



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 1, 2019

Honorable Tony L. Dearman
Director
Bureau of Indian Education
1849 C Street, NW
MS-3609-MIB
Washington, DC 20240

Dear Director Dearman:

We have approved the Bureau of Indian Education's (BIE's) application for Federal Fiscal Year (FFY) 2019 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B application submitted by the BIE to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 16, 2019, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A.

The BIE's FFY 2019 IDEA Part B grant award is being released subject to FFY 2019 Specific Conditions, as set forth in Enclosure B. Specifically, OSEP determined that the BIE failed 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. The objective of Section C of the CAP is to ensure the BIE provides a free appropriate public education to all eligible students with disabilities in the BIE-funded schools. In addition, this is the eighth consecutive year that the BIE has received a determination of needs intervention under Part B. Therefore, OSEP is imposing Specific Conditions on the BIE's FFY 2019 grant award under Part B. The reasons for doing so and the specific conditions are detailed in Enclosure B. The BIE must administer this award in keeping with both the applicable provisions of Federal law and regulations and the Specific Conditions attached to the grant award document. Acceptance by the BIE of this grant award constitutes an agreement by the BIE to comply with these Specific Conditions.

In addition, OSEP is designating the BIE's FFY 2019 Specific Conditions as "high-risk conditions," in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 CFR 3474.10.

On July 1, 2019, the BIE was notified that under IDEA section 616(d), the Department determined that the BIE needs intervention in implementing the requirements of the IDEA Part B for the eighth consecutive year. In accordance with IDEA section 616(e)(2)(B)(i) and 34 CFR §300.606(b)(2)(i), the Department required the BIE to submit a CAP that ensures that it can meet, by the end of the fourth quarterly reporting period for the 2019-2020 school year under Section C of the CAP, all of the Specific Conditions that are being imposed on its FFY 2019 IDEA Part B grant award. The BIE must submit its CAP and quarterly progress reports in accordance with the reporting and timeline requirements specified in the Specific Conditions that

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

OSEP is imposing on the BIE's FFY 2019 IDEA Part B grant award. In addition, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), the Department directed the BIE to use \$300,000 of its FFY 2019 administrative funds under IDEA section 611(h)(1)(A) and 34 CFR §300.710(a) to address the noncompliance with the requirements for secondary transition and to improve the accuracy of the secondary transition data. In addition, pursuant to IDEA section 616(e)(1)(A) and (2)(A), the Department advised the BIE of available sources of technical assistance and directed the BIE to access technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix issued with the Department's July 1, 2019 determination letter. The reporting requirements related to the CAP and the directed use of FFY 2019 IDEA Part B administrative funds outlined in the Department's July 1, 2019 letter are incorporated into the Specific Conditions in Enclosure B.

Please note that as part of your application for FFY 2019, the BIE has provided a certification, pursuant to 34 CFR §76.104, that its application meets the requirements of IDEA Part B and that the BIE will operate its Part B program in accordance with all of the required assurances and certifications. After OSEP approval, any changes made by the BIE to information that is a part of the BIE's Part B application must meet the public participation requirements in 34 CFR §300.165.

Enclosed is the BIE's FFY 2019 grant award of \$97,500,263 for funds currently available under the Department of Education Appropriations Act, 2019, Title III of Division B, Public Law 115-245, for the IDEA Part B Section 611 (Grants to States) program.

Under IDEA section 611(h)(4)(A), the BIE's FFY 2019 grant award includes \$19,500,053, twenty percent of the amount allotted under IDEA section 611(b)(2), to be distributed by the Secretary of the Interior to tribes or tribal organizations or consortia of the above to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. These funds are available for obligation by the BIE from July 1, 2019, through September 30, 2021, in accordance with 34 CFR §76.709. The funds received by a tribe or tribal organization must be used to assist in child find, screening and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. None of the funds provided under IDEA section 611(h)(4)(A) can be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

Under IDEA section 611(h)(1)(A), \$78,000,210, eighty percent of the amount allotted under IDEA section 611(b)(2), is provided to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. In the determination letter also issued today, OSEP informed the BIE that, based on the nature of the noncompliance, the Special or Specific Conditions placed on the BIE's IDEA Part B grant award every year since 2007, and OSEP's determination that the BIE needs intervention in meeting the requirements of Part B of the IDEA for the eighth consecutive year, the Department intends, pursuant to IDEA sections 616(e)(2)(B)(iii) and 611(h)(3) and 34 CFR §§300.604(b)(2)(iii), 300.708(d) and 300.716, to withhold \$780,002 until the BIE has sufficiently addressed the areas which were the basis for the determination of needs

intervention. This amount represents twenty percent of \$3,900,011, the total amount of the BIE's FFY 2019 funds that may be reserved for administrative costs under section 611(h)(1)(A) and 34 CFR §300.710. As explained in the July 1, 2019 determination letter, the Department also intends to suspend the BIE's authority to obligate \$780,002 of the BIE's administrative funds unless the BIE shows cause in writing why its authority to obligate these funds should not be suspended. Because the Department intends to both preliminarily suspend the BIE's authority to obligate these funds and ultimately to withhold these funds, the BIE has two separate opportunities to challenge the Department's proposed actions, as set out below.

As explained in the determination letter, the BIE has the opportunity "to appeal the Department's decision to withhold these funds." In accordance with section 616(e)(4)(A) of the IDEA and 34 CFR §§300.605(a), 300.708(d) and 300.716, the BIE may request a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 to appeal the Department's decision to withhold these funds. To request a hearing, the BIE must submit a letter to Johnny W. Collett, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Washington, D.C. 20202-2600 (facsimile number 202-245-7638) within 30 calendar days of the date of the determination letter. The filing date for any written submission by a party under 34 CFR §§300.179 through 300.184 is the date the document is hand-delivered, mailed, or sent by facsimile transmission. 34 CFR §300.183(a)-(b).

