Part B grant application. These funds are available for obligation by the BIE from July 1, 2021, through September 30, 2023, in accordance with 34 C.F.R. § 76.709.

Under IDEA section 611(h)(4)(A), the BIE's FFY 2021 grant award includes \$20,001,122, which represents 20 percent of the amount allotted under IDEA section 611(b)(2), to be distributed by the Secretary of the Interior to tribes or tribal organizations or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged three through five on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The funds received by a tribe or tribal organization must be used to assist in child find, screening and other procedures for the early identification of children aged three through five, parent training, and the provision of direct services. None of the funds provided under IDEA section 611(h)(4)(A) can be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

Under IDEA section 611(h)(1)(A), \$80,004,489, which represents 80 percent of the amount allotted under IDEA section 611(b)(2), is provided to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged five to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. Under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.707(b), with the exception of 5 percent of these funds, which may be reserved for administrative costs, 80 percent of the funds must be allocated to such schools by July 1, 2021, and 20 percent must be allocated to such schools by September 30, 2021.

Section 606 of the IDEA provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, the BIE is expressly agreeing as a condition of IDEA funding to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

As a reminder, all prime recipients of IDEA Part B funds must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <https://www.fdrs.gov/>. Please contact your State's Fiscal Accountability Facilitator if you have further questions.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in cursive script that reads "David Cantrell".

David Cantrell, Ph.D.
Delegated the authority to perform the
functions and duties of the Assistant
Secretary for the Office of Special
Education and Rehabilitative Services

Enclosures

- Enclosure A (Sections II.A-C. of the State's application)
- Enclosure B (Section II.D. of the State's application)
- Enclosure C (Specific Conditions)

cc: State Director of Special Education

State Name: Bureau of Indian Education (BIE)

Enclosure A

Section II

A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<p>Yes <i>(Assurance is given.)</i></p>	<p>No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i></p>	<p>Assurances Related to Policies and Procedures</p>
<p>X</p>		<p>1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.</p>
<p>X</p>		<p>2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)</p>
<p>X</p>		<p>3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.</p>
<p>X</p>		<p>4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)</p>
<p>X</p>		<p>5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular</p>

		classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.
X		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
X		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
X		8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
NA		9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
NA		10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
X		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
X		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or

		mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
NA		13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
X		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
X		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
X		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.
X		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
NA		18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
X		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
X		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
X		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
X		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant

		discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
X		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. <i>(Note: Check either "23b.1" or "23b.2" whichever applies.</i>
		23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to: <ul style="list-style-type: none"> • require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or • purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)
NA		23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
X		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
X		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

B. Other Assurances

The State also makes the following assurances:

Yes	Other Assurances
X	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
X	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
X	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

C. Certifications

The State is providing the following certifications:

Yes	Certifications
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i>, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
NA	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.

Enclosure C
Specific Conditions

1. Basis for Requiring Specific Conditions

Pursuant to section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA) and 2 C.F.R. § 200.208, the Office of Special Education Programs (OSEP) is imposing Specific Conditions¹ on the Bureau of Indian Education's (BIE) Federal fiscal year (FFY) 2021 grant award under Part B of the IDEA. OSEP is imposing these Specific Conditions because of: (1) the BIE's failure to complete all of the corrective actions contained in Section C of the 2020-2021 Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan (PIAP); and (2) the BIE's failure to complete all of the required actions under OSEP's October 23, 2019, Differentiated Monitoring and Support (DMS) letter and September 3, 2020 follow-up letter.

In response to serious concerns raised in 2005 by the U.S. Department of Education (Department) concerning the BIE's administration of the Elementary and Secondary Education Act (ESEA) and the IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP was Interior's plan for meeting the statutory requirements set forth in the ESEA and the IDEA for properly managing Federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that the ESEA and the IDEA have established. The BIE has been submitting quarterly reports to the Department on its progress in implementing the PIAP, and the BIE and the Department have been meeting quarterly to discuss the BIE's progress in implementing the PIAP's corrective actions.

Due to the lack of satisfactory progress in implementing the PIAP, the Department placed Special Conditions on Interior's receipt of all FFY 2007 and FFY 2008 ESEA and IDEA funds the Department provided to Interior. As part of the Special Conditions, the Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of the ESEA and the IDEA. In FFYs 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, OSEP imposed program-specific Special or Specific Conditions on the grant award under Part B of the IDEA, because the BIE had not completed all of the corrective actions contained in Section C of the PIAP. At Interior's request, the PIAP's name was formally changed to the CAP during the 2013-2014 school year.

