



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

Honorable Linda Powell
Commissioner of Education
State Department of Education
712 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

SEP 23 1994

Dear Commissioner Powell:

During the week of September 26, 1994, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Minnesota Department of Education's (MDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether MDE is meeting its responsibility to ensure that its educational programs for children with disabilities are being administered in a manner consistent with the requirements of Part B and its implementing regulations, and the Education Department General Administrative Regulations (EDGAR).

A copy of our report, entitled "Office of Special Education Programs Monitoring Report: 1994 Review of the Minnesota Department of Education (Report)", is enclosed. A brief description of the Report is included below.

The primary purpose of this Report is to address those aspects of Minnesota's special education system that OSEP reviewed and found to be inconsistent with Federal requirements. This report places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. The focus of OSEP's findings includes the provision of a free appropriate public education, education in the least restrictive environment and transition services for students with disabilities who are sixteen years or older. Also, OSEP analyzed MDE's system for ensuring compliance, specifically its monitoring and complaint management procedures.

OSEP also reviewed and comments on various initiatives MDE has taken with regard to improving special education programs in Minnesota. OSEP acknowledges MDE for the steps it is taking to improve special education programs in several areas, such as services for students with emotional and behavioral disorders, transition services, and services for children with disabilities who are members of racial minority groups. Of particular interest is MDE's recently completed Post-school Follow-up Study which focuses on the post-school outcomes for former students with disabilities who have been out of school one to five years.

The Report describes OSEP's findings with respect to the policies and procedures that MDE has implemented in fulfilling its general supervisory responsibilities, in accordance with the legal requirements established by Part B and EDGAR. The findings are organized into five areas of responsibility, as shown in the Table of Contents. The Report broadly describes the corrective actions that MDE must take to address OSEP's findings regarding those five areas of responsibility, and to ensure compliance with the requirements of Part B through the exercise of its systems for general supervision.

We are concerned about the continuing existence of two findings of deficiency that OSEP first identified in MDE's 1991 compliance report. First, MDE has not implemented a system to ensure that deficiencies it identifies in Minnesota public agencies are corrected in a timely manner. Although MDE had submitted approvable procedures for ensuring correction of public agencies' deficiencies, OSEP finds that MDE had not implemented these procedures. Second, OSEP finds that the MDE routinely violates the Federal timeline for investigating and resolving complaints. This deficiency was first identified in the 1991 compliance report and continued to exist at the time of OSEP's September 1994 on-site visit. I bring these two areas to your attention because of the serious issue they raise with regard to MDE's ability to exercise general supervisory authority to ensure that all public agencies in the State comply with Part B.

The Report also describes the results that MDE must achieve through the implementation of corrective actions taken to address identified deficiencies. However, the specific steps, activities, resources needed, methods of verification and timelines are not specified. In the interest of developing a corrective action plan (CAP) specifically designed to address the issues in Minnesota, OSEP proposes that MDE representatives discuss with OSEP, either in a meeting or telephone conference, the areas of noncompliance and the most effective methods for achieving compliance and improving programs for children with disabilities in the State, and identify and agree on specific corrective actions. We also will invite Ms. Kathleen Peterson, Chairperson of Minnesota's Special Education Advisory Committee, to participate in that discussion to represent the interests of the advisory committee and its constituency. It is our hope that placing a greater emphasis on the development and implementation of your CAP will result in a more meaningful and effective corrective action process.

MDE's CAP must be developed within 45 calendar days of receipt of this Report. If this 45 day period elapses without a CAP being jointly developed, OSEP will develop the CAP and require that it be implemented by MDE.

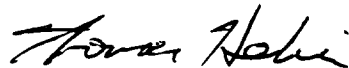
The findings included in this Report are final. The preliminary findings of OSEP's on-site compliance team were discussed with Mr. Erickson and Ms. Schulstad at an exit conference held on September 30, 1994. At this time MDE was invited to provide any additional information it wanted OSEP to consider during the development of findings for the compliance report. We believe the information presented in this Report to be accurate and look forward to working with MDE in the development of its CAP.

In the event MDE concludes, after consideration of the data in this Report, that evidence of noncompliance is significantly inaccurate and that one or more findings is insupportable, MDE may request reconsideration of the finding. In such a case, MDE must submit reasons for its reconsideration request and any supporting documentation within 15 calendar days of receiving this Report. OSEP will review the request and, where it agrees that the facts contained in the Report are insufficient to support the finding, issue a letter of response informing that State that the finding has been appropriately revised or withdrawn. Requests for reconsideration of a finding will not delay CAP development and implementation timelines for findings not part of the reconsideration request.

I want to thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Mr. Wayne Erickson and his staff were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of your various systems to implement Part B and EDGAR. I also want to thank Ms. Lorie Schulstad, Acting Team Leader for the Office of Monitoring and Compliance at the time of OSEP's visit, for her willingness to assist the OSEP team.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of your corrective actions. Please let me know if we can be of assistance. Thank you for your continued efforts toward the goal of improving education programs for children with disabilities in Minnesota.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Mr. Wayne Erickson

**OFFICE OF SPECIAL EDUCATION PROGRAMS
MONITORING REPORT:**

**1994 REVIEW OF
THE MINNESOTA DEPARTMENT OF EDUCATION'S
IMPLEMENTATION OF PART B OF
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

DECEMBER 1994

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INTRODUCTION

In order to be eligible to receive Part B funds, MDE is required to meet the eligibility requirements of Section 612 of Part B (20 U.S.C. §1412(6)), which provides:

The State educational agency shall be responsible for ensuring that the requirements of this part are carried out and that each educational program for children with disabilities within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and meets the educational standards of the State educational agency. [See §300.600(a).]

