

# DMS REPORT

## DIFFERENTIATED MONITORING AND SUPPORT OFFICE OF SPECIAL EDUCATION PROGRAMS U.S. DEPARTMENT OF EDUCATION

**STATE** BUREAU OF INDIAN EDUCATION

**DATE** OCTOBER 23, 2019

**IDEA** PART B

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

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

Dear Director Dearman:

The purpose of this letter is to provide a summary of the results of the differentiated monitoring and support (DMS) activities conducted by the U. S. Department of Education's Office of Special Education Programs (OSEP) during an on-site visit to the Bureau of Indian Education (BIE) the week of March 25, 2019, and three schools on March 29, April 9, and April 11, 2019. In addition to OSEP and Risk Management Services (RMS) staff, participants during the visits included staff from the BIE, the National Center for Systemic Improvement, the IDEA Data Center, and the National Technical Assistance Center on Transition.<sup>1</sup>

As part of the DMS process, OSEP conducts an organizational assessment (OA) of factors to identify States' progress in meeting performance standards and complying with the requirements of Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, the Education Department General Administrative Regulations and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance). OSEP uses the information from the OA and an Engagement Decision Tree to make decisions about how it will engage with States over the course of the Federal fiscal year (FFY). The FFY 2018 DMS areas were: 1) Results; 2) Compliance; 3) State Systemic Improvement Plan (SSIP); and 4) Fiscal.

On October 23, 2018, OSEP sent the BIE's DMS notice to Jeffrey Hamley and Donald Griffin. That notice provided a level of engagement of universal, targeted, or intensive for each of the four areas OSEP identified for DMS. The levels of engagement in the notice were based on a snapshot of the most recently available data in the corresponding four areas. The notice also identified the monitoring and support activities that would be carried out to address the factors contributing to the elevated need for monitoring and support in each of the areas that were identified for intensive engagement. We have attached a copy of the DMS notice for your convenience.

The enclosure describes the: 1) Background; 2) Monitoring<sup>2</sup> for each DMS area; 3) Summary; and 4) OSEP's conclusion including Next Steps and Required Actions. If OSEP is issuing findings of noncompliance with the IDEA requirements, you will find specific details pertaining to the finding of noncompliance, along with the respective citation(s); and the corrective action required to address the identified finding of noncompliance.

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<sup>1</sup> All three centers are OSEP-funded technical assistance providers.

<sup>2</sup> Monitoring is broadly defined as including activities examining both compliance and performance issues and encompasses traditional monitoring reviews and technical assistance activities. This is consistent with the OMB Uniform Guidance. See 2 C.F.R. §200.331(d) and (e).

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[www.ed.gov](http://www.ed.gov)

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

We appreciate your efforts to improve results for children with disabilities. If you have any questions, please contact Jennifer Wolfsheimer, your OSEP State Lead, at 202-245-6090.

Sincerely,

/s/

Laurie VanderPloeg

Director

Office of Special Education Programs

cc: Donald Griffin, State Director of Special Education  
Jeffrey Hamley, Ed.D, Associate Deputy Director  
Division of Performance & Accountability

Enclosure:

DMS Notice

OSEP San Felipe Letter

BIE FFY 2019 Specific Conditions

# ENCLOSURE

## Background

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OSEP's Differentiated Monitoring and Support (DMS) system is a component of Results Driven Accountability. DMS is designed to identify potential grantee risk to the U.S. Department of Education (Department) and to assist OSEP in effectively using its resources to monitor grantees. DMS addresses State-specific and Entity-specific needs in the areas of Results, Compliance, State Systemic Improvement Plan (SSIP), and Fiscal systems by differentiating levels and types of monitoring and support based on each State's and Entity's unique strengths, progress, and challenges in each area.<sup>3</sup>

During the DMS Visit, OSEP reviewed the BIE's Results, Compliance, and SSIP systems. In reviewing the BIE's systems for Results, Compliance, and SSIP, OSEP:

- Reviewed the BIE's systems for collecting and reporting data the BIE submitted for selected indicators in the BIE's Federal fiscal year (FFY) 2016 State Performance Plan (SPP)/Annual Performance Report (APR)<sup>4</sup> under Part B of the Individuals with Disabilities Education Act (IDEA).
- Reviewed the following—
  - The BIE's previous SPP/APRs, including its SSIP submissions
  - The BIE's FFY 2018 annual application for funds under Part B of the IDEA
  - Information on the BIE's website related to the IDEA
  - Other pertinent information related to the BIE's efforts to improve results for children with disabilities
- Gathered additional information through interviews with—
  - The BIE Director of Special Education
  - The BIE personnel responsible for implementing the Results, Compliance, and SSIP systems
  - Leadership and staff from three BIE-funded schools

During the visit, OSEP did not examine the area of Fiscal systems, in which the BIE received a "Level of Engagement" of "Universal." However, OSEP will continue to work with the BIE on all of the areas identified in the DMS notice during regular phone calls and virtual engagement.

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<sup>3</sup> For more information on OSEP's monitoring procedures, measurement categories and ratings, see the DMS notice provided as Attachment 1.

<sup>4</sup> The FFY 2016 SPP/APR was the most recent SPP/APR submission at the time of the monitoring visit.

OSEP will also provide universal technical assistance through nation-wide calls, webinars and documents posted on our websites.

Under 20 U.S.C. 1411(h)(1)(A) of the IDEA, the Secretary of Education provides funds to the Secretary of the Interior for the education of children with disabilities on reservations ages 5 through 21 enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. 20 U.S.C. 1411(h)(2)(A) specifies that in order to be eligible for funds under 20 U.S.C. 1411(h)(1)(A), the Department of the Interior must meet the appropriate requirements, as determined by the Secretary of Education, 20 U.S.C. 1412 (including monitoring and evaluation activities) and 20 U.S.C. 1413 that apply generally to State educational agencies (SEAs) and local educational agencies (LEAs), respectively. Accordingly, IDEA Part B regulations at 34 C.F.R. §§ 300.707 through 300.716 establish the requirements that apply to the BIE and BIE-funded schools and, except as specifically identified, have the BIE and BIE-funded schools assume responsibilities and programmatic requirements of an SEA and LEA, respectively.

### **BIE Organizational Structure**

Based on the information reviewed, it is the Department's understanding that, currently, the BIE funds two different types of schools: 1) BIE-operated schools; and 2) tribally-controlled schools (funded by both grants and contracts). While at one time BIE-operated schools comprised the majority of BIE-funded schools, currently approximately 130 of 183, or two-thirds of the BIE-funded schools, are tribally-controlled.

BIE also reported that, partially as a result of this trend, in 2014, the agency began an organizational restructuring designed to "improve[ ] service by meeting the different needs of federally operated schools and grant schools" and to "put[ ] resources and support closer to schools".<sup>5</sup> Under the current structure, the BIE is led by the Director of the BIE, who is supported by four Associate Deputy Directors (ADDs). Three of the ADDs oversee groups of the BIE-funded schools: 1) an ADD for tribally-controlled schools; 2) an ADD for BIE-Operated schools; and 3) an ADD for Navajo schools.<sup>6</sup>

The fourth ADD oversees the Division of Performance and Accountability (DPA). DPA administers the Federal programs supported by the Elementary and Secondary Education Act and IDEA formula grants from the U.S. Department of Education. The DPA functions as the State educational agency (SEA) for the BIE, but direct oversight of schools is provided by the three other ADDs. As a result, DPA is dependent upon the ADDs for tribally-controlled schools, BIE-operated schools, and Navajo schools to ensure proper implementation of the provisions of IDEA and any corrective actions required to address identified noncompliance under the IDEA for those entities.

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<sup>5</sup> See [www.bie.edu/BFRI/index.htm](http://www.bie.edu/BFRI/index.htm).

<sup>6</sup> The Navajo schools include both tribally-controlled and BIE-operated schools.

In addition, the ADDs for tribally-controlled schools, BIE-operated schools, and Navajo schools each oversee Educational Resource Centers (ERCs), which are regional centers designed to provide technical assistance, support and oversight of all of the BIE-funded schools. OSEP noted that both because direct authority over the schools is in the hands of the ADDs and its ERCs, and because of the limitations in both the authority, and the number, of staff in DPA, effective corrections of monitoring findings under, and the provision of technical assistance related to, IDEA is primarily dependent upon the cooperation of the ADDs and the ERCs. OSEP discussed this observation with the Director of the BIE, DPA staff, representatives of the ADDs and ERCs and school staff. In all cases, there was general agreement that schools, and the children and families that they serve, would be the ultimate beneficiaries of more clearly defined roles and responsibilities, increased communication, and greater collaboration.

Lastly, as reported, the BIE currently sends all documents (including IDEA-related monitoring reports) through the Department of the Interior's document tracking system (DTS). As described in detail later in this letter, this review system has proven to be a barrier to the BIE fulfilling its general supervision responsibilities due to substantial delays with obtaining clearance.