At this time, the BIE has not documented completion of all of the corrective actions contained in Section C of the 2020-2021 CAP.

Fiscal Monitoring:

Although the BIE has made significant progress in fiscal monitoring, the BIE has not fully implemented fiscal monitoring procedures. Specifically, the BIE submitted 45 copies of

¹ Pursuant to the requirements in 2 C.F.R. § 200.208, the term "Specific Condition," rather than "Special Condition," is used, beginning with FFY 2018 IDEA Part B grant awards that are issued subject to additional requirements. In this letter, the term "Special Condition" is used when referencing the BIE's IDEA Part B grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018.

fiscal monitoring letters for School Year (SY) 2016-2017, SY 2017-2018, and SY 2018-2019 and five programmatic and fiscal monitoring reports for SY 2020-2021. In addition, the BIE has reported in several consecutive CAPs that there is no noncompliance related to fiscal requirements for which the BIE did not issue written findings. Therefore, OSEP is removing the requirement under prior-Milestone C.4.2.2² and the corresponding performance metric requiring the BIE to provide copies of fiscal monitoring reports issued to schools, and also removing the requirement under prior-Milestone C.4.2.4 and the corresponding performance metric requiring the BIE to report instances of noncompliance related to fiscal requirements, identified through self-assessments and document reviews, for which the BIE does not issue a written finding, and evidence that the BIE verified the school corrected the noncompliance.

However, the BIE has not submitted evidence of timely correction of findings of noncompliance identified in fiscal monitoring reports, in accordance with prior-Milestone C.4.2.3. Therefore, the BIE has not ensured the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A), as required by IDEA sections 611(h)(2)(A) and (F), 612(a)(11), 613(a)(2)(A)(i), and 616; 34 C.F.R. §§ 300.149, 300.600, 300.708, and 300.716; 20 U.S.C. § 1232d(b)(3)(E); and in OSEP's verification letter dated May 26, 2010. As a result, OSEP is maintaining the Specific Condition requiring the BIE to implement a fiscal monitoring system to ensure that BIE-operated schools and tribally-controlled schools are ensuring the appropriate use of IDEA Part B funds.

Data Procedures and Processes:

The BIE has continued to report data showing significant progress in data procedures and processes. OSEP has determined that the BIE has satisfied the Specific Condition requiring the BIE to publicly report on the assessment of students with disabilities in the same manner and frequency as it reports on the assessment of students without disabilities, as required under 34 C.F.R. § 300.160(f). Therefore, OSEP is removing the Specific Condition requiring the BIE to develop and implement procedures to ensure public reporting of assessment data in accordance with the IDEA requirements in a timely fashion. OSEP appreciates the steps the BIE has taken to publicly report on the assessment of students with disabilities in the same manner and frequency as it reports on the assessment of students without disabilities, and expects that the BIE will continue to monitor this area to ensure continued compliance.

Secondary Transition: In its FFY 2019 IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR), the BIE continued to report a very low level of compliance under Compliance Indicator 13, which is related to secondary transition requirements. Under Indicator 13, the BIE was required to provide data on the percent of youth with individualized education programs (IEPs) aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs, as required by IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. § 300.320(b). There also must be evidence that the student was invited to the IEP Team meeting where transition services were to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to

² The term "prior-Milestone" refers to the particular Milestone under the 2020-2021 CAP. For clarity, the Milestones have been re-numbered with the 2021-2022 CAP.

the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority, consistent with 34 C.F.R. § 300.321(b). The BIE reported 20.41% compliance under Indicator 13 in its FFY 2019 SPP/APR.

Indicator 13 is integral to the BIE's State Systemic Improvement Plan (SSIP), which has been a positive project for the BIE and the students it serves and also represents a significant financial investment by the BIE. While OSEP recognizes the BIE's efforts to increase the validity and reliability of data it reports under Indicator 13, the data itself is extremely low and raises serious concerns about the BIE's compliance with secondary transition requirements. Therefore, due to the continued low level of compliance for this Indicator, OSEP is maintaining the Specific Condition related to secondary transition on the BIE's FFY 2021 IDEA Part B grant award.