As explained in the determination letter, the BIE also has an opportunity to show cause in writing why its authority to obligate those funds should not be suspended pending the outcome of any hearing to withhold payments, pursuant to section 616(e)(4)(B) of the IDEA and 34 CFR §§300.605(b), 300.708(d) and 300.716. To show cause, the BIE must submit a letter explaining why its authority to obligate those funds should not be suspended to Johnny W. Collett, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Washington, D.C. 20202-2600 (facsimile number 202-245-7638). Assistant Secretary Collett must receive the letter within 15 calendar days of the date of the determination letter.

Pending the outcome of any hearing to withhold payments, and if the Department determines that the BIE has failed to show cause why the BIE's authority to obligate those funds should not be suspended, the Department intends to suspend the BIE's authority to obligate \$780,002 of its FFY 2019 funds reserved for administrative costs. Therefore, with the exception of \$780,002 of the BIE's administrative funds, the funds allotted under IDEA section 611(h)(1)(A) are available for obligation by the BIE from July 1, 2019, through September 30, 2021, in accordance with 34 CFR §76.709.

Under IDEA section 611(h)(1)(A) and 34 CFR §300.707(b), with the exception of five percent of these funds, which may be reserved for administrative costs (\$300,000 of which the Department is directing the BIE to use to address noncompliance with secondary transition requirements and to improve the accuracy of secondary transition data, as noted above, and an additional \$780,002 of which the Department intends to suspend the BIE's authority to obligate pending the outcome of any hearing to withhold payments and if the Department determines that the BIE has failed to show cause why its authority to obligate those funds should not be suspended, as noted above), 80 percent of the funds must be allocated to such schools by July 1, and 20 percent must be allocated to such schools by September 30.

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The enclosed grant award of FFY 2019 funds is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

As a reminder, all prime recipients of IDEA Part B funds must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <https://www.fsr.gov/>. Please contact your State's Fiscal Accountability Facilitator if you have further questions.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

/S/

Laurie VanderPloeg
Director
Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

cc: State Director of Special Education

State Name: Bureau of Indian Education

Enclosure A

Section II

A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<p>Yes <i>(Assurance is given.)</i></p>	<p>No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i></p>	<p>Assurances Related to Policies and Procedures</p>
<p>X</p>		<p>1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.</p>
<p>X</p>		<p>2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)</p>
<p>X</p>		<p>3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.</p>
<p>X</p>		<p>4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)</p>
<p>X</p>		<p>5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes,</p>

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.
X		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
X		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
X		8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
NA	NA	9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
NA	NA	10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
X		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
X		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
NA	NA	13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
X		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
X		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
X		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.
X		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
NA	NA	18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
X		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
X		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
X		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
X		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
X		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. <i>(Note: Check either "23b.1" or "23b.2" whichever applies.</i>
		23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to: <ul style="list-style-type: none"> • require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or • purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)
X		23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
NA		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
X		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

B. Other Assurances

The State also makes the following assurances:

Yes	Other Assurances
X	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
X	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
X	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

C. Certifications

The State is providing the following certifications:

Yes	
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i>, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
NA	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.

Enclosure B
Specific Conditions

1. Basis for Requiring Specific 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 high-risk Specific Conditions¹ on the Bureau of Indian Education's (BIE) Federal fiscal year (FFY) 2019 grant award under Part B of the IDEA. OSEP is imposing these Specific Conditions because of: (1) 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); (2) the BIE's continued low level of compliance under the IDEA Part B Compliance Indicator 13 (related to secondary transition requirements); (3) the BIE's 2019 Part B Results Driven Accountability (RDA) score of '0' for its data on the percentage of children with disabilities exiting school by dropping out and the percentage of children with disabilities exiting school by graduating with a regular high school diploma; (4) the BIE's failure to complete any of the required actions in OSEP's August 8, 2018 letter to resolve the systemic problems underlying the disruption of required related services and timely initial evaluations in several BIE-funded schools; and (5) the BIE's failure to meet the timeline requirements for reporting the information required in the 2018-19 CAP and the quarterly progress reports, the report on and analysis of disaggregated secondary transition data, and the spending plan for use of the directed FFY 2018 IDEA Part B administrative funds to address noncompliance with secondary transition requirements and to improve accuracy of secondary transition data. The objective of Section C of the CAP is to ensure the BIE provides a free appropriate public education (FAPE) to all eligible students with disabilities 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 the Elementary and Secondary Education Act (ESEA) and the IDEA programs, the Department of the Interior (Interior) developed the PIAP. The PIAP was Interior's plan for meeting the statutory requirements set forth in the ESEA and the IDEA for properly managing Federal funds, improving the achievement levels of Indian students, and meeting the responsibilities for accountability that the ESEA and the 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

¹ Pursuant to the requirements in 2 C.F.R. §200.207, the term "Specific Condition" is used, rather than "Special Condition," beginning with FFY 2018 IDEA Part B grant awards that are issued subject to additional requirements. In this letter, the term "Special Condition" is used when referencing the BIE's IDEA Part B grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018. In addition, OSEP is designating the BIE's FFY 2019 Specific Conditions as "high-risk conditions," in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at 2 CFR 3474.10.

Department imposed requirements regarding further PIAP reporting and submission of supporting documentation that would enable Interior to demonstrate full compliance with the requirements of the ESEA and the IDEA. In FFYs 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, OSEP imposed program-specific Special or Specific 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 2018-2019 CAP.

