

Enclosure C
Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Federated States of Micronesia (FSM) Federal Fiscal Year (FFY) 2010 grant award under Part B of the Individuals with Disabilities Education Act (Part B or IDEA). The FFY 2009 Part B grant award was subject to Special Conditions related to the following nine areas: 1) child find in Chuuk; 2) least restrictive environment/continuum of alternative placements in Chuuk; 3) Chuuk's implementation of FSM's Procedures; 4) special education and related services for homebound children in Chuuk; 5) transportation services for children with disabilities in Chuuk; 6) Individualized education programs and evaluations in Chuuk; 7) timely correction of noncompliance; 8) interagency agreements, and 9. fiscal management in Chuuk. OSEP identified these areas of noncompliance in its April 17, 2007 verification letter.

The FFY 2009 Special Conditions required FSM to submit two reports, one due October 1, 2009 ("First Progress Report") and a second report due May 3, 2010 ("Second Progress Report"). OSEP responded to FSM's First Progress Report by Memorandum dated March 5, 2010. With prior approval by OSEP, FSM submitted its Second Progress Report on May 15, 2010. In addition, OSEP conducted a verification visit to FSM in November 2009 and issued a verification letter on April 30, 2010.

Based on the information provided by FSM in its Progress Reports, its FFY 2008 Annual Performance Report (APR), and the findings in the April 30, 2010 verification letter, OSEP has determined that FSM has satisfied all of the Special Conditions noted above, with the exception of fiscal management in Chuuk. However, based on the findings in its April 30, 2010 verification letter, OSEP is imposing Special Conditions on FSM's FFY 2010 Part B grant award for fiscal management in FSM.

There is a documented history of problems with fiscal management in Chuuk dating back to OSEP's verification visit in 2006. Because of varying reporting requirements related to the verification letters dated July 17, 2007 and April 30, 2010, the Special Conditions imposed on July 2009, and reports submitted in connection with FSM's Annual Performance Reports, these Special Conditions summarize the actions taken by OSEP and FSM related to fiscal management of Part B funds since OSEP's verification visit in 2006.

July 17, 2007 Verification Letter

OSEP's July 17, 2007 verification letter found that there were serious problems with the procurement process and system of reimbursement of expenses related to the administration of Part B in Chuuk. FSM was required to provide to OSEP, within one year of the date of the verification letter: 1) written procedures to ensure that Chuuk was in compliance with FSM national and Federal procurement requirements applicable to the Part B program, including procurement requirements in OMB Circular A-87, OMB Circular A-102 and 34 CFR Part 80, Subpart C, procedures and timelines for auditing the use of Part B funds in Chuuk; and 2) 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 OSEP's July 6, 2008 response to FSM's FFY 2006 Annual Performance Report and revised State Performance Plan, OSEP found that FSM provided the progress report required by the July 17, 2007 verification letter, and required FSM to provide additional information demonstrating implementation of FSM's plan, including updated data and information regarding the fiscal management of Part B funds in Chuuk, and the results of on-site and off-site fiscal audits of Chuuk in its final report due to OSEP on July 17, 2008. FSM provided this report on July 24, 2008.

OSEP's July 1, 2009 FFY 2007 APR Response Table

OSEP responded to FSM's July 24, 2008 report and the information contained in its FFY 2007 APR in OSEP's July 1, 2009 response to FSM's FFY 2007 APR. In that document, OSEP noted that FSM reported that fiscal management issues in Chuuk that were negatively impacting the timely delivery of special education and related services had been corrected. However, OSEP concluded that, while FSM provided additional information about its fiscal procedures, it had not identified the "specific findings" issued or the actions taken as a result of the findings. In addition, the planned fiscal management training in Chuuk had been delayed.

July 1, 2009 FFY 2009 Part B Grant Award Special Conditions

Based on continued noncompliance in the area of fiscal management in Chuuk, OSEP placed Special Conditions on FSM's FFY 2009 Part B grant award. As noted above, the FFY 2009 Special Conditions required FSM to submit two Progress Reports. FSM was required to 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.

OSEP responded to FSM's First Progress Report by Memorandum dated March 5, 2010. In that Memorandum, OSEP found that FSM had made progress with fiscal management in Chuuk. FSM reported that it is assisting Chuuk in responding to the 2008 National Public Auditors Report on Chuuk's Special Education Program and that it has worked closely with OSEP to close all audit findings from 2005, 2006, and 2007. FSM reported that it disseminated guidance to all State special education programs regarding issues that resulted in audit findings including: prior approval, maintenance of fixed assets, and contracting requirements over \$100.00. However, FSM's First Progress Report made clear that FSM believed that a Fiscal Management Plan was only a plan for training. OSEP's March 5, 2010 memorandum clarified that a Fiscal Management Plan is a written plan containing policies and procedures for ensuring that Part B funds are allocated, obligated and spent in compliance with all Part B requirements. Accordingly, OSEP's March 5, 2010 Memorandum required FSM to provide with its Second Progress Report due May 3, 2010: (1) a copy of FSM's Fiscal Management Plan for Part B funds, the date of the Plan and information regarding the distribution of the Plan and whether the Plan is specific to Chuuk or applicable throughout FSM. If FSM did not have a Fiscal Management Plan as described in the letter, FSM was to provide a copy of whatever written materials it used to manage Part B funds in FSM;