## **Compliance**

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### **DMS Compliance Overview**

In the 2018 DMS notice, OSEP identified the BIE as needing intensive support in the area of compliance due to the following complex challenges reflected in its FFY 2016 IDEA Part B SPP/APR data:

1. Indicator 11: Timely initial evaluation was 83.45%;
2. Indicator 13: Secondary Transition was 14.98%;
3. Timely and Accurate State-Reported Data was 84.35%; and
4. Longstanding Noncompliance (Special Conditions existed for three or more years).

### **The BIE Compliance System**

During the visit, OSEP, the Department's Risk Management Services (RMS), the BIE staff, and representatives from OSEP-funded technical assistance centers discussed the following areas in detail:

1. the BIE's general supervision responsibilities under the IDEA;
2. the BIE's data system;
3. timely initial evaluations, including evaluations for needed related services, and the provision of those related services, in BIE-funded schools;
4. compliance with secondary transition requirements; and

5. the BIE's dispute resolution system.

### General Supervision

During the visit, the discussion regarding the BIE's general supervision responsibilities focused on:

1. the BIE's policies and procedures related to the IDEA;
2. the BIE's monitoring system;
3. the BIE's issuing of local school determinations; and
4. the BIE's public reporting of local school performance reports.

First, in 2011, the BIE posted on its website draft policies and procedures that mirrored the Federal IDEA regulations addressing the obligation to have in effect policies and procedures that meet the requirements of IDEA. 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a). However, the BIE has since pulled these policies and procedures off its website. The BIE currently does not have final policies and procedures related to implementation of the IDEA. Further, during discussions OSEP held at the three BIE-funded schools, school administrators and staff articulated the need for clarity regarding the BIE's policies and procedures for the implementation of the IDEA<sup>7</sup>. In the absence of guidance, BIE-funded schools reported the need for clarity on the IDEA-related requirements they must follow, which generally impact the provision of services for children with disabilities enrolled in those schools.

For example, during the monitoring visit, OSEP also discussed with the BIE the use of Response to Intervention (RTI) prior to administering an initial evaluation. The BIE stated that it leaves decisions about the use of RTI to school-level staff. During OSEP's visits with the three BIE-funded schools, the school staff explained that when a child is struggling in school, the child is referred to the child study team to discuss individual concerns, review the relevant data and, unless the school has received from the parent a written request for an evaluation, interventions are tried for a period ranging from 45 days to three months. After the RTI period is completed, school staff then decides whether to conduct an evaluation.

No intervention process, including RTI, may be used to delay or deny the provision of a full and individual evaluation that meets the requirements of 34 C.F.R. §§ 300.304–300.311 to a child

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<sup>7</sup> In the absence of final policies and procedures, some BIE-funded schools have been implementing certain IDEA-related requirements based on the policies and procedures of the State in which they are located. While this is not impermissible if it were consistent with the BIE's final policies and procedures, the BIE has not indicated it has given schools this option. Under the IDEA, States have flexibility to define their own requirements in certain areas (e.g., the timeline for an initial evaluation (20 U.S.C. 1414(a)(1)(C)(i)(I)) and the timeline for presenting a due process complaint (20 U.S.C. 1415(b)(6)(B)). Without decisions by the BIE on how that flexibility is to be exercised, BIE-funded schools cannot demonstrate compliance, and parents of children with disabilities lack the information required to ensure their child receives FAPE, enforce their rights, and fully participate in the process under IDEA, which, in turn, impacts the BIE's general supervision system.

suspected of having a disability under 34 C.F.R. § 300.8. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation or within the BIE-established timeframe. 20 U.S.C. 1414(a)(1)(C)(i)(I); 34 C.F.R. § 300.301(c). The statutory and regulatory exceptions to this requirement do not include the use of RTI strategies. 20 U.S.C. 1414(a)(1)(C)(ii); 34 C.F.R. § 300.301(d). It would be inconsistent with the evaluation provisions at 34 C.F.R. §§ 300.301 through 300.111 for an initial evaluation to be delayed on the basis that a child has not participated in an RTI framework. See also 34 C.F.R. §§ 300.309(c) and 300.311(a)(7)(ii)(C); Analysis of Comments and Changes to 2006 IDEA Part B regulations, 71 Fed. Reg. 46540, 46658 (Aug. 14, 2006); OSEP Memorandum 11-07, A Response to Intervention (RTI) Process Cannot Be Used to Delay-Deny an Evaluation for Eligibility under the Individuals with Disabilities Education Act (IDEA), issued January 21, 2011<sup>8</sup>; and OSEP Questions and Answers on RTI and Early Intervening Services (EIS), January 2007.<sup>9</sup> As noted above, this demonstrates one of the impacts of not having final policies and procedures in place. Based on OSEP's monitoring visits, BIE-funded schools lack policies and procedures on the timeframe for completing initial evaluations and the relationship between RTI and evaluations pursuant to the IDEA.

Second, the BIE has a four-year monitoring cycle that is based on a risk matrix. The BIE uses a school's level of risk to determine whether the school will receive only a desk audit or on-site monitoring review<sup>10</sup>. The risk matrix divides all the BIE-funded schools into quintiles; schools rated in the first quintile receive an on-site visit. The BIE conducts 15 on-site monitoring visits each year. The second quintile is comprised of about 20 schools subject to desk audits. Through these monitoring activities, the BIE identifies noncompliance but has been unable to issue written findings of noncompliance because the letters are awaiting clearance in the Department of the Interior's Document Tracking System (DTS). The BIE informed OSEP that it has been unable to issue written findings of noncompliance to schools in the last two years. In lieu of a formal letter, the BIE conducts telephone calls to inform each school of the identified noncompliance and required corrective actions.

The BIE reported that it tracks the correction of noncompliance on a spreadsheet used for internal purposes. BIE-funded schools use the Fiscal Accountability Action Plan (FAAP) to track and submit documentation of progress towards the correction of both fiscal and programmatic findings. The FAAP is required of all schools with identified fiscal noncompliance. As a final step, after a school has corrected the noncompliance, the school submits evidence of correction through Native Star, the BIE's tool for tracking continuous school improvement. Staff at the three schools visited by OSEP stated that the BIE did not provide technical assistance or guidance on how to correct the identified noncompliance. Further, staff at these schools reported that, once they provided the BIE with the required information on correction of noncompliance, school staff did not receive feedback from the BIE indicating that the noncompliance has been resolved. During the monitoring visit, the BIE acknowledged that, just as it is

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<sup>8</sup> A copy of OSEP Memo11-07 may be viewed at: <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>.

<sup>9</sup> A copy of OSEP Questions and Answers on RTI and EIS (January 2007) may be viewed at: <https://sites.ed.gov/idea/files/07-0021.RTI.pdf>.

<sup>10</sup> The BIE's on-site monitoring reviews include both a document review and on-site interviews.

unable to issue written findings, it has also been unable to issue close-out letters to resolve the findings of noncompliance.

During the discussion, the BIE also explained that it has trouble ensuring students with disabilities take the correct assessment. The BIE further elaborated on the concern by explaining that although it is able to access IEPs in NASIS to determine what type of assessment each student is required to take, there is currently no method to determine if the student actually took the assessment required by the student's IEP. The BIE stated that, in some instances, it knows that the assessment administered to the student does not match the assessment required by the student's IEP. The BIE stated that when the agency becomes aware of this issue, it provides technical assistance to the school to ensure the correct assessment is administered to the student in the following year. The BIE explained that once consensus on recommendations for a proposed rule to replace the existing assessment system is reached through the negotiated rulemaking process, the BIE will have a more effective way to ensure that children with disabilities in BIE-funded schools are administered assessments in accordance with their IEPs. However, the BIE must also have a mechanism to issue written findings in instances where it has acknowledged noncompliance.

Third, while on-site, the BIE informed OSEP that, for the past two years, it has not issued local determinations in accordance with 20 U.S.C. 1411(h)(2)(A) and 1416(a) and 34 C.F.R. §§ 300.600(a)(2), 300.708(d), and 300.716. The BIE stated that it is waiting for the amended 2016 determinations to clear DTS before it can issue determinations for 2017 and 2018. Further, the BIE noted that it does not consider IDEA-related audit findings when making local determinations. Finally, unlike the BIE's issuing of findings of noncompliance, the BIE has not communicated, either formally or informally, to individual schools about their determinations.

The BIE staff informed OSEP that it is working to get templates for monitoring reports and local determinations approved through the DTS process, and that once a template is approved, the BIE could issue individual reports or determinations directly to schools without being subjected to internal clearance at the Department of the Interior.

Lastly, the BIE acknowledged that it does not comply with the requirement to report annually to the public on the performance of each BIE-funded school on the targets in the BIE's performance plan as required by 20 U.S.C. 1411(h)(2)(A) and 1416(b)(2)(C) and 34 C.F.R. §§ 300.602(b)(1)(i)(A), 300.708(d), and 300.716. OSEP notes that the most recent local performance reports the BIE has made publicly available are for FFY 2013, and the BIE has not publicly reported on the FFY 2014, FFY 2015, and FFY 2016 performance of BIE-funded schools. The BIE's efforts to bring the publicly available local performance reports up to date include working with the IDEA Data Center (IDC) to calculate and post updated local performance reports. However, the BIE was not able to clarify the current status of the data calculations needed to complete the local performance reports or of the clearance of those reports through DTS.

