

Enclosure B

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Hawaii's Federal Fiscal Year (FFY) 2005 grant award under Part C of the Individuals with Disabilities Education Act (Part C of IDEA), related to the following four longstanding areas of noncompliance identified in OSEP's June 5, 2002 Monitoring Report (Report):

1. The lead agency has failed to monitor all programs and agencies used to provide Part C services and correct identified noncompliance (monitoring and correction);¹
2. All infants and toddlers do not receive a comprehensive evaluation and assessment in all five developmental areas on a timely basis under 34 CFR §303.322 (comprehensive, timely evaluation);
3. Individualized Family Service Plans (IFSPs) do not identify a child's present level of developmental functioning as required under 34 CFR §303.344(a) (IFSP functioning level); and
4. The lead agency has not ensured timely transition planning under 34 CFR §303.148 by failing to develop transition plans for children receiving Part C services and for children potentially eligible under Part B of IDEA to notify school districts as those children were approaching the age of transition and conduct timely transition conference (transition planning).

Background:

OSEP's 2002 Report identified noncompliance with all four areas of noncompliance listed above. The Hawaii Department of Health (HDOH), the State's lead agency for Part C, proposed in its November 12, 2002 Improvement Plan (with minor revisions in January 29, 2003 and February 13, and 16, 2003) that it would correct all four findings above and have in place a monitoring system that ensure compliance with Part C for all programs and agencies that provide Part C services in Hawaii. OSEP's April 1, 2003 letter accepted the State's Improvement Plan and directed the State to demonstrate correction of each area of noncompliance by April 1, 2004. In its April 7, 2004 Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) and July 1, 2004 final Progress Report, the State acknowledged that its data for, and monitoring of, programs serving at-risk children were unreliable and inconsistent. In addition, the State reported in these 2004 documents data indicating significant noncompliance throughout the State for programs serving both developmentally delayed and at-risk children with many Part C requirements, including those that were the basis of findings in OSEP's 2002 Monitoring Report. The State reported in its March 25, 2005 FFY 2003 APR

¹ Hawaii's Part C system provides services to infants and toddlers who: 1) have developmental delays and receive care coordination and services from the Early Intervention Section (EIS); (2) are biologically at risk and medically fragile and receive care coordination from the Public Health Nursing Branch (PHNB) and services from EIS; and (3) are environmentally at risk and receive both care coordination and other services from the Maternal and Child Health Branch (MCHB) that includes Healthy Start, Home Reach, and Early Head Start programs. The Hawaii Department of Health (HDOH) is the State's lead agency and EIS, PHNB, and MCHB are programs administered by HDOH.

monitoring data based on its revised monitoring system (which the State indicated were reliable) indicating significant noncompliance by all programs with many Part C requirements including the findings from OSEP's 2002 Monitoring Report.

A. Failure to monitor and correct under 34 CFR §303.501

1. Basis for requiring special conditions.

OSEP's 2002 Report found that Hawaii had failed, as required by 20 U.S.C. Section 1435(a)(10) and 34 CFR §303.501(a)(2) and 303.501(b), to monitor all Part C agencies and programs used to provide Part C services in Hawaii and to correct noncompliance. The State proposed in its November 12, 2002 Improvement Plan (with revisions in January 29, 2003 and February 13, and 16, 2003) that it would monitor all agencies and programs used by Hawaii to provide Part C services (through development and use of monitoring procedures and instruments) to ensure compliance with Part C. OSEP's April 1, 2003 letter accepted the State's Improvement Plan and informed the State that it had one year from the letter to correct the noncompliance and directed the State to provide quarterly Progress Reports. In its April 7, 2004 FFY 2002 APR, and July 1, 2004 final Progress Report, the State provided data indicating significant noncompliance in all programs across the State.² The State reported in its March 25, 2005 FFY 2003 APR, monitoring data collected through its revised monitoring system from December 2004-February 2005 that indicated significant noncompliance with all findings from OSEP's 2002 Monitoring Report.

2. Nature of special conditions.

In the first progress report, due on November 21, 2005, HDOH must provide:

1. A list of programs and agencies monitored by the lead agency through September 30, 2005 and, for each program or agency determined to be out of compliance with any Part C requirement, information about the: (1) findings of noncompliance made; (2) timelines for correction; and (3) corrective actions required, including the evidence of change or correction data that the lead agency will require programs or agencies to provide before the noncompliance is determined to be corrected; and
2. A list of all sanctions and enforcement mechanisms that the lead agency may use for each program or agency providing Part C services in Hawaii.

