

## Enclosure B

### New Mexico Part C FFY 2007 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 New Mexico's Federal Fiscal Year (FFY) 2007 grant award under Part C of the Individuals with Disabilities Education Act (Part C). OSEP's July 3, 2006 FFY 2006 Part C grant award letter to the New Mexico Department of Health (NMDOH) imposed the following two Special Conditions to ensure that:

1. All infants and toddlers referred to Part C have evaluations and assessments and initial Individualized Family Service Plan (IFSP) meetings conducted within 45 days of referral to the early intervention program as required by 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a) (45-day Timeline).
2. Early intervention services listed on the child's IFSP are provided to the child and family as required by 34 CFR §303.342(e) (Service Provision).

New Mexico's July 3, 2006 Part C FFY 2006 grant award letter required NMDOH to submit two reports, the first by February 1, 2007 and a final progress report, by June 1, 2007. The State did not submit the final progress report that was due by June 1, 2007. The State's February 1, 2007 report provided data (listed directly below) that continue to demonstrate noncompliance with each of these two areas. New Mexico has not met its FFY 2006 Special Conditions and, therefore, these Special Conditions are imposed on New Mexico's FFY 2007 Part C grant.

#### A. 45-day Timeline

In its February 1, 2007 FFY 2005 Annual Performance Report (APR), under indicator 9, the State reported that it identified 10 findings of noncompliance by early intervention service (EIS) programs with 45-day Timeline requirements in FFY 2004, and that 3 of these 10 findings (30%) were corrected within one year. The State's FFY 2005 APR data reflected 64% compliance with the 45-day Timeline requirement for FFY 2005. The State's FFY 2006 special conditions required the State to report by June 1, 2007 updated compliance or correction data for the 13 EIS providers that were listed in the State's June 2006 progress report as not being in compliance with the 45-day Timeline requirements. Although OSEP could not determine which specific EIS programs or providers have corrected noncompliance with 45-day Timeline requirements, at least seven FFY 2004 findings of noncompliance were not reported as corrected.

#### B. Service Provision

In its FFY 2005 APR, under indicator 9, the State reported that it identified 10 findings of noncompliance by EIS programs with the Service Provision requirements in FFY 2004, and that 3 of these 10 findings (30%) were corrected within one year. The State did not provide, as required by the FFY 2006 special conditions, updated data demonstrating compliance, for the 3 EIS providers listed in the State's June 2006 progress report that were not in compliance with Part C's Service Provision

requirements. At least seven findings of noncompliance with the Service Provision requirements remain outstanding from FFY 2004.

## **2. Nature of the Special Conditions**

The State must provide data by June 1, 2008 demonstrating correction of noncompliance with the: (1) 45-day Timeline and (2) Service Provision requirements. To document its progress in ensuring the correction, NMDOH must submit to OSEP two Progress Reports, the first with its FFY 2006 APR due February 1, 2008<sup>1</sup> and a final Progress Report on June 1, 2008.

### **A. 45-day Timeline**

In the first Progress Report, due February 1, 2008 with its FFY 2006 APR, the State must provide updated correction data for each of the: (i) 13 EIS providers listed in the State's June 2006 progress report that were not in compliance with the 45-day Timeline requirements, and (ii) seven EIS programs identified in Indicator 9 of the State's FFY 2005 APR as not having corrected noncompliance in this area. The data must indicate whether each of these EIS programs or providers has corrected this finding and, if not, the corrective actions, including program-specific enforcement actions, that NMDOH has taken to ensure compliance.

In the second Progress Report, due June 1, 2008, the State must provide updated correction data (including any program-specific enforcement actions) for any EIS programs or providers for which NMDOH was not able to demonstrate correction with the 45-day Timeline requirements in the February 1, 2008 progress report.

### **B. Service Provision**

In the first Progress Report, due February 1, 2008 with its FFY 2006 APR, the State must provide updated correction data for each of the: (i) three EIS providers listed in the State's June 2006 progress report that were not in compliance with the Service Provision requirements, and (ii) seven providers identified in Indicator 9 of the State's FFY 2005 APR as not having corrected noncompliance in this area. The data must indicate whether each of these EIS programs or providers has corrected this finding and, if not, the corrective actions, including program-specific enforcement actions, that NMDOH has taken to ensure compliance.

In the second Progress Report, due June 1, 2008, the State must provide updated correction data (including any program-specific enforcement actions) for any EIS programs or providers for which NMDOH was not able to demonstrate correction with the Service Provision requirements in the February 1, 2008 progress report.

## **3. Evidence Necessary to Remove Conditions**

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, New Mexico provides documentation, satisfactory to the Department, that it has fully met the conditions set forth above, which require New Mexico to submit

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<sup>1</sup> In addition to the specific reporting requirements set forth in this enclosure, the State must also, as part of its FFY 2006 APR, due by February 1, 2008, provide the required data for Indicators 1, 7 and 9 for the reporting period for July 1, 2006 through June 30, 2007.

data demonstrating correction of two areas of noncompliance (45-day Timeline and Service Provision) that are the same subject of these Special Conditions under Part C.

**4. Method of Requesting Reconsideration**

The State can write to Patricia Guard, OSEP Acting Director, at the address below, 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.

**5. Submission of Reports**

All reports under these Special Conditions must be submitted to:

U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Attn: Virginia Sheppard  
400 Maryland Ave., S.W.  
Washington, D.C. 20202-2550