

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) 2015 grant award under Part B of the IDEA. 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 2014-2015 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). Although the BIE reported in its second quarterly report for the 2014-2015 CAP that there was one mediation request during the reporting period, and that the mediation sessions were scheduled in a timely manner, OSEP has determined that there is not sufficient data to demonstrate that the BIE is in compliance with these requirements. The BIE also reported in its third quarterly report for the 2014-2015 CAP that it had one mediation request and six State complaints that were pending. The fourth quarterly report for the 2014-2015 CAP, due on July 31, 2015, will be the next opportunity for the BIE to demonstrate whether the pending mediation request and six State complaints have been conducted consistent with IDEA requirements and timelines.

In addition, over the past three years, the BIE has been out of compliance with key data requirements under both sections 616 and 618 of the IDEA. First, pursuant to section 616(b)(2)(B) of the IDEA, the BIE is required to collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in section 616(a)(3). In its FFY 2011 State Performance Plan (SPP)/Annual Performance Report (APR) submitted on February 1, 2013, and in its FFY 2012 SPP/APR submitted on February 1, 2014, the BIE did not provide FFY 2011 and FFY 2012 data, respectively, for Indicator 3A, the percent of districts with a disability subgroup that meets the BIE's minimum "n" size that meet the BIE's Adequate Yearly Progress (AYP)/Annual Measurable Objectives (AMO) targets for the disability subgroup. In its FFY 2013 SPP/APR, the BIE provided FFY 2013 data for this indicator but did not use the required data source (AYP data used for accountability reporting under Title I of the ESEA), because the BIE had not submitted the AYP data used for accountability reporting under Title I. In its FFY 2013 SPP/APR submitted on February 1, 2015, the BIE did not provide any FFY 2013 data for Indicators 3B (the participation rate for children with individualized education programs (IEPs) on Statewide assessments) and 3C (the proficiency rate for children with IEPs against grade level, modified, and alternate academic achievement standards).

Second, under section 618 of the IDEA, each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public, on information specified in the statute and any other information that may be required by the Secretary. There are eight section 618 data collections under Part B: (1) Child Count; (2) Educational Environment; (3) Personnel; (4) Exiting; (5) Discipline; (6) Assessment; (7) Dispute Resolution; and (8) Local Educational Agency Maintenance of Effort Reduction and Coordinated Early Intervening Services (LEA MOE Reduction and CEIS). For School Year (SY) 2013-14, the BIE failed to submit two section 618 data submissions (Assessment and Personnel (specifically, regarding Related Services Providers)) in a timely manner, and failed to submit any data for two section 618 data submissions (Discipline, and LEA MOE Reduction and CEIS), both of which remain outstanding at this time. For SY 2014-15, the BIE failed to submit four section 618 data submissions (Child Count, Discipline, Dispute Resolution, and LEA MOE Reduction and CEIS) in a timely

manner. In addition, the BIE submitted inaccurate data related to Dispute Resolution, as required under section 618, for FFYs 2013 and 2014, as OSEP noted in the BIE's FFY 2011 and 2012 SPP/APR Response Tables. The BIE also did not make the necessary resubmissions to ensure that its section 618 data met the data quality standards for publication; this resulted in the exclusion of the BIE's data from five of the eight publicly released IDEA section 618 data files.

Finally, the BIE failed to publicly report on the assessment of students with disabilities in the same manner and frequency as it reports on the assessment of students without disabilities, as required under 34 CFR §300.160(f), for three years in a row – FFYs 2013, 2014, and 2015 – as noted in the BIE's FFYs 2011, 2012, and 2013 SPP/APR Response Tables, respectively. As a result of the BIE's repeated failures to comply with all of the above IDEA data submission requirements, OSEP is imposing additional Special Conditions on the BIE's FFY 2015 Part B grant award.

2. 2015 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. The BIE also received a determination of “needs intervention” in 2012, 2013 and 2014 for its FFYs 2010, 2011 and 2012 APRs, and this is the fourth consecutive year that the BIE is receiving a determination of “needs intervention.” 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). 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 2015-2016 school year under Section C of the CAP, all of the Special Conditions that are being imposed on its FFY 2015 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); (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); and (3) demonstrate compliance with the data reporting requirements under sections 612(a)(16)(D), 616(b)(2)(B) and 618 of the IDEA and 34 CFR §300.160(f). The BIE must submit its corrective action plan with its final quarterly progress report on Section C of the 2014-2015 CAP, due on July 31, 2015, 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 2015 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, 2015, OSEP has determined that it is necessary to impose the following Special Conditions.