Fiscal Monitoring: The BIE has not demonstrated sufficient progress in fiscal monitoring. Specifically, the BIE has not submitted copies of fiscal monitoring reports issued to schools (in accordance with Milestone C.4.2.2); the BIE has not submitted evidence of correction 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 BIE's identification of noncompliance (in accordance with Milestone C.4.2.3); and the BIE has not submitted evidence that it has verified that schools are correcting fiscal noncompliance when identified through self-assessments and document reviews (in accordance with Milestone C.4.2.4). Therefore, the BIE has not ensured 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 C.F.R. §§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. As a result, OSEP is maintaining the Specific Condition requiring the BIE to implement a fiscal monitoring system to ensure that BIE-operated and tribally-operated schools are ensuring the appropriate use of the IDEA Part B funds.

Dispute Resolution Timelines: The documentation the BIE has submitted does not sufficiently demonstrate that the BIE's procedures ensure that State complaints are resolved consistent with the IDEA requirements and timelines (in accordance with Milestone C.5.1.1). This milestone was added to the BIE's 2013-2014 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 was not in compliance with the State complaint requirements contained in 34 C.F.R. §300.152. The data the BIE provided in its quarterly reports for the 2018-2019 CAP demonstrated continued noncompliance in meeting the State complaint requirements in 34 C.F.R. §300.152. Specifically, the BIE has not ensured that State complaints are resolved within the 60-day timeline (or an appropriately extended timeline under 34 C.F.R. §300.152(b)(1)), consistent with 34 C.F.R. §300.152. According to the BIE's Quarter 1, Quarter 2, and Quarter 3 CAP progress reports, a total of four State complaints have been filed in the reporting period covered by the reports (i.e., July 1, 2018 – March 31, 2019). Of these, two written decisions were issued in excess of the 60-day timeline (140 and 91 days respectively) and two were still pending and past the 60-day timeline as of the date the BIE submitted its Quarter 3 CAP progress report. As a result, OSEP is maintaining the Specific Condition requiring that the BIE report on State complaint timelines.

Data Procedures and Processes: Although the BIE has demonstrated improvement in its data submissions under both sections 616 and 618 of the IDEA, OSEP continues to have concerns regarding data quality.

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 of Education (Secretary) on the priority areas described in section 616(a)(3). Although the BIE provided FFY 2016 data for Indicators 3B and 3C in its FFY 2016 SPP/APR, those data constitute only partial data from 10 of 23 States and therefore are not valid and reliable. OSEP's response to the BIE's FFY 2016 SPP/APR required the BIE to provide valid and reliable FFY 2016 data in its FFY 2017 APP/SPR, which was due on February 1, 2019. The BIE did not provide the required FFY 2016 data for Indicators 3B and 3C. In addition, although the BIE submitted FFY 2017 data for Indicators 3B and 3C in its FFY 2017 SPP/APR, the data was not submitted to EDFacts under Title I of ESEA in a timely manner. Further, the BIE's FFY 2017 data for Indicator 3C are not consistent with the assessment data it submitted in EDFacts, and the BIE did not provide assessment metadata for grade 12 in its response to the EMAPS State Supplemental Survey – IDEA; OSEP was therefore unable to determine whether the FFY 2017 data for Indicator 3C were valid and reliable.

Further, 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 C.F.R. §300.160(f), for five years in a row – 2013, 2014, 2015, 2016, and 2017 – as noted in OSEP's Responses to the BIE's FFYs 2011, 2012, 2013, 2014, and 2015 SPP/APRs, respectively. As a result of the BIE's repeated failures to comply with all of the above IDEA data submission requirements, OSEP is maintaining the Specific Condition related to data procedures and processes on the BIE's FFY 2019 Part B grant award. However, based on the BIE's progress in submitting timely and accurate data under section 618 of the IDEA, OSEP is removing Subtask C.6.3 (Section 618 Data) and the corresponding milestones and performance metrics.

Secondary Transition: In its FFY 2017 SPP/APR, the BIE continued to report a very low level of compliance under Part B Compliance Indicator 13, which is related to secondary transition requirements. Under Indicator 13, the BIE was required to provide data on the percent of youth with IEPs 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 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, as required by IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §300.320(b). 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, consistent with 34 CFR §300.321(b). The BIE reported 8.39% compliance under Indicator 13 in its FFY 2017 SPP/APR, a further decline from the 14.98% compliance the BIE reported in its FFY 2016 SPP/APR. In its FFY 2017 SPP/APR, the BIE noted that it was “just beginning the implementation of a new model of professional development and technical assistance provided to high schools around this indicator. [The BIE] recognized the need for more targeted resources in this area and ha[s] worked to get these resources in place for initial implementation of the PD/TA model that began May 2018. [The BIE] anticipated a dip in [its] compliance rates and w[as] not expecting improvement in SY 2017-18 as [it] secured all the necessary supports and resources to move into full implementation for the 2018-19 school year.”

Indicator 13 is integral to the BIE's State Systemic Improvement Plan (SSIP), which has been a positive project for the BIE and the students it serves and also represents a significant financial investment by the BIE. While OSEP recognizes the BIE's efforts to increase the validity and reliability of data it reports under Indicator 13, the data itself is extremely low and raises serious concerns about the BIE's compliance with secondary transition requirements. Therefore, due to the continued low level of compliance for this Indicator, OSEP is maintaining the Specific Condition related to secondary transition on the BIE's FFY 2019 Part B grant award.

In addition to the Specific Conditions on the BIE's FFY 2018 IDEA Part B grant award, OSEP directed the BIE to use \$300,000 of its FFY 2018 administrative funds under IDEA section 611(h)(1)(A) and 34 CFR §300.710(a) for use in improving the BIE's collection of secondary transition data and compliance with the requirements for secondary transition, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A). Further, the Department required BIE to develop, implement, and report progress on, a spending plan to expend directed funds by July 1, 2019, that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. However, after the late submission of its proposed spending plan, BIE indicated it would be unable to expend the directed FFY 2018 funds by the July 1, 2019, deadline. On June 3, 2019, BIE verbally requested a six-month extension to expend the directed FFY 2018 funds in accordance with the FFY 2018 spending plan approved by OSEP. As explained in OSEP's determination letter dated July 1, 2019, the Department is extending the deadline for BIE's expenditure of the directed FFY 2018 funds to December 31, 2019.

