

Enclosure B

Special Conditions

1. Basis for Requiring Special Conditions

The Office of Special Education Programs (OSEP) is imposing Special Conditions on the Bureau of Indian Education's (BIE) Federal Fiscal Year (FFY) 2009 grant award under Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and all existing Part B funds that are still available for obligation. OSEP is imposing these Special Conditions because of BIE's failure to complete all of the corrective actions contained in Section C of the Program Improvement and Accountability Plan (PIAP). The objective of Section C of the PIAP is to ensure BIE provides a free appropriate public education (FAPE) to all eligible students in all BIE-funded schools.

In response to serious concerns raised in 2005 by the U.S. Department of Education (Department) concerning the BIE's administration of Elementary and Secondary Education Act (ESEA) and IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP is Interior's plan for meeting the statutory requirements set forth in ESEA and IDEA for properly managing federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that ESEA and IDEA have established. The BIE has been submitting quarterly reports to the Department on its progress in implementing the PIAP, and the BIE and the Department have been meeting quarterly to discuss the BIE's progress in implementing the PIAP's corrective actions.

Because of the lack of satisfactory progress implementing the PIAP, the Department placed special conditions on Interior's receipt of all FFY 2007 and FFY 2008 ESEA and IDEA funds the Department provided to Interior. As part of the special conditions, the Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of ESEA and IDEA. At this time, the BIE has not completed all of the corrective actions contained in Section C of the 2008-2009 PIAP. Specifically, the BIE's quarterly report on Section C for the quarter ending March 31, 2009 indicates that the BIE has not been able to demonstrate that 100% of the findings of noncompliance are corrected within one year of identification (*Milestone C.4.1.4*), that schools write and implement corrective action plans that ensure correction of findings of noncompliance within one year of identification (*Milestone C.4.1.5*); or that the BIE creates and implements sanctions for schools not implementing corrective action plans (*Subtask C.4.2.1*). In addition, the BIE is awaiting final approval on its Coordinated Services Plan (CSP) and has therefore not conducted the required training (*Milestones C.5.1.2 and C.5.1.3*). Therefore, the BIE has not demonstrated full compliance with all of the statutory and regulatory requirements of IDEA.

2. Nature of the Special Conditions

As a result of the review of the BIE's quarterly report on Section C of the PIAP for the quarter ending March 31, 2009, OSEP is imposing the following special conditions.

A. Final Report on Section C of the 2008-2009 PIAP: BIE must submit to the Department by July 31, 2009, its final report on Section C of the PIAP for the 2008-2009 school year. This report covers April 1, 2009 through June 30, 2009. The report must contain (a) the status of each task and subtask scheduled to be completed, (b) Interior's supporting documentation regarding completion of these subtasks, including explanation of delays for all subtasks and expected completion dates for all unimplemented actions, and (c) other data or documentation as the Department may request in order to verify the completion of tasks and subtasks.

B. Revisions to Section C the 2009-2010 PIAP: The BIE is no longer required to report to the Department on the following tasks, sub-tasks and/or milestones:

Task C.1.0 (inclusive of Subtask C.1.1 and Milestones C.1.1.1-C.1.1.3): Review and update policies and procedures to comply with reauthorization of IDEA. The BIE completed the task of reviewing and updating its policies and procedures to comply with changes made by the IDEA Improvement Act of 2004 and its implementing regulations that were issued on August 14, 2006. The BIE needs to make additional changes as a result of the final Part B regulations that were issued on December 1, 2008. The BIE has provided an assurance in its FFY 2009 grant application for Part B of IDEA that it will complete the required changes by December 31, 2009. Since this will be monitored through the Part B application process, the BIE is no longer required to report to the Department on these tasks and milestones in the PIAP.

Task C.2.0 (inclusive of Subtask C.2.2 and Milestones C.2.1.1-C.2.2.2): Train all ADDs, ELOs, PIAP Education Specialists, and School Administrators on new policies and procedures. See the comments above. The BIE is no longer required to report to the Department on these tasks and milestones in the PIAP.

Task C.3.0 (inclusive of Subtask 3.1 and Milestone 3.1.1): Conduct Second Tier monitoring. The BIE made changes to its monitoring procedures that eliminated second tier monitoring. For this reason, the BIE is no longer required to report to the Department on this task and milestone in the PIAP.

Milestone C.4.1.3: Begin monitoring cycle. The BIE has implemented an annual monitoring cycle. Therefore, OSEP considers this milestone completed and the BIE is no longer required to report to the Department on this milestone in the PIAP.

Task C.6.0 (inclusive of Subtask C.6.1 and Milestones C.6.1.1 and C.6.1.2): Submit annual performance report. The submission of the annual performance report (APR) is an annual requirement for all States and the BIE. The BIE met this requirement for the last three years. Therefore, the BIE is no longer required to report to the Department on these tasks and milestones in the PIAP.

