



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

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

Dear Director Dearman:

We have approved the Bureau of Indian Education's application for Federal fiscal year (FFY) 2023 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). The effective date of this grant award is July 1, 2023.

Our approval is based on our review of the IDEA Part B application submitted by the Bureau of Indian Education (BIE), U.S. Department of Interior to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 23, 2023, 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 2023 application (Enclosure B) 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, our approval is based on the BIE's submission of the form required under Section 427 of the General Education Provisions Act (GEPA). Going forward, for future IDEA grant applications, the BIE must annually review and, if necessary and appropriate, revise its GEPA Section 427 form and submit the revised form as part of its grant application.

Consistent with section 611(h)(2) of the IDEA, the BIE provided specific assurances with the May 23, 2023, submission of its FFY 2023 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;
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 23-02, dated February 24, 2023, 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 the BIE's FFY 2023 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 2023 IDEA Part B grant award is being released subject to FFY 2023 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). Therefore, OSEP is imposing Specific Conditions on the BIE's FFY 2023 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 2023 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 its application for FFY 2023 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 Part B application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed is the BIE's FFY 2023 grant award of \$106,376,014 for funds currently available under the Consolidated Appropriations Act, 2023 (Public Law 117-328) for the IDEA Part B Section 611 (Grants to States) program. These funds are available for obligation by the BIE from July 1, 2023, through September 30, 2025, in accordance with 34 C.F.R. § 76.709.

Under IDEA section 611(h)(4)(A), the BIE's FFY 2023 grant award includes \$21,275,202, 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), \$85,100,811, 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 five 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, 2023, and 20 percent must be allocated to such schools by September 30, 2023.

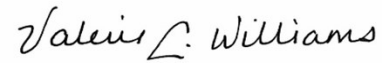
Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, the BIE is expressly agreeing as a condition of IDEA funding 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 of FFY 2023 funds 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.fsrs.gov/>. Please contact the BIE'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 "Valerie C. Williams".

Valerie C. Williams
Director
Office of Special Education Programs

Enclosures

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

cc: BIE Supervisory Education Specialist (IDEA)

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 align="center">Yes <i>(Assurance is given Place a check as applicable.)</i></p>	<p align="center">No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Enter date(s) as applicable</i></p>	<p align="center">Assurances Related to Policies and Procedures</p>
X		<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>
X		<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>
X		<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>
X		<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>
X		<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 classes with the use of supplementary aids and services cannot be</p>

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		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

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		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), as amended by the Every Student Succeeds Act; 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), as amended by the Every Student Succeeds Act; 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); as amended by the Every Student Succeeds Act; 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	1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i> , is on file with the Secretary of Education. 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.
NA	2. 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 B

Bureau of Indian Education
State

D. Statement

I certify that the State of Bureau of Indian Education can make the assurances checked as 'yes' in Section II.A. and II.B. and the certifications required in Section II.C. of this application. These provisions meet the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) as found in PL 108-446 and the implementing regulations. The State will operate its IDEA Part B program in accordance with all of the required assurances and certifications.


If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA ,as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2024. (34 CFR § 76.104)

I, the undersigned authorized official of the

Bureau of Indian Education

(Name of State and official name of State agency)

am designated by the Governor of this State to submit this application for FFY 2023 funds under Part B of the IDEA.

Printed/Typed Name of Authorized Representative of the State: Tony Dearman
Title of Authorized Representative of the State: Director of the Bureau of Indian Education
Signature: TONY DEARMAN  Digitally signed by TONY DEARMAN Date: 2023.05.15 11:58:28 -05'00'
Date:

Enclosure C

Specific Conditions

I. 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) 2023 grant award under Part B of the IDEA. OSEP is imposing these Specific Conditions because of the BIE's failure to complete all of the corrective actions contained in Section C of the 2022-2023 Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan (PIAP).

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 of 1965 (ESEA) and the IDEA programs, the U.S. 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, 2020, 2021, and 2022, 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 2022-2023 CAP, as explained below.

General Supervision: The BIE has not demonstrated that it has fully implemented a general supervision system in accordance with Task C.2.0. Specifically, the BIE has not submitted evidence of timely correction of findings of noncompliance identified in monitoring reports. Therefore, the BIE has not met the requirements of IDEA sections 611(h)(2)(A) and (F), 612(a)(11), 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 Differentiated Monitoring and Support (DMS) letter dated

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.

October 23, 2019. As a result, OSEP is maintaining the Specific Condition requiring the BIE to implement a general supervision system to ensure that all BIE-funded schools (i.e., BIE-operated schools and tribally-controlled schools) are in compliance with the programmatic requirements of IDEA Part B.