## Data

OSEP notes that the BIE is continuing to make progress in improving data collection and reporting. It appears that the BIE's data related to special education is at the forefront of these data improvements, especially in the area of assessments. Specifically, the Chief Academic Office – which houses the Native American Student Information System (NASIS), the BIE's data collection system – is working closely with the individual schools' special education departments to ensure that the special education data is as accurate as possible. Further, the BIE, with the assistance of the IDC, has developed data collection protocols, which will standardize the collection of all applicable special education data. Protocols have been, or are being, developed for all the required IDEA Section 616 and Section 618 data collections. The BIE has also created a Data Governance Board, which will oversee the collection of data at the BIE. Donald Griffin, BIE's Director of Special Education, has a seat on the Data Governance Board. Once the process for collecting and reporting data is finalized, the BIE will begin work with its schools to encourage the use of data to support decision making and improvement activities.

## Child Find, Timely Initial Evaluations, and Provision of Related Services

During the visit, the BIE explained that each BIE-funded school uses the evaluation criteria established by the State where it is located, and that each school has its own process for hiring educational psychologists to complete timely evaluations. The BIE also informed OSEP that it uses the 60-day timeline that its schools must comply with for completing initial evaluations consistent with 34 C.F.R. §§ 300.301(c)(1)(i) and 300.716. However, some BIE-funded schools are following the timeline established by the State where they are located for completing initial evaluations, which is permitted only if the BIE allows BIE-funded schools to use the State-established timeline under 34 C.F.R. § 300.301(c)(1)(ii). As an example, some BIE-funded schools located in Michigan use the State-established timeline of 45 business days for completing initial evaluations, which is inconsistent with, and generally longer than, the BIE's timeline of 60 calendar days.

The BIE further explained that it uses the same process to collect data regarding initial evaluations from all BIE-funded schools. The schools upload parental consent forms and the dates that the evaluations were completed into NASIS. If, upon initial review, the documents are not uploaded, the BIE reaches out to the school to inform it of the requirements. The BIE reviews the uploaded data and, if there are concerns, submits a form to the school requesting more information. Once the complete data submission is reviewed, the BIE determines if the school met the 60-day timeline for completing initial evaluations. If the school does not meet the timeline, the BIE will inform the school via email of the requirement to correct the noncompliance. The ADD in charge of overseeing the school receives a copy of the required actions to correct the noncompliance. The school is then required to develop a plan to address the noncompliance. ERCs are responsible for reviewing these plans.

One reported barrier to the ability of several BIE-funded schools to conduct timely initial evaluations has been the lack of related service providers or other qualified personnel who can assess the child's need for related services. For BIE-operated schools, the acquisitions process for approving and awarding contracts is handled by the contracting office in the Bureau of Indian Affairs (BIA), not the BIE. According to Tony Dearman, the BIE Director, the acquisitions process will be transferred to a new BIE office by 2020. In the meantime, the BIA's contracting office has had a continuous backlog, which, in at least one case, resulted in a delay of over one year in awarding a contract that covered the hiring of all related service providers for a group of seven BIE-operated schools. In February 2018, OSEP became aware that San Felipe Pueblo Elementary School was not providing related services and timely initial evaluations due to a lapse in contract approval, which impacted six additional BIE-operated schools covered by the same contract. OSEP issued a letter on August 8, 2018 (see Attachment 2) regarding the identified noncompliance and requiring the BIE to report quarterly on actions it has taken to address the disruption in related services and timely initial evaluations. Although the BIE has reported verbally that services have been restored in San Felipe Pueblo Elementary School, the BIE, to date, has not completed the additional corrective actions and has not submitted any of the responses required by the corrective actions. In July 2019, OSEP incorporated those corrective actions into the Specific Conditions (see Attachment 3) on the BIE's FFY 2019 IDEA Part B grant award, which require the BIE to report on the status of the corrective actions in each quarterly progress report it submits under the 2019-2020 Corrective Action Plan (specifically, Milestones C.9.1.1, C.9.2.1., C.9.3.1., and C.9.4.1).

During the monitoring visit, the BIE provided no documentation demonstrating either compliance or noncompliance by BIE-funded schools with the requirement to conduct timely initial evaluations. Although the three BIE-funded schools OSEP visited provided evidence that they were completing timely initial evaluations, OSEP is unable to determine whether other BIE-funded schools are in compliance, given the BIE has not submitted any of the responses required by the corrective actions in OSEP's August 8, 2018, letter regarding the disruption of related services and timely initial evaluations at San Felipe Pueblo Elementary School. OSEP also notes that the BIE's ability to effectively monitor for compliance with the requirement for timely initial evaluations may be affected by the reported use by BIE-funded schools of different timelines (i.e., some schools are following the State-established timeline for completing initial evaluations, whereas other schools are following the BIE-established timeline).

With respect to the provision of related services, the information reported by the three BIE-funded schools during the monitoring visit indicated a systemic problem with the availability of related service providers to provide the related services in accordance with a child's individualized education program (IEP). All of the BIE-funded schools that OSEP visited have at one time had a lapse in related service providers, which resulted in the failure to provide the related services required to ensure a free appropriate public education (FAPE). See 20 U.S.C. 1401(9) and 34 C.F.R. § 300.17. One of the schools reported that it had not had a physical

therapist this year and did not have a school counselor last year, although such staff were required in order to provide services in accordance with students' IEPs. The second school reported difficulty in the past with retaining school psychologists. The third school reported that it currently has all necessary related service providers, but has had difficulties maintaining contracts for related service providers in previous school years. The failure to provide services necessary to implement a child's IEP is a violation of the fundamental IDEA requirement to make available FAPE to all children with disabilities. 20 U.S.C. 1412(a). It is also a violation of the requirement in 34 C.F.R. § 300.323(c)(2) to ensure that, "[a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP."

### Secondary Transition

The BIE has established a robust monitoring system with regard to compliance with the secondary transition requirements in 20 U.S.C. 1414(d)(1)(A)(i)(VIII) and 34 C.F.R. §§ 300.320(b) and 300.321(b), as reported under IDEA Part B SPP/APR Compliance Indicator 13. The BIE currently monitors for compliance with secondary transition requirements by pulling a random sample of IEPs across the 60 BIE-funded high schools and using a checklist to review the IEPs for compliance with secondary transition requirements. The BIE conducts both desk audits and on-site monitoring to determine schools' compliance under Indicator 13. However, the BIE is unable to issue written letters of findings of noncompliance because the letters are awaiting clearance in the DTS. As stated previously, the BIE informed OSEP that it has been unable to issue written notifications of findings in the last two years. In lieu of a written letter, the BIE informs the schools by phone of the findings of noncompliance and the corrective actions required to resolve the findings.

The BIE has taken aggressive steps to increase professional development with regard to compliance with the secondary transition requirements specified in Indicator 13 of the IDEA Part B SPP/APR. One such step is the development of a needs assessment based on an analysis of Indicator 13 components in IEPs for the BIE-funded schools. The BIE discussed providing professional development to increase age-appropriate transition goals. In addition, the BIE has assigned a staff person to specifically review IEPs from the 60 BIE-funded high schools and provide technical assistance regarding the importance of compliance with secondary transition requirements within an IEP. During the visits at the three BIE-funded schools, school staff indicated to OSEP that the BIE's emphasis on compliance under Indicator 13 has had a significant impact on improving data for Indicator 13 in each of those schools. Although the BIE's FFY 2016 SPP/APR data for Indicator 13 reflected a very low level of compliance, the BIE has been able to show that, after the schools completed the corrective actions required by the BIE's monitoring reviews, the schools were at a very high level of compliance under Indicator 13. OSEP is hopeful that this improvement will be reflected in the BIE's future SPP/APR data. OSEP's interviews with the staff from each of the three schools confirmed that there has been an

increased focus by the BIE on schools' compliance under Indicator 13. However, as described by school staff, the technical assistance they have received thus far from the BIE has not focused on the development of meaningful secondary transition goals that have a specific impact on the student to meet the student's unique transition needs.

### State Complaints and Due Process Complaints

Under Part B of the IDEA, the BIE must have procedures and practices that are reasonably designed to effectively implement the requirements on:

1. the State complaint procedures in 34 C.F.R. §§ 300.151 through 300.153;
2. the due process complaint and due process hearing procedures in 20 U.S.C. 1415 and 34 C.F.R. §§ 300.507 through 300.518; and
3. the expedited due process hearing procedures in 20 U.S.C. 1415(k)(3) and
4. and 34 C.F.R. § 300.532, consistent with 34 C.F.R. § 300.716.

See also OSEP Memorandum 13-08, Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act, issued July 23, 2013.

