

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 North Carolina's Federal Fiscal Year (FFY) 2005 grant award under Part C of the Individuals with Disabilities Education Act (Part C of IDEA), related to two areas of longstanding noncompliance that the State has failed to correct: (1) conducting evaluations and assessments and convening initial Individualized Family Service Plan (IFSP) meetings within 45 days of children's referrals, as required under 34 CFR §§303.321(e), 303.322(e) and 303.342(a) (45-day timeline); and (2) convening timely transition planning conferences in the case of a child who may be eligible for preschool services under Part B at least 90 days prior the child's third birthday, as required under 34 CFR §303.148(b)(2)(i) (transition conference).

A. Conducting Evaluations and Assessments and Initial IFSP Meetings within 45 Days of Referral.

1. Basis for Requiring Special Conditions

OSEP's October 30, 2003 letter to the State identified noncompliance with the 45-day timeline requirement, based on the data and information submitted in the State's Self-Assessment and Improvement Plan. On December 30, 2003, the State submitted a revised Improvement Plan that proposed to correct this finding. OSEP's April 7, 2004 letter accepted the State's revised Improvement Plan and directed the State to submit, by October 30, 2004, a final Progress Report that demonstrated correction of the noncompliance.

The State's 2004 and 2005 submissions provided data indicating continued noncompliance. In its April 5, 2004 FFY 2002 APR, the State reported data from "Referral to IFSP" that indicated that, for the last three years, only about 50% of the IFSPs were developed within 45 days from referral and that, for 2003, of 5,102 infants and toddlers referred to the Part C system, the 45-day timeline from "referral to eligibility" was met for only 3,647 children. The State's November 10, 2004 final progress report noted (on page 3) "in FY 03-04 of all the children served, 2,237 did not receive their IFSP in the required timeframe." The State's April 29, 2005 submission reported that the referral to eligibility appeared to be the cause for the State's failure to meet the timeline.¹ The State's April 29, 2005 submission also provided data from a record review tool being piloted in seven of the eighteen Children's Developmental Services Agencies (CDSAs) in which, of the 82 records reviewed, 54 (66%) did not meet the 45-day timeline.

2. Nature of Special Conditions

In the first Progress Report, due on October 28, 2005, the State must provide:

- a. Statewide aggregate data (already being collected by the State) for July, August and September 2005 showing:

¹ "Of the 432 children who were enrolled in the Infant-Toddler Program during the month of December 2004, 259 (60%) did not have an IFSP developed within 45 days from referral (excluding parental delay). For these 259 who were not in compliance, the median number of days from referral to eligibility determination was 52 days; and the median number of days from eligibility determination to IFSP development was 28 days. Once eligibility was determined, 84 (32%) had an IFSP developed within two weeks. It appears from this analysis that most of the timeline is spent in the eligibility determination/evaluation process." State's April 29, 2005 submission, page 3.

1. the number and percentage of infants and toddlers for whom evaluations and assessments were completed: (a) within 45 days from referral, and (b) longer than 45 days from referral, and for this number, disaggregating by number any children for which the State has documented explanations due to family circumstances outside the lead agency's control, and
 2. the number and percentage of infants and toddlers for whom evaluations, assessments, and initial IFSP meetings were conducted: (a) within 45 days from referral, and (b) longer than 45 days from referral, and for this number, disaggregating by number any children for which the State has documented explanations due to family circumstances outside the lead agency's control;
- b. A list of the CDSAs, counties or providers identified by the State as being in noncompliance with the 45-day timeline requirement from the FFY 2003 APR reporting period through September 30, 2005, and for each finding of noncompliance, the State's analysis of the causes for those delays, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that it is corrected as soon as possible, but no later than April 1, 2006 and the status of correction; and
 - c. Other available monitoring data on the 45-day timeline (such as updated data collected in the State's record review and, to the extent available, broken down by CDSA).

In the second Progress Report, due on April 14, 2006, the State must provide: (a) updated data on the 45-day timeline requirement under 1 above for October 1, 2005, through March 30, 2006; and (b) updated monitoring data and information on the 45-day timeline requirement under items 2 and 3 above for the period October 1, 2005 through March 30, 2006.

B. Convening Timely Transition Planning Conferences.

1. Basis for Requiring Special Conditions

OSEP's October 30, 2003 letter to the State identified noncompliance with the requirement in 34 CFR §303.148(b)(2)(i) that children potentially eligible for Part B services have transition planning conferences at least 90 days prior to the child's third birthday (transition conference). OSEP's finding was based on the State's monitoring data in its State's Self-Assessment showing that 48 percent of the counties it monitored had difficulty meeting transition timelines and conducting the transition conferences in a timely fashion. On December 30, 2003, the State submitted a revised Improvement Plan that proposed to correct the transition conference finding. OSEP's April 7, 2004 letter accepted the State's revised Improvement Plan and directed the State to submit, by October 30, 2004, a final Progress Report demonstrating correction of the noncompliance.

The State's 2004 and 2005 submissions failed to provide data initially and when data were provided, they indicated continued noncompliance with the transition conference requirement. In its April 29, 2005 submission, the State acknowledged continued noncompliance with this requirement and reported that, of the 26 children's records that it reviewed as part of a pilot study, only nine of the children's records indicated that a transition planning conference was held, and of those nine records, only three conferences were held at least 90 days prior to the child's third birthday, and two records indicated that the transition conference was not held prior to the 90-day transition period due to family scheduling problems.

2. Nature of Special Conditions

In the first Progress Report, due on October 28, 2005, the State must provide:

- a. Aggregated, monitoring or sampling data for July, August and September 2005 (to the extent available, broken down by CDSA) showing the number and percentage of children potentially eligible for Part B who have a transition planning conference at least 90 days prior to the third birthday; for children who do not have a transition planning conference at least 90 days prior to the third birthday, data on the number for whom the State has documented explanations for why the timeline was not met; and
- b. A list of the CDSAs, counties or providers identified by the State as being in noncompliance with the 90-day transition planning conference, and, for each finding of noncompliance, the State's analysis of the causes for those delays, the specific corrective actions the State has required (including the evidence of change or correction data required by the State) to ensure that the finding is corrected as soon as possible, but no later than April 1, 2006 and the status of correction; and
- c. Any other available monitoring data on the transition conference (such as updated data collected in the State's record review and, to the extent available, broken down by CDSA).

In the second Progress Report, due on April 14, 2006, the State must provide: (a) updated data on the transition conference requirement under 1 above for October 1, 2005, through March 30, 2006; and (b) updated monitoring data and information on the transition conference requirement under items 2 and 3 above for the period October 1, 2005 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, the State provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require the State to submit data demonstrating compliance with each of the two areas of noncompliance that are the subject of these Special Conditions under Part C.

III. Method of Requesting Reconsideration

The State can write to Troy R. Justesen if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

IV. Submission of Reports

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

John Edwards
Education Program Specialist
U.S. Department of Education
Office of Special Education Programs
Room 4025
550 12th Street, SW
Washington, DC 20202