

Enclosure C
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 Federated States of Micronesia's (FSM) Federal Fiscal Year (FFY) 2009 grant award. OSEP continues to have significant concerns about FSM's failure to correct long-standing noncompliance that FSM identified in Chuuk State (Chuuk) in 2006 and that OSEP identified in its July 17, 2007 verification letter (verification letter)¹.

Although much of the noncompliance detailed in these Special Conditions is occurring in Chuuk, FSM, in exercising its monitoring responsibilities under 34 CFR §300.600(d), must ensure that when it identifies noncompliance with requirements of Part B, the noncompliance is corrected as soon as possible, and in no case later than one year after FSM's identification of the noncompliance (34 CFR §300.600(e)). By failing to ensure correction of noncompliance in Chuuk and elsewhere, FSM has not demonstrated substantial compliance with this critical requirement. In addition, the uncorrected noncompliance involves requirements of the IDEA that affect the delivery of special education and related services. Accordingly, OSEP is imposing these Special Conditions on FSM's FFY 2009 Part B grant award:

Child Find in Chuuk

Pursuant to Section 612(a)(3) of the IDEA and 34 CFR §300.111, FSM must have in effect policies and procedures that ensure that all children located within FSM with disabilities are identified, located and evaluated. FSM has not demonstrated correction of the noncompliance identified in 2006 by FSM in Chuuk, as outlined in OSEP's verification letter. The verification letter documented that there were significant delays between the time children in Chuuk were identified as being suspected of having a disability and the completion of an evaluation. These delays were not attributed solely to the delay in conducting the evaluation once parental consent to evaluate was obtained. Rather, there were substantial delays between identifying children as possibly disabled and obtaining parental consent to evaluate.

¹ FSM submitted three reports in response to OSEP's verification letter. The first report was an attachment to FSM's FFY 2006 Annual Performance Report (APR) submitted in February 2008; the second was the "final" report submitted on July 1, 2008; and the third was a progress report submitted in February 2009 with FSM's FFY 2007 APR (required because the final report did not demonstrate full correction.) These reports contain a complete history of FSM's efforts to achieve compliance with these requirements. The findings of noncompliance contained in OSEP's verification letter that FSM corrected are not discussed in these Special Conditions. Similarly, documents that OSEP requested in its verification letter that FSM provided are also not discussed in these Special Conditions. OSEP provided acknowledgment of the correction of some noncompliance and receipt of some documents in its response to FSM's FFY 2007 APR.

FSM reported in its FFY 2007 APR that it assisted Chuuk in conducting child find activities between July 2008 and January 2009, and that Chuuk identified 105 children as suspected of having a disability. However, as of January 2009 Chuuk had obtained parental consent to evaluate only 3 of those children. FSM further reported that the success of the child find process in Chuuk depends upon the consistent implementation of a weekly case management review process. However, FSM reported that Chuuk has not implemented the weekly case management review process on a consistent basis. In addition, FSM did not report on any child find activities undertaken apart from the formal assistance provided by FSM – in other words, FSM did not provide any information that there is an ongoing child find process in Chuuk. Therefore, although FSM assisted Chuuk in conducting formal child find activities, FSM has not ensured that there are policies and procedures in effect in Chuuk that ensure that all children with disabilities who are in need of special education and related services are identified, located and evaluated.

Least Restrictive Environment/Continuum of Alternative Placements in Chuuk

To the maximum extent appropriate, all children with disabilities must be placed in the least restrictive environment (LRE) appropriate to their individual needs, and FSM must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, as required by section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120. FSM has not demonstrated correction of the noncompliance identified in 2006 by FSM in Chuuk related to the requirement in 34 CFR §300.114 that to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special education classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. FSM reported in its progress report in its FFY 2007 APR that, in July 2008, FSM reviewed a random sample of IEPs from Chuuk and determined that only 60% of those IEPs included the required LRE justification. In January 2009, FSM reviewed another random sample of IEPs from Chuuk and found that 80% included the required LRE justification. In addition, FSM has not provided information on the availability of a continuum of alternative placements for children with disabilities in Chuuk. Therefore, FSM has not demonstrated correction of the noncompliance identified in 2006 by FSM in Chuuk related to the requirement that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services as required by 34 CFR §300.115, and ensuring that placement decisions are made pursuant to 34 CFR §300.116.