Secondary Transition: In its FFY 2021 IDEA Part B State Performance Plan/Annual Performance Report (SPP/APR), the BIE continued to report a 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 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 46.75% compliance under Indicator 13 in its FFY 2021 SPP/APR, which demonstrates improvement from FFY 2020 when the BIE reported 20.56% compliance. However, because the data continues to be extremely low, this area continues to raise significant concern about compliance with secondary transition requirements across the BIE. Therefore, OSEP is maintaining the Specific Condition related to compliance with the secondary transition requirements on the BIE's FFY 2023 IDEA Part B grant award.

Beginning with the Specific Conditions on the BIE's FFY 2018 IDEA Part B grant award, the BIE was required to develop a corrective action plan to improve the accuracy of the secondary transition data collected by the BIE. This requirement was a result of the significant decrease in the BIE's Indicator 13 data at that time, which the BIE had attributed in the SPP/APR to the increased "rigor of the data collection system for Part B Indicator 13...and more explicit guidance regarding compliance for individual components" of the indicator. Since then, the BIE has demonstrated the submission of accurate secondary transition data under Indicator 13 in its two most recent SPP/APRs (i.e., for FFYs 2020 and 2021). Therefore, OSEP is removing from this milestone the requirement to improve the accuracy of the secondary transition data.

In addition to the Specific Conditions on the BIE's FFY 2020 IDEA Part B grant award, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), OSEP 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. The deadline for expending these funds was December 31, 2021. OSEP directed the BIE to take any necessary steps to retrieve the unexpended amount of directed FFY 2020 IDEA Part B administrative funds from each school that did not expend the full amount allotted to it. In its 2022-2023 Q2 CAP report, the BIE reported that a total of \$347,967.77 of the FFY 2020 directed funds (\$600,000) was reported as expended by the BIE-funded high schools (both BIE-operated and tribally-controlled). The BIE reported that the Division of Performance and Accountability (DPA) coordinated with School Operations to retrieve the remaining \$5,533.43 of unexpended FFY 2020 directed funds from BIE-operated schools during the 2022-2023

school year. The BIE also reported that funds allocated to tribally-controlled schools (\$246,498.80 remaining out of \$540,000) must remain with the schools until they are expended, according to the Tribally Controlled Schools Act (TCSA), 25 U.S.C. § 2501 et seq., and that DPA partnered with Associate Deputy Directors and Education Resource Center staff to continue reiterating the purpose of those funds that remain with the tribally-controlled schools until expended. Because all of the directed funds allocated to the BIE-operated schools have been either expended or retrieved, and because the unexpended directed funds allocated to the tribally-controlled schools will remain with those schools until expended pursuant to the TCSA, OSEP is lifting the milestone and reporting requirements related to the directed FFY 2020 IDEA Part B administrative funds and which were previously incorporated into the Specific Conditions.

Provision of Related Services and Timely Initial Evaluations: The BIE has demonstrated that it has met the required actions to ensure that: (1) initial evaluations at San Felipe Pueblo Elementary School are conducted in a timely manner in accordance with 34 C.F.R. § 300.301(c)(1); (2) all children with disabilities enrolled in San Felipe Pueblo Elementary School received compensatory services as determined necessary by the individualized education program (IEP) Teams; and (3) initial evaluations at other BIE-funded schools (both tribally-controlled and BIE-operated) are conducted in a timely manner in accordance with 34 C.F.R. § 300.301(c)(1). As a result, with the FFY 2023 Specific Conditions, OSEP is removing the requirements under prior-Milestones C.6.1.1 and C.6.2.1, and the requirement under prior-Milestone C.6.3.1 related to timely initial evaluations. However, the BIE has not demonstrated that it has met the requirement under prior-Milestone C.6.3.1. related to ensuring that all BIE-funded schools (both tribally-controlled and BIE-operated) are able to provide related services to children with disabilities in accordance with their IEPs, as required in 34 C.F.R. §§ 300.100, 300.320 through 300.324. Therefore, OSEP is maintaining the Specific Condition related to ensuring the provision of related services 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, as documented in the 2022-2023 CAP reports, 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. Specifically, the BIE has issued annual determinations on the performance of all BIE-funded schools, including any school-specific audit findings, and uncorrected noncompliance from any source, consistent with IDEA sections 611(h)(2)(A) and 616(a) and (e) and 34 C.F.R. §§ 300.600(a)(2), 300.708(d), and 300.716. 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 IDEA sections 611(h)(2)(A) and 616(a) and (e) 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; and (3) 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 OSEP's October 23, 2019, DMS letter and September 3, 2020, follow-up letter, OSEP is maintaining the 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 initial evaluations in BIE-funded schools, which were already addressed in the prior Specific Conditions on the BIE's FFY 2022 IDEA Part B grant. The BIE has demonstrated that the provision of timely initial evaluations in BIE-funded schools has been addressed. However, because there are at least two schools that continue to have outstanding related services owed to children with disabilities in accordance with their IEPs, the provision of related services will continue to be addressed in the Specific Conditions on the BIE's FFY 2023 IDEA Part B grant, as explained above and detailed below.