(2) data and information on the implementation of its fiscal monitoring procedures in Chuuk;

- (3) the results of on-site and off-site fiscal audits of Chuuk from 2006 through the present;
- (4) the specific fiscal findings issued as a result of its monitoring visit in Chuuk that FSM reported with its July 2008 Progress Report and the actions taken as a result of the findings; and
- (5) information on whether FSM conducted any training on its Fiscal Management Plan, including the dates of training, the general content of the training, and the number and location of attendees.

In an effort to give FSM a reasonable amount of time to effectively measure the results of the training and to implement changes, if necessary, to its fiscal management system, OSEP also advised FSM that it could submit, by June 1, 2010, whatever additional information and data it believed would assist OSEP in assessing FSM's fiscal management in Chuuk.

FSM submitted information on April 27, 2010, with its Second Progress Report on May 15, 2010, and on June 17, 2010. FSM addressed three key areas: its Fiscal Management Plan, Fiscal Audits, and Fiscal Training.

Fiscal Management Plan

As part of FSM's overall Fiscal Management Plan, FSM provided, on April 27, 2010, a copy of its revised monitoring procedures entitled "FSM Continuous Improvement Monitoring System." These procedures include a section entitled, "Budget and Fiscal Management." FSM's newly revised monitoring procedures contain several provisions for the fiscal oversight of Part B funds throughout FSM. FSM's monitoring procedures require that a fiscal officer be included in each monitoring and verification visit, and FSM's monitoring protocol includes questions related to the appropriate use of Part B funds.

On April 27, 2010, FSM also provided a copy of its fiscal policies, *Federated States of Micronesia's National Government's: Financial Management Regulations* (FMR), enacted April 4, 1997. The FMR includes FSM national and State regulations pertaining to program and fiscal management in accordance with FSM's code. While FSM provided OSEP with its national and State fiscal policies and regulations, FSM did not provide OSEP with operational procedures that give effect to those fiscal policies as they relate to the administration of Part B. Specifically, FSM did not provide procedures for fiscal staff to use in meeting the requirements in the FMR – for example, forms and procedures to follow in the procurement process. Because FSM does not have procedures in place that ensure the implementation of its FMR, OSEP is unable to determine whether FSM's Fiscal Management Plan includes all content required to reasonably ensure compliance with Part B and Federal fiscal requirements. Furthermore, based on its findings in its April 15, 2010 verification letter, OSEP concludes that FSM does not have procedures that are reasonably designed to ensure the timely obligation and liquidation of Part B funds, and does not have procedures that are reasonably designed to ensure appropriate use of Part B funds.

Fiscal Audits

FSM was required to provide data and information on the results of on-site and off-site fiscal audits of Chuuk from 2006 through the present, and the specific fiscal findings issued as a result of its monitoring visit in Chuuk that FSM reported with its July 2008 Progress Report and the actions taken as a result of the findings. FSM provided this information in

its Second Progress Report due May 15, 2010, and in a Memorandum dated July 17, 2010¹. FSM reported that it corrected the noncompliance identified in Chuuk related to fiscal findings, although the correction was not timely. FSM also reported that it made no findings of noncompliance related to fiscal matters during a May 10-13, 2010 verification visit to Chuuk. In addition, FSM reported that it also conducted a verification visit to Kosrae in May 17-20, 2010 and did not make any findings of noncompliance in the area of fiscal management. FSM also reported that fiscal records pertaining to travel, fuel, and supplies were reviewed during a April 2010 Management Training in Chuuk, and that during a May 2010 on-site verification visit, FSM verified that fiscal records were adequately maintained.

Fiscal Training

FSM provided a copy of the fiscal training plan; training schedules, and agendas with its FFY 2008 APR. In the memorandum dated July 17, 2010 (see footnote 1), FSM provided the results of its fiscal management training plan. In that report, FSM stated that fiscal training was conducted on April 5-7, 2010. The fiscal training focused on the general requirements of IDEA and Federal regulations pertaining to program and fiscal management, and that FSM national and State fiscal regulations were also reviewed. Although FSM reported that fiscal management training was used to verify that all FSM States had procedures in place to manage the use of Part B funds, as noted above, FSM does not have written procedures to ensure that Part B funds are used properly. Accordingly, OSEP is concerned that FSM only provided training to its staff as it relates to IDEA, FSM and State regulations and did not address procedures for ensuring compliance with those requirements.

