

Enclosure E

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the District of Columbia Office of the State Superintendent's (DC OSSE) Federal Fiscal Year (FFY) 2009 grant awards under IDEA. The U. S. Department of Education (Department) continues to have significant concerns about the District of Columbia's inability to correct the areas of longstanding noncompliance addressed in the Special Conditions placed on the State's FFY 2008 grant award under Part B. As a result of these concerns and the determination of "needs intervention" for the third consecutive year under section 616(d) of the IDEA, OSEP will continue to require significant reporting, including requiring the DC OSSE to provide three Special Conditions progress reports, the State Performance Plan/Annual Performance Report (SPP/APR), and a copy of each "Status Report," including attachments, filed by the State with the U.S. District Court regarding the State's efforts to comply with the requirements of the Blackman Jones Consent Decree. In addition, OSEP is requiring the DC OSSE to continue to access technical assistance that is designed to help the State improve its system of general supervision from the Data Accountability Center (DAC), an OSEP-funded technical assistance provider. In each of the three required progress reports, the State must include a description of the technical assistance the State accessed and the actions taken as a result of the technical assistance.

OSEP is continuing the Special Conditions related to the State's failure to demonstrate compliance with the requirements to ensure timely initial evaluations and reevaluations, implementation of hearing officer determinations, placement in the least restrictive environment, and identification and correction of noncompliance. OSEP is also imposing reporting requirements in two additional areas in which OSEP has determined the State "needs intervention:" (1) data collection and reporting for SPP/APR compliance Indicators 9, 10, and 17; and (2) ensuring that youth with disabilities aged 16 and above have an individualized education program (IEP) that includes the required secondary transition content.

On June 1, 2009 the Department informed the DC OSSE that pursuant to section 616(e)(2)(B)(iii) of the IDEA and 34 CFR §300.604(b)(2)(iii), the Department intended to withhold 20 percent of the State's FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA until OSSE has sufficiently addressed the areas in which it "needs intervention," based on OSEP's determination that the DC OSSE "needs intervention" for the third consecutive year in meeting the requirements of Part B of the IDEA. The Department has granted the DC OSSE's request for a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 "to appeal the Department's decision to withhold these funds." In addition to the withholding action, the Department is imposing these Special Conditions on the DC OSSE's FFY 2009 Part B grant under section 616(g) of the IDEA and 34 CFR §80.12.

1. Provide Timely Initial Evaluations and Reevaluations

- a. An initial evaluation that meets the requirements of section 614(a)(1), (b) and (c) of the IDEA and 34 CFR §300.301(c)(1) must be completed for all children with disabilities, and an appropriate placement must be made within the maximum number of days established by the State’s policy.¹ See also, section 612(a)(7) of the IDEA.

Although the State described strategies being implemented to reduce the number of overdue initial evaluations, according to data submitted by the DC OSSE on May 15, 2009 under the FFY 2008 Special Conditions, the State has not achieved compliance with the requirement of ensuring that all initial evaluations were completed and placements made in a timely manner. At the end of the final reporting period for FFY 2008, 432 initial evaluations and placements had not been completed in a timely manner, with an average number of overdue days of 44.3. The State reported that 56 percent of initial evaluations and placements were made in a timely manner. These data indicate that while the State made some progress this year, 44 percent of initial evaluations and placements were not completed in a timely manner during the final reporting period.

INITIAL EVALUATIONS AND PLACEMENTS							
	FFY 2006 02/2007	FFY 2006 06/2007	FFY 2007 02/2008	FFY 2007 06/2008	FFY 2008 10/2008	FFY 2008 01/2009	FFY 2008 05/2009
Percent Completed Timely	47%	43%	42.7%	30.27%	14.34%	32.0%	56%
Average Number of Overdue Days	112	53	69.79	63	153	50.1	44.3

Data reported in the final FFY 2008 Special Conditions Progress Report demonstrate that DC OSSE continues to be out of compliance with the requirement to ensure that all initial

¹ Section 614(a)(1)(C)(i)(I) of the IDEA and 34 CFR §300.301(c)(1) require that an initial evaluation be conducted within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe. Section 38-2561.02 of the D.C. Code states that the District of Columbia must “assess or evaluate a student who may have a disability and who may require special education services within 120 days from the date that the student was referred for an evaluation or assessment.” Section 3005.2 of Chapter 30 of Title 5 of the DC Municipal Regulations states: “The IEP team shall conduct an initial evaluation of a child within a reasonable time of receiving a written referral and parental consent to proceed and within timelines consistent with Federal law and DC Code Section 38-2501(a).” (DC Code Section 38-2501(a) has been repealed and D.C. Code Section 38-2561.02 now addresses timeliness of evaluations.) Section 3013.1(c) specifies: “The LEA shall ensure that the educational placement decision for a child with a disability is made within timelines consistent with applicable local and Federal law.” Page five of the Procedural Manual for Parents (as revised July 2005) states that “under District of Columbia law, the LEA has no more than 120 calendar days after the date a child is referred for evaluation to determine his/her eligibility for special education services, develop the individualized education program (IEP) and begin delivery of appropriate special education and related services.”

evaluations are completed within the State-established timeline. Therefore, the DC OSSE did not satisfy this Special Condition.

