

Archived Information

ENCLOSURE B

SPECIAL CONDITIONS

I. Basis for Requiring Special Conditions and Nature of Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Louisiana's Federal Fiscal Year (FFY) 2004 grant award under Part C of the Individuals with Disabilities Education Act (Part C), related to four areas of noncompliance that OSEP identified in its July 20, 2001 Louisiana Monitoring Report (Report) and that the State has failed to correct.¹ The four noncompliance areas relate to the timely identification and evaluation of, and provision of early intervention services needed by, infants and toddlers with disabilities and their families. With regard to these four areas, OSEP's 2001 Report found that the State had failed to:

1. Conduct evaluations and assessments and convene the initial Individualized Family Service Plan (IFSP) meeting within 45 days of referral under 34 CFR §§303.321(e), 303.322(e) and 303.342(a);
2. Convene an IFSP meeting and obtain parental consent prior to eliminating or reducing early intervention services as required under 34 CFR §303.342(e);
3. Identify on the IFSP all early intervention services needed to meet the unique needs of the child and family under 34 CFR §303.344(d); and
4. Provide the early intervention services listed on the child's IFSP under 34 CFR §303.342(e).

OSEP's 2001 Report directed the State to develop and implement improvement strategies to ensure timely correction of all areas of noncompliance identified in the report, including the four findings listed above. On June 27, 2002, in response to OSEP's 2001 report, the Louisiana Department of Education (LDE), the State's designated lead agency for Part C at that time, submitted the State's Part C Improvement Plan. OSEP's February 12, 2003 response to the

¹The State has provided evidence of correction or improvement with a plan for full correction for the following seven of the findings of noncompliance in the Report: (1) the State Interagency Coordinating Council (SICC) had not included the required percentage of parents of children with disabilities (34 CFR §303.601(a)(1)); (2) a service coordinator had not been assigned to a child and family until after completion of the initial evaluation and assessment (34 CFR §303.23(b)(1)); (3) The State had not implemented a public awareness program (34 CFR §303.320); (4) The State had not ensured that all children in the State who are eligible for services under Part C are identified, located and evaluated; and an effective method is developed and implemented to determine which children are receiving needed early intervention services (34 CFR §303.321(b)(1)(2)); (5) The State had not ensured compliance with Part C's requirements regarding the provision of services in the natural environments (34 CFR §§303.344(d)(ii), 303.18 and 303.12(b)); (6) Service coordinators did not coordinate all services needed by the child and family (34 CFR §303.23); and (7) Families did not receive transportation needed to enable them to participate in early intervention services (34 CFR §303.12(d)(15)). The remaining three findings relate to the State's ability to monitor all Part C entities for all Part C requirements in order to identify and correct noncompliance. These findings will be addressed separately by OSEP in its response to the State's FFY 2002 Annual Performance Report (APR) that was submitted on March 31, 2004 with an addendum submitted on June 2, 2004. Resolving the remaining monitoring and other findings should be viewed as a high priority by the State during the FFY 2004 grant year.

State's Improvement Plan accepted the Plan and informed the State that it must provide OSEP with documentation that the State had corrected all areas of noncompliance no later than February 12, 2004.²

In September 2003, OSEP conducted a verification visit to Louisiana with the Louisiana Department of Health and Hospitals (DHH), the State's Part C lead agency, to review the State's systems for Part C general supervision and data collection. In its December 19, 2003 letter about that verification review, OSEP noted that the September 24, 2003 DHH document entitled, Federal Compliance Findings and Potential Resolutions (which served as an updated progress report on the State's Improvement Plan), demonstrated compliance with only one of the 14 noncompliance areas identified in the Report. On February 13, 2004, OSEP responded to the State's FFY 2001 Annual Performance Report (APR) and confirmed that the State had corrected two of the findings. OSEP's February 13, 2004 letter required the State to submit with its FFY 2002 APR, due on March 31, 2004, either: (1) documentation of correction of each of the remaining 12 areas of noncompliance; or (2) the specific additional actions the State would take to ensure full correction and the date by which the State would be able to provide documentation that it had fully corrected each of those 12 findings.

On March 31, 2004, the State submitted its FFY 2002 APR, which failed to provide OSEP with the required documentation or proposed actions to ensure correction of the following four areas of noncompliance. Pursuant to the Special Conditions, the State must ensure that, by December 31, 2004, it has corrected each of the four noncompliance areas identified below, and must submit the required documentation by October 15, 2004 and January 15, 2005.

