

Enclosure B
Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to section 611(h)(2)(F) of Part B of the Individuals with Disabilities Education Act (IDEA), the Office of Special Education Programs (OSEP) is imposing Special Conditions on the Bureau of Indian Education's (BIE) Federal Fiscal Year (FFY) 2013 grant award under Part B of the Individuals with Disabilities Education Act (IDEA or Part B). OSEP is imposing these Special Conditions because of the BIE's failure to complete all of the corrective actions contained in Section C of the Program Improvement and Accountability Plan (PIAP), as well as the BIE's noncompliance with State complaint and mediation requirements. The objective of Section C of the PIAP is to ensure the BIE provides a free appropriate public education (FAPE) to all eligible students in all BIE-funded schools.

In response to serious concerns raised in 2005 by the U.S. Department of Education (Department) concerning the BIE's administration of Elementary and Secondary Education Act (ESEA) and IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP is Interior's plan for meeting the statutory requirements set forth in ESEA and IDEA for properly managing Federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that ESEA and IDEA have established. The BIE has been submitting quarterly reports to the Department on its progress in implementing the PIAP, and the BIE and the Department have been meeting quarterly to discuss the BIE's progress in implementing the PIAP's corrective actions.

Because of the lack of satisfactory progress in implementing the PIAP, the Department placed special conditions on Interior's receipt of all FFY 2007 and FFY 2008 ESEA and IDEA funds the Department provided to Interior. As part of the special conditions, the Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of ESEA and IDEA. In FFY 2009, FFY 2010, FFY 2011 and FFY 2012, OSEP imposed program-specific special conditions on the grant award under Part B of the IDEA, because the BIE had not completed all of the corrective actions contained in Section C of the PIAP.

At this time, the BIE has not documented completion of all of the corrective actions contained in Section C of the 2012-2013 PIAP. Specifically, the BIE has not fully implemented fiscal monitoring procedures (in accordance with Milestones C.4.2.1 and C.4.2.2) to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of Part B funds allocated under IDEA section 611(h)(1)(A), as required by IDEA sections 611(h)(2)(A) and (F), 612(a)(11), 613(a)(2)(A)(i), and 616; 34 CFR §§300.149, 300.600, 300.708, and 300.716; 20 U.S.C. §1232d(b)(3)(E); and in OSEP's verification letter dated May 26, 2010. In addition, OSEP issued letters to the BIE on September 7, 2012 and February 19, 2013, finding that the BIE is not in compliance with the State complaint and mediation

requirements contained in 34 CFR §§300.152 and 300.506(b)(5). As a result, OSEP is imposing additional Special Conditions related to these requirements.

2. Nature of the Special Conditions

Based on its review of the BIE's quarterly report on Section C of the PIAP for the quarter ending March 31, 2013, and the areas of noncompliance identified in the September 7, 2012 and February 19, 2013 letters, OSEP has determined that it is necessary to impose the following Special Conditions.

A. Final Report on Section C of the 2012-2013 PIAP: The BIE must submit to the Department by July 31, 2013, its final report on Section C of the PIAP for the 2012-2013 school year. This report covers April 1, 2013 through June 30, 2013. The report must contain (a) the status of each task, subtask and milestone scheduled to be completed, (b) the BIE's supporting documentation regarding completion of these tasks, subtasks and milestones, including an explanation of any delays and expected completion dates for all unimplemented actions, and (c) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.

B. Revisions to Section C of the 2013-2014 PIAP:

Removal of Certain Special Conditions: The BIE is no longer required to report to the Department on the following tasks, subtasks, and milestones:

Subtask C.4.1: Implement Special Education Integrated Monitoring Process (inclusive of Milestones C4.1.1–C4.1.4). The BIE is required to identify and correct findings of noncompliance in a timely manner and to verify correction of findings of noncompliance, in accordance with IDEA sections 611(h)(2)(A) and (F), 612(a)(11) and 616; 34 CFR §§300.149, 300.600, 300.708 and 300.716; 20 U.S.C. §1232d(b)(3)(E); and OSEP Memorandum 09-02 (OSEP Memo 09-02), dated October 17, 2008. The BIE has revised its monitoring system and has demonstrated, in its FFY 2011 Annual Performance Report (APR), submitted on May 17, 2013, and its 2012-2013 PIAP reports, that it is identifying findings of noncompliance using all components of the BIE's system of general supervision. In Indicator 15 of its FFY 2011 APR, the BIE reported that 95.09% of the findings of noncompliance identified in FFY 2010 were corrected in a timely manner, and that the remaining findings were subsequently corrected. Specifically, the BIE reported that 813 of 855 findings of noncompliance identified in FFY 2010 were corrected in a timely manner, and that the 42 remaining findings were subsequently corrected by February 15, 2013. The BIE also reported, in its FFY 2011 APR and its third quarterly PIAP report dated April 30, 2013, that all remaining findings of noncompliance identified in FFY 2008 and FFY 2009, previously reported as uncorrected, have been corrected. Based on this information and the fact that the BIE will continue to report on its compliance with these requirements under Indicator 15 in its FFY 2012 APR, the Department has determined that the BIE is no longer required to report on this subtask and these milestones in the PIAP.

Addition of New Special Conditions: As documented in letters issued on September 7, 2012, and February 19, 2013, OSEP has concluded that the BIE has failed to comply with the requirements to ensure (1) that State complaints are resolved within the 60-day timeline or an appropriately extended timeline due to the exceptional circumstances with respect to the particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State, consistent with 34 CFR §300.152(a) and (b); and (2) that each session in the mediation process is scheduled in a timely manner, consistent with 34 CFR §300.506(b)(5). As a result, OSEP is adding new Special Conditions and PIAP tasks, consistent with the required actions detailed in the February 19, 2013 letter, requiring the BIE to provide a listing of all State complaints and mediation requests filed with the BIE on a quarterly basis during the reporting period, and documentation of the BIE's compliance with the timeline requirements under 34 CFR §§300.152(a) and 300.506(b)(5), respectively.

C. Continued Implementation of Section C of the PIAP and 2013-2014 Reporting Requirements:

Continued Implementation: The BIE must continue to implement Section C of the PIAP for the summer term of 2013 and school year 2013-2014 until all corrective actions have been implemented. To ensure progress, the BIE must provide the Department with quarterly progress reports, which will be due to the Department 30 days after the end of each quarter. Each quarterly report will contain:

- (a) a description of activities and progress for each milestone, as described in the performance metric, during the reporting period;
- (b) the status of each milestone scheduled to be completed during the reporting period along with specific completion dates for all tasks, subtasks, and key milestones;
- (c) supporting documentation regarding completion of the milestones, including explanation of any delays and expected completion dates for all unimplemented actions;
- (d) updates to ensure that progress for previously completed tasks, subtasks and milestones is sustained; and
- (e) other data or documentation as the Department may request in order to verify the completion of tasks, subtasks and milestones.

Section C of the 2013-2014 PIAP must be revised to reflect the current status of the BIE's general supervisory system, and must include the tasks, subtasks, milestones, and performance metrics described below.

Task C.4.0: Conduct School Monitorings.

Subtask C.4.2 (Fiscal Monitoring): Implement fiscal monitoring system to ensure that BIE-operated schools and tribally-operated schools are ensuring the appropriate use of IDEA Part B funds.

Milestone C.4.2.1: Develop and implement adequate fiscal monitoring procedures.

Performance Metric: Provide updated fiscal monitoring procedures.

Milestone C.4.2.2: Issue fiscal monitoring reports.

Performance Metric: Provide copies of fiscal monitoring reports issued to schools.

Milestone C.4.2.3: Ensure timely correction of findings of noncompliance identified in fiscal monitoring reports.

Performance Metric: Report the number of findings of noncompliance related to fiscal requirements that are timely corrected, and the number of findings of noncompliance related to fiscal requirements that are corrected more than one year after the State's identification of noncompliance; and provide evidence of correction.

Milestone C.4.2.4: Ensure verification of correction of noncompliance related to fiscal requirements for which no written findings are issued.

Performance Metric: Report instances of noncompliance related to fiscal requirements, identified through self-assessments and document reviews, for which the BIE does not issue a written finding; and evidence that the BIE has verified the school corrected the noncompliance.