- b. A reevaluation that meets the requirements of section 614(a)(2), (b), and (c) of the IDEA and 34 CFR §300.303 must be completed for each child with a disability no later than 36 months after the date on which the previous evaluation or reevaluation was completed, unless the parent and the local educational agency (LEA) agree that a reevaluation is unnecessary.²

Although the State described strategies being implemented to reduce the number of overdue reevaluations, according to data submitted by the State on May 15, 2009 under the FFY 2008 Special Conditions, the DC OSSE has not achieved compliance with the requirement of ensuring that all reevaluations of children with disabilities were conducted in a timely manner. At the end of the final reporting period for FFY 2008, 1,149 reevaluations had not been conducted in a timely manner, with an average number of overdue days of 47. The State reported that 47.2 percent of reevaluations were completed in a timely manner. These data indicate that while the State made some progress this year, 52.8 percent of all reevaluations were not completed in a timely manner during the final reporting period.

REEVALUATIONS							
	FFY 2006 02/2007	FFY 2006 06/2007	FFY 2007 02/2008	FFY 2007 06/2008	FFY 2008 10/2008	FFY 2008 01/2009	FFY 2008 05/2009
Percent Completed Timely	54%	41%	37.2%	23.17%	13.1%	26.0%	47.2% ³
Average Number of Overdue Days	115	67	199.22	75	31	40.6	47

Data reported in the final FFY 2008 Special Conditions Progress Report demonstrate that DC OSSE continues to be out of compliance with the requirement to ensure that all reevaluations are completed in a timely manner. Therefore, the DC OSSE did not satisfy this Special Condition.

2. Implement Due Process Hearing Decisions in a Timely Manner

Hearing officer determinations (HODs) must be implemented within the time frame prescribed by the hearing officer, or if there is no time frame prescribed by the hearing

²Section 614(a)(2) of the IDEA and 34 CFR §300.303 require that a reevaluation occur at least once every three years, unless the parents and the LEA agree that a reevaluation is unnecessary.

³ The State reported data of 47.0 percent. Based on the actual numbers reported, OSEP recalculated the data to be 47.2 percent. Data were reported to the tenth of a percentage in previous FFY 2008 reports.

officer, within a reasonable time frame set by the State, as required by section 615(f) and (i) of the IDEA.

Although DC OSSE reported the strategies it is implementing to reduce the number of children whose hearing officer determinations are not implemented in a timely manner, according to data submitted by the State on May 15, 2009 under the FFY 2008 Special Conditions, the State has not achieved compliance with the requirement of ensuring that all hearing officer determinations are implemented in a timely manner. At the end of the final reporting period for FFY 2008, hearing decisions for 228 children had not been implemented in a timely manner. The State reported that 34.54 percent of hearing officer determinations were implemented in a timely manner during the final FFY 2008 reporting period. These data indicate that while the State made some progress this year, 65.46 percent of hearing officer determinations were not implemented in a timely manner during the final reporting period.

TIMELY IMPLEMENTATION OF HEARING OFFICER DETERMINATIONS							
	FFY 2006 02/2007	FFY 2006 06/2007	FFY 2007 02/2008	FFY 2007 06/2008	FFY 2008 10/2008	FFY 2008 01/2009	FFY 2008 05/2009
Percent Implemented Timely	32%	0% ⁴	5%	16.1%	24.04%	20.93%	34.54%
Number of Children Whose HODs Not Implemented in a Timely Manner at Conclusion of Reporting Period	1,388 HODs	1,221 HODs	979 HODs	1,263 HODs	826 ⁵ Children	592 Children	228 Children

Data reported in the final FFY 2008 Special Conditions Progress Report demonstrate that DC OSSE continues to be out of compliance with the requirement to ensure the timely implementation of all hearing officer determinations. Therefore, the State did not satisfy this Special Condition.

3. Ensure Placement in the Least Restrictive Environment

All children with disabilities must be placed in the least restrictive environment appropriate to their individual needs, as required by section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120.

⁴ The State was unable to report the percent of HODs that were implemented timely and reported zero percent.

