

ENCLOSURE C

SPECIAL CONDITIONS

I. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on Florida's Federal Fiscal Year (FFY) 2004 grant awards under Part B of the Individuals with Disabilities Education Act (IDEA), because the Florida Department of Education (FDE) failed to correct three of the findings of noncompliance identified in OSEP's April 23, 2001 Florida Monitoring Report (Report). Two of these findings relate to the provision of special education and related services that a child needs to benefit from special education. The third finding relates to FDE's general supervisory responsibilities concerning FDE's complaint management system. Specifically, OSEP found that:

1. Public agencies failed to provide speech and language pathology as a related service to children with disabilities who need that service to benefit from special education.
34 CFR §§300.24(b)(14) and 300.300.
2. Public agencies failed to provide psychological counseling as a related service to children with disabilities who need that service to benefit from special education.
34 CFR §§300.24(b)(14) and 300.300.
2. FDE failed to ensure that complaints received by FDE are resolved within 60 calendar days after a complaint is filed, unless an extension of time has been granted if exceptional circumstances exist with respect to a particular complaint. 34 CFR §300.661(a) and (b)(1)

OSEP's 2001 Report directed FDE to develop and implement corrective actions and improvement strategies to ensure the timely correction of the noncompliance identified in the Report, including the three findings referenced above. In August 2002, in response to the areas of noncompliance, FDE submitted an Improvement Plan. In its December 3, 2002 response to the State's initial Improvement Plan, OSEP explained that the Improvement Plan did not adequately describe how the plan would result in correcting noncompliance. While many of the strategies for improvement for certain deficiencies seemed to be reasonable approaches, the Improvement Plan did not consistently identify how it would demonstrate correction of the deficiencies, including measurable targets, or propose reasonable timelines and agency resources necessary to implement the improvement strategies that would lead to correction of the areas of noncompliance. OSEP's December 3, 2002 letter directed FDE to submit a revised Improvement Plan, by December 3, 2003, providing more specificity about the actions the State would take in order to correct all noncompliance, including the three areas of noncompliance identified above. In September 2003, OSEP conducted a verification visit to Florida to review the State's systems for general supervision, data collection, and State-wide assessment. In OSEP's January 21, 2004 letter about that verification review, OSEP staff acknowledged that FDE was in the process of implementing the Part B Improvement Plan developed in response to Florida's 2001 Monitoring Report. The letter further stated that FDE must provide documentation to OSEP that it had corrected all noncompliance identified in the Report.

OSEP received FDE's State Improvement Plan Addendum on January 22, 2004. This document reflected the progress that FDE made since the State's initial Improvement Plan to address the areas of noncompliance identified in the Monitoring Report. While FDE had made progress in resolving several of the findings in the Monitoring Report, FDE did not succeed in demonstrating correction of all of the areas of noncompliance. In OSEP's April 13, 2004 letter to FDE, OSEP directed FDE to submit additional documentation regarding the correction of the following issues by June 14, 2004: (1) the provision of speech and language pathology as a related service; (2) the provision of psychological counseling as a related service; and (3) resolution of State complaints within the 60 day timeline. In the April 13, 2004 letter to FDE, OSEP also indicated that FDE must either demonstrate that it had already provided the required documentation in the Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) due on March 31, 2004, or provide the additional documentation under separate cover.

Florida's FFY 2002 Part B APR, submitted on April 15, 2004, did not include documentation that FDE corrected these three remaining areas of noncompliance. On July 1, 2004, FDE submitted an Amendment to its State Improvement Plan as modified by the Addendum of January 22, 2004. This document incorporated new information into the existing Improvement Plan on each of the three substantive areas mentioned above, including new strategies for improvement and goals (evidence of change).

1. Failure to demonstrate that all students receive speech and language pathology services as a related service who need those services to benefit from special education

In the Report assessing FDE's compliance with IDEA, OSEP determined that school districts do not ensure that children who need speech and language pathology as a related service to benefit from special education receive that service. This finding was based on 34 CFR §§300.24(b)(14) and 300.300 requiring public agencies to provide speech and language pathology as a related service to children with disabilities who need that service to benefit from special education.

In a September 11, 2001 response to a complaint filed with this Department's Office for Civil Rights about the provision of speech and language pathology, Florida stated that "the State has determined that speech and language service is an Exceptional Student Education program rather than a related service. Thus, a student must be determined eligible under the criteria for the special programs for students who are speech and language impaired in order to receive direct services from a speech and language pathologist." In correspondence dated January 30, 2002 and again on October 17, 2002, OSEP advised FDE that the standard that FDE applies for the provision of speech and language services for children with disabilities is in violation of IDEA. As stated in the October 17, 2002 letter, "Although FDE, as set forth in the State Board of Education Rules 6A-6.03012, considers speech to be a special education service, FDE must also ensure that school districts provide speech and language services to any child with a disability who needs those services to benefit from special education, even if he or she does not meet the State's criteria to receive speech-language pathology services as a special education service."