In addition to MDE's general supervisory responsibility, MDE is required to carry out certain activities in order to ensure that public agencies carry out their specific responsibilities related to the Part B and EDGAR requirements, including those at §§300.340-300.350 (individualized education program (IEP)), §§300.550-300.556 (least restrictive environment (LRE)), §§300.500-300.515 (procedural safeguards), §§300.530-300.534 (protection in evaluation procedures), §300.121 (free appropriate public education (FAPE)), §300.128 (child find) and §§300.560-300.575 (confidentiality of information). These activities are to:

- (1) include in its annual program plan, a copy of each State statute, policy and standard that ensures the specified requirements are met (see §§300.121-300.154);
- (2) require public agencies to establish and implement procedures that meet specific requirements, including those identified above (see §§300.220, 300.341, 300.501, 300.530 and 300.550);
- (3) monitor to ensure that public agencies implement all applicable Federal requirements, including those identified above (see §§80.40, 300.402, 300.556 and Sec. 441 of the General Education Provisions Act (GEPA), as amended by the Improving America's Schools Act of 1994 [formerly Sec. 435 of GEPA, 20 U.S.C. §1232d(b)(3)]); and
- (4) require that applications for Part B funds include procedures to ensure that the public agency's procedures are consistent with the requirements of §§300.340-300.350 (IEP), §§300.550-300.553 (LRE), §300.128 (child find), §§300.560-300.574 (confidentiality of information) and §300.226 (parent involvement) (see §§76.770, 76.400 and 300.220-300.240).

Information gathered by OSEP as part of its monitoring review demonstrates that MDE did not, in all instances, establish and exercise its general supervisory authority in a manner that ensures that all public agencies within the State comply with the requirements of Part B and EDGAR. Where findings are based, in part, on data collected from student records and local staff interviews, OSEP does not conclude that these findings establish that similar findings are present in all public agencies in Minnesota. However, because MDE's systems for ensuring compliance have not been fully effective for the reasons cited in this Report, OSEP requires MDE to undertake certain corrective actions, including the corrective actions cited immediately below, to improve its systems for ensuring Statewide compliance with Part B and EDGAR.

CORRECTIVE ACTION REQUIRED

1. MDE must issue a memorandum to all public agencies advising them of OSEP's findings of deficiency. The memorandum must direct public agencies to review their respective policies and procedures with regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to those public agencies for which OSEP found deficiencies. Should the public agencies determine that their current practice is inconsistent with the requirements identified in MDE's memo, they must immediately discontinue the current practice and implement the correct procedure. This memo must be submitted to OSEP within thirty days of the issuance of the this Report. Within 15 days of OSEP's approval of the memorandum, it must be issued to all public agencies for which MDE is responsible.

2. MDE must issue a memo to those agencies in which OSEP found deficient practices, as identified in this Report, requiring those public agencies to immediately discontinue the deficient practice(s) and submit documentation to MDE that the changes necessary to comply with Part B requirements have been implemented. MDE must send to OSEP verification that all corrective actions have been completed by these public agencies. This memo must be submitted to OSEP within thirty days of the issuance of this Report. Within 15 days of OSEP's approval of the memorandum, it must be issued to those agencies in which OSEP found deficient practices.

Throughout the Report, OSEP makes reference to information obtained through interviews with teachers, related service providers, and administrators. In all cases, OSEP has established that those persons interviewed were knowledgeable about and routinely involved in the areas about which they were questioned. Specifically, OSEP interviewed only those special education teachers responsible for providing services to the

students whose records were reviewed; the related service providers responsible for providing the related services discussed in the findings; and the administrators responsible for programs in the schools of the students whose records were reviewed.

OSEP REVIEW PROCESS: OSEP staff began its review of documents related to MDE's special education program in May 1994. During the week of May 31, OSEP met with Wayne Erickson and MDE staff responsible for administering the State's special education programs in order to collect preliminary information about Minnesota's special education system and begin making arrangements for OSEP's on-site visit.

OSEP reviewed MDE's systems for ensuring that all education programs for children with disabilities for whom MDE is responsible comply with the requirements of Part B and EDGAR. During the week of September 26, OSEP conducted its on-site review of MDE. The team conducting the review was composed of Gregory Corr, Judith Gregorian, Joan Pine, Barbara Route and Debra Sturdivant. Gregory Corr, OSEP's compliance team leader, spent the week at MDE's office in St. Paul reviewing compliance documents and conducting interviews with MDE staff responsible for administering the special education program. During the week, he also had the opportunity to meet with members of the Directors' Forum, a Statewide association of directors of special education.

Four members of OSEP's staff visited eight local educational agencies where they reviewed student records and interviewed local district staff about their special education programs. Prior to the visits, OSEP asked each district to complete placement charts by disability, race and type of placement (e.g. regular class, resource class, etc.). Data collected from these site visits are used to support or clarify the OSEP findings regarding the sufficiency and effectiveness of MDE's systems.

Involvement of parents and advocates: Also during the week of May 31, 1994, OSEP conducted public meetings in Moorhead, St. Paul and Duluth. In addition, OSEP participated in a meeting, convened by the PACER Center, with representatives of several advocacy organizations in the State. OSEP also invited written public comment and, over the summer, received comments from approximately seventy individuals and organizations.

Immediately before and during the on-site visit, OSEP had several additional contacts with parents, advocates and representatives of organizations concerned with special education in Minnesota. Several days prior to the on-site visit, OSEP held a telephone conference with parents and advocates. During the first evening of the site visit, OSEP held a focus meeting in one public agency with parents of youth with disabilities in order to hear their

impressions of special education services provided. Finally, during the week of the on-site visit, OSEP met with Minnesota's Special Education Advisory Committee.

