

Enclosure D

Special Conditions

I. Basis for Requiring Special Conditions

Pursuant to IDEA section 616(g) of Part B of the Individuals with Disabilities Education Act (IDEA or Part B) and 2 CFR §§200.207 and 3474.10, the Office of Special Education Programs (OSEP) is designating the District of Columbia (D.C.) as a “high-risk” grantee and imposing Special Conditions on the District of Columbia, Office of the State Superintendent of Education’s (State, D.C., or D.C. OSSE) Federal fiscal year (FFY) FFY 2017 grant award under IDEA Part B.

The State did not meet the Special Conditions imposed on its FFY 2016 IDEA Part B grant award to ensure timely reevaluations, timely correction of noncompliance, and compliance with secondary transition requirements. OSEP has imposed Special Conditions related to timely reevaluations on D.C.’s IDEA Part B grant award since 2001. This issue was initially identified in the 1998-2001 Compliance Agreement between D.C. and the U.S. Department of Education. OSEP has imposed Special Conditions on D.C.’s IDEA Part B grant award related to timely correction of noncompliance since 2005 and compliance with secondary transition requirements since 2009.

Timely reevaluations: A reevaluation that meets the requirements of section 614(a)(2), (b), and (c) of the IDEA and 34 CFR §300.303 must be completed for each child with a disability, no later than 36 months after the date on which the previous evaluation or reevaluation was completed, unless the parent and the LEA agree that a reevaluation is unnecessary.¹

In its April 27, 2017 Special Conditions progress report, revised June 14, 2017, the State reported that, for the period of October 1, 2016 through March 31, 2017, 86 percent of children were provided a timely reevaluation. The State further reported that at the end of the October 1, 2016 through March 31, 2017 reporting period, 271 children had not been provided a timely reevaluation. D.C.’s FFY 2016 Special Conditions progress reports reflect that for the July 1, 2016 through March 31, 2017 period, 86.4 percent of children were provided a timely reevaluation. These data reflect slippage from the July 1, 2015 through March 31, 2016 period in which 90 percent of children were provided a timely reevaluation.

In its April 27, 2017 Special Conditions progress report, revised June 14, 2017, the State reported that it had ensured correction of all findings of noncompliance identified in FFY 2014 and FFY 2015 related to the timely reevaluation requirements. The State further reported that 47

¹ Section 614(a)(2) of the IDEA and 34 CFR §300.303 require that a reevaluation occur at least once every three years, unless the parents and the LEA agree that a reevaluation is unnecessary. The State’s “Part B Initial Evaluation/ Reevaluation Policy,” dated March 22, 2010, states: “The LEA must hold a reevaluation meeting within three years of the date that the previous initial evaluation or reevaluation was completed. The reevaluation meeting must be scheduled in time to allow the IEP team to conduct assessments, if necessary, and to reconvene within three years of the previous eligibility meeting.”

of 62 findings identified in FFY 2014 related to timely reevaluations were corrected within the one-year timeline, with 15 findings subsequently corrected. Twelve of the 14 findings issued in FFY 2015 were corrected within the one-year timeline, with two findings subsequently corrected.

Because the State has not yet achieved compliance with the reevaluation requirements in IDEA sections 612(a)(7) and 614(a) through (c) and 34 CFR §300.303, OSEP requires the State to continue to provide progress data as detailed in these Special Conditions during FFY 2017.

Timely correction of noncompliance: Section 612(a)(11) of the IDEA and 34 CFR §300.149 require States to ensure that each educational program for children with disabilities administered within the State is under the general supervision of individuals responsible for educational programs for children with disabilities in the State educational agency. Section 616(a)(1)(C) and 34 CFR §300.600 of the IDEA require States to monitor implementation of Part B by LEAs. The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 CFR §§300.600 through 300.602 and 300.606 through 300.608. See also 20 U.S.C. 1232d(b)(3)(E).