⁵ Although the State reported 826 in the October 2008 Special Conditions Progress Report, in the January 2009 Progress Report, the State reported 754 as the number of children whose HODs were not implemented timely as of the end of the September 16, 2008 reporting period and did not explain the reason for the discrepancy.

Section 616(a)(3) of the IDEA and 34 CFR §300.600(d) require the Department to monitor States and require each State to monitor the LEAs located in the State to adequately measure performance in certain priority areas, including the provision of a free appropriate public education in the least restrictive environment. In addition, the regulations at 34 CFR §§300.119 and 300.120 require States to carry out technical assistance, training, and monitoring activities to ensure each public agency implements the least restrictive environment requirements at 34 CFR §300.114. Further, if there is evidence that a public agency makes educational placements that are inconsistent with the least restrictive environment requirements at 34 CFR §300.114, the State must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

OSEP collected data during a March 2001 compliance monitoring review of the State, to determine whether the State was ensuring that all children with disabilities were placed in the least restrictive environment. OSEP determined that decisions regarding the educational placement of children with disabilities were not based on the individual needs of the child, but rather on other factors. Personnel reported that placement decisions were affected by the lack of modifications and accommodations available in the regular class setting and the limited capacity of the State to serve children with disabilities along the continuum of alternative placements. OSEP found that the State was not ensuring that children with disabilities were placed in the least restrictive environment appropriate to their needs.

With the implementation of the State's monitoring system, OSEP required, in the FFY 2004 Special Conditions, that the State provide the results of its monitoring efforts, highlighting any findings and required corrective actions related to placement of children with disabilities in the least restrictive environment, including information obtained from record reviews and staff and parent interviews. During FFY 2004, the State provided no monitoring data or other documentation to OSEP to demonstrate students with disabilities were placed in the least restrictive environment consistent with the requirements.

OSEP continued to impose this Special Condition on the State's FFY 2005 and FFY 2006 IDEA Part B grant awards. During FFY 2005 and FFY 2006, the State was required to provide documentation to OSEP to demonstrate the State was meeting its responsibilities under section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120 related to ensuring the education of students with disabilities in the least restrictive environment. OSEP required the State to provide copies of monitoring reports highlighting the State's findings as to whether educational placement decisions were made consistent with the IDEA's least restrictive environment provisions. The State was also required to report on corrective action plans and the State's follow-up activities carried out to ensure the correction of noncompliance related to these requirements. Based on the State's FFY 2005 and FFY 2006 Special Conditions Progress Reports, OSEP concluded the State had failed to provide sufficient information to demonstrate the State was fulfilling its responsibilities under 34 CFR §§300.114 through 300.120.

OSEP revised the activities under the Special Condition on the State's FFY 2007 grant award to require that the State provide a written explanation and documentation of how the State is meeting its responsibilities to ensure each LEA complies with the least restrictive environment provisions at 34 CFR §300.114. This included providing copies

of monitoring reports issued between February 1, 2007 and May 15, 2008, reporting the number and percent of findings of noncompliance related to the least restrictive environment requirements identified in the monitoring reports, the corrective actions imposed, the number and percent of findings of noncompliance that were corrected, and the status of any remaining corrective actions, including actions undertaken by the State to ensure corrective actions were implemented and the noncompliance corrected within one year of identification.

During the FFY 2007 reporting period, the DC OSSE reported it had conducted monitoring activities to review LEAs' compliance with the least restrictive environment requirements and provided OSEP with copies of 25 written monitoring reports. However, OSEP's review of the monitoring reports submitted indicated that the State had not made findings specific to the LRE requirements at 34 CFR §300.114. The State indicated that a document entitled "MDT Checklist" would be used to monitor LEAs' compliance with the "MDT Guidelines" and that the results would be reported in "the 2007 reporting period." However, in a subsequent report to OSEP the DC OSSE stated that "it is unclear that any steps were taken to ensure that the MDT guidelines created and distributed in 2007 were monitored." In the June 2, 2008 Special Conditions Progress Report, the DC OSSE described the steps being taken to restructure the State's system of monitoring and reported, "[t]he Office of Monitoring and Compliance is currently working towards a system of ensuring placement in the least restrictive environment, but currently cannot provide any monitoring reports in this area." Based on the State's FFY 2007 Special Conditions Progress Reports, OSEP concluded that the State had failed to demonstrate it was meeting its responsibilities to ensure compliance with the least restrictive environment provisions.