Several themes emerged as State-wide concerns when all of the information obtained from parents and advocates was analyzed. Those issues raised by parents and advocates and investigated by OSEP are briefly summarized below.

1. Services for students identified as having emotional behavioral disturbance (EBD) were most often cited as inadequate. In particular, frequent use of suspensions and expulsions was identified as a concern. Another concern regarding students identified with this disability was the issue of a significant over-representation of African-Americans in this disability category, particularly in more restrictive educational settings. Many individuals indicated that often students identified as having EBD also had other learning problems, such as dyslexia, or attention deficit disorder, and often were not receiving services to address their learning needs. Concern was also expressed regarding the placement of students with EBD in alternative schools and other more restrictive settings.

2. The provision of transition services was also identified as an area of concern. Individuals and advocacy organizations indicated that there were limited options for students between the ages of 18 and 21, and that there was little or no coordination among transition service providers.

3. Many individuals and organizations expressed concerns regarding the quality of the IEPs. These concerns included: poor statements of present levels of performance, inadequate goals and objectives, and failure to implement the IEPs as written.

4. Problems regarding due process hearings were raised. These included concerns that hearing officers were not sufficiently trained in special education law, that decisions were not issued within 45 days and that local school districts' attorneys were discourteous to parents.

OSEP carefully examined the issues raised by parents and advocates. In some instances findings of noncompliance with Part B were made and these can be found in the appropriate sections in this report. Appendix B provides a discussion of OSEP's review of the issues that did not result in findings.

DESCRIPTION OF MDE'S SPECIAL EDUCATION SYSTEM: Minnesota's total count for children with disabilities aged birth through 21 was 86,340. Their Part B childcount was 83,572, generating

\$34,337,829 in Part B funds for appropriation year 1993.¹

There are 411 school districts in the State that combine into 105 special education administrative units (60 single districts and 45 cooperatives) that submit annual applications for Part B funds to MDE. Their services are delivered in 1604 elementary and secondary learning sites.

After OSEP's last visit in 1990, MDE moved from a more traditional organizational pattern by program and responsibility to "service rings" composed of multidisciplinary teams. As a part of this reorganization, previous positions were abolished and staff applied for newly-created positions within the new organizational framework. In 1994, a new commissioner was appointed by the Governor and MDE returned to an organizational format closely resembling the one that existed in 1990.

The Directors of the Office of Special Education and the Office Monitoring and Compliance report to different Assistant Commissioners. Located on the eighth floor of the department of education building, the Office of Special Education employs 16 professional staff. The responsibilities of these staff include technical assistance, interagency collaboration and administration of Federal and State special education funds and applications. The Office of Compliance and Monitoring, located on the fifth floor, includes a Director, a Team Leader and 11 professional staff involved primarily with special education compliance.²

INITIATIVES: The focus of OSEP's compliance monitoring is the determination of the extent to which a State is providing programs to children with disabilities in compliance with the requirements of Part B and EDGAR, and the focus of this Report is the specification of the areas in which MDE's systems have not been fully effective in ensuring compliance with those requirements. However, OSEP acknowledges MDE for undertaking the following initiatives:

1. In August 1992, MDE initiated a mediation program as a means for parents and school districts to resolve disputes outside of the context of a due process hearing. In 1993, 19 mediation sessions were held and, 12 sessions had been held during the first seven months of 1994.

¹ 1992-93 school year (Sixteenth Annual Report to Congress, 1994).

² At the time of OSEP's visit the Director position had been vacant for over a year and the Team Leader position was filled on an acting basis.

2. MDE has developed several initiatives to improve transition services for youth with disabilities:

- The State Transition Interagency Committee was formed to coordinate and guide interagency transition efforts;
- The Interagency Office on Transition Services was created to provide leadership to State agencies and local communities in the improvement of transition services;
- Approximately 70 Community Transition Interagencies (CTICs) were developed to encourage collaboration among agencies and communities at the local level.

3. MDE has targeted services for students with emotional/behavioral disorders as an area of special focus. MDE's initiatives include:

- Studies on related services and staff recruitment and retention, including the identification of factors leading to staff turnover and the development, implementation and evaluation of a remedial action plan;
- The identification, implementation and support of models for early identification and intervention that target young children and older children with later onset of EBD;
- The creation of a State and local public relations campaign to address the stigma of EBD and mental health needs;
- Designing a comprehensive five year plan for better meeting the educational and mental health needs of youth with EBD; and
- Support for local agencies in developing effective processes for serving EBD students, policy changes and program reforms;

4. MDE has commissioned three studies of racial disproportionality within special education:

- "Minority Representation in Special Education in Minnesota School Districts - 1989-90" (Ryan 1992) concludes that African-American and American Indian students in 18 of 19 districts studied were significantly overrepresented in special education.
- "The Study of Referral, Assessment, and Placement Practices with Minority Students in Some Special Education Programs in Minnesota" (Wilderson, Wood and McKee, undated) was written to complement the previous study in order to identify causal factors of racial disproportionality in special education and suggest ideas for alleviating this problem.
- "Referral, Assessment and Placement Practices Used in Northern

Minnesota with Native American Students in Special Education" (Gritzmacher 1993) examines factors relating to overrepresentation of American Indian students in special education.³

5. Within Minnesota, extensive use is made of paraprofessionals to provide a broad range of instructional support and student assistance. Currently there are more paraprofessionals working in the State than there are certified special education teachers. MDE has undertaken several training initiatives including an annual conference attended by approximately 500 people, most of whom are paraprofessionals. In addition, MDE has developed the Minnesota Paraprofessional Resources manual to provide resources and information to persons responsible for the training and supervision of paraprofessionals in the State.