A. Final Report on Section C of the 2014-2015 CAP: The BIE must submit to the Department by July 31, 2015, its final report on Section C of the CAP for the 2014-2015 school year. This report covers April 1, 2015 through June 30, 2015. 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. Submission of Section C of the 2015-2016 CAP: The BIE must submit Section C of the 2015-2016 CAP by July 31, 2015. The 2015-2016 CAP must include the tasks, subtasks, milestones, and performance metrics described in subparagraph 3.C below.

C. Implementation of Section C of the 2015-2016 CAP and Reporting Requirements:

The BIE must implement Section C of the 2015-2016 CAP, which covers the period between July 1, 2015, and June 30, 2016, 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.

When reporting the information required in the 2015-2016 CAP and the quarterly progress reports, the BIE shall include data and other required information for the reporting periods reflected below, unless otherwise specified:

	Due Date	Reporting Period
Final Quarterly Progress Report for Section C of 2014-2015 CAP	July 31, 2015	April 1, 2015 – June 30, 2015
Section C of 2015-2016 CAP	July 31, 2015	July 1, 2015 – June 30, 2016
First Quarterly Progress Report for Section C of 2015-2016 CAP	October 31, 2015	July 1, 2015 – September 30, 2015
Second Quarterly Progress Report for Section C of 2015-2016 CAP	January 31, 2016	October 1, 2015 – December 31, 2015
FFY 2014 SPP/APR	February 1, 2016	July 1, 2014 – June 30, 2015
Third Quarterly Progress Report for Section C of 2015-2016 CAP	April 30, 2016	January 1, 2016 – March 31, 2016
Final Quarterly Progress Report for Section C of 2015-2016 CAP	July 31, 2016	April 1, 2016 – June 30, 2016

Section C of the 2015-2016 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, including procedures for identifying noncompliance found outside of on-site visits, such as noncompliance identified in budget reviews or Fiscal Accountability Self-Assessments that all BIE-funded schools are required to submit to the BIE.

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.

Task C.6.0: Collect and Report Data to the Secretary and the Public in Accordance With the Requirements of Sections 612, 616, and 618 of the IDEA:

Subtask C.6.1 (Data Procedures and Processes): Develop and implement procedures to collect and report valid and reliable data required under sections 616 and 618 of the IDEA in a timely fashion.

Milestone C.6.1.1: Participate in regular calls organized by the Partner Support Center (PSC) to discuss data quality concerns and prioritize data submissions/resubmissions.

Performance Metric: Provide agendas, schedules, and/or other documentation of calls with PSC.

Milestone C.6.1.2: Develop protocols, procedures and governance to ensure the collection and reporting of valid and reliable data required under sections 616 and 618 of the IDEA in a timely fashion.

Performance Metric: Provide protocols, procedures and governance for the collection and reporting of data required under sections 616 and 618 of the IDEA.

Subtask C.6.2 (Section 616 Data): Develop and implement procedures to ensure that all section 616 data required in the SPP/APR are valid and reliable and reported in a timely fashion.

Milestone C.6.2.1: Report valid and reliable data for Indicator 3A for FFYs 2011 and 2012 in the FFY 2014 APR, due on February 1, 2016. Verify, in the FFY 2014 APR, that the Indicator 3A data it reported for FFYs 2011, 2012, and 2013 are consistent with the AYP data submitted for those fiscal years for accountability reporting under Title I of the ESEA.

Milestone C.6.2.2: Report valid and reliable data for Indicators 3B and 3C for FFY 2013 in the FFY 2014 APR, due on February 1, 2016.

Milestone C.6.2.3: Report valid and reliable data for all Indicators for FFY 2014 in the FFY 2014 APR, due on February 1, 2016.

Performance Metric: Provide the required data for all SPP/APR indicators in the FFY 2014 APR.

Subtask C.6.3 (Section 618 Data): Develop and implement procedures to ensure that all section 618 data required are valid and reliable and reported in a timely fashion.

Milestone C.6.3.1: Submit outstanding section 618 data for SY 2013-14, including: SY 2013-14 Assessment data (File Spec 188, 185, 175, 178, and 004) and SY 2013-14 Related Services Provider data (File Spec 099, for the SY 2013-14 Personnel data collection).

Performance Metric: Provide all data for specified file specs.

Milestone C.6.3.2: Report valid and reliable data for the IDEA Section 618 data collections to ED Facts Submission System (ESS) for SY 2014-15 Personnel, SY 2014-15 Exiting, and SY 2014-15

Discipline; and to ED Facts Metadata and Process System (EMAPS) for SY 2014-15 Dispute Resolution.

Performance Metric:

- (a) Submit preliminary data by October 14, 2015.
- (b) Resubmit data resolving data quality issues identified by the ESS reports and OSEP Pre-fill reports, as well as the HTML report and edit check warnings in EMAPS, by November 4, 2015.
- (c) Submit final data, addressing all data quality issues identified by OSEP, if any, by June 3, 2016, in order to ensure inclusion in publicly reported data.