During the visit, the BIE shared its efforts to implement procedures to ensure compliance with State complaint requirements contained in 34 C.F.R. § 300.152(a) and (b). Specifically, the BIE has made procedural changes that seem likely to improve the BIE's efforts to ensure that State complaints are resolved within the 60-day timeline or an appropriately extended timeline due to the exceptional circumstances with respect to a particular complaint or because the parent (or individual or organization, as appropriate) and the public agency agree to extend the time to engage in mediation or other alternative means of dispute resolution, if available in the State, consistent with 34 CFR §§ 300.152(a) and (b) and 300.716. The BIE informed OSEP that there are currently two complaints that have not been resolved within the 60-day timeline or a properly extended timeline. The BIE explained that it has a new contracting process to assign an investigator to a State complaint, which allows the BIE to send the State complaint to the investigator without needing to make a request for proposals every time the BIE receives a State complaint.

During OSEP's on-site visit, the BIE discussed its policies and procedures related to due process hearing requests. The BIE explained that once it receives a due process hearing request, the request is scanned and sent to the Department of the Interior's Office of Hearings and Appeals where it is assigned to an administration law judge (ALJ). The school is then called to schedule a resolution meeting. However, the BIE depends on the ALJ to ensure that the resolution meeting is carried out in accordance with the IDEA. The BIE informed OSEP that it has no systematic way to monitor whether the school has offered or conducted a resolution meeting. Further, the BIE noted that ALJs have extended both the 15-day timeline for convening a resolution meeting

and the 30-day timeline for resolving a due process complaint before a due process hearing may occur, beyond the exceptions and adjustments permitted by the IDEA and its implementing regulations. Under 20 U.S.C. 1415(f)(1)(B)(i)(I) and 34 C.F.R. § 300.510(a), an LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 300.511. The only exceptions to this requirement are in 20 U.S.C. 1415(f)(1)(B)(i) and 34 C.F.R. § 300.510(a)(3), which permit the resolution meeting to not be held if the parent and the LEA agree in writing to waive the meeting or the parties agree to use the mediation process described in 34 C.F.R. § 300.506. In addition, under 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. § 300.510(b)(1), if an LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Adjustments to the 30-day resolution period can be made under 34 C.F.R. § 300.510(c) only if: 1) both parties agree in writing to waive the resolution meeting; 2) after either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or 3) both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

Further, the BIE informed OSEP that it does not have written policies and procedures to ensure that BIE carries out its general supervision responsibilities as an SEA to ensure that due process hearings are carried out in accordance with IDEA requirements in 20 U.S.C. 1415 and 34 C.F.R. §§ 300.500, 300.507 through 300.518, and 300.716. Specifically, the BIE staff acknowledged that it has no mechanism to track compliance with the 45-day due process hearing timeline and to ensure that extensions of the 45-day due process hearing timeline are granted only at the request of a party, consistent with 34 C.F.R. §§ 300.510(b) and (c), 300.515(a), and 300.716. A hearing officer may not unilaterally extend this timeline.

Also, the BIE informed OSEP that it has no policies or procedures to ensure that expedited due process hearings are carried out in accordance with the requirements of Part B of the IDEA. Specifically, the BIE does not have procedures in place to ensure that: (1) expedited due process hearings are conducted within 20 school days of the date the due process complaint requesting the hearing is filed, and (2) a hearing officer makes a determination within 10 school days after the hearing, in accordance with 20 U.S.C. 1415(k)(3) and (4) and 34 C.F.R. §§ 300.532(c)(2) and 300.716. Under 20 U.S.C. 1415(k)(3) and 34 C.F.R. §§ 300.532(a) and 300.716, the parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or a BIE-funded school that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b). Under 20 U.S.C. 1415(f)(1)(A) and 34 C.F.R. §§ 300.532(c)(1) and 300.716, whenever a hearing is requested under § 300.532(a), the parents or the BIE-funded school involved in the dispute must have an

opportunity for an impartial due process hearing consistent with the requirements of §§ 300.507, 300.508(a) through (c), and §§ 300.510 through 300.514, except as provided in § 300.532(c)(2) through (4). Under 20 U.S.C. 1415(k)(3) and (4) and 34 C.F.R. §§ 300.532(c)(2) and 300.716, the BIE or BIE-funded school is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process complaint requesting the hearing is filed; and the hearing officer must make a determination within 10 school days after the hearing. Under 34 C.F.R. § 300.532(c)(3), a resolution meeting must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the meeting or to use mediation. Under 34 C.F.R. §§ 300.532(c)(4) and 300.716, the BIE may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but, except for the timelines as modified in 34 C.F.R. § 300.532(c)(3) (governing the resolution process), the BIE must ensure that the requirements in §§ 300.510 through 300.514 are met.

### **Findings:**

Based on the review of documents, analysis of data, and interviews with BIE personnel, as described above, OSEP concludes the following.

1. The BIE has not established its final policies and procedures related to implementation of Part B of the IDEA. Therefore, the BIE does not have policies and procedures in effect that meet the requirements of the IDEA, as required by 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a). To ensure effective monitoring and supervision, the final policies and procedures must address the circumstances, if any, wherein a BIE-funded school is permitted to follow the policies and procedures established by the State in which the school is located.
2. The BIE does not have a general supervision system that is reasonably designed to ensure that the BIE issues written notice of findings of noncompliance and ensure that the noncompliance is corrected as soon as possible, and in no case later than one year after the BIE's identification of the noncompliance. Specifically, although the BIE informed OSEP that it works with the schools to correct any noncompliance identified, the BIE does not have a functional mechanism for issuing written notice of the noncompliance, and ensuring the noncompliance is corrected as soon as possible, and in no case later than one year after the BIE's identification of the noncompliance. In order to effectively monitor implementation of Part B of the IDEA, the BIE must issue written notice of noncompliance it identifies in BIE-funded schools and ensure that the noncompliance is corrected as soon as possible, and in no case later than one year after the BIE's identification of the noncompliance, consistent with 20 U.S.C. 1411(h)(2), 1412(a)(11), 1416, and 1232d(b)(3)(E); and 34 C.F.R. §§ 300.149, 300.600(e), 300.708, and 300.716. See also OSEP's Frequently Asked Questions Regarding Identification and Correction of

Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR), dated September 3, 2008, and OSEP Memorandum 09-02, issued October 17, 2008. In addition, given that BIE-funded schools have reported the BIE does not provide feedback on the sufficiency of their actions to correct findings of noncompliance, OSEP strongly recommends that the BIE provide timely notifications to each school with findings as to the sufficiency of its corrective actions in demonstrating correction of noncompliance identified by the BIE.

3. The BIE has failed to make annual local determinations in accordance with 20 U.S.C. 1411(h)(2)(A) and 1416(a) and 34 C.F.R. §§ 300.600(a)(2), 300.708(d), and 300.716. The BIE must make determinations annually about the performance of each BIE-funded school using the categories in 34 C.F.R. § 300.603(b)(1). Further, when making annual determinations on the performance of the BIE-funded schools, the BIE must consider the results of any school-specific audit findings, as required in 20 U.S.C. 1416(b)(2)(C) and 34 C.F.R. § 300.602. See also Question C-9 of OSEP's *Questions and Answers on Monitoring, Technical Assistance, and Enforcement* (revised June 2009)<sup>11</sup>.
4. The BIE does not have procedures and practices that are reasonably designed to ensure it reports to the public on the performance of each of the BIE-funded schools no later than 120 days after the submission of its SPP/APR, as required by 34 C.F.R. §§ 300.602(b)(1)(i)(A), 300.708(d), and 300.716.
5. The BIE does not have a general supervision system that is reasonably designed to identify noncompliance with 34 C.F.R. § 300.323(a) and (c). Specifically, the BIE has no functional mechanism for monitoring whether BIE-funded schools have contracted with related service providers to implement a child's IEP as required under 34 C.F.R. § 300.323(a) and (c) and as required under 20 U.S.C. 1412(a) and 34 C.F.R. § 300.101 to make FAPE available to children with disabilities. To effectively monitor the implementation of Part B of the IDEA, as required by 20 U.S.C. 1411(h)(2)(A), 1412(a)(11), 1416, and 1232d(b)(3)(E), and 34 C.F.R. §§ 300.149, 300.600, 300.708, and 300.716, the BIE must have procedures for monitoring for compliance with all Part B requirements, including the IEP-related requirements at 34 C.F.R. § 300.323(a) and (c).
6. The BIE is not exercising its general supervisory and monitoring responsibilities to ensure the implementation of certain IDEA requirements related to dispute resolution, consistent with 20 U.S.C. 1411(h)(2)(A), 1412(a)(11), 1415, 1416(a), and 1232d(b)(3)(E), and 34 C.F.R. §§ 300.149, 300.500, 300.507 through 300.518, 300.532, 300.600(a) and (d)(2), 300.708(a), and 300.716. Specifically:

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<sup>11</sup> A copy of OSEP's Questions and Answers on Monitoring, Technical Assistance, and Enforcement may be viewed at: [https://sites.ed.gov/idea/files/08-0101\\_Monitoring\\_FINAL\\_June\\_2009.pdf](https://sites.ed.gov/idea/files/08-0101_Monitoring_FINAL_June_2009.pdf).