6. MDE has supported positions for Indian Social Worker aides for the last fifteen years. These aides function as liaisons between home and school with the goal of enhancing the participation of Indian parents in their children's special education programs. Training is also provided for Asian-Pacific and Hispanic Social Work Aides.

³ A 1989-90 MDE report stated that 18.1 percent of American Indian students were placed in programs for students with learning disabilities, mild mental retardation or emotional/behavior disorders.

I. TRANSITION SERVICES

MDE is required to ensure that all public agencies develop and implement an IEP for each student with disabilities, beginning no later than age 16 (and at a younger age, if appropriate) that contains a statement of needed transition services, developed in accordance with the requirements specified in §§300.18, 300.344, 300.345, 300.346 and 300.347.

TRANSITION SERVICES AND POSTSCHOOL SUCCESS

The inclusion of a transition plan within the IEPs of students 16 years of age and older has been shown to be positively related to the achievement of postschool outcomes such as employment, postsecondary education and training and independent living. For instance, the National Longitudinal Transition Study of Special Education Students (NLTS) has shown that postschool success was associated with youth who had a transition plan in high school that specified an outcome, such as employment, as a goal.

The postsecondary performance of former students with disabilities is significantly worse than that for former students who do not have disabilities. The NLTS reports that the rate of competitive employment for youth with disabilities out of school for three to five years was 57 per cent, compared to an employment rate of 69 per cent for youth in the general population. The NLTS identified several factors that were associated with postschool success in obtaining employment and earning higher wages for youth with disabilities. These included completing high school, spending more time in regular education, and taking vocational education in secondary school.

MINNESOTA'S TRANSITION SERVICES

Minnesota has implemented several initiatives to improve transition services for students with disabilities. In 1987 the Minnesota legislature mandated transition planning for all Minnesota students with disabilities beginning by grade 9 or age 14 (M.S. 120.17 Subd. 3A). A statement of needed transition services in the areas of: home living, community participation, recreation/leisure, jobs/job training, and post-secondary education is required in the IEP for each student with a disability.

In 1991 Minnesota received a five-year, State-wide systems change grant for developing, implementing, and improving transition services from the U.S. Department of Education, Office of Special Education and Rehabilitation Services.

In addition, Minnesota initiated a study of postschool outcomes of young adults with disabilities who had been out of school for one to five years. The study found that the employment rate for the former students at the time of the interview was 80 per cent. The unemployment rate was highest among former students

in the emotional/behavioral disorder group (25 per cent) and lowest among former students in the group with moderate/severe disabilities (18 per cent).⁴

Additional initiatives to improve transition services are noted in the introduction to this Report.

OSEP'S MONITORING PROCEDURES FOR TRANSITION SERVICES

In six of the eight public agencies (A, B, C, D, F, and H) it visited, OSEP focused on secondary education programs. The secondary programs included six high schools, two separate schools for students with emotional and behavioral disorders, and two alternative high schools that served both students with disabilities and students without disabilities.

OSEP reviewed the records of 36 students from these programs. Thirty-two of the students were 16 or older, and four students were between ages 14 and 16. The primary categories of disabilities for the students included: 28 students who were identified as having emotional behavioral disorders, four students who were identified as having mild/moderate mental handicaps, and four students who were identified as having learning disabilities.

OSEP reviewed the records for these students, interviewed the students' teachers who participated in the IEP meetings, and interviewed the principals and administrators responsible for the provision of special education services.

FINDINGS: OSEP finds that MDE did not ensure, in all cases, that public agencies implemented policies and procedures which fully implemented the requirements of Part B relative to transition.

1. Statement of Needed Transition Services

Each public agency is required to ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. If the IEP team determines that services are not needed in one or more of the areas specified in §300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which

⁴ 1994 Minnesota Post-school Follow-up Study, published by Institute on Community Integration (UAP), University of Minnesota, May 1994.

the determination was made (§300.346(b)(2)).⁵

A review of the records of the 32 students who were 16 years or older indicated that only two IEPs included either a statement of needed services in the three areas identified above, or if determined by the IEP that any of the three services were not needed, included a statement to that effect and the basis upon which the determination was made. Further, 16 of the IEPs specified only one area and did not explain the basis for not addressing the other two areas. Below is a table that indicates the public agencies, the number of IEPs reviewed and the number of areas addressed either by specifying the needs or by explaining the basis for not including the area.

Very few of the IEPs reviewed by OSEP included a statement of the needed transition services in the area of instruction. One possible explanation for this frequent omission may be related to the forms used by the public agencies visited by OSEP. The forms were based on MDE's recommended form, which directed the IEP team to address the areas of transition consistent with its State requirements (i.e., a statement of needed transition services in the areas of: home living, community participation, recreation/leisure, jobs/job training, and post-secondary education). These requirements do not specify needed transition activities in the area of instruction.

Also, MDE's method for determining compliance for this requirement is incomplete. Therefore, it was unable to identify all deficiencies through its monitoring process (see page 20).

Two teachers, one from public agency A and one from public agency C, stated that transition services are discussed between the student and staff from vocational education, separate from the IEP process. Thus, in those two agencies the IEP may not always include all the transition services activities.

⁵ The areas specified in §300.18(b)(2)(i) through (b)(2)(iii) are instruction, community experiences, and the development of employment and other post-school adult living objectives.

