

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) 2014 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 Corrective Action Plan (CAP), formerly known as the Program Improvement and Accountability Plan (PIAP). The objective of Section C of the CAP 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 FFYs 2009, 2010, 2011, 2012, and 2013, 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 Interior's request, the PIAP's name was formally changed to the CAP during the 2013-2014 school year.

At this time, the BIE has not documented completion of all of the corrective actions contained in Section C of the 2013-2014 CAP. 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, the BIE has not provided documentation sufficiently demonstrating that the

BIE is conducting dispute resolution processes consistent with IDEA requirements and timelines (in accordance with Milestones C.5.1.1 and C.5.1.2). These milestones were added to the BIE's Special Conditions as a result of OSEP's finding, as identified in OSEP's September 7, 2012, and February 19, 2013, letters, 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).

2. 2014 IDEA Part B Determination and Enforcement

The Department has determined that the BIE needs intervention in implementing the requirements of Part B of the IDEA. Under IDEA section 616(e)(2), if the Secretary determines a State to need intervention for three or more consecutive years, the Secretary must take one or more of the six enforcement actions identified in IDEA section 616(e)(2)(B) and may take, under IDEA section 616(e)(2)(A), one of the three enforcement actions identified in IDEA section 616(e)(1). The BIE also received a determination of "needs intervention" in 2012 and 2013 for its FFYs 2010 and 2011 APRs, and this is the third consecutive year that the BIE is receiving a determination of "needs intervention." Accordingly, under IDEA section 616(e)(2)(B)(i), the Secretary is requiring the BIE to submit a corrective action plan, because the Secretary has determined that the BIE should be able to correct the problems that are the basis for its "needs intervention" determination within one year from the date of the determination letter, and other enforcement remedies under IDEA section 616(e)(2)(B) are not appropriate at this time.

The BIE must submit a corrective action plan that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2014-2015 school year under Section C of the CAP, all of the Special Conditions that are being imposed on its FFY 2014 IDEA Part B grant award. The corrective action plan must address the steps the BIE will take to: (1) implement fiscal monitoring procedures 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); and (2) demonstrate compliance with the timeline requirements for resolving State complaints and scheduling mediation sessions under 34 C.F.R. §§ 300.152(a) and 300.506(b)(5). The BIE must submit its corrective action plan and quarterly progress reports in accordance with the reporting and timeline requirements specified in the Special Conditions that OSEP is imposing on the BIE's FFY 2014 IDEA Part B grant award.

3. Nature of the Special Conditions

Based on its review of the BIE's quarterly report on Section C of the CAP for the quarter ending March 31, 2014, OSEP has determined that it is necessary to impose the following Special Conditions.

A. Final Report on Section C of the 2013-2014 CAP: The BIE must submit to the Department by July 31, 2014, its final report on Section C of the CAP for the 2013-2014 school year. This report covers April 1, 2014 through June 30, 2014. 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. Continued Implementation of Section C of the CAP and 2014-2015 Reporting Requirements:

Continued Implementation: The BIE must continue to implement Section C of the CAP for the summer term of 2014 and school year 2014-2015 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 2014-2015 CAP 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 CAP, the BIE must include the following information:

Milestones C.4.2.1, C.4.2.2, C.4.2.3, and C.4.2.4:

- (a) For the fourth quarterly report for the 2013-2014 CAP, the BIE must provide updated fiscal monitoring procedures.
- (b) For the fourth quarterly report for the 2013-2014 CAP and the first, second, and third quarterly reports for the 2014-2015 CAP, the BIE must provide copies of fiscal monitoring reports issued to schools during the reporting period.
- (c) For the fourth quarterly report for the 2013-2014 CAP and the first, second, and third quarterly reports for the 2014-2015 CAP, 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 2013-2014 CAP and the first, second, and third quarterly reports for the 2014-2015 CAP, 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.5.1.1 and C.5.2.1:

- (a) For the fourth quarterly report for the 2013-2014 CAP and the first, second, and third quarterly reports for the 2014-2015 CAP, the BIE must provide a listing of mediation requests, including the date of the request and the date the mediation session was held.
- (b) For the fourth quarterly report for the 2013-2014 CAP and the first, second, and third quarterly reports for the 2014-2015 CAP, the BIE must provide a listing of State complaints, including the date the complaint was filed and the date the written decision was issued.

4. 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.

5. 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

6. Submission of Reports

The BIE must submit all reports required under the Special Conditions. The quarterly reports for Section C of the CAP 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