In addition to the Specific Conditions on the BIE's FFY 2019 and FFY 2020 IDEA Part B grant awards, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), OSEP directed the BIE to use \$300,000 of its FFY 2019 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) for use in improving the BIE's collection of secondary transition data and compliance with the requirements for secondary transition, and directed the BIE to use \$600,000 of its FFY 2020 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. § 300.710(a) for the BIE to use at the school level, not Bureau level, to improve compliance with the requirements for secondary transition and the accuracy of secondary transition data. Further, for both the FFY 2019 and FFY 2020 directed funds, OSEP required the BIE to develop, implement, and report progress on, a spending plan to expend the directed funds, that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. With respect to the FFY 2019 directed funds, which were required to be expended by June 30, 2021,³ the BIE submitted information regarding the amounts of the FFY 2019 directed funds that it had expended in accordance with the approved revised spending plan during the first through third quarterly reporting periods under the 2020-2021 CAP. In addition, with respect to the FFY 2020 directed funds, which were required to be expended by June 30, 2021, the BIE provided each of the 60 BIE-funded high schools a \$10,000 allocation⁴ in accordance with the approved spending plan, and, with the Q3 report under the 2020-2021 CAP, submitted information regarding the steps it took to ensure that the directed funds are used by each school for the intended purposes and by the June 30, 2021 deadline. As a result, in the fourth quarterly report for the 2020-2021 CAP, the BIE must provide documentation to OSEP that the remaining amount of directed FFY 2019 IDEA Part B administrative funds and the remaining amount of directed FFY 2020 IDEA

³ The BIE was originally required to expend the FFY 2019 directed funds by June 30, 2020, but the BIE notified OSEP on April 7, 2020, of its inability to expend the full \$300,000 of the FFY 2019 directed funds by the deadline and requested an extension. In OSEP's letter dated May 26, 2020, OSEP granted a one-year extension of the deadline, giving the BIE until June 30, 2021, to spend the \$300,000 of the FFY 2019 directed funds in accordance with a revised spending plan approved by OSEP.

⁴ In the Q3 report under the 2020-2021 CAP, the BIE reported that one high school had declined the \$10,000 allocation and that the BIE would re-allocate those funds to another high school.

Part B administrative funds have been expended by June 30, 2021, in accordance with their respective approved spending plan.

Provision of Related Services and Timely Initial Evaluations: The BIE has provided a plan to prevent contractual problems that could result in a disruption of services by related service providers in all BIE-funded schools. As a result, OSEP is removing the requirement under prior-Subtask C.9.4 and the corresponding milestone and performance metric requiring the BIE to report on the implementation of procedures to prevent contractual problems that could result in a similar disruption of services in the future. However, the BIE has not demonstrated that it has met the following required actions to: (1) ensure that initial evaluations at San Felipe Pueblo Elementary School are conducted within 60 days of receiving parental consent for the evaluation in accordance with 34 C.F.R. § 300.301(c)(1); (2) ensure that all students with disabilities enrolled in San Felipe Pueblo Elementary School received any compensatory services as determined necessary by the IEP Teams; and (3) determine if any other BIE-funded schools are unable to provide related services or conduct timely initial evaluations. Therefore, OSEP is maintaining the remaining Specific Conditions related to ensuring the provision of related services and timely initial evaluations in accordance with the requirements of IDEA in all BIE-funded schools, both tribally-controlled and BIE-operated.

Outstanding Required Actions from the October 23, 2019 DMS Letter: In response to OSEP's October 23, 2019, DMS letter, the BIE submitted information on April 2, 2020, addressing the actions that it had taken to correct the noncompliance identified in, and implement the corrective actions required by, the DMS letter. In a September 3, 2020, letter, OSEP provided an evaluation of the information submitted by the BIE to address the noncompliance and required actions. As noted in the September 3, 2020 letter, based on the BIE's submission, OSEP was unable to close any of the findings at that time. Since then, the BIE has made progress in addressing several of the required actions contained in OSEP's October 23, 2019, DMS letter and September 3, 2020, follow-up letter, and OSEP will address those areas of progress under separate cover. However, to date, the BIE has not documented completion of the following required actions: (1) documentation of the proposed timeline that ensures the adoption of final policies and procedures within one year of the date of the October 23, 2019, DMS letter, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a); (2) documentation that the BIE has taken the necessary steps to ensure that noncompliance identified in BIE-funded schools is corrected as soon as possible, and in no case later than one year after identification of the noncompliance, including, as appropriate, notification to schools when the finding has not been corrected;⁵ (3) a timeline for issuing annual determinations on the performance of all BIE-funded schools, which includes any school-specific audit findings, and uncorrected noncompliance from any source, consistent with 20 U.S.C. 1416(a) and (e), and documentation that demonstrates the BIE has issued the annual local determinations as required; and (4) documentation that the BIE has revised and implemented its dispute resolution procedures and practices to ensure that they are consistent with the IDEA. As a result of the BIE's failure to complete all of the required actions in

⁵ This finding corresponds to the existing Specific Condition related to fiscal monitoring, and will be addressed in the same milestone in the CAP.