Chuuk's Implementation of FSM's procedures

FSM must ensure that a free appropriate public education is available to all children with disabilities residing in FSM, as required by Section 1412(a)(1)(A) of the IDEA and 34 CFR §300.101(a). Accordingly, OSEP's verification letter required FSM to provide information that Chuuk had implemented FSM's written procedures for providing a free appropriate public education to all children with disabilities in Chuuk. FSM reported that it provided copies of these procedures to Chuuk personnel. However, FSM did not provide any information on whether Chuuk had implemented these procedures.

Special Education and Related Services for Homebound Children in Chuuk

OSEP's verification letter required FSM to correct noncompliance in Chuuk with the following requirements: children with disabilities who are homebound have an Individualized Education Program (IEP) in accordance with the requirements at 34 CFR §§300.320 through 300.328, including that IEPs of homebound children in Chuuk include a statement of the child's academic goals as required by 34 CFR §300.320(a)(2)(i), and a statement of the special education and related services to be provided to the child as required by 34 CFR §300.320(a)(4). In addition, the verification letter required FSM to correct noncompliance related to the requirement that there are sufficient teachers for homebound student [homebound teachers would have a rough time serving homebound students] in Chuuk to provide needed academic services as required by 34 CFR §§300.101(a), 300.323(c) and 300.156.

FSM reported that a review of a sample of IEPs for homebound students revealed "a few academic goals"; that Chuuk had implemented a Homebound Service Verification Form to ensure that services on the IEP were being delivered, but that FSM noted that inconsistencies between the information on the forms and information provided directly by parents. FSM also reported that there were 8 related services assistants/home service teachers in Chuuk providing services to 65 children with disabilities. However, FSM did not report whether homebound children with disabilities were receiving all the special education and related services on their IEPs and whether there were sufficient personnel to deliver all required special education and related services.

Transportation Services in Chuuk for Children with Disabilities

The verification letter required FSM to correct noncompliance related to the requirement that transportation services are provided to all children with disabilities in Chuuk who require such services to benefit from special education, as required by 34 CFR §§300.17; 300.34(a); 300.34(c)(16) and 300.101(a). FSM reported that the system of payments for purchasing gasoline had been implemented, but FSM did not provide information that children with disabilities were receiving the transportation services that were listed on their IEPs.

IEPs and Evaluations in Chuuk

The verification letter required FSM to provide documentation that it had reviewed with special education staff in Chuuk all existing IEPs to ensure that they are developed in accordance with Part B requirements in 34 CFR §§300.320 through 300.328 and that evaluations have been completed in accordance with the requirements in 34 CFR §§300.301 through 300.311. The verification letter required that FSM's reports include data and information on the number of IEPs reviewed, the results of the review, and whether any changes were made to the IEPs as a result of the reviews. FSM was also required to report the number of evaluations that were reviewed, the results of the reviews, and what steps FSM took as a result of the reviews.

FSM reported in its July 24, 2008 progress report that it had reviewed a sample of IEPs in Chuuk and, based on that review, concluded that all IEPs were likely to be deficient. In its progress report included in its FFY 2007 APR, FSM further reported on a review of another sample of IEPs, but FSM has never provided any information on whether any

changes were made to the IEPs as the result of the reviews. Rather, FSM reported that the implementation of the weekly case management review process would provide the technical support for completing these reviews. Since the weekly case management reviews are not occurring on a consistent basis, OSEP is concerned that FSM is not ensuring that IEPs in Chuuk are developed in accordance with Part B requirements.

FSM also reported that it provided technical assistance to Chuuk relating to evaluations and reported that Chuuk has corrected the noncompliance with respect to timely evaluations. However, FSM did not provide information on the number of evaluations that were reviewed, the results of the review (whether the evaluations met the requirements of 34 CFR §§300.301 through 300.311, and what steps FSM took as a result of the reviews).

Timely Correction of Noncompliance

Section 612(a)(11) of the IDEA and 34 CFR §300.149 require FSM to ensure that each educational program for children with disabilities administered within FSM is under the general supervision of individuals responsible for educational programs for children with disabilities in FSM. In exercising its monitoring responsibilities under 34 CFR §300.600(d), FSM must ensure that when it identifies noncompliance with requirements of Part B, the noncompliance is corrected as soon as possible, and in no case later than one year after FSM's identification of the noncompliance (34 CFR §300.600(e)).