C. Continued Implementation of Section C of the PIAP and 2009-2010 Reporting Requirements:

Continued Implementation: Interior will continue to implement Section C of the PIAP for the summer term of 2009 and school year 2009-2010 until all corrective actions have been implemented. To ensure progress, Interior will provide the Department with quarterly progress reports, which will be due to the Department 30 days after the end of each quarter. Each quarterly report will contain:

- (a) a description of activities and progress for each subtask during the reporting period;
- (b) the status of each subtask scheduled to be completed during the reporting period along with specific completion dates for all tasks, subtasks, and key milestones;
- (c) supporting documentation regarding completion of the subtasks, including explanation of delays for all subtasks and expected completion dates for all unimplemented actions;
- (d) updates to ensure that previously completed tasks and subtasks remain completed; and
- (e) other data or documentation as the Department may request in order to verify the completion of tasks and subtasks.

Required Documentation to Verify Completion of Certain Milestones: In addition to the reporting listed above, in order to demonstrate completion of the following milestones in Section C of the PIAP, the BIE must include the following information and/or documentation:

Milestone C.4.1.4: BIE will ensure 100% of findings of noncompliance are corrected within one year of identification. OSEP's FFY 2007 SPP/APR Response Table requires the BIE to demonstrate, in the FFY 2008 APR, due February 1, 2010, that the BIE has corrected the remaining 17 findings of noncompliance identified in FFY 2006 that the BIE reported were not corrected under this indicator in the FFY 2007 APR. The Response Table further requires the BIE to review its improvement activities and revise them, if appropriate, to ensure they will enable the BIE to provide data in the FFY 2008 APR, due February 1, 2010, demonstrating that the BIE timely corrected noncompliance identified by the BIE in FFY 2007, in accordance with 20 U.S.C. 1232d(b)(3)(E) and 34 CFR §§300.149 and 300.600(e) and OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02). In reporting on this milestone, the BIE must provide the following information:

- (a) In the first quarterly report for the 2009-2010 PIAP, due October 31, 2009, the BIE must provide updated data on the status of correction of the 17 findings of noncompliance identified in FFY 2006 that the BIE reported were not corrected under this indicator in the FFY 2007 APR. The BIE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance.
- (b) In lieu of reporting in the second quarterly report for the 2009-2010 PIAP, due January 31, 2010, the BIE must report in the FFY 2008 APR, due February 1, 2010, as required in the FFY 2007 SPP/APR Response Table under Indicator 15. In its response to Indicator 15, the BIE must:

- (i) provide information from the first quarterly report and updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2006, including the actions the State has taken to address the uncorrected noncompliance;
- (ii) report the number of findings of noncompliance identified through all components of the BIE's general supervision system in FFY 2007 and the number and percent of corrections completed as soon as possible but in no case later than one year from identification. For any findings of noncompliance not corrected within one year of identification, the BIE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance and the status of correction. In reporting on the correction of noncompliance, the BIE must report that it has: (1) corrected all instances of noncompliance; and (2) verified that each school or agency with identified noncompliance is correctly implementing the specific regulatory requirements consistent with OSEP Memo 09-02; and
- (iii) address all issues identified in OSEP's June 1, 2009 response to the BIE's FFY 2007 APR submission related to Indicator 15 and this Special Condition.

- (c) In the third quarterly report for the 2009-2010 PIAP, due April 30, 2010, the BIE must report the number of findings of noncompliance identified from July 1, 2008 through March 31, 2009, through all components of the BIE's general supervision system (State monitoring and the dispute resolution system) and the number and percent of corrections completed as soon as possible but in no case later than one year from identification, consistent with OSEP Memo 09-02. For any findings of noncompliance not corrected within one year of identification, the BIE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance and the status of correction.

The BIE must also provide an update on the status of correction of any remaining uncorrected noncompliance identified in FFY 2006 and FFY 2007 and the actions the BIE has taken to address the uncorrected noncompliance consistent with OSEP Memo 09-02.

Milestone C.4.1.5: 1 Sanctions applied if school fails to write and implement corrective action plans:

- (a) In the first quarterly report for the 2009-2010 PIAP, which covers July 1, 2009 through September 30, 2009 and is due October 31, 2009, the BIE must provide the policies and/or procedures it has developed to ensure subsequent correction when schools are unable to correct findings of noncompliance in a timely manner, including follow up visits, technical assistance, enforcement actions and/or sanctions. The BIE must also report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.

- (b) In the second quarterly report for the 2009-2010 PIAP, which covers October 1, 2009 through December 31, 2009 and is due January 31, 2010, the BIE must report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.
- (c) In the third quarterly report for the 2009-2010 PIAP, which covers January 1, 2010 through March 31, 2010 and is due April 30, 2010, the BIE must report on the number, if any, of enforcement actions and/or sanctions it has taken during the reporting period and describe those actions.

3. 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 BIE provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above, which require the BIE to submit data demonstrating compliance with each of the milestones that are the same subject of the Special Conditions under Part B.

4. Method of Requesting Reconsideration

The BIE can write to the Office of Special Education Programs Acting Director, Patricia J. Guard, 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 BIE and the reasons for those requested changes.

5. Submission of Reports

The BIE must submit all reports required under the Special Conditions. The quarterly reports for Section C of the PIAP should be submitted to:

Matthew Schneer
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12th Street, SW, Room 4035
Washington, DC 20202

and

Susan Benbow
Risk Management Service
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, Room 7E208
Washington, DC 20202