OSEP's October 23, 2019, DMS letter and September 3, 2020, follow-up letter, OSEP is imposing additional Specific Conditions in the areas outlined above and as detailed below. OSEP further notes that there were additional corrective actions required in the October 23, 2019, DMS letter, related to the provision of related services and timely evaluations in BIE-funded schools, which were already addressed in the prior Specific Conditions on the BIE's FFY 2020 IDEA Part B grant and will continue to be addressed in the Specific Conditions on the BIE's FFY 2021 IDEA Part B grant, as detailed below.

2. Nature of the Specific Conditions

Based on OSEP's review of the BIE's first through third quarterly reports on Section C of the 2020-2021 CAP, ending with the quarter ending March 31, 2021, OSEP has determined that it is necessary to impose the following Specific Conditions.

A. Final Report on Section C of the 2020-2021 CAP: The BIE must submit to the Department, by July 31, 2021, its final report on Section C of the CAP for the 2020-2021 school year. This report covers April 1, 2021 through June 30, 2021. The report must contain: (a) the status of each task, subtask, and milestone scheduled to be completed; (b) the BIE's supporting documentation regarding completion of these tasks, subtasks, and milestones, including an explanation of any delays and expected completion dates for all unimplemented actions; and (c) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.

B. Submission of Section C of the 2021-2022 CAP: The BIE must submit the 2021-2022 CAP by July 31, 2021. The 2021-2022 CAP must include the tasks, subtasks, milestones, and performance metrics described in subparagraph 3.D below.

C. Required Report on Disaggregated FFY 2020 Secondary Transition Data (Indicator 13): No later than October 31, 2021, the BIE must provide the following:

- (a) A report of the BIE's secondary transition compliance data for the period July 1, 2020, through June 30, 2021, disaggregated by:
 - (i) Compliance item (i.e., each particular component of the secondary transition requirements associated with SPP/APR Indicator 13 – for example, whether there is evidence that the student was invited to the IEP Team meeting where transition services are to be discussed);
 - (ii) Type of BIE-funded school i.e., tribally-controlled or BIE-operated; and
 - (iii) Each individual BIE-funded school; and
- (b) The BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

D. Implementation of Section C of the 2021-2022 CAP and Reporting Requirements:

The BIE must implement Section C of the 2021-2022 CAP, which covers the period between July 1, 2021, and June 30, 2022, until all corrective actions have been implemented. To ensure progress, the BIE must provide the Department with quarterly progress reports, which will be due to the Department 30 days after the end of each quarter. Each quarterly report must contain:

- (a) a description of activities and progress for each milestone, as described in the performance metric, during the reporting period;
- (b) the status of each milestone scheduled to be completed during the reporting period along with specific completion dates for all tasks, subtasks, and key milestones;
- (c) supporting documentation regarding completion of the milestones, including explanation of any delays and expected completion dates for all unimplemented actions;
- (d) updates to ensure that progress for previously completed tasks, subtasks and milestones is sustained; and
- (e) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.

When reporting the information required in the 2021-2022 CAP and the quarterly progress reports and the report, and analysis of, disaggregated secondary transition data, the BIE must include data and other required information for the reporting periods reflected below, unless otherwise specified:

Requirement	Due Date	Reporting Period
Final Quarterly Progress Report for Section C of 2020-2021 CAP	July 31, 2021	April 1, 2021 – June 30, 2021
Documentation that the remaining directed FFY 2019 IDEA Part B administrative funds were expended by June 30, 2021, for the salary of the staff member whose duties consist exclusively of supporting BIE-funded schools in compliance with secondary transition requirements, and the BIE’s cooperative agreement with WestEd for support in improving secondary transition compliance, in accordance with the approved revised spending plan	July 31, 2021	April 1, 2021 – June 30, 2021
Documentation that the \$600,000 of directed FFY 2020 IDEA Part B administrative funds, which must be expended by June 30, 2021, were used by the BIE-funded high schools for the intended purposes and by the June 30, 2021, deadline	July 31, 2021	April 1, 2021 – June 30, 2021

Section C of the 2021-2022 CAP	July 31, 2021	July 1, 2021 – June 30, 2022
Report on and Analysis of Disaggregated FFY 2020 Secondary Transition Data	October 31, 2021	July 1, 2020 – June 30, 2021
First Quarterly Progress Report for Section C of 2021-2022 CAP	October 31, 2021	July 1, 2021 – September 30, 2021
Second Quarterly Progress Report for Section C of 2021-2022 CAP	January 31, 2022	October 1, 2021 – December 31, 2021
FFY 2020 SPP/APR	February 1, 2022	July 1, 2020 – June 30, 2021
Third Quarterly Progress Report for Section C of 2021-2022 CAP	April 30, 2022	January 1, 2022 – March 31, 2022
Final Quarterly Progress Report for Section C of 2021-2022 CAP	July 31, 2022	April 1, 2022 – June 30, 2022

Section C of the 2021-2022 CAP must include the tasks, subtasks, milestones, and performance metrics described below.