April 30, 2010 Verification Letter

As noted above, OSEP conducted a verification visit to FSM in November 2009 and issued a verification letter on April 30, 2010. That verification visit found, among other matters not related to these Special Conditions, that FSM has not expended all funds from its FFY 2005 and FFY 2006 IDEA Part B grant awards, and OSEP concluded that FSM does not have procedures that are reasonably designed to ensure the timely obligation and liquidation of IDEA Part B funds in accordance with the requirements in 34 CFR §76.709. FSM was required to submit, within 60 days of the date of the April 30, 2010 verification letter, a description of the procedures in place to ensure the timely obligation and liquidation of IDEA Part B funds.

OSEP's April 30, 2010 verification visit letter also found that, while FSM has improved in its management of Part B funds, its fiscal policies and procedures have not been fully implemented and that some of these issues involve FSM States other than Chuuk. For example, school staff from Pohnpei State interviewed by OSEP reported waiting six months or more for materials, including instructional and support materials needed for the provision of special education and related services for children with disabilities. FSM staff reported only a few fiscal staff at the national level have the responsibility for reviewing and approving procurement requests. FSM staff also reported that there is a lack of knowledge by school and State staff regarding FSM's national procurement requirements and

¹ OSEP assumes that the correct date is June 17, 2010.

procedures. OSEP also concluded that FSM did not have procedures that are reasonably designed to ensure appropriate use of IDEA funds. Within 60 days of the April 30, 2010 verification visit letter, FSM was required to submit to OSEP: (1) a copy of FSM's guidance on purchasing processes; (2) a plan for providing fiscal management training and a report on the outcome of the fiscal training as required by FSM's FFY 2009 Special Conditions; and (3) a copy of guidance issued by the National Ministry of Finance, including procurement requirements/policies and procedures and/or standard operating procedures.

OSEP's April 30, 2010 verification visit letter also found that FSM did not have policies and procedures that are reasonably designed to ensure the timely liquidation of Part B funds and did not have procedures reasonably designed to ensure the appropriate use of IDEA funds. Therefore, OSEP required that FSM provide within 60 days of the date of that letter, in addition to the items described in the above paragraph, a description of procedures used to ensure the timely liquidation of Part B funds.

2. Nature of the Special Conditions

While the Special Conditions placed on FSM's FFY 2009 grant award, as it relates to fiscal management of Part B funds, was the result of noncompliance identified specifically in Chuuk, OSEP's April 30, 2010 verification visit letter found that fiscal management is an area of noncompliance throughout FSM, and may impact the timely liquidation, obligation, and appropriate use of Part B funds in all FSM States. Therefore, OSEP is modifying FSM's Special Conditions so that it applies to fiscal management throughout FSM.

Pursuant to these Special Conditions, FSM must provide three Reports: the First Progress Report is due October 1, 2010, the Second Progress Report is due with FSM's FFY 2009 APR, due February 1, 2011, and the Third Progress Report is due May 1, 2011.

First Progress Report due October 1, 2010

1. OSEP will review any documents submitted by FSM in response to OSEP's April 30, 2010 verification letter. For those documents related to fiscal management, OSEP will respond to FSM and inform FSM whether its submission is complete and responsive to OSEP's verification letter. If there are any outstanding document requests from the April 30, 2010 verification letter related to fiscal management, FSM must provide these documents with its First Progress Report. It is not necessary to provide further information on the fiscal management training conducted by FSM in May 2010.
2. FSM must provide a status report on the development of written procedures to ensure the implementation of its FMR and the fiscal requirements of Part B related to the timely obligation and liquidation of IDEA Part B funds and the use of Part B funds. These written procedures must include due dates, positions responsible for taking required actions, necessary forms, etc. to implement the FMR and the fiscal requirements of Part B related to the timely obligation and liquidation of Part B funds and the use of Part B funds. FSM is encouraged to seek technical assistance, including from OSEP, if necessary to develop these written procedures.

Second Progress Report due February 1, 2011

1. FSM must provide a copy of its written procedures to ensure the implementation of its FMR and the fiscal requirements of Part B related to the timely obligation and liquidation of Part B funds and the use of Part B funds.
2. FSM must provide a training plan on the new written procedures to ensure implementation of its FMR and the fiscal requirements of Part B related to the timely obligation and liquidation of Part B funds and the use of Part B funds, including dates and location of training to be conducted prior to its Third Progress Report.

Third Progress Report due May 1, 2011

1. FSM must provide the dates, locations, general content, and results of its fiscal training on the new procedures to implement its FMR and the fiscal requirements of Part B related to the timely obligation and liquidation of Part B funds and the use of Part B funds.
2. FSM must provide a list of fiscal audits conducted by FSM between May 1, 2010 and April 15, 2010 and the results of those audits, including any findings of noncompliance and any actions taken by FSM as a result of these findings.
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 Fiscal Management in FSM.

4. **Method of Requesting Reconsideration**

FSM may write to the Office of Special Education Programs Acting Director, Alexa Posny, 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 FSM 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