**Number of IEPs by Public Agency
and the Number of Areas that are Identified as Needed
or Explained as Not Needed**

Public Agency	Number of IEPs	3 Areas	2 Areas	1 Area	0 Areas
A	4	1	3	0	0
B	6	1	3	1	1
C	5	0	0	4	1
D	6	0	0	5	1
F	6	0	0	4	2
H	5	0	3	2	0
TOTAL	32	2	9	16	5

2. Transition Services Participants - A Representative Of Any Other Agency

Each public agency is responsible for ensuring that, if the purpose of the IEP meeting is the consideration of transition services, the meeting includes a representative of any other agency that is likely to be responsible for providing or paying for transition services (§300.344(c)(ii)). In addition, each public agency is required to ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting (§300.346(b)(1)).

A review of the records of the 32 students who were 16 years or older indicated that in only one case did a representative from another agency attend an IEP meeting at the invitation of the public agency (public agency C). No statement of responsibilities or linkages were specified for that agency on the IEP.

Part B only requires that the IEP meeting include a representative of any other agency if that agency is likely to be responsible for providing or paying for transition services. However, a teacher from public agency D reported to OSEP that representatives from other agencies are not invited to IEP meetings for her students who had serious emotional disturbances. The administrator responsible for the provision of special education in that public agency stated that representatives from other agencies are invited, if appropriate, to IEP meetings, but

that these representatives are not invited as often, or as routinely, for students with emotional behavior disorders, or learning disabilities, as they are for students with mental retardation. The administrator in public agency F also stated that the transition requirements, including inviting representatives from other agencies, were addressed more thoroughly for students with mental retardation. Finally, in public agency H a teacher reported and an administrator confirmed that when representatives from other agencies are invited to IEP meetings, their responsibilities or linkages for transition services are not specified on IEPs.

3. Notice Requirements

Each public agency is required to ensure that, if a purpose of the meeting is the consideration of transition services for a student, the notice must indicate this purpose, indicate that the agency will invite the student, and identify any other agency that will be invited to send a representative. (§300.345(b)(2)).

OSEP found that the meeting notice used by the public agencies it visited did not specify that a purpose of the meeting is the consideration of transition services, when those notices were for meetings for students who were 16 years or older.

Administrators in each agency OSEP visited confirmed that the notice did not specify the consideration of transition services. The public agencies were using the MDE's recommended notice.

FINDING/FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p>Transition</p> <p>1. §§300.18, 300.346(b) (Statement of transition services - required IEP content)</p>	<p>Beginning no later than age 16 (and at a younger age, if determined appropriate), public agencies must include a statement of the needed transition services as defined in §300.18. If the IEP team determines that services are not needed in one or more of the areas specified in §300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination was made (§300.346(b)(2)).</p>			
<p>2. §300.344(c) (Meeting participants)</p>	<p>IEP meetings for students aged 16 and older (and at a younger age, if determined appropriate) must include a representative of any other agency that is likely to be responsible for providing or paying for transition services (§300.344(c)(ii)). The statement of the needed transition services must include, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting (§300.346(b)(1)).</p>			
<p>3. §300.345 (Content of notice)</p>	<p>The notice of IEP meetings to consider the provision of transition services must specify that such consideration is a purpose of the meeting.</p>			

II. PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT

MDE is required to ensure that public agencies establish and implement procedures, which meet the requirements of §§300.550-300.553, regarding the placement of students with disabilities in the least restrictive environment (LRE). §300.550(a). Sections 300.554, 300.555 and 300.556 set forth requirements which must be met by MDE.

MDE is responsible under §300.550(a) to ensure that public agencies ensure that:

(1) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who do not have disabilities (§300.550(b)(1));

(2) Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§300.550(b)(2));

(3) The various alternative placements included at §300.551, are available to meet the needs of children with disabilities for special education and related services, and those alternative placements are available to the extent necessary to implement each child's IEP (§§300.551 and 300.552(b)); and

4) Each child with a disability participates with children who do not have disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child (300.553).

In order to meet the requirements of §300.550(b)(2), a public agency must, prior to making any decision to remove the child from the regular education environment, determine whether the child's education can be achieved satisfactorily in the regular education environment with the provision of supplementary services (such as resource room or itinerant instruction) and/or the use of supplementary aids and services. The selection of the appropriate supplementary aids and services must be determined by the IEP committee during the development of the IEP and must be based on the individual needs of the particular student. A description of the supplementary aids and services the child is to receive must be included in the IEP. The supplementary aids and services must be a component of the specially designed instruction crafted by the IEP committee to meet the child's unique educational needs. Supplementary aids and services may include, but are not limited to, curricular adaptations and

modifications such as taped textbooks and parallel instruction, modifications to the educational environment, such as preferential seating and the use of study carrels, and/or modifications to the service delivery system, such as the use of an additional instructor or peer tutors.

In determining whether a child with disabilities can be educated satisfactorily in a regular class with supplementary aids and services several factors must be considered, including: (1) whether reasonable efforts have been made to accommodate the child in the regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of a child on the education of the other students in the class. If, after considering these factors it is determined that the child should be removed from the regular classroom and provided education in a segregated, special education classroom or school, the agency still remains responsible to include the child in school programs with nondisabled children to the maximum extent appropriate.

Placement Trends in Minnesota

The data that MDE reported to OSEP for the 1989-90, 1990-91 and 1991-92 school years showed a sharp reduction in separate class placements and a concomitant increase in resource placements. Placement in regular classroom was stable over those three school years at approximately eleven percent of the population of students with disabilities. In an interview with OSEP, the SEA Director explained that the placement data MDE sent to OSEP for those three years did not conform to Federal definitions, resulting in an underreporting of the numbers of students with disabilities educated in the regular classroom.

Beginning with the 1992-93 data (the most recent data available to OSEP), MDE began reporting its placement statistics in accordance with the Federal reporting instructions.⁶ As is shown below in Table II, this resulted in far greater numbers of students reported as placed in regular class and a corresponding decline in the numbers reported as placed in resource room.