Furthermore, because the BIE's continued very low performance under Indicator 13 contributed to the BIE's 2019 Needs Intervention determination under section 616 of the IDEA (see section 2 below), OSEP is directing the use of an additional \$300,000 of the BIE's FFY 2019 administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. §300.710(a) for use in improving the BIE's collection of secondary transition data and compliance with the requirements for secondary transition, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A). Please note that the use of the directed FFY 2018 funds must be tracked separately from the use of the directed FFY 2019 funds, as the spending plan and deadlines for the use of the directed FFY 2018 funds are distinct and separate from the spending plan and deadlines for the use of the directed FFY 2019 funds.

2. BIE's 2019 Part B Results Driven Accountability (RDA) Needs Intervention Determination:

As a result of the BIE's 2019 Part B RDA Percentage of 22.5 percent, the BIE received a "needs intervention" determination in 2019 for the eighth consecutive year. Major factors that contributed to this determination include: (1) the BIE's very low compliance data reported for Indicator 13 (secondary transition); (2) scores of zero on the results elements in the Part B Results Matrix issued with the Department's July 1, 2019 determination letter (Part B Results Matrix) that reflect: (a) untimely submissions of data on the participation of BIE's third through eighth grade children with disabilities on regular Statewide assessments for reading and math; (b) the percentage of children with disabilities who exited an

educational program through receipt of a regular high school diploma; and (c) the percentage of children with disabilities who exited an educational program by dropping out of school; (3) the BIE's longstanding noncompliance with IDEA requirements (i.e., the Department has imposed Special or Specific Conditions on the BIE's last three (FFYs 2016, 2017, and 2018) IDEA Part B grant awards, and those Special or Specific Conditions are in effect at the time of the 2019 determination); and (4) the BIE's failure to meet the timeline requirements for reporting the information required in the 2018-2019 CAP and the quarterly progress reports, the report on and analysis of disaggregated secondary transition data, and the spending plan for use of the directed FFY 2018 IDEA Part B administrative funds to address noncompliance with secondary transition requirements and to improve accuracy of secondary transition data.

2019 Enforcement Action:

As described in the Department's July 1, 2019 determination letter pursuant to sections 616(e)(2)(B)(iii) and 611(h)(3) of the IDEA and 34 CFR §§300.604(b)(2)(iii), 300.708(d) and 300.716, the Department intends to withhold 20 percent of the BIE's FFY 2019 funds reserved for administrative costs under section 611(h)(1) (A) of the IDEA and 34 CFR §300.710 until the BIE. has sufficiently addressed the areas in which it "needs intervention."²

The Department's July 1, 2019 determination letter also requires the BIE, pursuant to IDEA section 616(e)(2)(B)(i), to submit a corrective action plan (CAP) that is reasonably designed to correct the major areas of noncompliance that contributed to the BIE's Needs Intervention determination. In addition to submitting a CAP, pursuant to IDEA section 616(e)(1)(B) and (e)(2)(A), the Department has directed the BIE to use \$300,000 of its FFY 2019 Part B administrative funds under IDEA section 611(h)(1)(A) and 34 C.F.R. §300.710(a) to address noncompliance with secondary transition requirements and to improve the accuracy of its secondary transition data. The BIE must develop, implement, and report progress on, a spending plan to expend the directed funds by July 1, 2020 that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. No later than October 31, 2019, the BIE must submit, along with its proposed spending plan, a report of the BIE's FFY 2018 secondary transition compliance data disaggregated by compliance item and BIE-funded school, and the BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance. (See subparagraphs 3.C and 3.D below for detailed requirements.) In addition to the directed use of funds, pursuant to IDEA section 616(e)(1)(A) and (e)(2)(A), the Department has advised the BIE of available sources of technical assistance and directed the BIE to access technical assistance related to the exiting data elements for which the BIE received a score of zero on the Part B Results Matrix.

In addition, 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 2019-2020 school year under Section C of

² The BIE's rights related to appealing the Department's proposal to withhold funds are described in full in both the determination and grant award letters and the opportunity to enter into a compliance agreement is described in the determination letter.

the CAP, all of the Specific Conditions that are being imposed on its FFY 2019 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 under 34 C.F.R. §300.152(a); (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); (4) demonstrate compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§300.320(b) and 300.321(b); (5) demonstrate how the directed FFY 2018 and FFY 2019 Part B administrative funds will be used to address noncompliance with the secondary transition requirements and improve the accuracy of the data, and provide evidence of the use of those directed funds; and (6) demonstrate completion of all of the required actions described in OSEP’s August 8, 2018 letter regarding the systemic problems underlying the disruption of related services and timely initial evaluations in several BIE-funded schools, including San Felipe Pueblo Elementary School.

In addition, with its FFY 2018 SPP/APR, due on February 3, 2020, the BIE must report on the sources from which it received technical assistance on the exiting data elements for which the BIE received a score of zero on the Part B Results Matrix and the actions the BIE will take as a result of that technical assistance.

The BIE must submit its corrective action plan for 2019-2020 and its final quarterly progress report on Section C of the 2018-2019 CAP, both due on July 31, 2019, and quarterly progress reports on the 2019-2020 CAP in accordance with the reporting and timeline requirements specified in the Specific Conditions that OSEP is imposing on the BIE’s FFY 2019 IDEA Part B grant award.