OSEP continued to impose this Special Condition on the State's FFY 2008 grant award and, again, revised the activities to require that the State clarify how it was meeting its responsibilities under 34 CFR §§300.119, 300.120, and 300.600. OSEP required the State to provide a description of the activities undertaken to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the requirements of 34 CFR §300.114 and any technical assistance activities carried out by the State to assist public agencies in this effort, as required by 34 §300.119. OSEP also required the State to provide an explanation of how the "MDT Notes Guidelines" and "MDT Checklist" documents that were referenced in previous reports to OSEP were used to ensure compliance with the LRE requirements and, if those documents were used, to report the results. In addition, the State was required to submit copies of monitoring reports issued since February 1, 2008 that include the State's findings as to whether educational placement decisions were made consistent with the LRE provisions of the IDEA and to report the number of findings the State identified specifically related to the LRE provisions. The DC OSSE reported that it decided not use the "MDT Notes Guidelines" and "MDT Checklist" in its monitoring process. The State further reported that no monitoring reports were issued during FFY 2008.

The State has demonstrated longstanding noncompliance related to ensuring the education of students with disabilities in the least restrictive environment consistent with federal requirements. Although the DC OSSE has issued written guidance and conducted training and technical assistance during FFY 2008, the State has not conducted general

monitoring to ensure compliance with the requirements in section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120 and 300.600. Therefore, OSEP concludes the State has not satisfied this Special Condition.

4. Identify and Correct Noncompliance

Section 612(a)(11) of the IDEA and 34 CFR §300.149 require States to ensure that each educational program for children with disabilities administered within the State is under the general supervision of individuals responsible for educational programs for children with disabilities in the State educational agency. Section 616(a)(1)(C) of the IDEA requires States to monitor implementation of Part B by LEAs. The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 CFR §§300.600 through 300.602 and 300.606 through 300.608. See also 20 U.S.C. 1232d(b)(3). In exercising its monitoring responsibilities under §300.600(d), the State must ensure that when it identifies noncompliance with requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (34 CFR §300.600(e)).

OSEP conducted a review in the District of Columbia in March 2001, for the purpose of assessing compliance in the implementation of the IDEA and assisting the State in developing strategies to improve results for children with disabilities. OSEP identified several areas of noncompliance, including the State's failure to exercise general supervisory responsibility by identifying deficiencies under the IDEA and ensuring that they are corrected in a timely manner, as required at 34 CFR §300.149 and 20 U.S.C. 1232d(b)(3). Because the State continued to demonstrate noncompliance with these requirements, the Department imposed Special Conditions on the State's FFY 2005 grant award under Part B and continued the Special Conditions on the State's FFY 2006 grant award.

Under the FFY 2005 and FFY 2006 Special Conditions, OSEP required the State to submit copies of monitoring reports it issued and documentation of any corrective actions it imposed, as well as activities undertaken by the State to ensure corrective actions were implemented and that the noncompliance was corrected within one year of identification. The State was also required to report the number of findings of noncompliance identified in the State's monitoring reports, the number and percent of findings of noncompliance that were corrected, and the status of any remaining corrective actions.

Because the State's submissions to OSEP during the FFY 2005 and FFY 2006 Special Conditions reporting periods did not provide sufficient information to demonstrate that it identified and corrected noncompliance in accordance with the requirements in section 612(a)(11) and 616(a) of the IDEA, 20 U.S.C. 1232d(b)(3), and 34 CFR §§300.149 and 300.600, OSEP concluded that the State did not meet this Special Condition.

OSEP continued this Special Condition on the State's FFY 2007 grant award. The State was required to provide as part of its response to Indicator 15 in the FFY 2006 APR, an updated description of the components included in the State's system of general supervision and how the State uses these components to monitor implementation of IDEA. The State was also required to report the number of findings of noncompliance identified in the State's monitoring reports issued between December 2005 and May 15,

2008, the number of corrections the State verified were completed as soon as possible but in no case later than one year from identification, and a description of actions the State had taken, including enforcement actions, to ensure correction of noncompliance. In addition, the State was required to submit copies of monitoring reports issued between February 1, 2007 and May 15, 2008.

The State did not provide the updated description of its system of general supervision in the FFY 2006 APR as required. The DC OSSE reported that its goal was to have a structured system in place to implement a “tiered approach to monitoring intervention” by fall of 2008. The State reported it was unable to provide an analysis of the number and percent of findings of noncompliance identified as required under the FFY 2007 Special Conditions and that “one of the ongoing goals of the Office of Monitoring and Compliance is to create a better way of tracking non-compliance which will allow this data to be reported in the future.” The DC OSSE reported that the State had established a system of sanctions and enforcement actions when LEAs do not timely correct noncompliance but did not provide evidence the measures were implemented. Based on this information, OSEP concluded the State did not satisfy this Special Condition.