⁶ States are instructed to report their data in the following categories: Regular class (removed from regular class less than 20% of school day), resource room (removed more than 20% and less than 60% of school day), and separate class (removed more than 60% of the school day).

TABLE II
Placement Trends in Minnesota

	1989-90	1990-91	1991-92	1992-93
Regular class	11.14	11.09	11.63	49.46
Resource room	65.60	75.76	75.49	31.99
Separate class	19.27	09.13	08.42	11.36
Separate school ⁷	3.62	3.62	04.28	6.81

Previous Monitoring

In its June 14, 1991 monitoring report to MDE, OSEP found that, (1) some students with disabilities were removed from the regular education environment without a determination of whether the student's education could be achieved satisfactorily in regular classes, with the use of supplementary aids and services, and (2) some public agencies did not make placement options available to the extent necessary to implement the IEP for students with emotional/behavioral disabilities (EBD) as required by §§300.551(a) and 300.552(b). MDE's corrective actions and documentation, including the training of teachers and administrators regarding their responsibilities in the areas cited in the monitoring report, were approved by OSEP in January 1992.

CURRENT FINDINGS: OSEP finds that MDE did not ensure that students with disabilities have available as an initial option, placement in the regular education classroom, with the use of supplementary aids and services such as special education consultation with the regular education teacher, collaborative teaching or itinerant instruction. Therefore, the full continuum of alternative placements is not available to meet the needs of children with disabilities for special education and related services. In addition, OSEP found that some public agencies in Minnesota did not make individual determinations of the maximum extent to which it was appropriate, for each child with a disability to be educated with children who do not have disabilities, or to participate with them in nonacademic and extra-curricular services and activities.

These findings are based upon the review of placement data

⁷ For purposes of this Report, OSEP combined four placement categories: public separate facility, private separate facility, public residential facility and private residential facility. In Table II these are reported under the category "separate school."

provided by all of the public agencies visited by OSEP, the review of student records and interviews with responsible administrators and teachers who participated in meetings in which placement decisions were made.

OSEP learned through interviews with administrators and teachers, in districts visited by OSEP, that before students are evaluated to determine eligibility for special education, regular education interventions are tried in order to meet student needs in the current regular education placement. If these interventions do not result in a student's ability to achieve successfully in the regular education classroom, the student is referred for an evaluation to determine if there is a disability necessitating the provision of special education and related services. If, based on the evaluation results, the student meets the criteria for placement in special education, the student is removed from the regular classroom to receive special education services. No further attempts are made to consider the new information obtained about the student from the evaluation results, in order to identify and implement special education interventions that would allow the student to remain in the regular classroom placement.

Although MDE had identified deficiencies with regard to LRE requirements, it had not ensured timely correction of deficiencies (see page 23).

A. Removal from the Regular Education Environment and Continuum of Alternative Placements to Implement IEP [§§300.550(b)(2) and 300.552(b)]

Two administrators responsible for special education programs in Agency A reported to OSEP in interviews that special education instruction in regular classes (i.e., special education instruction pursuant to an IEP without removal to a special education setting) is not available as a continuum placement option for all students with disabilities. Specifically, these administrators stated that reintegrating students from the separate school into the regular high school was difficult for several reasons. First, unless students with EBD comply with the same rules of conduct applicable to students without disabilities they will not be admitted to the regular high school. Similarly, the inflexibility of the regular high school schedule, composed of 85 minute periods, makes it difficult to place students with emotional and behavior disorders in the regular classroom. One administrator stated that the necessary supports are not available to maintain EBD students from the separate school in the high school. According to this administrator, students must achieve a certain level of performance before any consideration of reintegration into the regular education environment is made.

Administrators and teachers from agencies B and D and G, stated

that once a child is determined to have a disability and is made eligible for special education services, regular class placement with the use of supplementary aids and services is not considered as an initial placement option by the placement team for some students with disabilities in the district. An administrator in Agency G stated that regular class placement with supplementary aids and services is not considered as a first option for students with disabilities but rather, as an option for reintegrating students into less restrictive settings.

Two teachers in agency C stated that the agency is moving toward maintaining students in the regular education environment with the necessary supplementary aids and services, but that this option is not available to all students who would benefit from such a practice because there is insufficient collaboration between special education and regular education staff. Both teachers stated that they had students with disabilities who could be successfully educated in regular classrooms given the necessary supports, but that there were barriers to integration, such as the unwillingness of regular education teachers to implement the accommodations recommended by the IEP team. Additionally, they said that regular education classes are near capacity, and that there is no room in them for special education students for whom placement in regular classrooms has become appropriate.

For some students with disabilities being served in regular education classes, special education services are provided only as a "pull-out" service. These students do not have the option of remaining in the regular education classroom without removal and receiving special education services. The teachers further described the school district's process for providing special education services as an "all or nothing" approach.

An administrator and four teachers from Agency G, stated that all special education services are provided outside the regular education classroom. Speech therapy is the only special education service that can be provided in the regular education class as well as on a pull-out basis. One teacher stated that all the students in the self-contained class could be served in the regular education class if supplementary aids and services such as team teaching, itinerant instruction and collaboration were available. However, the administrator explained that those interventions are too expensive. The administrator also stated that service delivery models and related service schedules are barriers to including students in regular education. Students who are placed in "center-based" models must receive all their academic programming in special education classrooms.⁸

⁸ "Center-based" models are self-contained classes located in a regular education building.