3. Nature of the Specific Conditions

Based on the enforcement actions resulting from the BIE’s 2019 Needs Intervention determination, and on OSEP’s review of the BIE’s first through third quarterly reports on Section C of the 2018-2019 CAP, ending with the quarter ending March 31, 2019, OSEP has determined that it is necessary to impose the following Specific Conditions.

- A. Final Report on Section C of the 2018-2019 CAP:** The BIE must submit to the Department by July 31, 2019, its final report on Section C of the CAP for the 2018-2019 school year. This report covers April 1, 2019 through June 30, 2019. 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 2019-2020 CAP:** The BIE must submit the 2019-2020 CAP by July 31, 2019. The 2019-2020 CAP must include the tasks, subtasks, milestones, and performance metrics described in subparagraph 3.E below.
- C. Required Report on Disaggregated FFY 2018 Secondary Transition Data (Indicator 13):** No later than October 31, 2019, the BIE must provide the following:

- (a) A report of the BIE's secondary transition compliance data for the period July 1, 2018 through June 30, 2019, disaggregated by:
 - (i) compliance item (i.e., each particular component of the secondary transition requirements associated with SPP/APR Indicator 13 – for example, whether there is evidence that the student was invited to the IEP Team meeting where transition services are to be discussed); and
 - (ii) BIE-funded school.
- (b) The BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

NOTE: The BIE must ensure that its proposed spending plan for the use of the directed FFY 2019 Part B administrative funds includes strategies and activities that are specifically designed to address the suspected or known reasons for any noncompliance and to focus on the specific BIE-funded schools that continue to report low performance on particular compliance items or secondary transition requirements in general.

D. Submission of Spending Plan for Use of Directed FFY 2019 Funds: The BIE must submit, by October 31, 2019, a proposed spending plan that demonstrates how it will use \$300,000 of its FFY 2019 Part B administrative funds to pay for strategies and activities that address the suspected or known reasons for the noncompliance with secondary transition requirements and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE's proposed spending plan must include: (1) the activities that will be carried out with those funds; (2) the costs associated with each of the activities; (3) a projected timeline for using the funds to pay the costs associated with each of the activities that demonstrates that the funds will be used by July 1, 2020; and (4) an explanation of how the activities will result in improved compliance with secondary transition requirements and improved accuracy of data. The BIE must also describe the documentation it will provide to demonstrate funds were used in accordance with its FFY 2019 spending plan. In addition, to ensure that the BIE can increase compliance with the secondary transition requirements and improve data accuracy within one year, the BIE must expedite the use of the directed FFY 2019 IDEA Part B administrative funds and target the use of those funds for activities that are based on a careful review of the BIE's FFY 2018 secondary transition data.

Please note that the use of the directed FFY 2018 funds (of which, as noted above, the Department has granted a six-month extension until December 31, 2019) must be tracked separately from the use of the directed FFY 2019 funds, as the spending plan and deadlines for the use of the directed FFY 2018 funds are distinct and separate from the spending plan and deadlines for the use of the directed FFY 2019 funds.

E. Implementation of Section C of the 2019-2020 CAP and Reporting Requirements:

The BIE must implement Section C of the 2019-2020 CAP, which covers the period between July 1, 2019, and June 30, 2020, 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 2019-2020 CAP and the quarterly progress reports, the report on and analysis of disaggregated secondary transition data, and the spending plan for use of directed funds, 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 2018-2019 CAP	July 31, 2019	April 1, 2019 – June 30, 2019
Section C of the 2019-2020 CAP	July 31, 2019	July 1, 2019 – June 30, 2020
Report on and Analysis of Disaggregated FFY 2018 Secondary Transition Data	October 31, 2019	July 1, 2018 – June 30, 2019
Proposed spending plan that demonstrates how the BIE will use \$300,000 of its FFY 2019 Part B administrative funds to address noncompliance with the secondary transition requirements and to improve accuracy of data	October 31, 2019	July 1, 2019 – June 30, 2020
First Quarterly Progress Report for Section C of 2019-2020 CAP and a report on the BIE’s FFY 2018 Part B administrative funds used from July 1, 2019 through September 30, 2019, to carry out the activities in the BIE’s	October 31, 2019	July 1, 2019 – September 30, 2019

spending plan		
Second Quarterly Progress Report for Section C of 2019-2020 CAP and a report on the BIE's FFY 2018 and FFY 2019 Part B administrative funds used from October 1, 2019 through December 31, 2019, to carry out the activities in the BIE's spending plans for the FFY 2018 and FFY 2019 funds	January 31, 2020	October 1, 2019–December 31, 2019
FFY 2018 SPP/APR	February 3, 2020	July 1, 2018 – June 30, 2019
Third Quarterly Progress Report for Section C of 2019-2020 CAP and a report on the BIE's FFY 2019 Part B administrative funds used from January 1, 2020 through March 31, 2020, to carry out the activities in the BIE's spending plan	April 30, 2020	January 1, 2020 – March 31, 2020
Final Quarterly Progress Report for Section C of 2019-2020 CAP and a report on the BIE's FFY 2019 Part B administrative funds used from April 1, 2020 through June 30, 2020, to carry out the activities in the BIE's spending plan	July 31, 2020	April 1, 2020 – June 30, 2020

Section C of the 2019-2020 CAP must include the tasks, subtasks, milestones, and performance metrics described below.

Task C.4.0: Conduct School Monitoring.

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: Implement adequate fiscal monitoring procedures.

Performance Metric:

- (a) Report on the implementation of fiscal monitoring procedures, including communications with schools, both before and after monitoring visits, technical assistance provided to the schools, and any barriers to effective fiscal monitoring of and support to the schools.
- (b) Provide updated fiscal monitoring procedures, if changes are made.

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 the IDEA Requirements and Timelines.