Task C.1.0: Adopt IDEA Policies and Procedures.

Subtask C.1.1: Provide documentation of the adoption of final policies and procedures that meet the requirements of the IDEA.

Milestone C.1.1.1: Provide a timeline for the adoption of final policies and procedures in a timely manner, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).

Performance Metric:

With the first quarterly report, due October 31, 2021, provided a detailed timeline for the adoption of final policies and procedures in a timely manner, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).

Milestone C.1.1.2: Prior to the publication of final policies and procedures, provide notice to BIE-funded schools regarding any requirements that give flexibility to BIE-funded schools to follow the timeline established by the State where they are located instead of the timeline established by the BIE.

Performance Metric:

With the first, second, and third quarterly reports, provide copies of any notice issued during that quarter to BIE-funded schools regarding any requirements that give flexibility to BIE-funded schools to follow the timeline established by the State where they are located instead of the timeline established by the BIE.

Milestone C.1.1.3: Provide a status update on the adoption of final policies and procedures, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).

Performance Metric:

With the first, second, and third quarterly reports, until such time as they are finalized, submit a report on the status of the adoption of final policies and procedures, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).

Task C.2.0: Implement a General Supervision System to Include Programmatic and Fiscal Monitoring.

Subtask C.2.1: Implement a general supervision system to ensure that BIE-operated schools and tribally-controlled schools are in compliance with the requirements of IDEA Part B.

Milestone C.2.1.1: Ensure timely correction of findings of noncompliance identified in monitoring reports.

Performance Metric:

Report the number of findings of noncompliance related to IDEA requirements (both programmatic and fiscal) that are timely corrected (i.e., as soon as possible and in no case later than one year after identification of the noncompliance), and the number of findings of noncompliance related to IDEA requirements that are corrected more than one year after the BIE's identification of the noncompliance; and provide evidence of correction and/or, as appropriate, evidence of notification provided to schools when the finding has not been corrected.

Subtask C.2.2: Implement a system for issuing annual determinations.

Milestone C.2.2.2: Demonstrate that the BIE has a system for issuing annual determinations on the performance of all BIE-funded schools, which includes any school-specific audit findings, and uncorrected noncompliance from any source, consistent with 20 U.S.C. 1411(h)(2)(A), 1416(a) and (e), 34 C.F.R. §§ 300.600(a)(2), 300.708(d), and 300.716.

Performance Metric:

- (a) With the first quarterly report, due October 31, 2021, provide a detailed plan and timeline for issuing the FFY 2018 and FFY 2019 annual determinations on the performance of all BIE-funded schools.
- (b) With the first, second, and third quarterly reports, until such time as they are issued, provide an update on the status of the FFY 2018 and FFY 2019 annual local determinations, including documentation demonstrating the BIE has issued the determinations.
- (c) In the third quarterly report, due April 30, 2021, provide an update on the status of the FFY 2020 annual local determinations.

Task C.3.0: Implement IDEA Requirements Related to Dispute Resolution.

Subtask C.3.1: Provide written documentation that the BIE has revised and implemented its dispute resolution procedures and practices to be consistent with IDEA.

Milestone 3.1.1: Demonstrate that the BIE has a mechanism for tracking the resolution process for due process complaints to determine compliance with: (i) the 15-day timeline for convening a resolution meeting, consistent with 20 U.S.C. 1415(f)(1)(B)(i)(I) and 34 C.F.R. § 300.510(a); (ii) the 30-day timeline for resolving a due process complaint before a due process hearing may occur, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(b)(1) and (c) and 300.716; and (iii) the 45-day timeline for due process hearings if the school does not resolve the due process complaint to the satisfaction of the parent, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(c), 300.515(a), and 300.716.

Performance Metric:

- (a) With the first quarterly report, due October 31, 2021, provide a detailed timeline for the submission and implementation of revised policies and procedures for tracking the resolutions process for due process complaints to determine compliance with the required timelines noted in Milestone 3.1.1.
- (b) With the second and third quarterly reports, until such time as they are submitted, provide an update on the status of the revision and implementation of the policies and procedures for tracking the resolutions process for due process complaints to determine compliance with the required timelines noted in Milestone 3.1.1.