Administrators from public agencies D, E, F and H confirmed that the placement data reported in charts which OSEP asked each district to complete, indicated that in one district there were very few students with mild to moderate mental retardation in regular classes with supplementary aids and services, and in the other three districts there were no students with mild to moderate mental retardation in regular classes with supplementary aids and services.

Several administrators explained that there is a strong belief among staff in their districts that students with mental retardation should be in separate classes. Several other administrators were surprised that the data for students with mild to moderate mental retardation indicated that so few students were in regular classes with supplementary aids and services given the general progress their districts have made in moving students from separate classes to less restrictive settings. Moreover, the data suggest that in regards to students with mild to moderate mental retardation, individual determinations are not made regarding the placement of students with those disabilities in the various alternative placements included at §300.551.

B. Educated with Nondisabled Peers and Nonacademic and Extracurricular Activities [§§300.550(b)(1) and 300.553]

Several administrators and a teacher from Agency A stated that there is no consideration of the maximum extent to which students at the separate school can participate in regular education classes or extra-curricular or nonacademic programs with their nondisabled peers. For students with EBD who are placed at a separate center in the district, participation is considered only if the student expresses an interest in returning to the regular education program and the teacher advocates for regular school placement at the IEP meeting. A teacher at the separate center stated that there are no students who currently participate in any regular education programming.

Two administrators and a teacher in Agency B stated that there are no opportunities for integration of students who are in Level 5 programming⁹. One administrator stated that if "Level 5" students are ready for mainstreaming, they are placed in a setting where integration is possible.

One Level 5 program, which focuses on mental health needs, serves 20 students with EBD in a regular elementary school. It is an intensive short-term program that does not provide any

⁹A Level 5 program is a segregated, self-contained class or separate school program which offers little to no opportunities for mainstreaming with nondisabled students.

opportunities for students to participate in regular education classes or extra-curricular or nonacademic programs with their nondisabled peers. IEPs indicate that there are opportunities for integration during lunch, recess, and assemblies. However, while these opportunities are made available to the class, no determinations are made on an individual basis regarding planned opportunities for meaningful participation. One teacher stated that, "there is no mainstreaming at all. Students eat breakfast and lunch together with staff."

In an interview with OSEP, two administrators and a teacher in Agency C stated that the IEP team did not make individualized determinations regarding the maximum extent to which it is appropriate for each student placed in the separate school to be educated with students who do not have disabilities or participate with them in nonacademic and extra-curricular activities. None of these students participate in nonacademic activities with their nondisabled peers during the school day, even though, as the teacher reported to OSEP, some would benefit. With the exception of physical education, integration with nondisabled peers for academics is not considered for students at the separate school. One administrator stated, "we need to be closer to [the separate school] than we are. We are trying to get high schools ready for reintegrating the students [served at the separate school]."

FINDING/FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p>A. Removal from the Regular Education Environment and Continuum of Alternative Placements to Implement IEP [§§300.550(b)(2) and 300.552(b)]</p>	<p>Placement in the regular education classroom with the use of supplementary aids and services must be a placement option for students initially placed into special education as well as for those students who had previously been removed from the regular education environment.</p>			
<p>B. Educated with Nondisabled Peers and Nonacademic and Extracurricular Activities [§§300.550(b)(1) and 300.553]</p>	<p>There must be consideration of the maximum extent to which students with disabilities can participate in regular education classes or extra-curricular or nonacademic programs with their nondisabled peers. A special focus of this activity must include consideration of such participation for those students who have been removed from the regular education environment to separate classes or separate schools.</p>			

III. FREE APPROPRIATE PUBLIC EDUCATION

MDE is responsible for ensuring that a free appropriate public education (FAPE) is available to all children with disabilities within the State, and must ensure that each student with a disability receives the related services that are required to assist the child to benefit from special education as required by §§300.300 and 300.16(a).

The provision of appropriate special education and related services is essential to the achievement of positive postsecondary results for students with disabilities. Although many students with serious emotional disturbance (SED) experience emotional, social and educational problems, FAPE may not be provided due to a lack of related services in the public schools and insufficient interagency collaboration between LEAs and mental health agencies.

The National Longitudinal Transition Study shows that students with SED have poor school performance and results including lower grades, a higher rate of course failure, and a dropout rate higher than that for other students with disabilities.¹⁰ They also have poor post-secondary outcomes. When compared with the general population, students with SED have difficulty maintaining jobs, lower rates of employment and significantly higher arrest records¹¹. Students with SED also have the lowest enrollments in college and vocational schools of all students with disabilities and, as a group, low scores on measures of independence.¹²

OSEP received numerous comments about special education for SED students when it conducted public meetings in Minnesota. In addition, OSEP had made findings regarding lack of availability of services for SED students in the 1991 monitoring report. Therefore, OSEP targeted the files of students with SED to determine whether they are receiving necessary special education and related services.

¹⁰ Approximately 50 percent of students with SED dropout of school.

¹¹ By two years after high school, 37 percent of students with SED have been arrested. By three to five years, the numbers increase to 58 percent. These figures represent an arrest record 2 and a half times that of youth in the general population (Wagner, 1992).

¹² About 17 percent of youth with SED go on to college or vocational schools within two years after leaving high school, compared with 53 percent of students without disabilities and 14 percent of all students with disabilities (Marder, 1992).

State-wide Data

As noted above in the Transition section of this Report, MDE funded a study of postschool outcomes of young adults with disabilities in Minnesota who had been out of school for one to five years to, among other things, obtain a measure of how students with disabilities who received special education in high school were managing as young adults. The findings from this study showed that a third of all students that dropped out of high school were former students with emotional/behavior disorders (EBD). The study also corroborates the finding in the National Longitudinal Transition Study that young adults with EBD were most likely to have experienced some period of unemployment compared with individuals in other disability groups.