Subtask C.5.1 (State Complaints): Implement procedures to ensure compliance with State complaint requirements contained in 34 C.F.R. §300.152(a) and (b).

Milestone C.5.1.1: 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 C.F.R. §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: Follow guidance of the Partner Support Center (PSC) and seek its assistance as needed.

Performance Metric:

Submit evidence of any contacts with PSC.

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

Performance Metric:

Provide completed protocols, procedures, and governance for the collection and reporting of data required under sections 616 and 618 of the IDEA, and report on implementation of the protocols, procedures, and governance, as well as the Data Governance Board.

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 Indicators 3B and 3C for FFY 2016 in the FFY 2018 SPP/APR, due on February 3, 2020.

Milestone C.6.2.2: Report valid and reliable data for all Indicators for FFY 2018 in the FFY 2018 SPP/APR, due on February 3, 2020.

Performance Metric:

Provide the required data for all SPP/APR indicators in the FFY 2018 SPP/APR.

Subtask C.6.3 (Public Reporting of Assessment Data): Develop and implement procedures to ensure public reporting of assessment data in accordance with the IDEA requirements in a timely fashion.

Milestone C.6.3.1: 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 C.F.R. §300.160(f).

Performance Metric:

Within 90 days of the receipt of the BIE's 2019 determination letter, the BIE must provide to OSEP a Web link that demonstrates

that it has reported, for FFY 2015, to the public, on the statewide assessments of children with disabilities in accordance with 34 C.F.R. §300.160(f).

As soon as possible after the BIE reports publicly on the assessments of nondisabled children for FFY 2016 and FFY 2017, the BIE must provide to OSEP a Web link that demonstrates that it has reported, for FFY 2016 and FFY 2017, to the public, on the statewide assessments of children with disabilities in accordance with 34 C.F.R. §300.160(f).

Task C.7.0: Demonstrate Compliance with Secondary Transition Requirements.

Subtask C.7.1 (Update and Implementation of Corrective Action Plan):

Update, as appropriate, and implement the corrective action plan submitted in the 2018-2019 CAP to demonstrate compliance with secondary transition requirements and improve the accuracy of the secondary transition data.

Milestone C.7.1.1: Update and implement a corrective action plan that addresses the actions the BIE will take to demonstrate compliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§300.320(b) and 300.321(b) and improve the accuracy of the secondary transition data.

Performance Metric:

Submit a report on the status of implementation of the actions the BIE is taking to demonstrate compliance with secondary transition requirements and improve the accuracy of the secondary transition data.

Subtask C.7.2 (Use of Directed Administrative Funds): Develop and implement a spending plan demonstrating that the FFY 2019 directed funds will be used to address the noncompliance with secondary transition requirements and to improve the accuracy of the secondary transition data.

Milestone C.7.2.1: Submit a report on and analysis of FFY 2018 secondary transition compliance data, disaggregated by compliance item and BIE-funded school.

Performance Metric:

No later than October 31, 2019, provide the following:

- (a) A report of the BIE's secondary transition compliance data for the period July 1, 2018 through June 30, 2019, disaggregated by:
 - (i) Compliance item (i.e., each particular component of the secondary transition requirements associated with SPP/APR Indicator 13 – for example, whether there is evidence that the student was invited to the IEP Team meeting where transition services are to be discussed); and

(ii) BIE-funded school.

(b) The BIE's analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

Milestone C.7.2.2: In addition to implementing the approved spending plan for the use of the directed FFY 2018 funds (for which the Department granted a six-month extension to December 31, 2019), the BIE must develop and implement a spending plan to expend the directed FFY 2019 funds by July 1, 2020 that demonstrates how the directed funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements in IDEA section 614(d)(1)(A)(i)(VIII) and 34 C.F.R. §§300.320(b) and 300.321(b) and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE's proposed spending plan must include: (1) the activities that will be carried out with those funds; (2) the costs associated with each of the activities; (3) a projected timeline for using the funds to pay the costs associated with each of the activities that demonstrates that the funds will be used by July 1, 2020; and (4) an explanation of how the activities will result in improved compliance with secondary transition requirements and improved accuracy of the data. The BIE must also describe the documentation it will provide to demonstrate that the directed FFY 2018 funds were used in accordance with the FFY 2018 spending plan, and the separate documentation it will provide to demonstrate that the directed FFY 2019 funds were used in accordance with the FFY 2019 spending plan. In addition, to ensure that the BIE can increase compliance with the secondary transition requirements and improve data accuracy within one year, the BIE must expedite the use of the directed FFY 2019 IDEA Part B administrative funds and target the use of those funds for activities that are based on a careful review of the BIE's FFY 2018 secondary transition data.

Performance Metric:

- (a) By October 31, 2019, submit the proposed spending plan for the directed FFY 2019 IDEA Part B administrative funds for OSEP approval.
- (b) With each quarterly report for the 2019-2020 CAP, provide evidence that the BIE has directed the use of funds, as appropriate, during the reporting period.
- (c) With the first and second quarterly reports for the 2019-2020 CAP, provide the amount of the \$300,000 of the BIE's FFY 2018 IDEA Part B administrative funds that were used during the reporting period to carry out the activities described in the BIE's FFY 2018 spending plan to address the suspected or known reasons for the noncompliance with secondary

transition requirements and to improve the accuracy of the data.³

- (d) With the second, third and fourth quarterly reports for the 2019-2020 CAP, provide the amount of the \$300,000 of the BIE's FFY 2019 IDEA Part B administrative funds that were used during the reporting period to carry out the activities described in the BIE's FFY 2019 spending plan to address the suspected or known reasons for the noncompliance with secondary transition requirements and to improve the accuracy of the data.
- (e) With each quarterly report for the 2019-2020 CAP, provide documentation that the BIE used those FFY 2018 and/or FFY 2019 IDEA Part B administrative funds during the reporting period in a manner consistent with the BIE's respective spending plan.