Milestone 3.1.2: Demonstrate that the BIE has established procedures to ensure that extensions of the 45-day due process hearing timeline are granted only at the request of a party, consistent with 34 C.F.R. §§ 300.510(b) and (c) and 300.716.

Performance Metric:

- (a) With the first quarterly report, due October 31, 2021, provide a detailed timeline for the submission and implementation of revised policies and procedures ensuring that extensions of the 45-day due process hearing timeline are granted only at the request of a party.
- (b) With the second and third quarterly reports, until such time as they are submitted, provide an update on the status of the revision and implementation of the policies and procedures for ensuring that extensions of the 45-day due process hearing timeline are granted only at the request of a party.

Milestone 3.1.3: Demonstrate that the BIE has established procedures to ensure that hearings on due process complaints filed pursuant to 20 U.S.C. 1415(k)(3) and 34 C.F.R. § 300.532(a) (expedited due process hearings) are conducted within 20 school days of the date the complaint requesting the hearing is filed, and that a hearing officer makes a determination within 10 school days after the hearing, in accordance with 34 C.F.R. §§ 300.532(c)(2) and 300.716.

Performance Metric:

- (a) With the first quarterly report, due October 31, 2021, provide a detailed timeline for the submission and implementation of revised policies and procedures ensuring that expedited due process hearings meet the required timelines noted in Milestone 3.1.3.
- (b) With the second and third quarterly reports, until such time as they are submitted, provide an update on the status of the revision and implementation of the policies and procedures for ensuring that expedited due process hearings meet the required timelines noted in Milestone 3.1.3.

Task C.4.0: Demonstrate Compliance with Secondary Transition Requirements.

Subtask C.4.1: Update, as appropriate, and implement the corrective action plan submitted in the 2020-2021 CAP to demonstrate compliance with secondary transition requirements and improve the accuracy of the secondary transition data.

Milestone C.4.1.1: Update, as appropriate, and implement the corrective action plan to address the actions the BIE will take to demonstrate compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and improve the accuracy of the secondary transition data.

Performance Metric:

Submit a report on the status of implementation of the actions the BIE is taking to demonstrate compliance with secondary transition requirements and improve the accuracy of the secondary transition data.

Milestone C.4.1.2: Submit a report on and analysis of FFY 2020 secondary transition compliance data, disaggregated by compliance item, type of BIE-funded school (i.e., tribally-controlled or BIE-operated), and each individual BIE-funded school.

Performance Metric:

No later than October 31, 2021, provide the following:

- (a) A report of the BIE's secondary transition compliance data for the period July 1, 2020 through June 30, 2021, disaggregated by:
 - (i) Compliance item (i.e., each particular component of the secondary transition requirements associated with SPP/APR Indicator 13 – for example, whether there is evidence that the student was invited to the IEP Team meeting where transition services are to be discussed);
 - (ii) Type of BIE-funded school (i.e., BIE-operated or tribally-controlled); and
 - (iii) Each individual BIE-funded school; and
- (b) The BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

Milestone C.4.1.3: With each quarterly report, submit a report on strategies and activities implemented to address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE's selected strategies must be based on a careful review of the BIE's disaggregated FFY 2020 secondary transition data, and quarterly reports must include: (1) the activities carried out and (2) an explanation of how the activities resulted or will result in improved compliance with secondary transition requirements and improved accuracy of secondary transition data.

Performance Metric:

With the second and third quarterly reports for the 2021-2022 CAP, provide a description of the strategies and activities carried out to address noncompliance with the secondary transition requirements and to improve the accuracy of the secondary transition data.

Task C.5.0: Improve Exiting Data in Accordance with IDEA Requirements.

Subtask C.5.1 (Improving Exiting Data): Improve exiting data by implementing strategies and activities, including accessing available technical assistance resources, to address the dropout rate of children with disabilities.

Milestone C.5.1.1: The BIE must report on strategies and activities implemented to address the suspected or known reasons for the high dropout rate of children with disabilities. The BIE's selected strategies must be based on a careful review of the BIE's dropout data, and quarterly reports must include: (1) the activities carried out and (2) an explanation of how the activities resulted or will result in an improved dropout rate.

Performance Metric: With the first, second, and third quarterly reports for the 2021-2022 CAP, provide a description of the strategies and activities carried out to improve the dropout rate.

Task C.6.0: Ensure the Provision of Related Services and Timely Initial Evaluations in Accordance with the Requirements of IDEA.