1. *Convening an initial IFSP meeting within 45 days from referral.*

a. Basis for requiring special conditions

In its 2001 Report, OSEP found that the State had failed to ensure that initial evaluations and assessments are conducted and the initial IFSP meeting is held within 45 days from referral (34 CFR §§303.321(e), 303.322(e) and 303.342(a)). OSEP found on page 17 of the Report that "service coordinators told OSEP they must act quickly to get the initial IFSP written within the 45-day timeline, and that frequently the IFSP is written after the deadline." The Report further noted that "the multidisciplinary team further stated that the delay in development of the IFSP was caused by the delays of the service coordination agency, citing a typical instance when it took two months for a service provider agency to learn that a child needed service after the evaluation team sent information to the service coordination agency."

OSEP's February 12, 2003 letter required the State to submit data demonstrating compliance with Part C's 45-day timeline requirement including data from the five parishes OSEP visited in February 2000 (Orleans, Baton Rouge, West Carroll, Ouachita, and Rapides). In March 2003,

² The Louisiana Department of Health and Hospitals (DHH) became the State's Part C Lead Agency, effective July 1, 2003. In its February 12, 2003 letter, OSEP emphasized that although the Lead Agency was transitioning from LDE to DHH (a process that the State of Louisiana began more than one year earlier before July 1, 2002), the State was still responsible for correcting all of the noncompliance within the one-year timeline regardless of which entity was the Lead Agency.

the State submitted its Part C monthly data reports on the 45-day timeline compliance requirement for all parishes, which data indicated continued noncompliance in many parishes, the worst being Calcasieu, Jefferson, Lafource, Livingston, Orleans and St. John Parishes.³ Effective July 1, 2003, under DHH, the State organized its regional Part C reporting not by the 66 parishes (or school districts) but by the 19 regional Single Points of Entry (SPOEs) that are responsible for receiving referrals, schedule evaluations and assessments and convene the initial IFSP meeting.

OSEP's February 13, 2004 letter required the State to provide documentation that it had corrected the noncompliance, including data by each region reflecting that the initial IFSP meeting is held within 45 days of referral and, if not, the extent of, and reasons for, the delay. In addition, OSEP's February 13, 2004 letter directed the State to submit the corrective actions or other plans to ensure that each region is in compliance with Part C's 45-day timeline requirement. Page 23 of the State's March 31, 2004 FFY 2002 APR submission reported data from all 19 SPOEs and indicating that, as of the APR submission date, six of the 19 SPOEs (regions 2, 3, 4, 11, 18 and 19) clearly exceeded the 45-day timeline. However, the State's March 31, 2004 APR failed to indicate that DHH had made noncompliance findings against, or required corrective actions from, these six regions. The March 31, 2004 APR also failed to include any analysis for the reasons for the delay in these six SPOE regions or any corrective actions being required.⁴

a. **Nature of special conditions:**

In the first progress report, due on October 15, 2004, DHH must provide:

1. A description of DHH's monitoring procedures that demonstrate how DHH determines whether a SPOE or provider is in compliance with the 45-day timeline requirements of 34 CFR §§303.321(e), 303.322(e), and 303.342(a); a list of the entities the State has monitored for this requirements to date, the date and nature of any findings of noncompliance with those requirements that were made in any of those entities, and the status of correction of such findings;
2. Data for all 19 SPOEs (already being collected by DHH) showing the percentage of infants and toddlers for whom initial evaluations and assessments were completed and the initial IFSP meeting held within 45 days from referral in July, August, and September 2004;
3. Those corrective actions DHH is taking or requiring to ensure compliance by December 31, 2004 for the six regions identified in the State's March 31, 2004 FFY 2002 APR (regions 2,3,4,11,18, and 19) and, for any SPOE region identified above that is not meeting Part C's 45-day timeline, DHH's analysis of the causes for those delays and the specific actions that DHH intends to implement or has implemented to ensure that the SPOE region is in compliance with that requirement as soon as possible.

³ The State (under LDE) provided its parish data under its LANSER data system.

⁴ OSEP could not determine whether those SPOEs (6, 8, 12, 13, and 17) which reported an average of 45 days for holding the initial IFSP meeting are in compliance because an *average* number of 45 days from referral to holding an initial IFSP meeting does not demonstrate compliance, if the timeline for some children exceeds that timeline.

In the second progress report, due on January 15, 2005, DHH must provide:

1. A description of any changes, since September 30, 2004, in DHH's monitoring procedures or corrective action strategies required by DHH of SPOEs or providers to ensure compliance with the 45-day timeline requirements of 34 CFR §§303.321(e), 303.322(e), and 303.342(a), a list of the agencies which DHH monitored regarding those requirements from September 30, 2004 through December 31, 2004, the date and nature of any findings of noncompliance with those requirements that DHH made in any of those agencies, and the status of correction of such findings; and
2. Data for each of the SPOEs (including regions 2, 3, 4, 11, 18 and 19) showing the percentage of infants and toddlers whose initial evaluations and assessments were completed and an initial IFSP meeting held within 45 days from referral, for October, November and December 2004.