- a. The BIE does not have a mechanism for tracking the resolution process for due process complaints to determine compliance with: (i) the 15-day timeline for convening a resolution meeting, consistent with 20 U.S.C. 1415(f)(1)(B)(i)(I) and 34 C.F.R. § 300.510(a); (ii) the 30-day timeline for resolving a due process complaint before a due process hearing may occur, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(b)(1) and (c) and 300.716; and (iii) the 45-day timeline for due process hearings if the school does not resolve the due process complaint to the satisfaction of the parent, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(c), 300.515(a), and 300.716;
  - b. The BIE has no mechanism to ensure that extensions of the 45-day due process hearing timeline are granted only at the request of a party, consistent with 34 C.F.R. §§ 300.510(b) and (c) and 300.716.
  - c. The BIE has not ensured that due process complaints filed pursuant to 20 U.S.C. 1415(k)(3) and 34 C.F.R. § 300.532(a) are treated in an expedited manner. Specifically, the BIE does not have procedures in place to ensure that expedited due process hearings are conducted within 20 school days of the date the complaint requesting the hearing is filed, and that a hearing officer makes a determination within 10 school days after the hearing, in accordance with 34 C.F.R. §§ 300.532(c)(2) and 300.716.
7. The BIE has not submitted any of the reports on the status of the corrective actions OSEP imposed in its August 8, 2018, letter, which required the BIE to take a set of actions and report quarterly to OSEP on these actions related to the failure to provide related services and timely evaluations in San Felipe Pueblo Elementary School and six other BIE-funded schools. To date, the BIE has not provided any of the reports required on the status of the corrective actions. As stated in the August 8, 2018, letter, the failure to provide services in accordance with a child's IEP is a violation of the fundamental IDEA requirement to make FAPE available to all eligible children with disabilities. 20 U.S.C. 1411(a)(1). It is also a violation of the requirement in 34 CFR § 300.323(c)(2) to ensure that, "[a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." In addition, under 34 CFR § 300.301(c)(1), initial evaluations must be conducted within 60 days of receiving parental consent for the evaluation. The BIE, which is required to exercise the general supervisory responsibility of an SEA under IDEA Part B, is responsible for ensuring that BIE-funded schools meet their affirmative obligation to identify, locate and evaluate all children with disabilities in accordance with IDEA requirements, and for ensuring that FAPE is made available to all eligible children with disabilities in BIE-funded schools. 20 U.S.C. 1411(h)(2)(A), 1412(a)(1), 1412(a)(3), and 1412(a)(11); 34 C.F.R. §§ 300.111, 300.301(c)(1), 300.600, 300.708(a) and 300.716.

**Required Actions/Next Steps**

1. Within 90 days from the date of this letter, the BIE must provide documentation of the proposed plan and timeline that ensure the adoption of final policies and procedures within one year of the date of this report, related to implementation of Part B of the IDEA that meet the requirements under 20 U.S.C. 1411(h)(2)(A) and 1412(a) and 34 C.F.R. § 300.708(a).
2. Within 90 days from the date of this letter, to the extent possible, prior to the publication of final policies and procedures, the BIE must provide notice to BIE-funded schools regarding any requirements that give flexibility to BIE-funded schools to follow the timeline established by the State where they are located instead of the timeline established by the BIE.
3. Within 90 days from the date of this letter, the BIE must provide documentation that:
  - a. The BIE has taken the necessary steps to ensure it provides written findings of noncompliance it identifies in BIE-funded schools as soon as possible after the BIE concludes that a school has noncompliance, generally in less than three months from discovery; and
  - b. The BIE has taken the necessary steps to ensure that noncompliance identified in BIE-funded schools is corrected as soon as possible, and in no case later than one year after identification of the noncompliance, including, as appropriate, notification to schools when the finding has not been corrected.
4. Within 90 days from the date of this letter, the BIE must provide a timeline for issuing annual determinations on the performance of all BIE-funded schools, which includes any school-specific audit findings, and uncorrected noncompliance from any source, consistent with 20 U.S.C. 1416(a) and (e).
5. Within 90 days from the date of this letter, the BIE must provide documentation that it will be reporting to the public on the performance of each BIE-funded school on the targets in the BIE's performance plan for FFY 2014, FFY 2015, FFY 2016, and FFY 2017 no later than 120 days following the BIE's submission of the FFY 2018 SPP/APR, due on February 3, 2020, and in accordance with 34 C.F.R. §§ 300.602(b)(1)(i)(A), 300.708(d), and 300.716.
6. Within 90 days from the date of this letter, the BIE must provide revised monitoring procedures that include identifying noncompliance with 34 C.F.R. § 300.323(a) and (c). These procedures must require the BIE to issue written findings of noncompliance when data and information collected demonstrate that a BIE-funded school is in noncompliance

with providing related service providers to implement a child's IEP as required under 34 C.F.R. § 300.323(a) and (c) and as required under 20 U.S.C. 1412(a) and 34 C.F.R. § 300.101 to make FAPE available to children with disabilities.

7. Within 90 days from the date of this letter, the BIE must provide written documentation that it has revised and implemented its dispute resolution procedures and practices to ensure that:
  - a. The BIE has a mechanism for tracking the resolution process for due process complaints to determine compliance with: (i) the 15-day timeline for convening a resolution meeting, consistent with 20 U.S.C. 1415(f)(1)(B)(i)(I) and 34 C.F.R. § 300.510(a); (ii) the 30-day timeline for resolving a due process complaint before a due process hearing may occur, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(b)(1) and (c) and 300.716; and (iii) the 45-day timeline for due process hearings if the school does not resolve the due process complaint to the satisfaction of the parent, consistent with 20 U.S.C. 1415(f)(1)(B)(ii) and 34 C.F.R. §§ 300.510(c), 300.515(a), and 300.716;
  - b. The BIE has a mechanism to ensure that extensions of the 45-day due process hearing timeline are granted only at the request of a party, consistent with 34 C.F.R. §§ 300.510(b) and (c) and 300.716; and
  - c. The BIE has established procedures to ensure that hearings on due process complaints filed pursuant to 20 U.S.C. §1415(k)(3) and 34 C.F.R. § 300.532(a) are conducted within 20 school days of the date the complaint requesting the hearing is filed, and that a hearing officer makes a determination within 10 school days after the hearing, in accordance with 34 C.F.R. §§ 300.532(c)(2) and 300.716.
8. The BIE must submit reports on the status of the corrective actions OSEP imposed in its August 8, 2018, letter regarding the failure to provide related services and timely initial evaluations in San Felipe Pueblo Elementary School and six other BIE-funded schools. As required in the Specific Conditions on the BIE's FFY 2019 IDEA Part B grant award, the BIE must report on the status of the corrective actions in each quarterly progress report it submits under the 2019-2020 Corrective Action Plan (specifically, Milestones C.9.1.1, C.9.2.1., C.9.3.1., and C.9.4.1) by the due dates specified in the Specific Conditions (i.e., October 31, 2019, January 31, 2020, April 30, 2020, and July 31, 2020).

## Results

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### DMS Results Overview

The BIE was identified as needing intensive support in the area of results due to the following complex challenges reflected in its FFY 2016 IDEA Part B SPP/APR:

1. Reading Assessment Elements – the data reporting the average percentage of 3rd through 8th grade children with disabilities participating in regular Statewide assessments was not valid and reliable;
2. Math Assessment Elements – the data reporting the average percentage of 3rd through 8th grade children with disabilities participating in regular Statewide assessments was not valid and reliable;
3. Percentage of children with disabilities who dropped out over the previous three years; and
4. Percentage of children with disabilities who graduated with a regular high school diploma over the previous 3 years.

OSEP met with the BIE staff and representatives from OSEP-funded TA centers supporting the BIE's efforts to improve data quality for graduation and dropout rates, as well as to improve reading and math assessment participation.

### BIE Results Discussion

During the visit, the BIE discussed its current improvement strategies, as well as the progress and effectiveness of activities underway in the BIE to improve outcomes for children with disabilities in the areas of graduation, dropout, and reading and math assessment participation.

The first results topic addressed at the on-site visit was the graduation and dropout rates of students with disabilities in BIE-funded schools. The BIE informed OSEP that there has been an increased focus within the BIE on increasing graduation rates and decreasing dropout rates for all students. As part of the BIE's strategic plan (Bureau of Indian Education, Strategic Direction-2018-2023), the agency is addressing graduation and dropout rates across the BIE. Currently, the BIE's improvement activities targeting the graduation and dropout rates of students with disabilities in BIE-funded schools are provided in the form of technical assistance webinars to the schools. Further, BIE-funded schools conduct a comprehensive needs assessment as part of the Title I schoolwide improvement plan to address improvement activities aimed at increasing graduations and reducing dropouts of children with disabilities. The BIE is now looking into adding graduation and dropout rates of children with disabilities as one of the factors considered in the annual IDEA Part B determination process for its schools. By adding these areas into the

determination process, the BIE expects to increase the attention each school gives to graduation and dropout rates of children with disabilities and help improve these results.