Task C.5.0: Conduct Dispute Resolution Processes in Accordance With IDEA Requirements and Timelines.

Subtask C.5.1 (Mediation): Implement procedures to ensure compliance with mediation requirements contained in §300.506(b)(5).

Milestone C.5.1.1: Ensure that each session in the mediation process is scheduled in a timely manner.

Performance Metric: Provide a listing of mediation requests, including the date of the request and the date the mediation session was held.

Subtask C.5.2 (State Complaints): Implement procedures to ensure compliance with State complaint requirements contained in §300.152(a) and (b).

Milestone C.5.2.1: Ensure that State complaints are resolved within the 60-day timeline or an appropriately extended timeline

due to the exceptional circumstances with respect to the particular complaint or because the parent (or individual or organization) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State, consistent with 34 CFR §300.152(a) and (b).

Performance Metric: Provide a listing of State complaints, including the date the complaint was filed and the date the written decision was issued.

Required Documentation to Verify Completion of Certain Milestones:

In order to demonstrate completion of Milestones in Section C of the PIAP, the BIE must include the following information:

Milestones C.4.2.1 and C.4.2.2: Issue fiscal monitoring reports and ensure timely correction of findings of noncompliance identified in fiscal monitoring reports.

- (a) For the fourth quarterly report for the 2012-2013 PIAP, the BIE must provide updated fiscal monitoring procedures.
- (b) For the fourth quarterly report for the 2012-2013 PIAP and the first, second, and third quarterly reports for the 2013-2014 PIAP, the BIE must provide copies of fiscal monitoring reports issued to schools during the reporting period.
- (c) For the fourth quarterly report for the 2012-2013 PIAP and the first, second, and third quarterly reports for the 2013-2014 PIAP, the BIE must provide: (i) the number of findings of noncompliance related to fiscal requirements that are corrected during the reporting period; (ii) the date those findings were identified; (iii) the number of those findings timely corrected; (iv) the number of those findings corrected more than one year after the BIE's identification of noncompliance; and (v) a description of the evidence used by the BIE to verify correction of those findings.
- (d) For the fourth quarterly report for the 2012-2013 PIAP and the first, second, and third quarterly reports for the 2013-2014 PIAP, the BIE must provide: (i) the number of instances of noncompliance related to fiscal requirements, identified through self-assessments and documents reviews during the reporting period, for which the BIE did not issue a written finding; (ii) the date those instances of noncompliance were identified; (iii) the date those instances of noncompliance were verified as corrected; and (iv) a description of the evidence used by the BIE to verify correction of those instances of noncompliance.

Milestones for C.5.2.1 and C.5.2.2

- (a) For the fourth quarterly report for the 2012-2013 PIAP and the first, second, and third quarterly reports for the 2013-2014 PIAP, the BIE must provide a listing of mediation requests, including the date of the request and the date the mediation session was held, as required by OSEP's February 19, 2013 letter and the 2013-2014 PIAP.
- (b) For the fourth quarterly report for the 2012-2013 PIAP and the first, second, and third quarterly reports for the 2013-2014 PIAP, the BIE must provide a listing of State complaints, including the date the complaint was filed and the date the written decision was issued, as required by OSEP's February 19, 2013 letter and the 2013-2014 PIAP.

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, the BIE provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above

4. Method of Requesting Reconsideration

The BIE can write to OSEP's Director, Melody Musgrove, Ed.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 the Special Conditions sought by the BIE and the reasons for those requested changes.

U.S. Department of Education
Office of Special Education Programs
Attn: Melody Musgrove
550 12th Street, SW, Room 4109 Washington, DC 20202

5. Submission of Reports

The BIE must submit all reports required under the Special Conditions. The quarterly reports for Section C of the PIAP should be submitted to:

Matthew Schneer
U.S. Department of Education
Office of Special Education Programs
550 12th Street, SW, Room 4169
Washington, DC 20202

And

Susan Benbow
U.S. Department of Education
Risk Management Service
Office of the Deputy Secretary
550 12th Street, SW, Room 7103
Washington, DC 20202