2. *Convening an IFSP meeting and obtaining consent to eliminate or reduce services.*

a. **Basis for requiring special conditions:**

In its 2001 Report, OSEP found that services were added to the IFSP or eliminated or reduced without an IFSP meeting or parent consent prior to the provision of services described in the revised plan (34 CFR §303.342(e)). On page 17 of the Report, OSEP found (through interviews with service coordinators and parents in all areas of the State) that information concerning specific services, frequency and intensity was added to the IFSP after the meeting without additional input from the IFSP team or without the required parental consent. Additionally, OSEP found in its 2001 Report that "parents and service coordinators stated that the changes in service were made without an evaluation to indicate a reduced need for services and the changes were made without an IFSP meeting to discuss changes in child or family needs." OSEP's February 12, 2003 letter required the State to include "a summary of the State's monitoring findings and actions to ensure correction of noncompliance with Part C's requirement that public agencies not add or eliminate early intervention services without conducting an IFSP meeting," and directed the State to submit data on March 15, 2003, October 15, 2003 and January 15, 2004 from at least the five parishes OSEP had monitored. The State submitted no responsive data on any of those dates.

OSEP's February 13, 2004 letter again required DHH to submit documentation that IFSPs were not being unilaterally changed by the lead agency without an IFSP meeting being held and parental consent being obtained. OSEP's February 13, 2004 letter specifically requested the State to provide any available family survey, parent interview or other monitoring data to demonstrate that early intervention services were not unilaterally changed without prior parental consent and IFSP meeting held to revise the IFSP. The State's March 31, 2004 FFY 2002 APR described the required content for an IFSP, but failed to provide any responsive data demonstrating correction of this area of noncompliance.

b. Nature of special conditions:

In the first progress report, due on October 15, 2004, DHH must provide a description of its monitoring procedures to ensure that early intervention services are not changed on a child's IFSP without first holding an IFSP meeting and obtaining parent consent, a list of the entities in which the State has implemented those monitoring procedures, the date and nature of any findings of noncompliance with those requirements that the State has made in any entity monitored, and the status of correction of such findings.

In the second progress report, due on January 15, 2005, DHH must provide a description of any changes, since September 30, 2004, in the procedures that DHH uses to monitor agencies to determine whether they are in compliance with this requirement, a list of the entities which the State has monitored regarding this requirement since September 30, 2004, the date and nature of any findings of noncompliance with this requirement that DHH made in any entity, and the status of correction of such findings.

3. *Ensuring that the IFSP lists all early intervention services or other services needed to meet the unique needs of the child and family.*

a. Basis for requiring special conditions

In its 2001 Report, OSEP found that the State had not ensured that all of the early intervention services or other services needed to meet the unique needs of the child and family were included on the IFSP (34 CFR §303.344(d)). Page 18 of the 2001 Report noted that “[a]dministrators from three areas of the State told OSEP that IFSPs contain the services that are available, not what the child needs.” The Report further noted that “[f]amily service coordinators, providers, administrators and parents in three areas reported to OSEP that if a service is not available it is not included on the IFSP” and that early intervention services were not available in three areas of the State because of lack of providers.

OSEP's February 12, 2003 letter directed the State to identify its actions to address this area of noncompliance and how it would measure (through monitoring or other methods) the “effectiveness” of its activities to ensure that early intervention services needed to meet the unique needs of the child and family, because this issue does not easily lend itself to self-reporting or a review of individual IFSP records. OSEP's February 12, 2003 letter requested the State provide by March 15, 2003 its monitoring findings and actions to address this finding. The State submitted to OSEP (in its Federal Compliance Findings document) during OSEP's September 2003 verification visit to the State, the State's plan to use its “data system to monitor what services are most and frequently used” as well as training of service coordinators.” However, that document acknowledged that this was “planned for future use” and not in place.

OSEP's February 13, 2004 letter requested DHH to submit by March 31, 2004 documentation demonstrating that the State monitored to ensure that those early intervention services needed by a child and family were identified on the IFSP. OSEP's February 13, 2004 letter specifically directed the State to submit “service coordinator interviews, family interviews, comparison of IFSP reviews and evaluation reports, and/or other monitoring data to show that all early

intervention services or other services needed to meet the unique needs of the child and family are identified on the IFSP.” In its March 31, 2004 FFY 2002 APR, DHH failed to provide any responsive data and only listed the required content for IFSPs, but included no monitoring data or other documentation that the State has corrected this area of noncompliance.

b. **Nature of special conditions:**

In the first progress report, due on October 15, 2004, DHH must provide: (1) a description of DHH’s monitoring procedures (such as service coordinator interviews, family interviews, comparisons of individual IFSP records with the evaluation reports that were reviewed prior to the development of the IFSP, and analysis of other monitoring data) that demonstrate how DHH determines whether a SPOE or provider is in compliance with the Part C requirement that services needed by a child and family are identified on the IFSP under 34 CFR §303.344(d); (2) a list of the entities the State has monitored or will monitor for these requirements by December 31, 2004, the date and nature of any findings of noncompliance with these requirements that the State has made; (3) the status of correction of such findings; and (4) any other relevant data on this requirement available through October 15, 2004.