The verification letter required FSM to demonstrate that it is correcting noncompliance as soon as possible, but no later than one year from the date that FSM identifies noncompliance. In its FFY 2007 APR, FSM reported in Indicator 15 that it timely corrected 75% of noncompliance. Although this represents progress from data in its FFY 2006 APR of 50%, this data demonstrates that FSM is not timely correcting noncompliance. Furthermore, as discussed in these Special Conditions, FSM has not corrected most of the noncompliance identified in OSEP's verification letter, all of which was identified in 2006 – 2007.

Interagency Agreement

The verification letter required FSM to provide information about its progress in reviewing the interagency agreement between the Education Division and the Health Division in FSM to ensure compliance with the requirements at 34 CFR §300.154(a)-(c), including information regarding whether the interagency agreement includes procedures for timely referrals of children with suspected disabilities for evaluation to comply with 34 CFR §300.301(c)(1), and if FSM revised any interagency agreements, to provide OSEP with a copy of the revised interagency agreements. FSM reported in its FFY 2007 APR that it reviewed the interagency agreement between the Education Division and the Health Division, but that it had not yet revised the agreement. FSM reported that it anticipated that the National Interagency Agreement would be revised by August 2009.

Fiscal Management in Chuuk

The verification letter required FSM to provide to OSEP within 90 days of the date of the verification letter a copy of a plan for providing training to staff in Chuuk about appropriate accounting and procurement procedures, and data and information regarding

the progress of the fiscal management of Part B funds in Chuuk, including the results of on-site fiscal audits.

In addition, the verification letter required FSM to provide a final report by July 17, 2008 demonstrating implementation of FSM’s fiscal management plan for Chuuk, updated data and information regarding the fiscal management of Part B funds in Chuuk, and the results of onsite and offsite fiscal audits of Chuuk.

FSM reported that it conducted an onsite review of Chuuk’s fiscal management of Part B funds, including a random review of procured equipment and supplies, and documented evidence of procurement compliance with travel and contractual services. FSM reported that there has been a substantial improvement in the management of overall expenditures in Chuuk, but provided no details to support this conclusion. FSM made specific findings and required corrective actions, but did not report on the findings or the corrective actions. FSM reported that there are 3rd party audits of Part B expenditures in Chuuk, but has not reported on the results of these audits. FSM also reported that the planned FSM fiscal management training scheduled for December 2008 did not occur due to scheduling problems.

2. Nature of the Special Conditions

FSM must, pursuant to these Special Conditions, provide two 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	January 1, 2009 – August 1, 2009
Second Progress Report	May 3, 2010	August 2, 2009 – March 1, 2010

Pursuant to the Special Conditions, FSM must provide for each applicable reporting period:²

Child Find in Chuuk

- 1) Updated data and information related to the implementation of the revised Child Find Plan and weekly case management review process, including a description of ongoing processes for Child Find in Chuuk, and the number of times that Chuuk has conducted the weekly case management review process;
- 2) Information on the 102 children identified by Chuuk as suspected of having a disability, the number for whom parental consent to evaluate was sought, the

² FSM must also respond to the requirements in OSEP’s Part B FFY 2007 SPP/APR Response Table. If FSM provides information in its October 1, 2009 progress report that is responsive to the request for information in the Part B FFY 2007 SPP/APR Response Table, FSM must reference the specific information contained in its October 1, 2009 progress report in its FFY 2008 APR submission.

- number for whom parental consent to evaluate was received, and of that number, the number found eligible for special education and related services, and the number found not eligible for special education and related services; and
- 3) For those children whose parent(s) consented to an evaluation, data on the number of days between the date each of the 102 children were identified as suspected of having a disability and the date of the completion of an evaluation.

Least Restrictive Environment/Continuum of Alternative Placements in Chuuk

- 1) The number of IEPs in Chuuk in effect, and the number of these IEPs that include the required LRE justification; and
- 2) Information on whether there is a continuum of alternative placements for children with disabilities in Chuuk.

Chuuk's Implementation of FSM's Procedures

FSM must provide information on whether Chuuk has implemented FSM's written procedures for providing a free appropriate public education to all children with disabilities in Chuuk as required by 34 CFR §300.101(a). FSM may meet this requirement by providing information regarding whether Chuuk staff have copies of the procedures, demonstrate familiarity with the procedures, and whether Chuuk staff are following the procedures.