OSEP continued this Special Condition on the State’s FFY 2008 grant award and revised the activities to require that the DC OSSE access technical assistance that is designed to help the State improve its system of general supervision. The State was required to provide in each of the three progress reports, a description of the technical assistance accessed and the actions taken as a result of the technical assistance. The State was also required to describe the status of the State’s restructured Office of Monitoring and Compliance Division and provide updates on the efforts to establish and implement the integrated monitoring process and tiered approach to monitoring intervention as described in the State’s June 2, 2008 Special Conditions Progress Report.

The FFY 2008 Special Conditions required that the State report on the status of correction of the 31 issues of noncompliance identified by the State through the IDEA complaint investigations in FFY 2005 that were reported in the State’s FFY 2005 APR. The State reported it was unable to locate documentation of the written complaints and any follow up actions taken to correct the noncompliance. The State further reported that “the lack of written complaint reports prohibits the State from reconciling these cases.”

OSEP also required the State to clarify the number of findings of noncompliance identified in FFY 2005 included in the State’s monitoring reports and the status of correction of these findings. Although the State clarified the number of findings of noncompliance identified in FFY 2005, it failed to provide updated information regarding the status of correction of these findings in the final FFY 2008 Special Conditions Progress Report, as required. As a result, OSEP cannot determine whether the DC OSSE has ensured correction of the seven remaining uncorrected findings of noncompliance identified in FFY 2005.

The State was required to report the number of findings of noncompliance identified in FFY 2006, the number and percent of findings corrected no later than one year from identification, and for any remaining uncorrected findings, the actions the State has taken to address the uncorrected noncompliance. In its FFY 2007 APR, the State reported that 13 of 86 findings of noncompliance identified in FFY 2006 were corrected in a timely

manner and that 57 findings of noncompliance were subsequently corrected. The State did not account for the remaining 16 findings of noncompliance in either the FFY 2007 APR or in the final FFY 2008 Special Conditions Progress Report. As a result, OSEP cannot determine whether the DC OSSE has ensured correction of the 16 remaining uncorrected findings of noncompliance identified in FFY 2006.

In its final FFY 2008 Special Conditions Progress Report, the State was required to report the number of findings of noncompliance identified in FFY 2007 (July 1, 2007 through June 30, 2008) through the components of the State's general supervision system (State monitoring and the dispute resolution system) and the number and percent of corrections completed as soon as possible but no later than one year from identification. For any findings not corrected within a year, the State was required to include a description of the actions taken, including technical assistance and enforcement actions, to address the noncompliance and the status of correction.

The State was also required to provide copies of any monitoring reports issued since February 1, 2008. In each of the three FFY 2008 Special Conditions Progress Reports, the State reported that no monitoring reports were issued.

Based on information provided in the State's FFY 2008 Special Conditions Progress Reports, it does not appear that any general monitoring of LEAs was conducted during FFY 2007. The DC OSSE reported it "is unable to provide the number of findings of noncompliance and the number and percent of corrections for FFY 2007 at this time due to the challenges in data collection and reporting."

The development and implementation of a general supervision system that is capable of monitoring the implementation and enforcement of Part B of the IDEA is one of the State's most critical functions under the IDEA. While the State submitted the LEA self-assessment and the State's monitoring manual and has been working with the Data Accountability Center and the Mid-South Regional Resource Center to develop a system of general supervision, that system has not yet been implemented. As a result, OSEP is unable to determine if the State's system will be effective in identifying and correcting noncompliance. Based on the above, OSEP concludes the DC OSSE has not satisfied this Special Condition and is requiring additional actions for FFY 2009.

5. Collect and Report Data for Select SPP/APR Indicators

Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans, as required by section 616(b)(2)(B) of the IDEA and 34 CFR §300.601(b)(1).

OSEP's June 1, 2009 correspondence advised the DC OSSE of the specific factors that led to OSEP's determination that DC "needs intervention." Those factors include that the DC OSSE did not provide any FFY 2007 data for SPP/APR compliance Indicators 9, 10 (disproportionate representation) and 17 (timeliness of due process decisions).

The State has not provided valid and reliable data for compliance Indicators 9 and 10 for three years. The State reported in the FFY 2007 APR that valid and reliable data for FFY 2005 and 2006 are unavailable. The State further reported it was unable to provide FFY 2007 data on the number of districts that may have had disproportionate representation of racial or ethnic groups in special education and related services or in specific disability

categories “due to the lack of valid and reliable data that would allow the State to demonstrate whether there was disproportionate representation.” Because this information is unavailable, the State reported it “is unable to make any determinations related to potentially inappropriate identification practices.” Disproportionate representation that is the result of inappropriate identification in special education and in specific disability categories are key compliance indicators under the monitoring and enforcement scheme established under section 616 of the IDEA. Without these data, OSEP and the public cannot assess whether any districts have disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that was the result of inappropriate identification.

