

Enclosure B

New Mexico IDEA Part C FFY 2010 Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to the Department's authority in sections 616(g) and 642 of the Individuals with Disabilities Education Act (IDEA) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is designating New Mexico as a "high risk" grantee and imposing Special Conditions on New Mexico's Federal Fiscal Year (FFY) 2010 grant award under Part C of the IDEA (Part C) to ensure that:

All infants and toddlers with disabilities with IFSPs in New Mexico receive the early intervention services on their IFSPs in a timely manner, as required by 34 CFR §§303.340(c), 303.342(e) and 303.344(f)(1) (timely service provision).

The timely service provision requirements were the subject of Special Conditions imposed on New Mexico's IDEA Part C FFY 2009 grant award, which required the New Mexico Department of Health (NMDOH) to submit two reports, the first with its FFY 2008 APR, due February 1, 2010 and a final Progress Report by May 14, 2010.¹ NMDOH was required to provide timely service provision data for a six-month period for eight early intervention service (EIS) programs or providers. In its Progress Reports, NMDOH provided updated FFY 2009 quarterly data showing continued noncompliance with the timely service provision requirements for seven of the eight early intervention service (EIS) programs or providers, ranging from 81.1% to 95% compliance for the six-month period from July 1, 2009 to December 31, 2009.²

For these reasons, and to ensure that the timely service provision requirements are met in New Mexico, the Department is imposing these Special Conditions on New Mexico's FFY 2010 Part C grant award.

2. Nature of the Special Conditions

NMDOH must provide data to OSEP by May 1, 2011, demonstrating compliance by the remaining seven EIS programs and providers with the timely service provision requirements in 34 CFR §§303.340(c), 303.342(e) and 303.344(f)(1). NMDOH must submit two progress reports with the following data for each of the seven EIS programs listed in Footnote 2 of this document: (1) the number and percentage of infants and toddlers with disabilities for whom the Part C services identified on the child's IFSP were timely initiated; (2) the number of eligible children with IFSPs whose services were not timely initiated because the delay was attributable to: (a) documented exceptional family circumstances; or (b) other reasons (in which case, NMDOH must provide an explanation

¹ NMDOH's FFY 2009 IDEA Part C FFY 2009 grant also contained Special Conditions to ensure compliance with the 45-day timeline requirements in 34 CFR §§303.321(e)(2); 303.322(e)(1) and 303.342(a). OSEP's May 12, 2010 letter lifted the Special Condition regarding these 45-day timeline requirements and indicated that OSEP looked forward to NMDOH's annual reporting on these requirements under Indicator 7 of its Annual Performance Report (APR).

² The seven EIS programs and providers are: Disabilities Services, Inc., La Vida Felicidad, Inc., Laguna Pueblo Division of EC, MECA, Pecos Valley Cooperative, RCI, and Tresco, Inc. The one program that demonstrated compliance was Mosaic.

of the reasons for each delay); and (3) the specific actions that NMDOH has taken with each of the seven EIS programs or providers to address the reasons for delays.

- i. The first Progress Report, due by February 1, 2011, with NMDOH's FFY 2009 APR, must provide data for elements (1) through (3) above for the period from January 1, 2010, through June 30, 2010, for each of the seven EIS programs and providers. In addition, if NMDOH has issued any findings for any of these seven EIS programs and providers during FFY 2008 or 2009 regarding timely service provision, the status of correction of these findings.
- ii. The second and final Progress Report, due by May 1, 2010, must provide updated data for elements (1) through (3) above for the period from July 1, 2010, through December 31, 2010 for each of the seven EIS programs and providers. In addition, if NMDOH has issued any findings for any of these seven EIS programs and providers during FFY 2008 or 2009 regarding timely service provision and which findings were not reported as corrected in NMDOH's February 1, 2010 progress report, the status of correction of these findings.

3. Evidence Necessary to Remove Conditions

The Department will remove the Special Conditions if, at any time prior to the expiration of the grant year, New Mexico provides documentation, satisfactory to the Department, that it has met the conditions set forth above.

4. Method of Requesting Reconsideration

NMDOH may write to the Office of Special Education Programs Acting Director, Alexa Posny, Ph.D., 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 these Special Conditions sought by the State and the reasons for those requested changes.

5. Submission of Reports

NMDOH must submit all reports to the Department under these Special Conditions to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
400 Maryland Ave., S.W.
Washington, D.C. 20202-2550
Attn.: Virginia Sheppard
And by email to: virginia.sheppard@ed.gov