In the final progress report, due on April 14, 2006, HDOH must provide:

3. Updated information from the November 21, 2005 report in 1 above for agencies monitored through March 30, 2006 and also provide for each agency or program that had corrective actions approved prior to March 30, 2006, the status of correction including data submitted to the lead agency by the agency or program and any additional enforcement or corrective actions taken by the lead agency; and

² HDOH reported that its data in the FFY APR was unreliable and it was in the process of revising its monitoring; however, in its FFY 2003 APR the State indicated that it had revised its monitoring system and its data for all programs was reliable. Therefore, OSEP has not imposed special conditions on the State's ability to identify noncompliance, but rather on the State's ability to correct.

4. A list of any sanctions and enforcement mechanisms used or identified as needed by the lead agency by each program or agency providing Part C services in Hawaii.

B. *Infants and toddlers received a comprehensive evaluation/assessment in all five developmental areas on a timely basis under 34 CFR §303.322.*

1. Basis for requiring special conditions.

OSEP's 2002 Report found that Hawaii failed to ensure that all infants and toddlers in the EIS program received a comprehensive evaluation and assessment in all five developmental areas on a timely basis under 34 CFR §303.322 (comprehensive, timely evaluation). The State proposed in its November 12, 2002 Improvement Plan (with minor revisions in January 29, 2003 and February 13, and 16, 2003) that it would ensure compliance with the comprehensive, timely evaluation requirement for its EIS program. OSEP's April 1, 2003 letter accepted Hawaii's Improvement Plan and directed the State to ensure compliance with the comprehensive, timely evaluation by April 1, 2004. Hawaii's FFY 2002 APR submitted on April 7, 2004 indicated that, from the monitoring of 11 EIS programs in 2002-2003, 82% of 88 individual records reviewed indicated that children received a comprehensive developmental evaluation; however, HDOH also reported that the data were unreliable for the 2 EIS programs and that it could not determine compliance and, therefore, did not develop corrective action plans. HDOH's FFY 2003 APR, submitted on April 25, 2005 reported (on pages 87-88) that children referred to the EIS program do not receive a full evaluation in all five developmental areas. HDOH reported "if a child cannot access a comprehensive developmental evaluation (CDE) within 45 days, the child is provided an evaluation in his/her major area(s) of need, and placed on a wait list for the CDE. This ensures that all children will receive a CDE, even if it is not timely." On page 88 of its March 25, 2005 FFY 2003 APR, HDOH reported that 60% of EIS eligible children received a comprehensive evaluation and the additional 40% received a "single" evaluation or "partial" evaluation.

2. Nature of special conditions.

In the first progress report, due on November 21, 2005, HDOH must provide:

1. Data for July, August and September 2005 from each EIS program on the percentage and number of infants and toddlers suspected of having a disability who receive a comprehensive evaluation/assessment in all five developmental areas: (a) within 45 days from referral; and (b) more than 45 days from referral (disaggregating by number any children for which the State has documented explanations for the delay due to family circumstances outside the lead agency's control such as an ill child or parent refusal to consent to an evaluation); and
2. A list of the EIS programs identified by the State through September 30, 2005 as being in noncompliance with the comprehensive evaluation requirement and for each EIS program determined to be out of compliance, the corrective actions approved by the State including the evidence or correction data required by the State to determine the EIS program is in compliance and the status of correction.

In the second progress report, due on April 16, 2006, HDOH must provide:

1. Updated EIS data under 1 above for October, November and December 2005 and January, February, and March 2006; and

2. Updated monitoring data under 2 above for EIS programs identified as being in noncompliance with the comprehensive evaluation requirement through March 30, 2006.

C. *IFSPs contain the present developmental functioning for each child under 34 CFR §303.344(a).*

1. Basis for requiring special conditions.

OSEP's 2002 Report found that Hawaii failed to ensure that IFSPs for children identified as having a developmental delay under the EIS program included the child's present levels of developmental functioning in each of the developmental areas under 34 CFR §§303.322(d) and 303.344 (present levels of functioning). The State proposed in its November 12, 2002 Improvement Plan (with minor revisions in January 29, 2003 and February 13, and 16, 2003) that it would ensure compliance with the present level of functioning requirement for all eligible infants and toddlers with disabilities identified as having a developmental delay under the EIS program. OSEP's April 1, 2003 letter accepted Hawaii's Improvement Plan and directed the State to ensure compliance with this requirement by April 1, 2004. Hawaii's FFY 2002 APR submitted on April 7, 2004 indicated (on page 57) that of the 104 EIS records reviewed, 24% included statements of present levels of functioning in the required developmental areas. On page 16 of its March 25, 2005 FFY 2003 APR, HDOH reported compliance data from the EIS programs for the following IFSP content indicators: (1)"statement of present levels of development" reported 79% compliance; (2)"IFSP outcomes, criteria, procedures, and timelines" reported 19% compliance; (3)"mandated service with frequency, intensity, method, location and payment" reported 27% compliance; and (4)"steps to support procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting" reported 38% compliance.