II. Nature of the Specific Conditions

Based on OSEP's review of the BIE's first through third quarterly reports on Section C of the 2022-2023 CAP, ending with the quarter ending March 31, 2023, OSEP has determined that it is necessary to impose the following Specific Conditions on the BIE's FFY 2023 IDEA Part B grant.

A. Final Report on Section C of the 2022-2023 CAP: The BIE must submit to the Department, by July 31, 2023, its final report on Section C of the CAP for the 2022-2023 school year. This report covers April 1, 2023 through June 30, 2023. The report must contain: (1) the status of each task and milestone scheduled to be completed; (2) the BIE's supporting documentation regarding completion of these tasks and milestones, including an explanation of any delays and expected completion dates for all unimplemented actions; and (3) other data or documentation as the Department may request in order to verify the completion of tasks and milestones.

B. Submission of the IDEA section of the 2023-2024 CAP: The BIE must submit the IDEA section of the 2023-2024 CAP (hereinafter, "2023-2024 CAP") by July 31, 2023. The 2023-2024 CAP must include the tasks and milestones described below.

C. Implementation of the 2023-2024 CAP and Reporting Requirements:

The BIE must implement the 2023-2024 CAP, which covers the period between July 1, 2023, and June 30, 2024, 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:

1. a description of activities and progress for each milestone during the reporting period;
2. the status of each milestone scheduled to be completed during the reporting period along with specific completion dates for all tasks and milestones;

3. supporting documentation regarding completion of the milestones, including explanation of any delays and expected completion dates for all unimplemented actions;
4. updates to ensure that progress for previously completed tasks and milestones is sustained; and
5. other data or documentation as the Department may request in order to verify the completion of tasks and milestones.

When reporting the information required in the 2023-2024 CAP and the quarterly progress reports, 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 2022-2023 CAP	July 31, 2023	April 1, 2023 – June 30, 2023
2023-2024 CAP	July 31, 2023	July 1, 2023 – June 30, 2024
Report on and Analysis of Disaggregated FFY 2022 Secondary Transition Data	October 31, 2023	July 1, 2022 – June 30, 2023
First Quarterly Progress Report for 2023-2024 CAP <ul style="list-style-type: none"> • Milestones 1.1, 1.2, and 1.3 • Milestones 2.1 and 2.2 • Milestone 3.1 	October 31, 2023	July 1, 2023 – September 30, 2023
Second Quarterly Progress Report for 2023-2024 CAP <ul style="list-style-type: none"> • Milestones 1.1, 1.2, and 1.3 • Milestones 2.1 and 2.2 • Milestone 3.2 	January 31, 2024	October 1, 2023 – December 31, 2023
FFY 2022 SPP/APR	February 1, 2024	July 1, 2022 – June 30, 2023
Third Quarterly Progress Report for 2023-2024 CAP <ul style="list-style-type: none"> • Milestones 1.1, 1.2, and 1.3 • Milestones 2.1 and 2.2 • Milestone 3.2 	April 30, 2024	January 1, 2024 – March 31, 2024
Final Quarterly Progress Report for 2023-2024 CAP <ul style="list-style-type: none"> • Milestones 1.1, 1.2, and 1.3 • Milestones 2.1 and 2.2 • Milestone 3.2 	July 31, 2024	April 1, 2024 – June 30, 2024

Task 1.0: Adopt IDEA Policies and Procedures.