The second results topic addressed at the on-site visit was the data quality for reading and math assessment participation for students with disabilities across the BIE-funded schools. The BIE discussed both the challenges it faces and the improvement activities underway regarding data quality for reading and math assessment participation for students with disabilities. One unique challenge the BIE encounters with assessment data is that it collects data across 23 States and each State has a different assessment; thus, there is not a single measurement tool for the assessment data. The BIE explained that its schools receive instruction from individual States regarding assessment data and that the BIE has a limited role outside of the assessment data it collects from the schools. To this end, the BIE has an elaborate data collection process in order to report the assessment data in the IDEA Part B SPP/APR. BIE-funded schools in most of the 23 States send PDF versions of the assessment data to the BIE. The BIE then takes these submissions and puts them into an Excel spreadsheet, which the BIE then enters into NASIS and reports in the IDEA Part B SPP/APR. Currently, the BIE is working with the IDC to develop a data collection protocol for assessment information, which will be the standard operating procedure for collecting all applicable assessment data. Further, the BIE is currently in the process of finalizing a proposed rule that will define BIE's standards, assessments, and accountability system under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). This will replace BIE's existing State-dependent assessment system under the No Child Left Behind Act in order to develop an assessment system that is consistent with Section 1111 of the ESEA, for schools funded by the BIE on a national, regional, or tribal basis, as appropriate, taking into account the unique needs of the schools. Depending upon how the BIE designs its future system under ESEA, this could assist with the data collection and data quality stemming from the results of its assessments by designing a less onerous system without compromising the need for challenging academic standards and aligned assessments. Improved and more timely data would, in turn, assist BIE with meeting requirements of other Department-funded programs that utilize such data.

Based on the review of documents, analysis of data, and interviews with BIE and local school personnel, as described above, OSEP concludes that the BIE's effort to create a library of data collection protocols will assist in data collection and improve the quality of graduation and dropout data, as well as the data for reading and math assessment participation.

### **Next Steps**

OSEP is looking forward to further discussions with the BIE regarding its efforts to improve data quality and outcomes for students with disabilities in the areas of graduation and dropout, as well as reading and math assessment participation.

## SSIP

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### DMS SSIP Overview

The BIE was identified as needing intensive support in the area of the SSIP due to the following complex challenges to implementation of the SSIP including:

1. Infrastructure changes to support SSIP initiatives;
2. Stakeholder Engagement;
3. Evidence-based practices; and
4. Progress toward achieving the State-identified Measurable Result (SIMR).

### BIE SSIP Discussion

The BIE was identified for intensive engagement with regard to the SSIP due to the following factors: Infrastructure changes to support SSIP initiatives; Stakeholder Engagement; Evidence-based practices; and Progress toward achieving the SIMR.

The BIE's SIMR is to increase the number of youth engaged (i.e., enrolled in higher education and/or competitively employed) one year out of high school. In the FFY 2016 IDEA Part B SPP/APR, which OSEP used to determine the DMS levels of engagement, the BIE reported data for its SIMR at 65%, below both the baseline data of 72.60% and the FFY 2016 target of 70%.<sup>12</sup>

Under 20 U.S.C. 1416(b)(2)(B)(i) and 34 CFR § 300.601(b)(1), each State, including the BIE (see 34 C.F.R. §§ 300.708(d) and 300.716), must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans. As part of Phase III of the SSIP, the BIE must, consistent with its evaluation plan described in Phase II, assess and report on its progress implementing the SSIP. As part of its evaluation of its SSIP, the BIE must summarize the infrastructure improvement strategies that were implemented, and the short-term outcomes achieved. The BIE must describe the next steps for each infrastructure improvement strategy and the anticipated outcomes to be attained during the next fiscal year. The BIE must also summarize the specific evidence-based practices that were implemented and the strategies or activities that supported their selection and ensured their use with fidelity. The BIE must also describe any additional data (e.g., progress monitoring data) that was collected to support the on-going use of the evidence-based practices and inform decision-making for the next year of SSIP implementation.

In an effort to achieve this SIMR, the BIE has implemented a tiered system of support for 60 BIE-funded schools with secondary programs, utilizing its strong partnerships with the National Center for Systemic Improvement (NCSI), IDC, and National Technical Assistance Center on

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<sup>12</sup> In the FFY 2017 IDEA Part B SPP/APR, the BIE reported data for its SIMR at 63%.

Transition (NTACT) to build the capacity of schools and improve post-school outcomes for students with disabilities.

### Infrastructure Improvement

The BIE has made progress implementing its infrastructure improvement activities. While staffing vacancies continue to present challenges in making progress towards the SIMR, the BIE has aligned the SSIP work with the agency's strategic plan. Goal four of the BIE's strategic plan is college and career readiness, which aligns with the BIE's theory of action strands and activities to improve post-school outcomes for students with disabilities. To reduce duplication of efforts, the BIE has merged some milestones from the SSIP and the BIE's strategic plan. These milestones include:

1. expanding student learning for post-school outcomes;
2. increasing career readiness from middle school all the way up to high school; and
3. developing a questionnaire to be used as a needs assessment.

By aligning the BIE's strategic plan work and activities designed to make progress in achieving the SIMR, the BIE is taking steps to improve post-school outcomes for all students in the BIE-funded schools. OSEP notes that in the BIE's FFY 2018 SSIP submission, due on February 3, 2020, the BIE should explain the alignment of these milestone activities and provide a connection to the SSIP's theory of action.

### Theory of Action

In order to achieve the SIMR, the BIE developed a theory of action that divides action steps into three major strands:

1. Marketing the Value of Education: Importance of Students Staying in School;
2. Professional Development; and
3. Data-based Decision-Making Processes.

The BIE noted in the theory of action that each activity will have some impact on a component of post-school outcomes, while the entirety of the activities will result in overall improvement in post-school outcomes by the completion of the SSIP. During the visit, the BIE explained the extensive focus it has placed on improving compliance with Secondary Transition (IDEA Part B SPP/APR Indicator 13), and the development of a data collection protocol for Postsecondary Education and Training (IDEA Part B SPP/APR Indicator 14).

The BIE has taken many steps to increase professional development under Indicator 13, which measures compliance with secondary transition requirements. One such step was the

development of a needs assessment based on analysis of components related to Indicator 13 in IEPs for children with disabilities in the 60 BIE-funded schools. The BIE discussed providing professional development to increase age-appropriate transition goals. In addition, the BIE has assigned a staff person to specifically review IEPs from the 60 BIE-funded high schools and provide technical assistance regarding the importance of secondary transition and compliance with secondary transition requirements within an IEP. During the visits at three of the 60 BIE-funded high schools, staff indicated to OSEP that the emphasis on Indicator 13 has had a significant impact on improving the data for Indicator 13, but not necessarily on the child-specific outcomes. Specifically, the technical assistance provided thus far from the BIE has not focused on making meaningful secondary transition goals. In addition, school staff reported that they received little technical assistance or support in efforts to improve graduation rates, reduce dropout rates, and other areas related to successful secondary transition and post-school outcomes.

With regard to Indicator 14, the BIE, in collaboration with NTACTION, has developed a survey that all 60 of the BIE-funded high schools are using to interview children with disabilities one year after leaving the school. Further, the IDC has assisted the BIE with the development of a data collection protocol for Indicator 14, Postsecondary Education and Training. These ongoing activities are aimed at improving postsecondary education and training data collection and quality. Through the BIE's emphasis on Postsecondary Education and Training outcomes for students with disabilities, the BIE is beginning to see that individual schools are making connections with the tribal colleges and involving their State and/or the Tribal Vocational Rehabilitation agency. However, the BIE would like to see an increase in the collaboration and networking with State and local vocational rehabilitation programs.

Further, during the visit, the BIE highlighted best practices that it would like to share during future professional development activities with all the BIE-funded schools including: networking, community resources mapping, inclusion of State and/or Tribal Vocational Rehabilitation agency, and embracing a peer-to-peer mentoring model. The BIE described plans to hold four capacity-building regional trainings: two for tribally-controlled schools; one for the BIE-operated schools; and one for Navajo Schools.

The activities the BIE has completed to date appear to be drawn from the theory of action strand regarding professional development that focuses on improving transition planning and services. OSEP recommends that the BIE consider expanding the scope of the activities to encompass best practices in improving graduation and dropout rates, and other related results areas.

### Coherent Improvement Strategies

The BIE identified three coherent improvement strategies in the SSIP:

1. Marketing the Value of Education: Importance of Students Staying in School;

2. Professional Development; and
3. Data-based Decision-Making Processes.

During the monitoring visit, the BIE noted that it is marketing the value of staying in school by highlighting the value in the webinars and presentations conducted with schools and through collaboration with the BIE Education Resource Centers (ERCs). However, the BIE was not able to clearly identify the intended outcome, how it was measuring progress, and how it was collecting data for this coherent improvement strategy. As one example of the impact of this work, the BIE described how students in one school developed a shop and presented on the importance of staying in school at a conference.