In exercising its monitoring responsibilities under 34 CFR §300.600(d), the State must ensure that when it identifies noncompliance with requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (34 CFR §300.600(e)). When verifying the correction of identified noncompliance, the State must ensure that the LEA has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA and determine that the LEA is correctly implementing the specific regulatory requirement(s) based on a review of updated data such as data subsequently collected through on-site monitoring or a State data system. See OSEP Memorandum 09-02, dated October 17, 2008 (OSEP Memo 09-02).

D.C. reported in its May 1, 2017 Corrective Action Plan (CAP) progress report, revised June 14, 2017, that 100 percent of the FFY 2015² findings of noncompliance identified in FFY 2015 for which the one-year timeline had expired were corrected, with 233 of those being corrected within the one-year timeline (86.6 percent). This represents slippage from the data that D.C. reported in its May 2, 2016 Special Conditions progress report, revised May 18, 2016, in which the State reported that 587 of 604 findings of noncompliance identified in FFY 2014 (97.18 percent) for which the one-year timeline had expired were corrected within the one-year timeline.

While the State has demonstrated progress in ensuring that all findings of noncompliance are corrected, D.C. has not demonstrated that its general supervision system can ensure *timely*

² OSEP notes that D.C. made a total of 306 findings during FFY 2015. At the time of the State's submission, the one-year timeline for correction had not expired for 33 of these findings. Four of the 273 findings for which the one-year timeline for correction had expired were identified through IDEA dispute resolution processes and remain open due to unique circumstances (e.g., the parties have agreed that the corrective action will be implemented after expiration of the one-year timeline). For the purposes of calculating the State's compliance with ensuring timely correction of identified noncompliance, OSEP has excluded these four findings from the denominator (306 minus 33 (not yet due) minus 4 open dispute resolution findings: $233/269 = 86.6$). D.C. must continue to track all open findings, including dispute resolution findings and report on the status of correction in progress reports to OSEP.

correction of noncompliance. Therefore, OSEP requires the State to continue to provide progress data as outlined in these Special Conditions.

Secondary transition: Beginning not later than the first individualized education program (IEP) to be in effect when the child turns 16, or younger, if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and (2) the transition services (including courses of study) needed to assist the child in reaching those goals, as required by section 614(d)(1)(A)(i)(VIII) of the IDEA and 34 CFR §300.320(b). The public agency must invite a child with a disability to attend the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals. See 34 CFR §300.321(b)(1). To the extent appropriate, with the prior consent of the parents or a child who has reached the age of majority, the public agency must invite the representative of any participating agency that is likely to be responsible for providing or paying for transition services. See 34 CFR §300.321(b)(3).

D.C. reported under Indicator 13 of its FFY 2015 APR that 63 percent of youth aged 16 and above had an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs; evidence that the student was invited to the IEP Team meeting where transition services were to be discussed; and evidence, that if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

D.C.'s FFY 2016 Special Conditions progress reports for the period July 1, 2016 through March 31, 2017, reflect 64 percent compliance with the secondary transition requirements. These data reflect progress from the FFY 2015 APR data of 63 percent. However, D.C. continues to report low levels of compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §§300.320(b) and 300.321(b).

D.C. requested to meet with OSEP to discuss a revised method for collecting and reporting data on LEA compliance with secondary transition requirements for the FFY 2017 reporting period. On June 6, 2017, OSEP staff met with OSSE representatives to discuss the State's proposal to monitor its LEAs and collect secondary transition compliance data using a three-year cycle. This approach allows the State to focus its work with a cohort of LEAs before it collects and reports the LEAs' compliance data. The State's largest LEA, the District of Columbia Public Schools, will be reviewed each year of the three-year cycle. While the State will continue to randomly select 100 student IEPs for review for each of the three reporting periods, only student files from the cohort of LEAs selected for review for a given reporting period will be evaluated for compliance.

The FFY 2017 Special Conditions incorporate the State's proposal and also include elements OSEP believes are appropriate to: (1) ensure the secondary transition data the State reports under the Special Conditions and in its State Performance Plan/Annual Performance Report (SPP/APR) Indicator 13 data reflect actual LEA practice and compliance; and (2) ensure that it carries out

appropriate oversight and technical assistance to those LEAs that are not part of the cohort selected for intensive support and compliance review in a given year.