Subtask C.6.1: Ensure correction of noncompliance previously identified by OSEP in San Felipe Pueblo Elementary School arising from the disruption of related services and timely initial evaluations.

Milestone C.6.1.1: The BIE must report on any compensatory services that have been provided as a remedy for the related services that students with disabilities at San Felipe Pueblo Elementary School did not receive in accordance with their IEPs.

Performance Metric:

With the first quarterly report for the 2021-2022 CAP due on October 31, 2021, the BIE must provide an assurance that: (1) IEP Teams considered, on an individual basis, whether compensatory services were needed as a remedy for the services previously not provided at San Felipe Pueblo Elementary School; and (2) any compensatory services determined necessary by the IEP Teams have been, or are being, provided.

Subtask C.6.2: Implement procedures to ensure compliance with requirements to conduct timely initial evaluations at San Felipe Pueblo Elementary School.

Milestone C.6.2.1: Ensure that all initial evaluations at San Felipe Pueblo Elementary School are conducted within 60 days of receiving parental consent for the evaluation in accordance with 34 C.F.R. § 300.301(c)(1).

Performance Metric:

With the first, second, and third quarterly reports for the 2021-2022 CAP, report on: (a) the number of requested initial evaluations that have not been conducted or have been delayed at San Felipe Pueblo Elementary School; and (b) the steps that the

BIE is taking to ensure that those evaluations are conducted as soon as possible.

Subtask C.6.3: Implement procedures to ensure compliance in all BIE-funded schools, both tribally-controlled and BIE-operated, with the requirements to provide related services in accordance with students' IEPs and to conduct timely initial evaluations.

Milestone C.6.3.1: Determine if any other BIE-funded school, whether tribally-controlled or BIE-operated, is unable to provide services or conduct timely initial evaluations. The BIE may continue to implement the monitoring plan submitted by the BIE and approved by OSEP under the 2020-2021 CAP to collect this information.

Performance Metric:

With the first, second, and third quarterly reports for the 2021-2022 CAP, report on: (i) the number of students with disabilities who are not receiving related services in accordance with their IEPs; (ii) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (iii) the number of requested initial evaluations that have not been conducted or have been delayed; and (iv) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Required Documentation to Verify Completion of Certain Milestones: In order to demonstrate completion of Milestones in Section C of the CAP, the BIE must include the following information:

Milestones C.1.1.1, C.1.1.2, and C.1.1.3:

- (a) For the first quarterly report for the 2021-2022 CAP, the BIE must provide a detailed timeline for the adoption of final policies and procedures in a timely manner, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).
- (b) For the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must provide copies of any notice issued during that quarter to BIE-funded schools regarding any requirements that give flexibility to BIE-funded schools to follow the timeline established by the State where they are located instead of the timeline established by the BIE.
- (c) For the first, second, and third quarterly reports for the 2021-2022 CAP, or until such time as they are finalized, the BIE must submit a report on the status of the adoption of final policies and procedures, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).

Prior-Milestone C.4.2.3 of the 2020-2021 CAP:

For the fourth quarterly report for the 2020-2021 CAP, the BIE must provide: (i) the number of findings of noncompliance related to fiscal requirements that are corrected during the reporting period; (ii) the date those findings were identified; (iii) the number of those findings timely corrected; (iv) the number of those findings corrected more than one year after the BIE's identification of noncompliance; and (v) a description of the evidence used by the BIE to verify correction of those findings.

Milestone C.2.1.1:

For the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must report the number of findings of noncompliance (related to either programmatic or fiscal requirements under IDEA) that are timely corrected (i.e., as soon as possible and in no case later than one year after identification of the noncompliance), and the number of findings of noncompliance related to IDEA requirements that are corrected more than one year after the BIE's identification of the noncompliance; and provide evidence of correction and/or, as appropriate, evidence of notification provided to schools when the finding has not been corrected.

Milestone C.2.1.2:

- (a) For the first quarterly report for the 2021-2022 CAP, the BIE must provide a detailed plan and timeline for issuing the FFY 2018 and FFY 2019 annual determinations on the performance of all BIE-funded schools.
- (b) For the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must provide an update on the status of the FFY 2018 and FFY 2019 annual local determinations, including documentation demonstrating the BIE has issued the determinations.
- (c) For the third quarterly report for the 2020-2021 CAP, the BIE must provide an update on the status of the FFY 2020 annual local determinations.