However, in addition to using anecdotal information (such as the one described above) to evaluate the efficacy of BIE's activities, it is important to also focus on interim measures of progress when implementing and describing the activities addressing the three coherent improvement strategies. As noted in the Part B Measurement Table for Indicator 17, in Phase III of the SSIP, States must provide "data and analysis on the extent to which the State has made progress toward and/or met the State-established short-term and long-term objectives for implementation of the SSIP and its progress in achieving the State-identified Measurable Result for Children with Disabilities." To accomplish this, States may describe any additional data (e.g., progress monitoring data) that was collected to support the on-going use of the evidence-based practices and inform decision-making for the next year of SSIP implementation. The BIE should identify clear interim measures of progress for each coherent improvement strategy and each evidence-based practice. This will help determine whether interventions are yielding the desired results and enable the BIE to course-correct in a timely manner when it determines that its activities are not leading to the desired result.

### Evidence-Based Practices

The BIE informed OSEP that it provides technical assistance to schools through monthly webinars and phone calls, as needed, regarding conducting, and submitting the data collected from, the Postsecondary Education and Training survey. These tools are designed to improve the quantity and quality of the data. While on-site, there were also extensive discussions regarding the BIE's provision of three levels of technical assistance to the 60 BIE-funded schools with secondary programs, as part of its SSIP evidence-based practices. The BIE explained that the three levels of technical assistance are universal support to all 60 BIE-funded high schools, targeted support to two schools, and intensive support to one identified school.

Universal technical assistance to all 60 BIE-funded high schools on improving post-school outcomes includes:

1. monthly technical assistance calls;

2. access to Obaverse — an online resource for high schools regarding data collection and analysis;
3. specific information about the rigor of Indicator 13 data collection; and
4. dissemination of extensive guidance documents aimed at addressing the SIMR.

The universal technical assistance has increased the BIE's communication with BIE-funded high schools in 20 States. The BIE has observed that the schools that have accessed resources through universal technical assistance are increasing the number of their Indicator 14 interviews and are slowly beginning to see an increase in the quality of the secondary transition goals on the IEPs.

The development of Obaverse, a repository of resources for improving post-school outcomes for students, is a strength in the provision of universal technical assistance. The BIE could optimize these resources by:

1. tracking which schools are using the available resources and how they are using the available resources;
2. following up with the schools to evaluate the usefulness of the tools and consider improvements based on schools' feedback; and
3. providing more intentional guidance and direction to schools on the use of these resources, and following up and making adjustments based on data collected.

The BIE is currently providing targeted technical assistance to two schools. This includes more guidance from the University of Kansas Transition Coalition as well as a 12-week self-study activity designed to support schools in identifying specific short-term goals based on needs and developing a plan of action to address them. Based on the SSIP report and OSEP's conversations with the BIE representatives, it is unclear how the two schools were selected for targeted technical assistance; how students with disabilities are specifically supported through the targeted technical assistance in these schools; and what information or data collected as a result of these activities will be used to scale-up strategies to additional BIE-funded schools.

Further, the BIE provides intensive technical assistance to one school, which has included multiple on-site visits from OSEP-funded technical assistance providers, and resulted in an improved relationship with the local vocational rehabilitation agency, as well as improved quality of secondary transition data in IEPs for students with disabilities at the school. It is unclear how students with disabilities are specifically impacted through the intensive technical assistance provided to this school. OSEP notes that the one school that was selected for intensive technical assistance volunteered to work with the BIE to improve post-school outcomes, rather than being identified through a particular needs assessment.

The BIE did not clearly articulate the intended outcomes, goals, and purpose of specific activities at both the targeted and intensive levels of technical assistance. Specifically, the BIE did not

clearly describe the overall goal of the tiered levels of support are and how it will result in substantial improvements for all the BIE-funded schools. It is essential for the BIE to clearly outline the distinctions in what is provided in the targeted and intensive tiers of support, and their respective intended outcomes. This would be helpful in determining progress for each school involved. Further, the BIE's SSIP should connect the tiered support with the three coherent improvement strategies and report progress on the activities conducted. This will help the BIE and other stakeholders directly link the evidence-based practices and coherent improvement strategies that resulted in desired outcomes and could inform scale-up and sustainability efforts.

Based on the review of documents, analysis of data, and interviews with the BIE personnel, as described above, OSEP concludes that the BIE's SSIP has had a significant impact on improving the data for Indicator 13, but that activities designed to have an impact on child-specific outcomes are still in the development stage.

### **Required Actions/Next Steps**

In its FFY 2018 IDEA Part B SPP/APR submission due February 3, 2020, as required by the measurement for Part B SPP/APR Indicator 17, consistent with 20 U.S.C. 1416(b)(2)(B)(i) and 34 C.F.R. §§ 300.601(b)(1), 300.708(d), and 300.716, the BIE must:

1. Explicitly align the milestones from the SSIP and the BIE's strategic plan, and provide a connection to the BIE's theory of action in the SSIP;
2. Clearly outline the distinctions between the intended outcomes of each tier of support;
3. Identify clear interim measures of progress for each coherent improvement strategy and each evidence-based practice; and
4. Clearly and strategically connect evidence-based practices and coherent improvement strategies and any reported progress to the activities conducted.

The BIE and OSEP will discuss the BIE's progress towards achieving these steps during monthly TA calls.

# DMS NOTICE

## **Differentiated Monitoring and Support Engagement Decisions:**

### ***Bureau of Indian Education*** **2018-2019**

This year we have selected four States or entities for on-site visits as part of OSEP's Differentiated Monitoring and Support (DMS) system. These selections were based on the relative number of intensive and targeted levels of engagement for each State. The Bureau of Indian Education (BIE) has been selected for an on-site visit.

OSEP's Differentiated Monitoring and Support (DMS) system is a component of Results Driven Accountability. DMS is designed to identify potential grantee risk to the Department and to assist OSEP in effectively using its resources to monitor grantees. DMS addresses State-specific and Entity-specific needs in the areas of results, compliance, State Systemic Improvement Plan (SSIP), and fiscal by differentiating levels and types of monitoring and support based on each State's and Entity's unique strengths, progress, and challenges in each area.

DMS is a multi-tiered model for monitoring and providing support based on the principle that supports are first provided at a core or universal level to effectively address the needs of all States and Entities. Targeted monitoring and support is generally based on OSEP's identification of common needs among multiple States and Entities. Intensive monitoring and support is reserved for those States and Entities with the most intense or complex challenges to implementation.

OSEP has assessed States' and Entities' progress in meeting performance standards and compliance with the legal requirements of the Individuals with Disabilities Education Act, the Education Department General Administrative Regulations and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This information was used to help OSEP make decisions about a State's or an Entity's levels of engagement for monitoring and support.

The charts below specify the Bureau of Indian Education's (BIE's) level of engagement in each area – results, compliance, fiscal and SSIP.

**Results | Level of Engagement: *Intensive***

<b>Factors</b>	<b>Existing/Current Engagement</b>
<p><b>Reading Assessment Elements</b></p> <ul style="list-style-type: none"> <li>• Average Percentage of 3<sup>rd</sup> through 8<sup>th</sup> Grade Children with Disabilities Participating in Regular Statewide Assessments: Not Valid and Reliable.</li> </ul> <p><b>Math Assessment Elements</b></p> <ul style="list-style-type: none"> <li>• Average Percentage of 3<sup>rd</sup> through 8<sup>th</sup> Grade Children with Disabilities Participating in Regular Statewide Assessments: Not Valid and Reliable.</li> </ul> <p><b>Exiting Data Elements</b></p> <ul style="list-style-type: none"> <li>• Percentage of Children with Disabilities who Dropped Out Over Previous 3 Years: 40%</li> <li>• Percentage of Children with Disabilities who Graduated with a Regular High School Diploma over Previous 3 years.</li> </ul>	<p>OSEP continues to make information and technical assistance (TA) resources available and provide universal support to all States and Entities.</p>

**New Engagement**

OSEP will offer to provide the BIE, in collaboration with OSEP’s technical assistance providers, intensive technical assistance and support in its work to improve the BIE’s graduation rate, dropout rate, or reading and math proficiency rates based on the BIE’s needs. OSEP’s support may include establishing a schedule of regular contact, engaging in conversations to explore improvement activities, and discussing the progress and effectiveness of activities currently underway in the BIE to improve outcomes for students with disabilities. OSEP may also work with the BIE to conduct a root cause analysis of the factors that contribute to low results outcomes for students with disabilities.

**Fiscal | Level of Engagement: *Universal***

<b>Factors</b>	<b>Existing/Current Engagement</b>
<ul style="list-style-type: none"> <li>• Factors are only listed when the level of engagement is targeted or intensive.</li> </ul>	<p>OSEP continues to make information and TA resources available and provide universal support to all States.</p>

**New Engagement**

OSEP will provide the State with universal support related to Part B fiscal requirements.