In the second progress report, due on January 15, 2005, DHH must provide: (1) a description of any changes, since September 30, 2004, in DHH’s monitoring procedures or strategies required by SPOEs or providers to demonstrate how DHH determines whether a provider is in compliance with the Part C requirements that services needed by a child and family are identified on the IFSP under 34 CFR §303.344(d); (2) a list of the entities DHH has monitored for these requirements, the date and nature of any findings of noncompliance with these requirements that DHH made, (3) the status of correction of such findings; and (4) any other relevant data on this requirement available through January 15, 2005.

4. ***Ensuring that those early intervention services listed on the IFSP are provided.***

a. **Basis for requiring special conditions**

In its 2001 Report, OSEP found that the State had not ensured that the early intervention services listed on the IFSP were provided (34 CFR §303.342(e)). Pages 18 and 19 of the 2001 Report stated that service coordinators, service providers, parents and administrators in all areas of the State told OSEP that services listed on their IFSP were not always provided. As noted in the 2001 Report, these staff members and parents also stated that sometimes a service provider could not be located for that service area and children waited from one to six months for a provider to be available.

OSEP’s February 12, 2003 letter requested the State to provide documentation that the State was monitoring to ensure that those early intervention services listed on the IFSP were being provided and any data reflecting waiting lists for early intervention services. OSEP’s February 12, 2003 letter directed the State to submit relevant data on March 15, 2003, October 15, 2003 and January 15, 2004, including data from the five parishes OSEP had monitored. The State submitted no data or information in response but indicated its plan during OSEP’s September, 2003 verification visit to “use data system to monitor utilization of IFSP services.”

OSEP's February 13, 2004 response to the State's FFY 2001 APR required DHH to provide by March 31, 2004 data to demonstrate that the early intervention services listed on the IFSP were being provided. The FFY 2002 APR that the State submitted on March 31, 2004 failed to include any responsive data and only listed the State's IFSP content requirement that "[t]he projected dates for initiation of the early intervention services ... as soon as possible after the IFSP meeting."

b. **Nature of special conditions:**

In the first progress report, due on October 15, 2004, DHH must provide:

1. A description of DHH's monitoring procedures or strategies required by region, SPOEs or providers to demonstrate how the State determines whether those early intervention services listed on the IFSP are provided to the child and family under 34 CFR §303.342(e); a list of the entities the State has monitored for this requirement to date, the date and nature of any findings of noncompliance with this requirement that the State has made, and the status of correction of such findings;
2. Data showing the number of infants and toddlers with disabilities who are not receiving the early intervention services listed on their IFSP (by discipline, child, region or otherwise) in July, August, and September 2004; and
3. For each region in which infants and toddlers with disabilities and their families are not receiving the early intervention services listed on the IFSP in July, August, and September 2004, DHH's analysis of the causes for failure to provide services and the specific actions that DHH intends to implement to ensure that each region is in compliance with the service provision requirements as soon as possible, but not later than December 31, 2004.

In the second progress report, due on January 15, 2005, DHH must provide:

1. A description of any changes, since September 30, 2004, in DHH's monitoring procedures or strategies required by SPOEs, providers or other entities to demonstrate how DHH determines whether services listed on the IFSP are provided under 34 CFR §303.342(e); a list of the entities the State has monitored for these requirements from October 1, 2004 through December 31, 2004, the date and nature of any findings of noncompliance with this requirement that DHH made in any entity, and the status of correction of such findings;
2. Data showing the number of infants and toddlers with disabilities who are not receiving the early intervention services listed on their IFSP in October, November and December, 2004; and
3. For any region in which infants and toddlers with disabilities and their families are not receiving the early intervention services listed on the IFSP in from October through December 2004, DHH's analysis of the causes for failure to provide services and the specific

corrective actions that DHH intends to implement to ensure that each region is in compliance with the service provision requirements as soon as possible.

II. 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, DHH provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require DHH to submit data demonstrating compliance with each of the four noncompliance areas that are the subject of the special conditions under Part C.

III. Method of Requesting Reconsideration

DHH can write to Troy Justenson, the 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 DHH 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.

IV. Submission of Reports

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

Mary Louise Dirrigl
Education Program Specialist
U.S. Department of Education
Office of Special Education Programs
Room 4013
550 12th Street, SW
Washington, DC 20202