The State has not provided valid and reliable data for compliance Indicator 17 for two years. The DC OSSE informed OSEP that “the methods used prior to the August 11, 2008 implementation of the SHO [Student Hearing Office] Docketing System...were inadequately maintained and thus yielded unreliable data.” The State further reported it could not submit FFY 2006 data “because of the poor tracking system” in place during the FFY 2006 reporting period. Without these data, OSEP and the public cannot determine the percent of adjudicated due process hearing requests that met the timeline required by 34 CFR §300.515. The issuance of timely final due process decisions is a key component of an effective due process system.

As a result, OSEP is imposing the area of collecting and reporting valid and reliable data for these SPP/APR indicators as an additional Special Condition on the State’s FFY 2009 grant award.

6. Ensure IEPs Include the Required Secondary Transition Content

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals, as required by section 614(d)(1)(A)(i)(VIII) of the IDEA and 34 CFR §300.320(b).

OSEP’s June 1, 2009 correspondence advised the DC OSSE of the specific factors that led to the determination that the District of Columbia “needs intervention.” One factor was that the State reported 29.15 percent compliance for Indicator 13 (secondary transition), which represents slippage from the 54 percent compliance rate for FFY 2006. Further, the State was unable to demonstrate it corrected prior noncompliance related to this indicator. The State’s low level of compliance on this critical indicator demonstrates that the DC OSSE is not ensuring that youth with disabilities aged 16 and above have an IEP that includes the required secondary transition content.

As a result, OSEP is imposing an additional Special Condition on the State’s FFY 2009 grant award.

2. Nature of the Special Conditions

The DC OSSE must, pursuant to these Special Conditions, provide three progress reports. Each report must be submitted to OSEP in accordance with the reporting periods and timelines specified below:

	Progress Report Due Date	Reporting Period
First Progress Report	October 1, 2009	April 19, 2009 – September 3, 2009
Second Progress Report	January 4, 2010	September 4, 2009 – December 4, 2009
Third Progress Report	May 3, 2010	December 5, 2009 – April 2, 2010

The DC OSSE must also submit its FFY 2008 Annual Performance Report (APR) to OSEP, due February 1, 2010.

In addition, the DC OSSE shall continue to provide to OSEP, a copy of each “Status Report,” including attachments, filed by the State with the U.S District Court reporting on the State’s efforts to comply with the requirements of the Blackman Jones Consent Decree. The DC OSSE must provide this information to OSEP within two weeks from the date the report is filed with the Court and/or the plaintiffs. When reporting on efforts toward meeting the requirements related to the Special Conditions identified below, the DC OSSE may reference in the Special Conditions progress reports, the specific activities, strategies, and interventions being implemented pursuant to the Blackman Jones Consent Decree, as appropriate.

A. Initial Evaluations and Reevaluations

In each of the three progress reports, the DC OSSE must report the following:

1. Initial Evaluations
 - (a) The number of children who, as of the end of the previous reporting period, had been referred for, but not provided a timely initial evaluation and placement;
 - (b) The number of children referred for initial evaluation and placement whose initial evaluation and placement became overdue during the reporting period;
 - (c) The number of children from (a) and (b) above, who were provided initial evaluations and placements during the reporting period;
 - (d) The number of children who had not been provided a timely initial evaluation and placement at the conclusion of the reporting period;
 - (e) The percent of timely initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period; and
 - (f) The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue.
2. Reevaluations
 - (a) The number of children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;

- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
 - (c) The number of children from (a) and (b) above, who had been provided triennial reevaluations during the reporting period;
 - (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period;
 - (e) The percent of timely triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell during the reporting period; and
 - (f) The average number of days the reevaluations that had not been provided in a timely manner were overdue.
3. The DC OSSE shall include in each progress report, updated information related to the State's process for collecting and reporting data on timely initial evaluations and placements and/or reevaluations through OSSE's Special Education Data System (SEDS).
4. The DC OSSE must describe the strategies it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations, and, if there is no progress in reducing the number of overdue initial evaluations and placements and reevaluations, the State must provide an explanation for this lack of progress and reevaluate the procedures it is implementing to reduce the number of overdue initial evaluations and placements and/or reevaluations.

B. Implementation of Due Process Hearing Decisions

1. In each of the three progress reports, the DC OSSE must provide the following information:
 - (a) The number of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the time frame established by the hearing officer or by the State;
 - (b) The number of children whose hearing officer determinations had not been implemented within the time frame established by the hearing officer or by the State (became overdue) during the reporting period;
 - (c) The number of children from (a) and (b) above whose hearing officer determinations were implemented during the reporting period;
 - (d) The number of children whose hearing officer determinations had not been implemented in a timely manner at the conclusion of the reporting period; and
 - (e) The percent of hearing officer determinations that had been implemented in a timely manner during the reporting period.
2. The DC OSSE shall include in each progress report, updated information related to the State's process for collecting and reporting data on timely implementation of hearing officer determinations through the Blackman Jones database and OSSE's Special Education Data System (SEDS), including the extent to which the State's reported data include LEA charter schools' implementation of hearing officer determinations. If all affected LEA charter schools' data are not included, the DC OSSE must describe the steps the State has taken to require LEA charter schools to

collect and report data on the timely implementation of hearing officer determinations.

