

ENCLOSURE A

SPECIAL CONDITIONS

1. Basis for Requiring Special Conditions

The requirements that States ensure that children with disabilities participate in State and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding performance goals and indicators and the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000. According to the information reported to the Department in the BIA's Biennial Performance Report for the 2000-2001 school year, the BIA was not reporting publicly on the participation and performance of children with disabilities in State and district-wide alternate assessments as required by Part B of the Individuals with Disabilities Education Act (IDEA).

Therefore, the Department determined that the Bureau of Indian Affairs had not complied with all the terms and conditions of the Federal Fiscal Year 2001 awards under Part B of IDEA, and, under the authority of the Education Department General Administrative Regulations, 34 CFR §80.12, the Department imposed Special Conditions on BIA's Federal Fiscal Year 2002 awards under Part B. Those Special Conditions required that BIA demonstrate, by May 30, 2003, that it was reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a). The BIA did not meet that timeline and has not yet met the requirements of 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a). This reporting did not occur because data had not been received from all of the BIA-funded schools. Data is scheduled to be submitted in August of 2003. Therefore, the Department is imposing Special Conditions on BIA's Federal Fiscal Year 2003 awards under Part B.

2. Nature of the Special Conditions

By August 29, 2003, the BIA must demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a). The BIA must submit information on reporting publicly on the participation and performance of children with disabilities in alternate assessments. In the event that, notwithstanding the State's assurance, the State does not meet that timeline, the State must:

- a. Submit to OSEP by September 1, 2003, a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments by May 30, 2004. The plan must ensure that students with disabilities, including students who take the alternate assessment, are assessed in the same grades as nondisabled students and that their participation in such assessments and the results of their assessments are reported in the same frequency and detail as nondisabled students.
- b. Submit progress reports on January 5, 2004, March 29, 2004, and the final submission due on May 31, 2004.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the special conditions if, at any time prior to the expiration of the grant year, the BIA provides documentation, satisfactory to the Department, that it has fully met the requirements to report publicly on the participation and performance of children with disabilities in alternate assessments.

4. Method of Requesting Reconsideration

The BIA can write to Assistant Secretary Robert H. Pasternack if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by the BIA to the Department under the Special Conditions should be submitted to:

Tony G. Williams
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U.S. Department of Education
330 C Street, SW
Washington, DC 20202-2640