

Enclosure D

California Special Conditions

1. Basis for Requiring Special Conditions

Due to the State's long-standing failure to comply with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA), the Office of Special Education Programs (OSEP) designated California as a high-risk grantee, and imposed Special Conditions on California's Federal Fiscal Year (FFY) 2008 Part B grant award pursuant to 34 CFR §80.12. OSEP's prior actions were based, in part, upon the failure of the California Department of Corrections and Rehabilitation (CDCR- formerly, the California Department of Corrections (CDC) ¹) to ensure that a free appropriate public education (FAPE) is available to eligible inmates with disabilities in adult correctional facilities consistent with the requirements of Part B. 34 CFR §§300.101-300.102. Because this noncompliance has not been corrected, OSEP is imposing Special Conditions on California's FFY 2009 Part B grant award pursuant to 34 CFR §80.12.

These Special Conditions are a continuation and clarification of the prior conditions that applied to CDCR and are imposed pursuant to IDEA section 616(g) and 34 CFR §80.12. In its 1996 Monitoring Report, OSEP found that California was not making special education and related services available to eligible youth with disabilities in any of California's adult correctional facilities. The 1996 Monitoring Report required that the State take corrective action. Last year's Special Conditions contained a provision regarding this requirement. To date, OSEP does not have any data indicating that CDCR has ensured that FAPE is made available to all eligible youth with disabilities in adult correctional facilities. Therefore, these Special Conditions remain appropriate under 20 U.S.C. §1412(a)(11) and 34 CFR §300.149 (formerly 34 CFR §300.600).

2. Nature of the Special Conditions

At the request of the Department, the State will provide one or more reports detailing the steps the State has taken to comply with the requirements of Part B of the IDEA, including steps taken by CDCR, the California Department of Education (CDE), or both, as appropriate, to locate, identify, evaluate, and provide special education and related services to eligible youth with disabilities in adult correctional facilities, consistent with the requirements of Part B. Full compliance with a request for a report under these Special Conditions must be achieved within thirty days of any such request.

Any report submitted under these Special Conditions shall, at a minimum, include the following documentation and information:

- a. CDCR's written policies and procedures for identifying individuals with disabilities incarcerated in adult correctional facilities who are eligible to receive special education and related services, consistent with 34 CFR §§300.102 and 300.111;

1 On June 5, 1997, in his Executive Order W-155-97, former Governor Wilson transferred from CDE to CDC the responsibility for ensuring that the requirements of the IDEA are met with respect to eligible youth who are convicted as adults under State law and are incarcerated in adult prisons.

- b. A chronological list of any actions that CDCR has taken to identify individuals with disabilities who are incarcerated in adult correctional facilities and eligible to receive special education and related services, consistent with 34 CFR §§300.102 and 300.111;
- c. The number of individuals with disabilities in adult correctional facilities that CDCR has identified as eligible to receive special education and related services consistent with 34 CFR §§300.102 and 300.111;
- d. CDCR's written policies and procedures to make FAPE available to eligible individuals with disabilities in adult correctional facilities;
- e. A chronological list of any actions that CDCR has taken to make FAPE available to eligible individuals with disabilities in adult correctional facilities; and
- f. Data on the number of eligible individuals with disabilities in adult correctional facilities to whom CDCR has made FAPE available.

3. Evidence Necessary for Conditions to Be Removed

The Department will remove these Special Conditions if, at any time prior to the expiration of the grant year, California provides documentation, satisfactory to the Department, that it has fully met the requirement to make FAPE available to eligible individuals with disabilities in adult correctional facilities.

4. Method of Requesting Reconsideration

The State may 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 State and the reasons for those requested changes.

5. Submission of Reports and Documentation

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

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