In response to this issue, FDE issued two guidance memoranda to District School Superintendents, dated April 26, 2002 and July 25, 2003 and a technical assistance paper dated

February 2004. None of these documents clarified that students who need speech and language services as a related service to benefit from special education may receive these services directly from a speech pathologist regardless of whether the child meets the State's criteria for speech as a special program as established in Florida's State Board of Education Rule. In fact, each of these documents incorporate Florida's inappropriate use of categorical criteria for decision-making about which children may be eligible for speech and language pathology as a related service. The February 2004 paper, for example, notes that "If the individual education plan (IEP) team determines that a student identified as autistic, developmentally delayed, traumatic brain injured, or deaf or hard-of-hearing who has a delay or absence of communication skills as documented by the initial speech/language evaluation is in need of speech or language services, such student does not have to meet the additional eligibility criteria . . . in order to receive speech or language services." Students identified as having other disabling conditions, such as students with mental retardation, are denied access to speech and language pathology services unless they meet additional eligibility criteria for those services, even if they need speech and language pathology services as related services in order to benefit from special education.

As described above, on April 13, 2004, OSEP directed the State to submit additional documentation regarding how through monitoring, technical assistance and other guidance, the State ensures the provision of speech and language pathology services as related services to all children who need them to benefit from special education no later than June 14, 2004. FDE's July 1, 2004 Amendment to its State Improvement Plan indicated that it would submit a legislative proposal to include speech and language services as related services to the State Board for approval at the Board's September 2004 meeting. We view this as a very important step in resolving this issue, and look forward to hearing more about the specifics of such a legislative proposal.

2. Failure to provide psychological counseling as a related service to children with disabilities who need that service to benefit from special education.

In the 2001 Report assessing FDE's compliance with IDEA, OSEP determined that school districts do not ensure that children who need psychological counseling as a related service to benefit from special education receive that service. In addition, OSEP found that lack of staff often resulted in denial or delays in the availability of needed psychological counseling services. Therefore, Florida was not meeting its responsibility under 34 CFR §§300.24(b)(14) and 300.300 to ensure that public agencies provide psychological counseling as a related service to children with disabilities who need that service to benefit from special education.

OSEP's most recent correspondence with FDE dated April 13, 2004 directed the State to submit additional documentation regarding the provision of psychological counseling as a related service. In addition, during OSEP's verification visit to Florida on September 9-11, 2003, OSEP requested that FDE provide the monitoring protocols, including questions and interview guides used by the State in determining whether psychological counseling was provided to children who needed it to benefit from special education, as well as summary analyses to demonstrate how the State uses those materials in its monitoring of school districts no later than June 14, 2004. The documentation that FDE submitted on March 19, 2004 did not include summary analyses that explained how the State uses the monitoring data to make findings of noncompliance. FDE's

July 1, 2004 Amendment to its State Improvement Plan included new strategies and evidence of change related to provision of psychological services which appear designed to lead to resolution of this issue.

3. Failure to ensure that complaints received by FDE are resolved within 60 calendar days after a complaint is filed, unless an extension of time has been granted if exceptional circumstances exist with respect to a particular complaint.

In the 2001 Report assessing FDE’s compliance with IDEA, OSEP determined that FDE does not ensure that complaints are resolved in compliance with IDEA timelines. This finding was based on 34 CFR §§300.661(a) and (b)(1). FDE’s State Improvement Plan Addendum of January 22, 2004 reported that for the period between July 2003 and December 2003, 47% of complaints were completed within specified timelines and an additional 31% were completed within 1 to 5 days beyond the deadline. While an increase in compliance from the 35% and 18% performance reported for the period between July 2001 and June 2002, FDE’s performance was still well short of full compliance with the timelines in 34 CFR §§300.661(a) and (b)(1).

OSEP’s most recent correspondence with FDE dated April 13, 2004 directed the State to submit additional documentation to demonstrate correction of this area of noncompliance no later than June 14, 2004.¹ FDE’s July 1, 2004 Amendment to its State Improvement Plan also included new strategies related to timely resolution of complaints filed through the State complaint process which appear to be designed to lead to resolution of this issue.

II. Nature of the Special Conditions

By July 1, 2005, Florida must demonstrate that it is in compliance with the requirements of Part B relating to: (1) 34 CFR §§300.24(b)(14) and 300.300, that public agencies provide speech and language pathology as a related service to children with disabilities who need that service to benefit from special education; (2) 34 CFR §§300.24(b)(14) and 300.300, that public agencies provide psychological counseling as a related service to children with disabilities who need that service to benefit from special education.; and (3) 34 CFR §300.661(a) and (b)(1), that FDE ensures that complaints received by FDE are resolved within 60 calendar days after a complaint is filed, unless an extension of time has been granted if exceptional circumstances exist with respect to a particular complaint.

To document its progress in ensuring the correction of the noncompliance, FDE must submit to OSEP four quarterly reports according to the following schedule:

	Dates of Reporting Period	Date Quarterly Report Due to OSEP
First Reporting Period	July 1-September 30, 2004	October 15, 2004
Second Reporting Period	October 1-December 31, 2004	January 15, 2005
Third Reporting Period	January 1, 2005-March 31, 2005	April 15, 2005
Fourth Reporting Period	April 1, 2005-June 1, 2005	June 15, 2005

¹ OSEP notes that FDE has restructured its complaint management system in response to OSEP’s Monitoring Report; however, the timeline for complaint resolution continues to be noncompliant with IDEA.

