

Archived Information

ENCLOSURE C

SPECIAL CONDITIONS

I. Basis for Requiring Special Conditions

Background: Four areas of noncompliance remaining from the Compliance Agreement, which expired on March 10, 2001, and a fifth area of noncompliance concerning the requirements to administer and report on alternate assessments were included in DCPS's FFY 2002 Special Conditions set forth in Enclosure C attached to DCPS's July 25, 2002 grant award letter. Four areas of noncompliance remained in DCPS's FFY 2003 Special Conditions set forth in Enclosure C attached to DCPS's September 30, 2003 grant award letter.

Current Status: OSEP has determined that DCPS remains out of compliance in the four areas identified in the FFY 2003 Special Conditions grant award letter. The basis for reaching this determination is as follows.

1. Initial Evaluations and Reevaluations

(a) An initial evaluation that meets the requirements of sections 614(a)(1), (b), and (c) of Part B of IDEA must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by DCPS's policy. According to data submitted by DCPS under the FFY 2003 Special Conditions, DCPS had not achieved the goal of ensuring that all initial evaluations were completed and placements made in a timely manner. At the end of the final reporting period for FFY 2003, 262 initial evaluations and placements had not been completed in a timely manner, with an average number of overdue days of 25.

(b) A reevaluation that meets the requirements of sections 614(a)(2), (b), and (c) of Part B of IDEA must be completed for all children with disabilities no later than 36 months after the date on which the most previous evaluation or reevaluation was completed. According to data submitted by DCPS under the FFY 2003 Special Conditions, DCPS had not achieved the goal of ensuring that all reevaluations of children with disabilities were conducted in a timely manner. At the end of the final reporting period for FFY 2003, 573 reevaluations had not been conducted in a timely manner, with an average number of overdue days of 25.

2. Implementation of Due Process Hearing Decisions

Independent hearing officer determinations must be implemented within the time-frame prescribed by the hearing determination, or if there is no time-frame prescribed by the hearing officer, within a reasonable time-frame set by DCPS, as required by sections 615 (f) and (i) of Part B of IDEA. According to data submitted by DCPS under the FFY 2003

Special Conditions, DCPS had not achieved the goal of ensuring that all due process hearing decisions were implemented in a timely manner. At the end of the final reporting period under the FFY 2003 Special Conditions, 1,486 hearing decisions had not been implemented in a timely manner.

DCPS has been working with OSEP to identify methods for reporting accurately the information OSEP requires. In an April 4, 2004 letter from Dr. Raymond Bryant to Ms. Stephanie Smith Lee, DCPS reported on procedures it has established to set reasonable timelines for those decisions that do not have a hearing officer established timeframe for implementation. DCPS established timeframes for implementation when the hearing officer orders DCPS: (1) to convene a multi-disciplinary team (MDT) meeting within a certain number of days after receipt of an independent educational evaluation (IEE) from the parent; (2) to provide a specific amount and type of compensatory education service; and (3) to take immediate action. For all other actions, if no due date is specified in the hearing officer decision or stated in IDEA or local statutes or regulations, DCPS will make a case by case decision as to an appropriate due date depending on the type of relief granted. Generally, DCPS will specify a 30- or 45-day timeline.

In addition to developing the timelines for implementation of decisions that do not have a hearing officer prescribed timeframe for implementation, DCPS described in the April 4, 2004, letter the internal mechanisms it has established to assist in bringing cases with no hearing officer established timelines to closure. For example, for those cases awaiting the receipt of an IEE, the school and/or compliance specialist periodically contact the parent/advocate to inquire about IEE status. After a certain period of time, DCPS will offer to do the assessments if the parent/advocate has not obtained them. Each week the schools receive a list of pending and overdue hearing officer decisions related to their school and the compliance specialists meet weekly with school staff reminding them of all pending and overdue decisions. Principals periodically receive a memo from the Office of the Superintendent with the list of pending and overdue hearing officer decisions reminding them they will be held accountable for such cases. Finally, DCPS has added six compliance specialists to its Office of Mediation and Compliance.

3. Placement in the Least Restrictive Environment

All children with disabilities must be placed in the least restrictive environment (LRE) appropriate to their individual needs, as required by section 612(a)(5)(A) of Part B of IDEA and 34 CFR §§300.550-300.556. During its March 26, 2001 compliance monitoring review of DCPS, OSEP collected data to determine whether DCPS was ensuring that all children with disabilities were placed in the least restrictive environment. OSEP determined that children with disabilities are removed from the regular educational environment for reasons other than that the nature or severity of the disability, even with the use of supplementary aids and services, is such that education in regular classes cannot be achieved satisfactorily. Personnel reported that placement decisions were affected by the lack of modifications and

accommodations available in the regular class and the limited capacity of DCPS to serve children with disabilities along each point of the continuum of alternative placements. OSEP found that DCPS was not ensuring that children with disabilities are placed in the least restrictive environment appropriate to their individual needs.