3. In each of the three progress reports, the DC OSSE must describe the strategies it is implementing to reduce the number of children whose hearing officer determinations are not implemented in a timely manner, and address any remaining barriers to the timely implementation of hearing officer decisions and the steps being taken to remove those barriers.

C. Ensure Placement in the Least Restrictive Environment (LRE)

1. With the first progress report, due October 1, 2009, the DC OSSE must provide OSEP with copies of monitoring report(s) issued since May 15, 2009 that include the State's findings as to whether educational placement decisions were made consistent with the least restrictive environment provisions of the IDEA at 34 CFR §§300.114 through 300.120. The State shall also report the following information:
 - (a) The number of LEAs monitored for compliance with LRE provisions during the reporting period;
 - (b) The number of findings of noncompliance made that are specifically related to the LRE provisions; and
 - (c) A description of the corrective action required for each LEA found to have noncompliance with the LRE provisions.
2. With the second and third progress reports, due January 4, 2010 and May 3, 2010 respectively, the DC OSSE shall submit copies of any monitoring reports issued during the appropriate Special Conditions reporting period (see schedule above) that include the State's findings as to whether educational placement decisions were made consistent with the least restrictive environment provisions of the IDEA at 34 CFR §§300.114 through 300.120 and report the following information:
 - (a) The number of LEAs monitored for compliance with LRE provisions during the reporting period;
 - (b) The number of findings of noncompliance made that are specifically related to the LRE provisions; and
 - (c) A description of the corrective action required for each LEA found to have noncompliance with the LRE provisions.

In the third progress report, due May 3, 2010, the DC OSSE shall also provide data on the status of correction of all findings of noncompliance specifically related to the LRE provisions issued since May 15, 2009.

D. Identify and Correct Noncompliance

1. The DC OSSE must continue to access technical assistance that is designed to help the State improve its system of general supervision. Assistance will continue to be available from the Data Accountability Center (DAC), an OSEP-funded technical assistance provider and the Mid-South Regional Resource Center. In each of the three required progress reports, the State shall include a description of the technical

assistance the State accessed and the actions taken as a result of the technical assistance.

2. With the first progress report, due October 1, 2009, the DC OSSE must provide updated data on the status of correction of the seven (7) remaining findings of noncompliance identified in FFY 2005 and 16 remaining findings of noncompliance identified in FFY 2006 reported in the State's FFY 2007 APR. The DC OSSE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance.

In reporting on the correction of noncompliance, the DC OSSE must report that it has: (1) corrected all instances of noncompliance; and (2) verified that each LEA with identified noncompliance is correctly implementing the specific regulatory requirements consistent with OSEP Memorandum 09-02, dated October 17, 2008.

3. With the first progress report, due October 1, 2009, the DC OSSE must describe the steps the State has taken to collect, analyze, and report data on the number of findings of noncompliance identified through the components of the State's general supervision system (State monitoring system and dispute resolution) in FFY 2007 (July 1, 2007 through June 30, 2008). The DC OSSE must also provide a preliminary report of the status of correction of these findings (i.e., the number of findings made and the number corrected). OSEP recommends that the DC OSSE report these preliminary data using the Indicator 15 Worksheet that can be found at <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/417/?3#category3> under the heading, SPP/APR Submission Tools. The finalized data must be reported in the State's FFY 2008 APR under Indicator 15 (see #5 below).
4. With the first progress report, due October 1, 2009, the DC OSSE must provide OSEP with copies of any monitoring reports issued since May 15, 2009. With the second and third progress reports, due January 4, 2010 and May 3, 2010 respectively, the DC OSSE shall submit copies of any monitoring reports issued during the appropriate Special Conditions reporting period (see schedule above).
5. In the FFY 2008 APR, due February 1, 2010, in the DC OSSE's response to Indicator 15, the State must:
 - (a) provide information from the October 1, 2009 progress report and updated information on the status of correction of all remaining uncorrected findings of noncompliance identified in FFY 2005 and FFY 2006, including the actions the State has taken to address the uncorrected noncompliance.
 - (b) report the number of findings of noncompliance identified through all components of the State'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 State 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 State must report that it has: (1) corrected all instances of noncompliance; and (2)

verified that each LEA with identified noncompliance is correctly implementing the specific regulatory requirements consistent with OSEP Memo 09-02.