Quarterly reports must include the following information:

A. Speech and Language Pathology

1. By October 15, 2004, FDE must provide documentation that includes the following information:
 - a. The legislative proposal FDE presented to the State Board for approval at its September 2004 meeting that will include speech and language pathology services as related services available to children with disabilities who need them to benefit from special education.
 - b. The Board's action on that proposal.
 - c. The steps FDE has taken to inform all district superintendents, directors of special education, staffing specialists, special education providers, related services personnel and members of all IEP teams that a student with a disability who needs speech and language pathology as a related service to benefit from special education must receive that service.
 - d. A summary and evaluation of the technical assistance and training that FDE has provided to school districts to ensure that all students with disabilities who need speech and language pathology as a related service to benefit from special education receive that service.
2. By October 15, 2004, FDE must provide the monitoring protocols, including questions and interview guides used by the State in determining whether speech and language pathology services were provided to children who needed those services to benefit from special education, as well as a description of how the State uses those materials in its monitoring of school districts.
3. For each quarterly report, including the October 15, 2004 report, FDE must provide the following information:
 - a. A summary of any findings of noncompliance regarding the provision of speech and language pathology as a related service that FDE made through its monitoring system during the reporting period; any actions that FDE has taken to ensure the correction of such findings; and the impact of such actions. The monitoring data should include the number of students receiving speech and language therapy as a related service.
 - b. A summary of any findings of noncompliance regarding the provision of speech and language pathology as a related service that FDE made through its complaint resolution system during the previous reporting

period, any actions that FDE has taken to ensure the correction of such findings, and the impact of such actions.

4. For the second, third and fourth reports, FDE must include updates on the progress of the legislative proposal described in # 1.

B. Psychological Counseling

1. By October 15, 2004, FDE must submit documentation that it has informed all district superintendents, directors of special education, staffing specialists, special education providers, related services personnel and members of all IEP teams that the IEP of a student with a disability determined to need psychological counseling as a related service to benefit from special education must include this service on the IEP.
2. By October 15, 2004, FDE must provide the monitoring protocols, including questions and interview guides used by the State in determining whether psychological counseling services were provided to children who needed those services to benefit from special education, as well as a description of how the State uses those materials in its monitoring of school districts.
3. For each quarterly report, including the October 15, 2004 report, FDE must provide the following:
 - a. A summary and evaluation of the training and technical assistance that FDE provided to ensure that all children with disabilities who need psychological counseling to benefit from special education receive that service.
 - b. A summary of any findings of noncompliance with these requirements that FDE made through its complaint resolution system during the previous reporting period, any actions that FDE has taken to ensure the correction of such findings, and the impact of such actions.
 - c. A summary of any findings of noncompliance with these requirements that FDE made through its monitoring system during the reporting period; any actions that FDE has taken to ensure the correction of such findings; and the impact of such actions. The monitoring data should include the number of students receiving psychological counseling as a related service.

C. Complaint Management System

1. By October 15, 2004, the strategies that FDE will implement to ensure that its complaint resolution system is able to resolve complaints within the 60 day timelines including the timeline for filing current vacancies and interim steps that

FDE will take during the hiring phase to ensure the timely resolution of complaints filed through the formal State complaint process.

2. By October 15, 2004, the number of complaints received by FDE from January 1, 2004 through September 30, 2004, the number of days to resolve each complaint and an explanation for any complaint not resolved within 60 calendar days after the complaint was filed, unless an extension of time was granted when exceptional circumstances exist with respect to a particular complaint.
3. For the each subsequent quarterly report, the number of complaints received by FDE during the respective reporting period; the number of days to resolve each complaint and an explanation for any complaint not resolved within 60 calendar days after the complaint was filed, unless an extension of time was granted when exceptional circumstances exist with respect to a particular complaint.

III. Evidence Necessary for Conditions To Be Removed

The Department will remove the Special Conditions, if at any time prior to the expiration of the grant year, FDE provides documentation, satisfactory to the Department, that it ensures the provision of speech and language pathology services and psychological counseling services to all students who need them as related services in order to benefit from special education, without regard to whether they meet other eligibility criteria for those services, and demonstrates that complaints are resolved within 60 days of their receipt, unless an extension is granted for exceptional circumstances regarding the specific complaint.

IV. Method of Requesting Reconsideration

FDE may write to Troy Justesen, designated to act as the Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS), if it wishes the Department to reconsider any aspect of these Special Conditions. Any request of this sort should describe in detail the changes to the Special Conditions sought by FDE and the reasons for those requested changes. The Special Conditions should be appended to all copies of your eligibility documents that you maintain, distribute, and make available to the public.

V. Submission of Reports

Reports must be submitted, in accordance with the time lines included in this enclosure, to:

Sheila Friedman
Education Program Specialist
U.S. Department of Education
Office of Special Education Programs
550 12th Street, SW, Room 4169
Washington, DC 20204