

## Enclosure D

### Specific Conditions<sup>1</sup>

#### **I. Basis for Requiring Specific Conditions**

These are Specific Conditions imposed 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 by the U.S. Department of Education's (Department's) Office of Special Education Programs (OSEP). OSEP is designating the District of Columbia (D.C.) as a "high risk" grantee and imposing Specific 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 2018 grant award under IDEA Part B to ensure the State corrects its longstanding noncompliance with certain IDEA requirements.

The State did not meet the Special Conditions imposed on its FFY 2017 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 Department. 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 local educational agency (LEA) agree that a reevaluation is unnecessary.<sup>2</sup>

In its May 1, 2018 Special Conditions progress report, revised May 24, 2018, the State reported that, for the period of October 1, 2017 through March 31, 2018, 87.1 percent of children were provided a timely reevaluation. The State further reported that at the end of the October 1, 2017 through March 31, 2018 reporting period, 194 children had not been provided a timely reevaluation. The State reported that it had ensured correction of all findings of noncompliance identified in FFY 2016 related to the timely reevaluation requirements. The State further reported that 49 of 60 findings identified in FFY 2016 related to timely reevaluations were corrected within the one-year timeline, with 11 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 take the actions outlined in these Specific Conditions during FFY 2018.

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<sup>1</sup> Consistent with 2 CFR §§ 200.207 and 3474.10, the term "specific" conditions replaces the previously used term "special" conditions." In this document, the term "Special Conditions" is used when referencing the State's IDEA Part B grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018.

<sup>2</sup> 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."

**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, 2018 Special Conditions progress report, revised May 24, 2018, that although 100 percent of the findings of noncompliance identified in FFY 2016<sup>3</sup> for which the one-year timeline had expired were corrected, only 371 of those were corrected within the one-year timeline (75.2 percent). The State's FFY 2015 data reflect full correction of all findings with 86.6 percent of findings corrected within the one-year timeline.

While the State continues to demonstrate it ensures that findings of noncompliance are fully corrected, D.C. has not demonstrated that its general supervision system can ensure *timely correction* of noncompliance. Therefore, OSEP requires the State to continue to take the actions outlined in these Specific 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

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<sup>3</sup> OSEP notes that D.C. made a total of 586 findings during FFY 2016. At the time of the State's submission, the one-year timeline for correction had not expired for 80 of these findings. Thirteen (13) of the 506 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 to extend the timeline for implementation of corrective actions, the decision has been appealed to Court, etc.). For the purposes of calculating the State's compliance with ensuring timely correction of identified noncompliance, OSEP has excluded these 13 findings from the denominator (586 minus 80 (not yet due) minus 13 (open dispute resolution findings) equals 493): 371 findings corrected timely/493 equals 75.2 percent). D.C. must continue to track all open findings, including dispute resolution findings and report on the status of correction in future progress reports to OSEP.

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 2016 APR that 71 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 2017 Special Conditions progress reports for the period July 1, 2017 through March 31, 2018, reflect 94 percent compliance with the secondary transition requirements. These data reflect significant progress from the FFY 2016 APR data of 71 percent. We note that this is the first time that the State has reported 90 percent or better 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).

The FFY 2018 Specific Conditions in this area are intended to support the State's continued efforts for improved compliance and to sustain these improvements.

## **II. Nature of the Specific Conditions**

OSEP imposes the following Specific Conditions on D.C.'s FFY 2018 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 2017 Special Conditions.

**Required Reporting on Areas of Longstanding Noncompliance:** D.C. must provide updated data and other information on the areas of longstanding noncompliance as described below.

### **A. Demonstrate compliance with the requirement to conduct timely reevaluations**

- 1. Required report on the State's analysis of LEA delays in completing reevaluations in a timely manner:** No later than October 1, 2018, D.C. must provide its analysis of the suspected or known reasons for untimely reevaluations that are attributable to its LEAs (including delayed action to start the reevaluation process and delays in scheduling meetings). The analysis should reflect the State's consideration of the LEA(s) involved (and as appropriate, the school/campus involved) and identify the factors that caused the delays to occur.

The State must also provide a description of the steps it will take during FFY 2018 to address the noncompliance with the LEAs involved and to improve their compliance with the requirement to ensure timely reevaluations.

- 2. Required report on progress:** The State must provide reevaluations data in two progress reports during FFY 2018. The reporting period for each progress report is reflected below:

<b>Due Date</b>	<b>Reporting Period</b>
November 1, 2018	April 1, 2018 – September 30, 2018
May 1, 2019	October 1, 2018 – March 31, 2019

In its FFY 2018 Specific 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 2017:
    - 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").
    - iv. Number of findings for which the one-year timeline had not yet expired.

**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 the State's analysis of FFY 2016 findings of noncompliance not corrected within one year of identification:** No later than October 1, 2018, D.C. must provide its analysis of the suspected or known reasons for the delay in correcting

noncompliance. The analysis should reflect the State’s consideration of the specific IDEA requirements not followed, the LEA(s) involved (and as appropriate, the school/campus involved), and the State’s process for tracking and verifying correction.

The State must also provide a description of the steps it will take during FFY 2018 to address the reasons for the delay and to improve its compliance with the requirement to ensure timely correction of noncompliance.

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, 2018 and May 1, 2019. D.C. must provide the information specified below:

- a. The number and status of correction of any remaining findings of noncompliance identified in FFY 2012, FFY 2014, FFY 2015, and FFY 2016 that D.C. reported were not corrected in the information submitted with its May 1, 2018 Special Conditions progress report, revised May 24, 2018.
- b. The number of findings of noncompliance the State made during FFY 2017 (July 1, 2017 through June 30, 2018).
- c. The number of findings identified in FFY 2017 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 2017 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 2017 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, FFY 2016, and FFY 2017: (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, FFY 2016, and/or FFY 2017 that were not corrected.

**C. Demonstrate compliance with secondary transition requirements**

1. **Required report on progress:** The State must provide secondary transition compliance data in two progress reports during FFY 2018. The reporting period for each progress report is reflected below:

Due Date	Reporting Period
November 1, 2018	April 1, 2018 – September 30, 2018
May 1, 2019	October 1, 2018 – March 31, 2019

For each reporting period, consistent with the State's monitoring plan approved by OSEP in 2017, 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.
  - 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.
2. **Report SPP/APR Indicator 13 data:** D.C. must report FFY 2017 actual target data for Indicator 13 (secondary transition) consistent with the required measurement and instructions in its FFY 2017 APR, due February 1, 2019. D.C. must also address all of the issues related to Indicator 13 identified in OSEP's June 28, 2018 response to the State's FFY 2016 SPP/APR submission.

#### **IV. Evidence Necessary for Conditions to be Removed**

These Specific Conditions require D.C. to submit data demonstrating: (1) compliance with the timely reevaluation requirements; (2) timely correction of findings of noncompliance, including the status of timely correction for the remaining 80 uncorrected FFY 2016 findings and any FFY 2017 findings; and subsequent correction of all remaining findings of noncompliance; and (3) compliance with the secondary transition requirements.

The Department will remove these Specific Conditions if, at any time prior to the expiration of the FFY 2018 grant year, the State provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above.

#### **V. 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 Specific Conditions. The request must describe in detail the changes to the Specific Conditions sought by the State and the reasons for those requested changes.

## **VI. 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 Specific Conditions to:

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