2. Nature of special conditions.

In the first progress report, due on November 21, 2005, HDOH must provide:

1. Data for July, August and September 2005 for each EIS program on the percentage and number of eligible infants and toddlers who have IFSPs and do not have IFSPs containing present levels of functioning in all five developmental areas; and
2. A list of the EIS programs identified by the State through September 30, 2005 as being in noncompliance with the present level of functioning requirement and for each EIS program determined to be out of compliance, the corrective actions approved by the State including the evidence or correction data required by the State to determine the EIS program is in compliance and the status of correction.

In the second progress report, due on April 16, 2006, HDOH must provide:

3. Updated EIS data under 1 above for October, November and December 2005 and January, February, and March 2006; and
4. Updated monitoring data under 2 above for EIS programs identified as being in noncompliance with the present functioning level requirement through March 30, 2006.

D. Failure to conduct timely transition planning for each eligible child under 34 CFR §303.148.

1. Basis for requiring special conditions

OSEP's 2002 Report found that the State had failed to develop to develop transition plans for children receiving Part C services and for children potentially eligible under Part B of IDEA to notify school districts for those children who were approaching the age of transition and conduct timely transition conferences (transition planning) as required under 34 CFR §303.148. The State proposed in its November 12, 2002 Improvement Plan (with minor revisions in January 29, 2003 and February 13, and 16, 2003) that it would ensure compliance with the transition planning requirements for all children receiving Part C services. OSEP's April 1, 2003 letter accepted Hawaii's Improvement Plan and directed the State to ensure compliance with this requirement by April 1, 2004. In the State's April 7, 2004 FFY 2002 APR, no data were provided on any of the transition planning requirements (that transition plans were developed for all children and for children potentially eligible under Part B, that school districts were notified, and timely transition conferences held) as required under 34 CFR §303.148. The State reported in its July 2004 Progress Report, baseline data from all agencies monitored (EIS, PHNB and MCHB) indicating noncompliance with the transition planning conference timelines (33% for EIS, 69% for PHNB and 26% for MCHB). HDOH reported that while the lack of documentation in the IFSP did not indicate that the conference did not happen, concerns remained regarding the reliability and validity of the data from other agencies. On pages 15-17 of its March 25, 2005, FFY 2003 APR, HDOH reported monitoring data for the EIS, PHNB and MCHB agencies from 2004-2005 that indicated significant noncompliance with timely transition planning. For the indicator, "the transition conference was held at least 3-6 months prior to the child's 3rd birthday or start of home school," the State reported the following compliance data: 38% for EIS, 42% for PHNB, and 47% for MCHB. In addition, HDOH reported other transition planning compliance data in the FFY 2003 APR as: (1) "information about the child was transmitted to the Department of Education," EIS - 67%, PHNB - 38% and MCHB - 17%; and (2) "steps to support procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in a new setting," EIS - 38%, PHNB - 63% and MCHB - 74%.

2. Nature of special conditions.

In the first progress report, due on November 21, 2005, HDOH must provide:

1. Monitoring, child record review sampling or other aggregated data from all Part C programs and agencies for July, August, and September 2005 under 34 CFR §303.148 on the number or percentage of children for whom: (1) transition plans were developed on the IFSP before the child's third birthday; and (2) for children potentially eligible for Part B services, the local school district was notified and transition conferences were held at least 90 days prior to the child's third birthday; and
2. A list of the programs or agencies identified by the State through September 30, 2005 as being in noncompliance with any of the transition planning requirements; and for each program or agency determined to be out of compliance, the corrective actions approved by the State including the evidence or correction data required by the State to determine the EIS program is in compliance and the status of correction.

In the second progress report, due on April 16, 2006, HDOH must provide:

3. Updated transition planning data under 1 above for October, November and December 2005 and January, February, and March 2006; and
4. Updated transition planning compliance information under 2 above through March 30, 2006.

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, HDOH provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require HDOH 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

HDOH can write to Troy R. Justesen 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 HDOH 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

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

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Julia Martin
400 Maryland Ave, SW
Washington, DC 20202-2550