In the first quarterly report for FFY 2003, DCPS reported that it conducted citywide training on October 29, 2003 and December 17, 2003. Each presentation included strategies and interventions to maintain students in the least restrictive environment. DCPS provided a list of new or expanded inclusive programs and newly created preschool programs for students with disabilities and has developed a comprehensive list of special education programs for each school. An error in data reporting was identified during the fourth quarter of the FFY 2002 Special Conditions. DCPS had been reporting intensities of service (amounts of service received) by students rather than the environments in which services are being provided. DCPS reported that at the beginning of school year 2003-2004, it changed the LRE codes in SETS to reflect the education environment data categories accepted by OSEP. As individualized education programs (IEPs) are developed for students when annual reviews come due, the LRE code will be adjusted to reflect the codes accepted by OSEP and entered into SETS. DCPS reports that it expects this process to be completed for all IEPs by June 2004.

In the first quarterly report for FFY 2003, DCPS reported that it was implementing a Continuous Improvement Monitoring Process (CIMP) for special education in the District of Columbia. On April 23, 2004, DCPS submitted a supplement to its third quarterly report regarding its progress in monitoring to ensure compliance with LRE requirements and attached its SEA Monitoring Manual. The April 23, 2003 supplement stated that "to address the issue of LRE, DCPS has designated the SEA Monitoring and Program Certification Unit as the State level agency for monitoring." The Monitoring Office has: (1) established monitoring cycles for all LEAs in DC and begun monitoring; (2) provided training guidance and resources to all LEAs in the form of Monitoring Academies; and (3) developed and utilized a CIMP that includes ongoing, systemic monitoring. The April 23, 2004 report included data relative to LRE from the record reviews conducted in 7 of the 19 DCPS high schools that are being monitored this spring. The Monitoring team will return to the schools to do interviews and follow-up by June 2004. The report stated that there were 149 students who spent 2,222 hours in special education and 1,780 hours in general education and further review via interviews and classroom observations would be conducted to determine if the percentage of hours and setting is appropriate for these students.

4. Alternate Assessments

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 District's Biennial Performance Report for the 2000-2001 school year, the District was not administering alternate assessments to all children with disabilities who could not participate in the District-wide assessment program, and was not reporting publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments as required by Part B of the Individuals with Disabilities Education Act (IDEA).

Therefore, the Department determined that the District 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 an additional Special Condition on the District's FFY 2003 award under Part B of the IDEA. Those Special Conditions required that the District demonstrate, by August 31, 2003 that it was reporting publicly and to the Secretary on the participation and performance of children with disabilities in regular and alternate assessments, as required by 20 U.S.C. 1412(a)(17) and 34 CFR §§300.139.

The State did not meet that timeline and has not yet met the requirements at 20 U.S.C. 1412(a)(17) and 34 CFR §§300.139. DCPS has reported to the public on the participation and performance of children with disabilities on the regular District-wide assessment via the DCPS website. However, DCPS has not yet reported to either the public or the Secretary on the participation and performance of children with disabilities attending DCPS schools, including charter schools that are public schools within DCPS, and charter schools that are LEAs on the alternate assessment. The performance results of children with disabilities on the alternate assessment must be reported if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children. Finally, in reviewing school report cards that include the participation and performance of children with disabilities on the regular assessment, it came to our attention that DCPS is not reporting publicly or to the Secretary on the participation and performance on the regular assessment of children with disabilities attending charter schools that are public schools of the LEA and charter school established as LEAs.

II. Nature of the Special Conditions

The following Special Conditions are imposed on the District of Columbia Public Schools' (DCPS's) Part B grant awards for FFY 2004:

A. Initial Evaluations and Reevaluations

1. DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:

- (a) Initial Evaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had been referred for, but not provided a timely initial evaluation and placement;
- (b) The number of children referred for initial evaluation and placement whose initial evaluation and placement became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who were provided initial evaluations and placements during the reporting period;
- (d) The number of children who had not been provided timely initial evaluations and placements at the conclusion of the reporting period; and
- (e) The percentage of timely initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period.

- (b) Reevaluations

For each reporting period include:

- (a) The children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;
- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who had been provided triennial reevaluations during the reporting period;
- (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period; and
- (e) The percentage of timely triennial reevaluations provided to children with disabilities whose reevaluation deadline fell during the reporting period.

2. For each reporting period, DCPS must report to OSEP the strategies it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations, and, if there is no progress in reducing the number of overdue initial evaluations and placements or triennial reevaluations, DCPS must provide an explanation for this lack of progress and reevaluate the procedures it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations.
3. For the each reporting period, DCPS must report the average number of days the initial evaluation and placements and reevaluations that had not been provided in a timely manner were overdue for that reporting period.

B. Implementation of Due Process Hearing Decisions

1. For those hearing officer decisions that include a timeframe for implementation prescribed by the hearing officer, DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:
 - (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time-frame prescribed by the hearing officer;
 - (b) The number of children whose hearing officer determinations had not been implemented within the time-frame prescribed by the hearing officer (became overdue) during the reporting period;
 - (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percentage of hearing officer determinations that had been implemented in a timely manner during the reporting period.