Task C.8.0: Improve Exiting Data In Accordance with IDEA Requirements.

Subtask C.8.1 (Improving Exiting Data): Improve exiting data by utilizing available technical assistance resources.

Milestone C.8.1.1: The BIE must report on: (1) the sources from which it received technical assistance related to those exiting data elements for which the BIE received a score of zero on the 2019 Part B Results Matrix; and (2) the actions it took as a result of that technical assistance.

Performance Metric:

With the FFY 2018 SPP/APR, due on February 3, 2020, provide agendas, schedules, and/or other documentation that demonstrates evidence of receipt of technical assistance related to those exiting data elements for which the BIE received a score of zero on the 2019 Part B Results Matrix and subsequent actions the BIE took as a result of that technical assistance.

Task C.9.0: Ensure the provision of related services and timely initial evaluations in accordance with the requirements of IDEA.

Subtask C.9.1: Ensure correction of noncompliance previously identified by OSEP in San Felipe Pueblo Elementary School and other BIE-funded schools covered by the expired contracts for related services and timely initial evaluations.

Milestone C.9.1.1: The BIE must report on the status of the expired contracts at San Felipe Pueblo Elementary School and other BIE-funded schools that resulted in the disruptions of related services and timely initial evaluations.

³ OSEP has granted a six-month extension for the use of the directed FFY 2018 funds until December 31, 2019. As a result, the final report on the use of the FFY 2018 funds should be included in the second quarterly report for the 2019-2020 CAP.

Performance Metric:

With the first quarterly report for the 2019-2020 CAP due on October 31, 2019, the BIE must provide an assurance that: (1) all the expired contracts have been renewed; (2) IEP Teams considered, on an individual basis, whether compensatory services were needed as a remedy for the services previously not provided; and (3) any compensatory services determined necessary by the IEP Teams have been, or are being, provided.

Subtask C.9.2: Implement procedures to ensure compliance with requirements to provide related services in accordance with students' IEPs and to conduct timely initial evaluations at San Felipe Pueblo Elementary School and other BIE-funded schools covered by the expired contracts.

Milestone C.9.2.1: Ensure that all students with disabilities enrolled in San Felipe Pueblo Elementary School and other BIE-funded schools covered by the expired contracts received related services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams, as required by IDEA section 612(a)(1) and 34 C.F.R. §§300.320 and 300.323(c)(2), and that all initial evaluations are conducted within 60 days of receiving parental consent for the evaluation in accordance with 34 C.F.R. §300.301(c)(1).

Performance Metric:

With each quarterly report for the 2019-2020 CAP, report on: (a) the number of students with disabilities, at San Felipe Pueblo Elementary School and any other BIE-funded school that falls under the same contracts, who are still not receiving related services in accordance with their IEPs; (b) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (c) the number of requested initial evaluations that have not been conducted or have been delayed; and (d) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Subtask C.9.3: Implement procedures to ensure compliance in all other BIE-funded schools with the requirements to provide related services in accordance with students' IEPs and to conduct timely initial evaluations.

Milestone C.9.3.1: Determine if any other BIE-funded schools are unable to provide services or conduct timely initial evaluations due to contracting delays. The BIE may develop a reasonable monitoring plan that examines a sample of BIE-funded schools per year, in lieu of examining all BIE-funded schools at the same time. If the BIE selects this option, it must submit the monitoring plan to OSEP for approval.

Performance Metric:

- (a) If the BIE opts to develop a monitoring plan, it must submit the plan to OSEP for approval with the first quarterly report for the 2019-2020 CAP due on October 31, 2019.
- (b) With each quarterly report for the 2019-2020 CAP, report on:
 - (i) the number of students with disabilities who are not receiving related services in accordance with their IEPs; (ii) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (iii) the number of requested initial evaluations that have not been conducted or have been delayed; and (iv) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Subtask C.9.4: Implement procedures to prevent contractual problems that could result in a similar disruption of services in the future.

Milestone C.9.4.1: Submit a plan to prevent contractual problems that could result in a similar disruption of services in the future.

Performance Metric:

With the first quarterly report for the 2019-2020 CAP, the BIE must provide a plan to prevent contractual problems that could disrupt services, by identifying specific policies, procedures, processes and staff positions that are responsible for implementation and oversight of compliance with this requirement.

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 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 CAP, the BIE must report on the implementation of fiscal monitoring procedures and any changes to those procedures.
- (b) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 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 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 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 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 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.

Milestone C.5.1.1:

- (a) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 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 C.6.1.1, 6.1.2, 6.2.1, 6.2.2, and 6.3.1:

- (a) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 CAP, the BIE must provide evidence of any contact with PSC.
- (b) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 CAP, the BIE must provide completed 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, and report on implementation of the protocols, procedures, and governance, as well as the Data Governance Board.
- (c) For the fourth quarterly report for the 2018-2019 CAP, the BIE must provide evidence of submission of section 618 data for SY 2018-2019 in accordance with the timelines for submission of preliminary, revised, and final data.
- (d) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 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 C.F.R. §300.160(f), and that it has implemented those procedures by providing a Web link demonstrating compliance with 34 C.F.R. §300.160(f) for FFY 2015, and, for FFY 2016 and FFY 2017, as soon as possible after the BIE reports publicly on the FFY 2016 and FFY 2017 assessments of nondisabled children.
- (e) For the third quarterly report for the 2019-2020 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 C.F.R. §300.160(f), by providing a Web link, in its FFY 2018 SPP/APR, demonstrating compliance with 34 C.F.R. §300.160(f) for FFY 2018.