2015 and 2016 Enforcement Actions under Section 616 of the IDEA: D.C.'s low level of compliance with secondary transition requirements was a factor in the State's 2015 and 2016 needs intervention determinations. As part of the required enforcement actions for 2015 and 2016, the Department directed D.C. to use \$250,000 of the State's FFY 2015 and FFY 2016 IDEA Part B State-level funds to address noncompliance with secondary transition requirements.

Status of Directed Use of Remaining FFY 2016 and FFY 2015 IDEA Part B State-Level Funds for Secondary Transition: With its May 1, 2017 CAP progress report,³ revised June 14, 2017, the State provided documentation that reflects that as of May 1, 2017, while D.C. has obligated the full amount of the \$250,000 FFY 2016 IDEA Part B funds the Department directed in its June 28, 2016 determination letter, there is a remaining balance of \$233,355 that has not yet been expended. D.C. reported that it expects to use all of the directed FFY 2016 funds for secondary transition by September 30, 2017.

Because D.C. had not used the full amount of FFY 2015 directed funds to address noncompliance with secondary transition requirements as required by the Department's June 30, 2015 determination letter, the State was required to continue to report on the use of the remaining funds during FFY 2016. In its May 1, 2017 CAP progress report, revised June 14, 2017, the State reported it has obligated the full amount of the \$250,000 FFY 2015 IDEA Part B funds and there is a remaining balance of \$9,252 that must be expended to improve compliance with secondary transition requirements. D.C. reported that it expects to use all of the directed FFY 2015 funds by September 30, 2017.

The FFY 2016 Special Conditions and the Department's June 28, 2016 determination letter require D.C. to provide an updated report on the use of the remaining directed FFY 2015 funds no later than September 1, 2017. These FFY 2017 Special Conditions require the State to continue to report on the use of the directed FFY 2016 and FFY 2015 funds in each subsequent progress report until OSEP notifies D.C. that we have determined that the State has fulfilled the requirement to use the directed IDEA Part B funds.

³ During FFY 2016, D.C. submitted two types of reports: a CAP progress report and a Special Conditions progress report. The CAP progress report addresses D.C.'s progress in implementing the strategies and activities identified in its CAP, which D.C. is carrying out to ensure compliance with each of the areas that were the bases for its 2016 needs intervention determination. D.C. also reports on the status of the use of its directed funds as part of the CAP progress reports. The Special Conditions progress reports include updated student-specific data related to areas of longstanding noncompliance and information related to timely correction of noncompliance. OSEP has previously informed D.C. that it was not necessary to provide the required information in separate reports; however, the State chose to continue reporting separately on its implementation of the CAP and use of the directed funds in one submission and reported on its progress toward correcting the areas of longstanding noncompliance in another.

II. Nature of the Special Conditions

OSEP imposes the following Special Conditions on D.C.'s FFY 2017 IDEA Part B grant award to ensure that D.C. corrects the areas in which the Department has determined the State did not meet the FFY 2016 Special Conditions.

Required Reporting on Areas of Longstanding Noncompliance: D.C. must provide updated information on the areas of longstanding noncompliance. When reporting the information required in the FFY 2017 Special Conditions progress reports, D.C. shall include data and other required information as reflected below.