**Compliance | Level of Engagement: *Intensive***

<b>Factors</b>	<b>Existing/Current Engagement</b>
<ul style="list-style-type: none"> <li>• Indicator 11: Timely initial evaluation: 83.45%</li> <li>• Indicator 13: Secondary Transition: 14.98%</li> </ul>	<p>OSEP continues to make information and TA resources available and provide universal support to all States and Entities.</p>

<ul style="list-style-type: none"> <li>• Timely and Accurate State-Reported Data: 84.35%</li> <li>• Long Standing Non-Compliance: Special Conditions 3 or more years.</li> </ul>	
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**New Engagement**

OSEP will gather additional information to determine the scope of engagement necessary to assist the BIE in improving IDEA compliance. This may include working collaboratively with the BIE and OSEP-funded technical assistance centers, working with the BIE to conduct a root cause analysis of the factors that contributed to low compliance, and /or additional OSEP monitoring.

**SSIP | Level of Engagement: *Intensive***

<b>Factors</b>	<b>Existing/Current Engagement</b>
<ul style="list-style-type: none"> <li>• Infrastructure changes to support SSIP initiatives.</li> <li>• Stakeholder Engagement.</li> <li>• Evidence-based practices.</li> <li>• Progress toward the SiMR.</li> </ul>	<p>OSEP continues to make information and TA resources available and provide universal support to all States and Entities.</p>

**New Engagement**

OSEP will offer to provide the BIE intensive technical assistance and support in its work to improve the SSIP in areas such as evidence-based practices, evaluation planning, or stakeholder engagement. OSEP will offer to establish a schedule of regular contact with the BIE, explore improvement activities and discuss the progress and effectiveness of the activities currently underway in the BIE. OSEP will also work collaboratively with OSEP-funded TA providers and may, if necessary, explore opportunities for on-site technical assistance to the BIE.

# OSEP SAN FELIPE LETTER



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

**AUG 8 2018**

Honorable Tony L. Dearman Director  
Bureau of Indian Education 1849 C Street NW  
MS-4657-MIB  
Washington, DC 20240

Dear Director Dearman:

The purpose of this letter is to discuss the Bureau of Indian Education's (BIE's) responsibilities to resolve the systemic problems underlying the disruption of required special education services in at least one BIE-operated school, as well as actions the BIE must take to demonstrate it will resolve those problems. On April 23, 2018, staff from the U.S. Department of Education's Office of Elementary and Secondary Education's, Office of State Support (OSS), participated in a school visit to the San Felipe Pueblo Elementary School in San Felipe Pueblo, New Mexico. During their visit, OSS staff observed potential violations of the Individuals with Disabilities Education Act (IDEA), which they reported to my office, the Office of Special Education Programs (OSEP). Specifically, OSEP was informed that related services were not being provided to students with disabilities in accordance with their individualized education programs (IEPs) due to a contractual problem. Subsequently, on May 4, 2018, our office was contacted by a parent of a student with disabilities who attends this school who made similar allegations. This parent also provided us with a letter dated February 23, 2018 from the school principal, Ms. Christianna M. Sisneros, addressed to affected families and which described the disruption of services.

Our understanding, based on the OSS visit and the call from the parent and the letter she forwarded, is that related services at the San Felipe Pueblo Elementary School, including Speech Language Therapy, Physical Therapy, and School Psychological Services, have been suspended due to the expiration of contracts for the services. It is also our understanding that Occupational Therapy was temporarily disrupted, but those services have since been restored.

During a May 9, 2018 phone call with members of my staff Matthew Schmeer and Josiah Willey, staff from the BIE confirmed our understanding and verified that the problem with providing related services, specifically Speech Language Therapy, Physical Therapy, and School Psychological Services, was due to a disruption in contractual agreements. The contracts in question expired in January 2018, and those services have been suspended ever since. In addition, BIE staff explained that, due to a lack of school psychologists, initial evaluations were also not being conducted in a timely fashion. As a result, students suspected of having a disability have not been evaluated to determine if they are eligible for services under IDEA. BIE staff explained that they were made

aware of the contractual problem by the principal in a timely manner and that they had knowledge of the problem for approximately 13 months. BIE staff also stated they believed the delay in getting the contracts in place was due to the Bureau of Indian Affairs' (BIA's) procedures, and stated that the contracts were submitted for approval to the BIA in April 2017. It has now been over a year since the contracts were submitted for approval to the BIA.

BIE staff further explained that the BIE-Operated Schools Office is working with the BIA Division of Acquisitions to ensure related services are restored and/or continuing at the school. BIE staff confirmed that the San Felipe Pueblo Elementary School has sent Prior Written Notice to parents of students with disabilities whose services have been delayed due to the contractual problems. BIE staff informed OSEP that, when services are restored, compensatory services will be discussed and provided for those students.

Furthermore, in the course of the discussion, we learned that there are six additional schools that fall under the same contracts, so there are many more students who may potentially be impacted by this problem. BIE staff was not aware of any other schools that were in a similar situation, beyond those six additional schools, and pointed out that procurement processes within the BIA create challenges only for BIE-operated schools, as tribally-controlled schools use their own procurement procedures.

The failure to provide services in accordance with a child's IEP is a violation of the fundamental IDEA requirement to make available a free appropriate public education (FAPE) to all children with disabilities. IDEA Section 612(a)(1). It is also a violation of the requirement in 34 CFR § 300.323(c)(2) to ensure that, "[a]s soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP." In addition, under 34 CFR § 300.301(c)(1), initial evaluations must be conducted within 60 days of receiving parental consent for the evaluation. The BIE, which is required to exercise the general supervisory responsibility of a State educational agency under IDEA Part B, is responsible for ensuring that BIE-funded schools meet their affirmative obligation to identify, locate and evaluate all children with disabilities in accordance with IDEA requirements, and for ensuring that FAPE is made available to all eligible children with disabilities in BIE-funded schools. IDEA Sections 611(h)(2)(A), 612(a)(1), 612(a)(3), and 612(a)(11); 34 CFR §§ 300.111, 300.301(c)(1), 300.600, 300.708(a) and 300.716. OSEP has serious concerns that children with disabilities in BIE-funded schools are not receiving special education and related services in accordance with their IEPs, which amounts to a denial of FAPE. OSEP also is concerned that, as a result of the disruption, children suspected of having a disability are not being evaluated in a timely manner and potentially eligible children with disabilities in BIE-funded schools are being denied FAPE.

As a result of our review of information provided by OSS, the February 13, 2018 letter from Ms. Sisneros, and our May 9, 2018 phone call with the BIE, OSEP is requiring the following:

- 1) Within 30 days of the date of this letter, the BIE must report: (a) the number of students with disabilities, at the San Felipe Pueblo Elementary School and any other school that falls under the same contracts, who are not receiving related services in accordance with their IEPs as of the date of this letter; (b) the steps that the BIE is taking to ensure that these students receive services in accordance with their IEPs, as required by IDEA Section 612(a)(1) and 34 CFR §§ 300.320 and 300.323(c)(2), and that IEP Teams consider, on an individual basis, whether compensatory services are needed as a remedy for the services previously not provided; (c) the number of requested evaluations that

have not been conducted or have been delayed as of the date of this letter; and (d) the steps that the BIE is taking to ensure that those evaluations are conducted as soon as possible. The BIE must continue to provide updates in its quarterly progress reports for the 2018-2019 Corrective Action Plan (CAP), due on October 31, 2018, January 31, 2019, April 30, 2019, and July 31, 2019, or until such time as all services have been restored and any compensatory services, determined necessary by the IEP Teams have been provided, and all requested evaluations have been conducted. The quarterly updates must report on the status of services that were interrupted and evaluations that had not been conducted, as well as the status of the BIE's actions to ensure the affected students with disabilities receive services in accordance with their IEPs and are provided any compensatory services determined necessary by the IEP Teams and to ensure the requested evaluations are conducted.

- 2) Within 30 days of the date of this letter, the BIE must determine if any other BIE-funded schools are unable to provide services or conduct timely initial evaluations due to contracting delays. If the BIE determines that there are other schools that are not providing services in accordance with students' IEPs or that are not conducting timely initial evaluations due to contracting delays, the BIE must report on the students not receiving required services and/or evaluations not timely conducted, in the same manner described in paragraph (1) above.
- 3) With the first quarterly report for the 2018 - 2019 CAP, due on October 31, 2018, the BIE must submit a plan to prevent contractual problems that could result in a similar disruption of services in the future. If you have any further questions, please contact Dr. Josiah Willey at (202) 245-6247.

Sincerely,

Ruth E Ryder  
Acting Director  
Office of Special Education Programs

cc: Donald Griffin  
BIE Director of Special Education

## **BIE FFY 2019 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 Conditions<sup>13</sup> 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 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

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<sup>13</sup> 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.

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 ED Facts 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 ED Facts, 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."<sup>14</sup>

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 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

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<sup>14</sup> 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.

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:

	<b>Due Date</b>	<b>Reporting Period</b>
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 spending plan	October 31, 2019	July 1, 2019 – September 30, 2019

	<b>Due Date</b>	<b>Reporting Period</b>
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.<sup>15</sup>

- (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.

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<sup>15</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> 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 12<sup>th</sup> Street, SW, Room 6050