- **Milestone 1.1:** 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. With the fourth quarterly report for the 2022-2023 CAP, and the first, second, and third quarterly reports for the 2023-2024 CAP, provide copies of any such notice issued during that quarter to BIE-funded schools.
- **Milestone 1.2:** Adopt policies and procedures related to the implementation of Part B of the IDEA that meet the requirements under IDEA sections 611(h)(2)(A) and 616(a) and (e) and 34 C.F.R. § 300.708(a). With the fourth quarterly report for the 2022-2023 CAP, and the first, second, and third quarterly reports for the 2023-2024 CAP, submit an update regarding the adoption of final policies and procedures, including Tribal consultations, approval, and the rollout of the final policies and procedures to stakeholders, including school staff.
- **Milestone 1.3:** Provide written documentation that the BIE has revised and implemented its dispute resolution procedures and practices to be consistent with the timelines specified in IDEA. With the fourth quarterly report for the 2022-2023 CAP, and the first, second, and third quarterly reports for the 2023-2024 CAP, provide an update on the status of the revision and implementation of the policies and procedures for the following:
 - 1) Tracking the resolutions process for due process complaints to determine compliance with: (i) the 15-day timeline for convening a resolution meeting, consistent with IDEA section 615(f)(1)(B)(i)(I) and 34 C.F.R. §§ 300.510(a) and 300.716; (ii) the 30-day timeline for resolving a due process complaint before a due process hearing may occur, consistent with IDEA section 615(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 IDEA section 615(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(c), 300.515(a), and 300.716;
 - 2) Ensuring that extensions of the 45-day due process hearing timeline are granted only at the request of a party, consistent with IDEA section 615(f)(1)(B) and 34 C.F.R. §§ 300.510(b) and (c) and 300.716; and
 - 3) Ensuring that expedited due process hearings (requested under IDEA section 615(k)(3) and 34 C.F.R. § 300.532(a)) meet the required timelines in IDEA section 615(k)(4)(B) and 34 C.F.R. §§ 300.532(c)(2) and 300.716 (conducted within 20 school days of the date of the complaint requesting the hearing is filed and that a hearing officer makes a determination within 10 school days after the hearing).

Task 2.0: Implement a General Supervision System to Ensure Compliance with the Requirements of IDEA Part B in all BIE-operated schools and Tribally-Controlled Schools.

- **Milestone 2.1:** Ensure timely correction of findings of noncompliance identified in BIE-funded schools. With the fourth quarterly report for the 2022-2023 CAP, and the first, second, and third quarterly reports for the 2023-2024 CAP, provide a report on the number

of findings of noncompliance related to IDEA requirements that are timely corrected (i.e., as soon as possible and in no case later than one year after identification of the noncompliance) at each BIE-funded school, and provide evidence of correction.

- **Milestone 2.2:** To ensure the provision of related services in accordance with IDEA Part B, submit a report regarding any BIE-funded school* that is unable to provide related services. (*The BIE may use the reports from the schools monitored during the 2022-2023 school year to collect this information.) With the fourth quarterly report for the 2022-2023 CAP, and the first, second, and third quarterly reports for the 2023-2024 CAP, provide the following data by school:
 - 1) the number of children with disabilities who are not receiving related services in accordance with their IEPs;
 - 2) the area(s) in which services are not being provided;
 - 3) the steps the BIE is taking to ensure that these children receive the required services in accordance with their IEPs; and
 - 4) any compensatory services determined necessary by the IEP Teams as a result of not receiving the required related services.

Task 3.0: Demonstrate Compliance with Secondary Transition Requirements.

- **Milestone 3.1:** Submit a report on and analysis of the FFY 2022 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. No later than October 31, 2023, provide the following:
 - 1) A report of the BIE’s secondary transition compliance data for the period July 1, 2022 through June 30, 2023, disaggregated by:
 - a) Compliance items (i.e., each component of the secondary transition requirements associated with SPP/APR Indicator 13 – for example, whether there is evidence that the child was invited to the IEP Team meeting where transition services are to be discussed);
 - b) Type of BIE-funded school (i.e., BIE-operated or tribally-controlled); and
 - c) Each individual BIE-funded school; and
 - 2) The BIE’s analysis of the disaggregated data, including suspected or known reasons for any noncompliance, and the BIE’s technical assistance plan to address those reasons identified.
- **Milestone 3.2:** 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), the BIE must submit a report on the status of implementation of the actions the BIE is taking to demonstrate compliance with secondary transition requirements, including strategies based on a careful review of the BIE’s disaggregated FFY 2022 secondary transition data. This should include how the BIE determined which schools received technical assistance and how that technical assistance was provided. With the second and third quarterly reports, provide:

- 1) a description of strategies and activities carried out to address noncompliance with the secondary transition requirements; and
- 2) an explanation of how the activities resulted or will result in improved compliance with secondary transition requirements.

III. 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.

IV. Method of Requesting Reconsideration

The BIE can write to OSEP's Director, Valerie C. Williams, 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: Valerie C. Williams
550 12th Street, SW, Room 4109
Washington, DC 20202

V. Submission of Reports

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

Shannon O'Neill via email at shannon.oneill@ed.gov
U.S. Department of Education
Office of Special Education Programs
550 12th Street, SW, Room 5033
Washington, DC 20202

And

Susan Benbow via email at susan.benbow@ed.gov
U.S. Department of Education
Risk Management Services Division
Office of Finance and Operations
550 12th Street, SW, Room 6050
Washington, DC 20202