Milestone C.7.1.1:

- (a) For the fourth quarterly report for the 2018-2019 CAP and the first, second, and third quarterly reports for the 2019-2020 CAP, the BIE must report on the status of implementation of the corrective action plan to demonstrate compliance with the secondary transition requirements and to improve the accuracy of the secondary transition data.

Milestone C.7.2.1:

- (a) No later than October 31, 2019, the BIE must submit a report of its FFY 2018 secondary transition compliance data, disaggregated by compliance item and BIE-funded school, and an analysis of the disaggregated data, including suspected or known reasons for any noncompliance.

Milestone C.7.2.2:

- (a) By October 31, 2019, the BIE must submit, for OSEP approval, a proposed spending plan that demonstrates how the directed FFY 2019 Part B administrative funds will be used to pay for strategies and activities that address the suspected or known reasons for the noncompliance with the secondary transition requirements and that are reasonably designed to correct that noncompliance and improve the accuracy of the data. The BIE's proposed spending plan must include: (1) the activities that will be carried out with those funds; (2) the costs associated with each of the activities; (3) a projected timeline for using the funds to pay the costs associated with each of the activities that demonstrates that the funds will be used by July 1, 2020; and (4) an explanation of how the activities will result in improved compliance with secondary transition requirements and improved accuracy of the data. The BIE must also describe the documentation it will provide to demonstrate funds were used in accordance with the FFY 2019 spending plan.
- (b) For the first quarterly report for the 2019-2020 CAP, the BIE must provide evidence that the BIE has directed the use of funds, as appropriate, and provide the amount of the \$300,000 of the BIE's FFY 2018 IDEA Part B administrative funds (for which the Department granted an extension until December 31, 2019) that were used from July 1, 2019 through September 30, 2019, to carry out the activities described in the BIE's spending plan to address the suspected or known reasons for noncompliance with secondary transition requirements and to improve the accuracy of the data, and documentation that the BIE used those FFY 2018 IDEA Part B administrative funds in a manner consistent with the BIE's spending plan.
- (c) For the second quarterly report for the 2019-2020 CAP, the BIE must provide evidence that the BIE has directed the use of funds, as appropriate, and provide the amount of the \$300,000 of the BIE's FFY 2018 IDEA Part B administrative funds and the amount of the \$300,000 of the BIE's FFY 2019 IDEA Part B administrative funds that were used from October 1, 2019 through December 31, 2019, to carry out the activities described in the BIE's respective spending plan to address the suspected or known reasons for

noncompliance with secondary transition requirements and to improve the accuracy of the data, and documentation that the BIE used those FFY 2018 and FFY 2019 IDEA Part B administrative funds in a manner consistent with the BIE's respective spending plan.

- (d) For the third quarterly report for the 2019-2020 CAP, the BIE must provide evidence that the BIE has directed the use of funds, as appropriate, and provide the amount of the \$300,000 of the BIE's FFY 2019 IDEA Part B administrative funds that were used from January 1, 2020 through March 31, 2020, to carry out the activities described in the BIE's spending plan to address the suspected or known reasons for noncompliance with secondary transition requirements and to improve the accuracy of the data, and documentation that the BIE used those FFY 2019 IDEA Part B administrative funds in a manner consistent with the BIE's spending plan.

Milestone C.8.1.1:

- (a) With the FFY 2018 SPP/APR, due on February 3, 2020, the BIE must provide agendas, schedules, and/or other documentation that demonstrates evidence of receipt of technical assistance related to those exiting data elements for which the BIE received a score of zero on the Part B Results Matrix and subsequent actions the BIE took as a result of that technical assistance.

Milestone C.9.1.1:

With the first quarterly report for the 2019-2020 CAP due on October 31, 2019, the BIE must provide an assurance that (1) all the expired contracts have been renewed; (2) IEP Teams considered, on an individual basis, whether compensatory services were needed as a remedy for the services previously not provided; and (3) any required compensatory services determined necessary by the IEP Teams have been, or are being, provided.

Milestone C.9.2.1

With each quarterly report for the 2019-2020 CAP, report on: (a) the number of students with disabilities, at San Felipe Pueblo Elementary School and any other BIE-funded school that falls under the same contracts, who are still not receiving related services in accordance with their IEPs; (b) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (c) the number of requested initial evaluations that have not been conducted or have been delayed; and (d) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Milestone C.9.3.1

- a) If the BIE opts to develop a monitoring plan, it must submit the plan to OSEP for approval with the first quarterly report for the 2019-2020 CAP due on October 31, 2019.

- (b) With each quarterly report for the 2019-2020 CAP, report on: (i) the number of students with disabilities who are not receiving related services in accordance with their IEPs; (ii) the steps that the BIE is taking to ensure that these students receive the required services in accordance with their IEPs and any compensatory services determined necessary by the IEP Teams; (iii) the number of requested initial evaluations that have not been conducted or have been delayed; and (iv) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible.

Milestone C.9.4.1

With the first quarterly report for the 2019-2020 CAP, the BIE must provide a plan to prevent contractual problems that could disrupt services by identifying specific policies, procedures, processes and staff positions that are responsible for implementation and oversight of compliance with this requirement.

4. Evidence Necessary for Conditions To Be Removed

The Department will remove the Specific 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, Laurie VanderPloeg, at the address below, if it wishes the Department to reconsider any aspect of these Specific Conditions. The request must describe in detail the changes to the Specific Conditions sought by the BIE and the reasons for those requested changes.

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

6. Submission of Reports

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

Jennifer Wolfsheimer
U.S. Department of Education
Office of Special Education Programs
550 12th Street, SW, Room 5033
Washington, DC 20202

And

Susan Benbow
U.S. Department of Education
Risk Management Services Division
Office of Finance and Operations
550 12th Street, SW, Room 6050
Washington, DC 20202