A. Demonstrate compliance with the requirement to conduct timely reevaluations

1. **Required report on disaggregated FFY 2016 data:** No later than September 1, 2017, D.C. must provide the following:
 - a. A report of the State's timely reevaluations compliance data for the period July 1, 2016 through June 30, 2017 disaggregated by LEA, and as appropriate, school/campus.
 - b. The State's analysis of the disaggregated data, including suspected or known reasons for any noncompliance.
 - c. A description of the steps the State will take to address the suspected or known reasons for the noncompliance with specific LEAs and/or schools/campuses that continue to demonstrate noncompliance with the IDEA's timely reevaluation requirements.
2. **Required report on progress:** The State must provide reevaluations data in two progress reports during FFY 2017. The reporting period for each progress report is reflected below:

Due Date	Reporting Period
November 1, 2017	April 1, 2017 – September 30, 2017
May 1, 2018	October 1, 2017 – March 31, 2018

In its FFY 2017 Special Conditions progress reports, the State must report the following information:

- a. The number of children who, as of the end of the previous reporting period had not been provided a timely triennial reevaluation.
- b. The number of children whose triennial reevaluation became overdue during the reporting period.
- c. The number of children from (a) and (b) above, who had been provided triennial reevaluations during the reporting period.

- d. The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period.
- e. The percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period that were conducted in a timely manner.

The State must also report the actual numbers for the following:

- i. The number of children whose triennial reevaluation deadlines fell within the reporting period.
- ii. The number of those children who were provided a timely triennial reevaluation.

To calculate the percent of triennial reevaluations provided in a timely manner use the data reported in (ii) divided by (i) times 100.

- f. The average number of days the triennial reevaluations that had not been provided in a timely manner were overdue.
- g. For reevaluations that were not provided in a timely manner, provide:
 - i. The reasons for the delay; and
 - ii. The number of children whose reevaluation was delayed for each reason identified.
- h. A description of the actions the State is taking to address the noncompliance.
- i. The following information related to the correction of findings of noncompliance the State identified pertaining to the timeliness of reevaluations in FFY 2016:
 - i. The number of findings of noncompliance the State identified.
 - ii. The number of findings for which the State verified the noncompliance was corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance.
 - iii. Number of findings for which the State verified the noncompliance was corrected more than one year after the State's identification of noncompliance (i.e., "subsequent correction").

B. Demonstrate that the State can implement a general supervision system that is reasonably designed to correct noncompliance in a timely manner

- 1. **Required report on disaggregated FFY 2015 findings of noncompliance:** No later than September 1, 2017, D.C. must provide the following:
 - a. A report of the State's findings of noncompliance issued for the period July 1, 2015 through June 30, 2016 that were not corrected within one year of identification,

disaggregated by: (i) IDEA requirement; (ii) LEA; and as appropriate, (iii) school/campus.

- b. The State's analysis of the disaggregated data, including suspected or known reasons for the delay in correcting the noncompliance.
 - c. A description of the steps the State is taking to address the suspected or known reasons for the delay in correcting noncompliance by the affected LEA, and as appropriate, school/campus
2. **Required report on progress:** The State must provide data on the status of correction of findings of noncompliance in progress reports, due November 1, 2017 and May 1, 2018. D.C. must provide the information specified below:
- a. The number of any remaining findings of noncompliance identified in FFY 2012, FFY 2014, and FFY 2015 that D.C. reported were not corrected in the information submitted with its FFY 2015 APR.
 - b. The number of findings of noncompliance the State made during FFY 2016 (July 1, 2016 through June 30, 2017).
 - c. The number of findings identified in FFY 2016 for which the State verified the noncompliance was corrected as soon as possible and in no case later than one year after the State's identification of the noncompliance.
 - d. The number of findings identified in FFY 2016 for which the State verified the noncompliance was corrected more than one year after the State's identification of noncompliance (i.e., "subsequent correction").
 - e. The number of findings identified in FFY 2016 for which the one-year timeline has not yet expired.
 - f. A description of the actions taken to verify the correction of noncompliance to ensure that each LEA with noncompliance identified in FFY 2012, FFY 2014, 2015, and/or FFY 2016: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance) based on a review of updated data, such as data subsequently collected through on-site monitoring or a State data system; and (2) has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA consistent with OSEP Memo 09-02.
 - g. A description of the actions the State has taken to address any remaining findings of noncompliance identified in FFY 2012, FFY 2014, FFY 2015, and/or FFY 2016 that were not corrected.