- (c) address all issues identified in OSEP's June 1, 2009 response to the State's FFY 2007 APR submission related to Indicator 15 and this Special Condition.
6. In the final progress report due May 3, 2010, the DC OSSE must report the number of findings of noncompliance identified in FFY 2008 (July 1, 2008 through June 30, 2009), through all components of the State'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. For any findings of noncompliance not corrected within one year of identification, the DC OSSE must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance and the status of correction.

The DC OSSE shall also provide an update on the status of correction of any remaining uncorrected noncompliance identified in FFY 2005, FFY 2006 and FFY 2007 and the actions the State has taken to address the uncorrected noncompliance. In reporting on the correction of noncompliance, the DC OSSE must report that it has: (1) corrected all instances of noncompliance; and (2) verified that each LEA with identified noncompliance is correctly implementing the specific regulatory requirements consistent with OSEP Memo 09-02.

E. Collect and Report Data for Select SPP/APR Indicators

1. With the first progress report, due October 1, 2009, the DC OSSE must describe the steps the State has taken to collect, analyze, and report FFY 2008 data (July 1, 2008 through June 30, 2009) for SPP/APR compliance Indicators 9 and 10 (disproportionate representation). DC OSSE must also describe the steps the State has taken to collect, analyze, and report FFY 2008 data for SPP/APR compliance indicator 17 (timeliness of due process hearing decisions). Because DC OSSE reported in its FFY 2007 APR that it could not provide valid and reliable data for Indicator 17 prior to August 11, 2008, DC OSSE must provide FFY 2008 data from August 11, 2008 through June 30, 2009 for Indicator 17 in the FFY 2008 APR, due February 1, 2010.
2. With the first progress report, due October 1, 2009, the DC OSSE must also provide a preliminary report of the FFY 2008 actual target data for Indicators 9 and 10 and a preliminary report of the FFY 2008 actual data from August 11, 2008 through June 30, 2009 for Indicator 17.
3. In the FFY 2008 APR, due February 1, 2010, the DC OSSE must:
 - (a) Report consistent with the required measurement and instructions FFY 2008 data from July 1, 2008 through June 30, 2009 for compliance Indicators 9 and 10, and FFY 2008 data from August 11, 2008 through June 30, 2009 for compliance Indicator 17; and
 - (b) Address all issues identified in OSEP's June 1, 2009 response to the State's FFY 2007 APR submission related to compliance Indicators 9, 10, and 17.

F. Ensure IEPs Include Required Secondary Transition Content

1. In each of the three progress reports, the DC OSSE must provide the following information:
 - (a) The number of LEAs monitored for compliance with the IEP secondary transition content requirements;
 - (b) Of the student records reviewed as part of the State's site visits, the percent of youth with IEPs aged 16 and above with an IEP that includes the required secondary transition content; and
 - (c) A description of the corrective action required for each LEA found to have noncompliance with ensuring IEPs for youth aged 16 and above include the required secondary transition content.

The DC OSSE may collect this data during the site visits conducted by the OSSE Quality Assurance and Monitoring Unit "to ensure that IEPs with secondary transition goals are present, accurate, and have been completed for all eligible students" (see FFY 2007 APR, Indicator 13, Improvement Activities – Monitoring and Compliance).

2. In the FFY 2008 APR, due February 1, 2010, the DC OSSE must report that it has verified that each LEA with noncompliance reported by the State under Indicator 13 in the FFY 2007 APR and each of the LEAs with remaining noncompliance identified in FFY 2006: (1) is correctly implementing the specific regulatory requirements; and (2) has developed an IEP that includes the required transition content for each youth, unless the youth is no longer within the jurisdiction of the LEA, consistent with OSEP Memo 09-02.

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, 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 requirements related to: the timely provision of initial evaluations and placements and reevaluations; timely implementation of due process hearing decisions; ensuring placement of children with disabilities in the least restrictive environment; identification and correction of noncompliance; collecting and reporting data for select SPP/APR indicators; and ensuring IEPs include the required secondary transition content.

4. **Method of Requesting Reconsideration**

The State can write to Patricia J. Guard, Acting Director, Office of Special Education Programs, 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**

The State must submit all reports required under the Special Conditions. The District of Columbia State Superintendent or other authorized official of the DC OSSE shall certify the completeness and accuracy of each report. The progress reports should be submitted to:

Lisa Pagano
U.S. Department of Education
Office of Special Education and Rehabilitative Services
550 12th Street, SW, Room 4174
Washington, DC 20202

or by e-mail to: lisa.pagano@ed.gov