2. For those hearing officer decisions that do not include a timeframe for implementation prescribed by the hearing officer, DCPS must issue to OSEP four reports under the schedule detailed below which include the following information:
 - (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time-frame established by DCPS;
 - (b) The number of children whose hearing officer determinations were not implemented within the time-frame established by DCPS (became overdue) during the reporting period;
 - (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percentage of hearing officer determinations that had been implemented in a timely manner during the reporting period.

3. For each reporting period, DCPS must report to OSEP the strategies it is implementing to reduce the number of children whose hearing officer determinations are not implemented in a timely manner, and address any remaining barriers to the timely implementation of hearing officer decisions (those with a time frame set by the hearing officer and those without a time-frame set by the hearing officer) and the steps being taken to remove those barriers.

C. Least Restrictive Environment

1. By October 8, 2004, DCPS must provide to OSEP, the monitoring report(s) issued as a result of its first cyclical monitoring of the High School Division of DCPS, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556. The monitoring report should include the results of interviewing members of the placement teams and reviewing the individualized education programs (IEPs) of children with disabilities who do not participate for all, or part of, the day in the regular class in order to determine if these placement decisions were made consistent with the requirements in 34 CFR §§300.550-300.556.
2. By April 29, 2004, DCPS must provide to OSEP, the monitoring report(s) issued as a result of its first cyclical monitoring of the Middle/Junior High School Division of DCPS, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556. The monitoring report should include the results of interviewing members of the placement teams and reviewing the individualized education programs (IEPs) of children with disabilities who do not participate for all, or part of, the day in the regular class in order to determine if these placement decisions were made consistent with the requirements in 34 CFR §§300.550-300.556.
3. As part of the final quarterly report, DCPS must provide any additional monitoring report(s) issued since April 29, 2004 as a result of its monitoring, highlighting any findings and required corrective action plans related to placement of children with disabilities in the least restrictive environment, in accordance with 34 CFR §300.556. In addition, DCPS must report on any follow-up activities it has carried out to ensure the corrective action plans have resulted in the correction of identified noncompliance in the area of least restrictive environment (LRE).

DUE DATES AND REPORTING PERIODS FOR QUARTERLY REPORTS UNDER A-C THAT DCPS MUST SUBMIT TO THE U.S. DEPARTMENT OF EDUCATION

The following are the reporting dates for providing the required information to OSEP in A-C above.

DATES OF REPORTING PERIODS	DATE OF DCPS REPORT TO THE U.S. DEPARTMENT OF EDUCATION
June 1 – September 30, 2004	October 29, 2004
October 1 – December 31, 2004	January 14, 2005
January 1 – March 31, 2005	April 15, 2005
April 1 – May 31, 2005	June 17, 2005

D. Reporting on Regular and Alternate Assessments

By May 30, 2005, DCPS must demonstrate that it is reporting publicly and to the Secretary on the participation and performance in regular assessments of children with disabilities attending charter schools that are public schools of DCPS and charter schools established as LEAs. In addition, DCPS must demonstrate that it has reported publicly on the participation and performance on the alternate assessment of children with disabilities attending DCPS schools, including charter schools that are public schools of DCPS, and charter schools established as LEAs. The performance results of children with disabilities on the alternate assessment must be reported if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children. and alternate assessments as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139. The State must submit information on reporting publicly on the participation and performance of children with disabilities in regular and alternate assessments in the Annual Performance Report format provided by OSEP. (This format is available at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.)

The State must:

- a. Submit to OSEP by December 1, 2004, 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 regular and alternate assessments by May 30, 2005. The plan must ensure that DCPS is reporting on the participation and performance in the regular assessment of students with disabilities attending charter schools that are public schools of DCPS and charter schools established as LEAs and report on the participation and performance in the alternate assessment of children with disabilities attending DCPS schools, including charter schools that are public schools of DCPS, and charter schools established as LEAs.

- b. Submit progress reports on January 31, 2005, March 28, 2005, and a final submission on May 30, 2005. The final submission that includes information on reporting publicly on the participation and performance of children with disabilities in regular and alternate assessments is to be submitted in the Annual Performance Report format provided by OSEP. (This format is available at <http://www.ed.gov/policy/speced/guid/idea/monitor/index.html>.)

III. Evidence Necessary for Conditions To Be Removed

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

IV. Method of Requesting Reconsideration

DCPS can write to Troy Justesen, the Acting Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), 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 DCPS and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

V. Submission of Reports

Reports must be submitted, in accordance with the time lines included in this enclosure, to:

Deborah J. Morrow, Ph.D.
Education Program Specialist
U.S. Department of Education
Office of Special Education Programs
Potomac Center Plaza, Room 4167
550 12th Street, SW
Washington, DC 20004