C. Demonstrate compliance with secondary transition requirements

1. **Required written monitoring plan.** No later than September 1, 2017, D.C. must submit its three-year cycle monitoring plan,⁴ revised to include:
 - a. A description of how the State will ensure that the compliance data collected and reported to OSEP reflect actual practice and compliance of the cohort of LEAs reviewed (i.e., the data demonstrate the LEAs' level of compliance with the secondary transition requirements).
 - b. A description of how the State will carry out its oversight responsibilities and provide support to LEAs that are not included in a given year's cohort of LEAs selected for intensive technical assistance and review of compliance.
2. **Required report on progress.** The State must provide secondary transition compliance data in three progress reports during FFY 2017. The reporting period for each progress report is reflected below:

Due Date	Reporting Period
August 1, 2017 ⁵	April 1, 2017 – June 30, 2017
November 1, 2017	July 1, 2017 – September 30, 2017
May 1, 2018	October 1, 2017 – March 31, 2018

For each reporting period, D.C. must select a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period from the cohort of LEAs that have been designated for review.

- a. Report, of the student records reviewed, consistent with the required measurement for Indicator 13, the number and percent of youth aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including course of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition service needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services were to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.
- b. Report the number of LEAs included in its review and the number of those LEAs that demonstrated compliance with the secondary transition requirements.

⁴ OSEP expects that the monitoring plan D.C. provided on June 6, 2017 will remain substantially unchanged, with the exception of the information OSEP requires in this section. Any significant revisions by the State will require OSEP's approval prior to implementation.

⁵ We expect that the State will use the method in place since 2009 to collect and report these data until the State's revised monitoring plan due no later than September 1, 2017, is approved.

- c. Provide an explanation of the progress or slippage that occurred for the reporting period and a description of the actions the State is taking to address any noncompliance with secondary transition requirements.
 3. **Report SPP/APR Indicator 13 data:** D.C. must report FFY 2016 actual target data for Indicator 13 (secondary transition) consistent with the required measurement and instructions in its FFY 2016 APR, due February 1, 2018. D.C. must also address all of the issues related to Indicator 13 identified in OSEP's June 28, 2017 response to the State's FFY 2015 SPP/APR submission.
 4. **Report on status of remaining directed FFY 2016 and FFY 2015 funds:** On August 1, 2017, D.C. must report the information required by OSEP's FFY 2016 IDEA Part B grant award letter, Enclosure E, Special Conditions, dated July 1, 2016, regarding the use of the remaining directed FFY 2016 and FFY 2015 State-level funds under IDEA section 611(e) for secondary transition. If D.C. does not use the full amount of the FFY 2016 and FFY 2015 directed funds by August 1, 2017, the State must continue to report on the use of the funds in each subsequent progress report, until the Department notifies the State that it has determined that the State has fulfilled the requirement to use the directed IDEA Part B funds.
- D. FFY 2016 SPP/APR:** D.C. must submit its FFY 2016 SPP/APR to OSEP, due February 1, 2018. D.C. must report consistent with the requirement measurement and instructions, FFY 2016 data for all indicators and must address all issues identified in OSEP's June 28, 2017 response to the State's FFY 2015 SPP/APR submission.

III. Evidence Necessary for Conditions to be Removed

The Department will remove these Special Conditions if, at any time prior to the expiration of the FFY 2017 grant year, the State provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

IV. Method of Requesting Reconsideration

The State can write to OSEP's Acting Director, Ruth E. Ryder, if it wishes the Department to reconsider any aspect of the Special Conditions. The request must describe in detail the changes to the Special Conditions sought by the State and the reasons for those requested changes.

V. Submission of Reports

The State Superintendent of Education or other authorized official of the SEA shall certify the completeness and accuracy of each report. D.C. must submit all reports required under these Special Conditions to:

Lisa Pagano
U.S. Department of Education
Office of Special Education and Rehabilitative Services
Office of Special Education Programs – MSIP
550 12th Street, S.W., Room 5016
Washington, D.C. 20202 or by email to: Lisa.Pagano@ed.gov