Milestones C.3.1.1, 3.1.2, and 3.1.3:

- (a) For the first quarterly report for the 2021-2022 CAP, the BIE must provide a detailed timeline for the revision and implementation of policies and procedures for: (i) tracking the resolutions process for due process complaints to determine compliance with the required timelines noted in Milestone 3.1.1; (ii) ensuring that extensions of the 45-day due process hearing timeline are granted only at the request of a party; and (iii) ensuring that expedited due process hearings meet the required timelines noted in Milestone 3.1.3.
- (b) For the second and third quarterly reports for the 2021-2022 CAP, the BIE must provide an update on the status of the revision and implementation of policies and procedures for: (i) tracking the resolutions process for due process complaints to determine compliance with the required timelines noted in Milestone 3.1.1; (ii) ensuring that extensions of the 45-day due process hearing timeline are granted only at the request of a party; and (iii) ensuring that expedited due process hearings meet the required timelines noted in Milestone 3.1.3.

Prior-Milestone C.7.1.1 of the 2020-2021 CAP and Milestone C.4.1.1:

For the fourth quarterly report for the 2020-2021 CAP and the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must report on the status of implementation of the corrective action plan to demonstrate compliance with the secondary transition requirements and to improve the accuracy of the secondary transition data.

Prior-Milestone C.7.2.2 of the 2020-2021 CAP:

- (a) For the fourth quarterly report for the 2020-2021 CAP, the BIE must provide documentation that the remaining directed FFY 2019 IDEA Part B administrative funds were expended by the June 30, 2021 deadline, for the salary of the staff member whose duties consist exclusively of supporting BIE-funded schools in compliance with secondary transition requirements and the BIE's cooperative agreement with WestEd for support in improving secondary transition compliance, in accordance with the approved revised spending plan.
- (b) For the fourth quarterly report for the 2020-2021 CAP, the BIE must provide documentation that the \$600,000 of directed FFY 2020 IDEA Part B administrative funds were used by the BIE-funded high schools for the intended purposes and by the June 30, 2021, deadline.

Milestone C.4.1.2:

No later than October 31, 2021, the BIE must submit a report of its FFY 2020 secondary transition compliance data (disaggregated by compliance item, type of BIE-funded school (i.e., tribally-controlled or BIE-operated), and each individual BIE-funded school) and an analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

Milestone C.4.1.3:

For the second and third quarterly reports for the 2021-2022 CAP, the BIE must provide a description of the strategies and activities used to address noncompliance with the secondary transition requirements and to improve the accuracy of the secondary transition data.

Milestone C.5.1.1:

With the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must report on the strategies and activities carried out to improve the dropout rate.

Milestone C.6.1.1:

With the first quarterly report for the 2021-2022 CAP due on October 31, 2021, the BIE must provide an assurance that: (1) IEP Teams considered, on an individual basis, whether compensatory services were needed as a remedy for the services previously not provided at San Felipe Pueblo Elementary School; and (2) any compensatory services determined necessary by the IEP Teams have been, or are being, provided.

Prior-Milestone C.9.2.1 of the 2020-2021 CAP and Milestone C.6.2.1:

With the fourth quarterly report for the 2020-2021 CAP and the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must report on: (a) the number of requested initial evaluations that have not been conducted or have been delayed at San Felipe Pueblo Elementary School; and (b) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Prior-Milestone C.9.3.1 of the 2020-2021 CAP and Milestone C.6.3.1:

With the fourth quarterly report for the 2020-2021 CAP and the first, second, and third quarterly reports for the 2021-2022 CAP, the BIE must report on: (i) the number of students with disabilities who are not receiving related services in accordance with their IEPs; (ii) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (iii) the number of requested initial evaluations that have not been conducted or have been delayed; and (iv) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

4. Evidence Necessary for Conditions To Be Removed

The Department will remove the Specific Conditions if, at any time prior to the expiration of the grant year, the BIE provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

5. Method of Requesting Reconsideration

The BIE can write to OSEP's Acting Director, David Cantrell, at the address below, if it wishes the Department to reconsider any aspect of these Specific Conditions. The request must describe in detail the changes to the Specific Conditions sought by the BIE and the reasons for those requested changes.

U.S. Department of Education
Office of Special Education Programs
Attn: David Cantrell
550 12th Street, SW, Room 4109
Washington, DC 20202

6. Submission of Reports

The BIE must submit all reports required under the Specific Conditions. The quarterly reports for Section C of the CAP should be submitted to:

Susan Kirlin
U.S. Department of Education
Office of Special Education Programs
550 12th Street, SW, Room 5033
Washington, DC 20202

And

Susan Benbow

U.S. Department of Education
Risk Management Services Division
Office of Finance and Operations
550 12th Street, SW, Room 6050
Washington, DC 20202