Provision of Special Education and Related Services for Homebound Children in Chuuk

- 1) Monitoring data and information on whether the Homebound Service Verification Forms are completed, and whether homebound students with disabilities are receiving the special education and related services on their IEPs;
- 2) The number of special education and related service providers for homebound students; the number of homebound students receiving special education and related services; and how FSM determines if the ratio of teacher to student is sufficient to provide the special education and related services on the IEPs; and
- 3) Data demonstrating that all IEPs of homebound children in Chuuk are in compliance with 34 CFR §§300.320 through 300.328 and §§300.301 through 300.311, including but not limited to the percentage of these IEPs that include required academic goals.

Transportation Services in Chuuk for Children with Disabilities

- 1) Updated data and information demonstrating that transportation services are provided to all children with disabilities in Chuuk who require such services to benefit from special education, as required by 34 CFR §§300.17; 300.34(a); 300.34(c)(16) and 300.101(a);
- 2) The number of students with IEPs in Chuuk that include transportation services and the number of students with IEPs in Chuuk that receive transportation services.

IEPs and Evaluations in Chuuk

FSM must review all IEPs for compliance with 34 CFR §§300.320 through 300.328 in Chuuk in effect during the reporting period, and report:

- 1) The number of IEPs reviewed;
- 2) The results of the review; and
- 3) What changes, if any, were made to the IEPs as a result of the review.

FSM must also review all evaluations for compliance with 34 CFR §§300.301 through 300.311, which were conducted in Chuuk during the reporting period, and report:

- 1) The number of evaluations of children that were reviewed;
- 2) The results of the review of the evaluations; and
- 3) What steps FSM took as a result of the review of the evaluations.

To the extent that FSM reports in its October 1, 2009 progress report on the results of its review of IEPs that are also in effect during the second reporting period, it is not necessary to include a discussion of the review of those IEPs in the second progress report due on May 3, 2010, unless the IEP has been amended during the second reporting period.

Timely Correction of Noncompliance

For each progress report, FSM must include data and information that it has: (1) corrected all instances of noncompliance; and (2) verified that each State within FSM with identified noncompliance is correctly implementing the specific regulatory requirements consistent with OSEP Memorandum 09-02, dated October 17, 2008.

Each progress report must provide an update on the status of correction of any outstanding noncompliance identified in FFY 2005, FFY 2006 and FFY 2007 and the actions FSM has taken to address the uncorrected noncompliance. For any findings of noncompliance not corrected within one year of identification, FSM must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance and the status of correction.

In the final progress report due May 3, 2010, FSM must also report the number of findings of noncompliance identified between March 1, 2008 through March 31, 2009 through all components of FSM's general supervision system (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. The report must include the specific findings of noncompliance, the location where the noncompliance was identified, the number of findings, the date(s) the findings were made, and the date(s) the findings were corrected. For any findings of noncompliance not corrected within one year of identification, FSM must include a description of the actions, including technical assistance and enforcement actions, taken to address the noncompliance and the status of correction.

FSM 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 FSM has taken to address the uncorrected noncompliance.

Interagency Agreements

The report must include a copy of the revised National Interagency Agreement that FSM reported is to be completed by August 1, 2009. If FSM is unable to provide a copy of this agreement, the report should include the reasons why FSM has not revised its National Interagency Agreement.

Fiscal Management in Chuuk

The report must provide information demonstrating implementation of FSM's Fiscal Management Plan, including updated data and information regarding the fiscal management of Part B funds in Chuuk, the results of on-site and off-site fiscal audits of Chuuk, and outcomes of the Fiscal Management training.

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, FSM provides documentation, satisfactory to the Department, that it has met the requirements set forth above, which require FSM to submit data demonstrating compliance with the requirements related to Child Find, LRE/Continuum of Alternative Placements; Implementation of FSM's procedures, Provision of Special Education and Related Services for Homebound Children, Transportation Services, IEPs and Evaluations in Chuuk; Timely Correction of Noncompliance; Interagency Agreements; and Fiscal Management in Chuuk.

4. Method of Requesting Reconsideration

FSM must write to the Office of Special Education Programs Acting Director, Patricia 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

FSM must submit all required reports under the Special Conditions to:

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