Milestone C.6.3.3: Report valid and reliable data to ESS for the IDEA Section 618 data collection for SY 2014-15 Assessment.

Performance Metric:

- (a) Submit preliminary data by November 18, 2015.
- (b) Resubmit data resolving data quality issues identified by the ESS reports and OSEP Pre-fill reports by December 16, 2015.
- (c) Submit revised data, addressing all data quality issues identified by OSEP, if any, by March 2, 2016.
- (d) Submit final data, addressing all data quality issues identified by OSEP, if any, by April 13, 2016, in order to ensure inclusion in publicly reported data.

Milestone C.6.3.4: Report valid and reliable data to ESS for the IDEA Section 618 data collection for SY 2015-16 Child Count and SY 2015-2016 Educational Environment.

Performance Metric:

- (a) Submit preliminary data by February 17, 2016.
- (b) Resubmit data resolving data quality issues identified by the ESS reports and OSEP Pre-fill reports by April 6, 2016.
- (c) Submit final data, addressing all data quality issues identified by OSEP, if any, by the deadline designated by OSEP, in order to ensure inclusion in publicly reported data.

Milestone C.6.3.5: Report valid and reliable data to EMAPS for the IDEA Section 618 data collection for FFY 2014/SY 2014-15 LEA MOE Reduction and CEIS.

Performance Metric:

- (a) Submit preliminary data by April 13, 2016.

- (b) Resubmit data resolving data quality issues identified by the ESS reports and OSEP Pre-fill reports by May 4, 2016.

Milestone C.6.3.6: Work with the IDEA Data Center (IDC) and other relevant OSEP-funded technical assistance (TA) centers to develop and implement a TA plan.

Performance Metric: Submit a TA plan and evidence of implementation of action plans identified in the TA plan.

Subtask C.6.4 (Public Reporting of Assessment Data)

Milestone C.6.4.1: Develop and implement procedures to ensure that the BIE will publicly report on the assessment of children with disabilities in the same manner and frequency as it reports on the assessment of children without disabilities, as required under 34 CFR §300.160(f).

Performance Metric: Within 90 days of receipt of the BIE's determination letter, submit a Web link demonstrating that the BIE has reported, for FFYs 2011, 2012, and 2013, to the public on the participation and performance of children with disabilities in accordance with the requirements of 34 CFR §300.160(f). In addition, submit a Web link in the FFY 2014 APR that demonstrates compliance with 34 CFR §300.160(f) for FFY 2014.

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 2014-2015 CAP, the BIE must provide updated fiscal monitoring procedures.
- (b) For the fourth quarterly report for the 2014-2015 CAP and the first, second, and third quarterly reports for the 2015-2016 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 2014-2015 CAP and the first, second, and third quarterly reports for the 2015-2016 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 2014-2015 CAP and the first, second, and third quarterly reports for the 2015-2016 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 2014-2015 CAP and the first, second, and third quarterly reports for the 2015-2016 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 2014-2015 CAP and the first, second, and third quarterly reports for the 2015-2016 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.

Milestones for C.6.1.1, 6.1.2, 6.2.1, 6.2.2, 6.2.3, 6.3.1, 6.3.2, 6.3.3, 6.3.4, 6.3.5, 6.3.6, and 6.4.1:

- (a) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide schedules, agendas, and/or other documentation of calls with PSC.
- (b) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide protocols, procedures and governance developed to ensure the collection and reporting of valid and reliable data under sections 616 and 618 of the IDEA in a timely fashion.
- (c) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide updates on the status of the collection and reporting of FFY 2011 and FFY 2012 data for Indicator 3A, and FFY 2013 data for Indicators 3B and 3C.
- (d) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide all outstanding section 618 data for SY 2013-14.
- (e) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide evidence of submission of section 618 data for SY 2014-15 in accordance with the timelines for submission of preliminary, revised, and final data.

- (f) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide the TA plan developed with the IDC and any other relevant TA providers, and evidence of implementation of action plans identified in the TA plan.
- (g) For the first, second, and third quarterly reports for the 2015-2016 CAP, the BIE must provide documentation that it has developed procedures to publicly report on the assessment of students with disabilities in accordance with 34 CFR §300.160(f), and that it has implemented those procedures by providing a Web link demonstrating compliance with 34 CFR §300.160(f) for FFYs 2011, 2012, and 2013.
- (h) For the third quarterly report for the 2015-2016 CAP, the BIE must provide documentation that it has implemented procedures to publicly report on the assessment of students with disabilities in accordance with 34 CFR §300.160(f), by providing a Web link, in its FFY 2014 APR, demonstrating compliance with 34 CFR §300.160(f) for FFY 2014.

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