Previous Finding

When OSEP monitored MDE in 1990, it found that MDE did not meet its general responsibility under §300.300 to ensure that special education and related services contained in IEPs of children with disabilities were designed to meet their unique needs. When OSEP reviewed the records of one agency's students with EBD and conducted interviews about those records, it found that all students were all receiving the same amount of counseling a week and that needs for counseling had not been individually determined. In another public agency, a building administrator stated in an interview with OSEP that the public agency did not provide counseling services and that when students required such services to benefit from special education, they were referred to the community mental health agency. The administrator explained that the public agency does not include counseling services in the IEP because the parents' insurance will pay for it.

On May 4, 1993, MDE completed all of its corrective actions to ensure that all public agencies make available special education and related services contained in IEPs to meet the unique needs of children with disabilities, and that related services are made available to assist all students with disabilities to benefit from special education. MDE issued a memo to all public agencies informing them that these requirements would be the focus of monitoring activities in the future, and that to the extent that their current practice did not meet these requirements, they must immediately discontinue their current practices and implement the correct procedures. MDE also developed training materials and provided training to inform and train teachers and administrators in their responsibilities.

FINDING: Based on the facts provided below, OSEP finds that MDE did not consistently meet its responsibility under §300.300 to ensure that each student with a disability receives the related services that are required to assist the child to benefit from special education as required by §§300.300 and 300.16(a).

Specifically, OSEP found that counseling services were not made available to students with EBD.

Under Part B, it is permissible for LEAs to work collaboratively with other agencies, such as State or county mental health agencies, to ensure that needed related services are provided. However, LEAs must ensure that the needed services are provided at no cost to the parent or child and cannot transfer to the parent responsibility for locating or funding such services.

As discussed on Section IV on page 21 of this Report, MDE's procedures for identifying deficiencies regarding the provision of related services were not fully effective.

Agency E In interviews with OSEP, a teacher and two administrators involved in the development of IEPs stated that psychological counseling was not considered an option for inclusion in the IEP, for any student with a disability. Two of the students in the teacher's class were receiving counseling services through the county mental health agency; however, the parents of these students made the arrangement with the mental health agency for provision of the service and paid for the service. The teacher stated that all seven students in the class needed psychological counseling services in order to benefit from their special education programs, but because their parents could not pay for the services, some students were not receiving them. The teacher told OSEP that prior approval from the school district would have to be obtained before psychological counseling could be included as a related service in a child's IEP.

Administrators confirmed that psychological counseling services are not provided through an IEP. They reported to OSEP that parents are responsible for obtaining needed psychological counseling services for their children even where services are necessary to benefit from special education. The school assists by referring them to the local mental health agency, but will not provide counseling services as a part of special education and related services.

Agency C OSEP interviewed three teachers and two administrators who stated that schools do not provide psychological counseling even when necessary for students to benefit from special education. Rather, schools refer the parents of students who need these services to the local mental health center. One administrator stated that the IEP team would not identify counseling as a need because the school does not provide it. Another administrator stated that a cooperative agreement between the local mental health agency and the separate school was initiated to address the need, but it was never completed. The administrator further stated that there were students at the separate school who needed counseling to benefit from special

education. Although the district had assigned a part-time counselor, the counselor could not meet all the identified needs of students in the school. The administrator was told that additional counseling services could not be obtained due to insufficient funds.

A psychologist confirmed that the school does not provide psychological counseling. According to the psychologist, psychological counseling is a mental health service, not an educational service and, therefore, no goals and objectives are written in the IEP when psychological counseling is identified as a need by the IEP team. The psychologist also confirmed that parents are responsible for obtaining the needed services.

An administrator knowledgeable about the availability of services also confirmed that the agency does not provide individualized psychological counseling. The administrator explained that the agency only makes available the services of school-based guidance counselors who work with groups of students in the classroom. In addition, school psychologists may work with teachers on a consultative basis, and provide direct services to students in the form of assessments, including student interviews and observations of the student in his or her environment and data gathering of information about the student from parents and others knowledgeable about the student. The administrator stated that although the agency will not provide counseling services, it has established linkages with mental health providers to assist parents in finding and receiving services.

Agency F OSEP reviewed two student records and interviewed the students' teacher who stated that those students needed counseling services to benefit from their educational programs but that those services were not available. An administrator knowledgeable about the availability of services confirmed that, although currently available, these services were unavailable at the time the IEPs were developed for those two students, and that no subsequent provisions had been made to provide the services to these two students.

FINDING/FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p>MDE is responsible for ensuring that FAPE is available to all children with disabilities within the State, and must ensure that each student with a disability receives the related services that are required to assist the child to benefit from special education as required by §§300.300 and 300.16(a).</p>	<p>Where the provision of counseling services is necessary for a student with a disability to benefit from special education, such services must be provided as a part of the student's FAPE.</p>			

IV. STATE EDUCATIONAL AGENCY MONITORING

- A. MDE is responsible for the adoption and use of effective methods to monitor public agencies responsible for carrying out special education programs. (Sec. 441 of the General Education Provisions Act (GEPA), as amended by the Improving America's Schools Act of 1994 [formerly Sec. 435 of GEPA, 20 U.S.C. §1232d(b)(3)]). A State shall keep records to show its compliance with program requirements. §76.731.

Background In its 1991 monitoring report to MDE, OSEP found that MDE had no, or incomplete, methods for determining compliance with certain Federal requirements. MDE's Office of Monitoring and Compliance (OMC) subsequently revised its monitoring procedures which were approved by OSEP in 1992.

MDE's six year monitoring cycle, which was in effect during OSEP's 1990 review of MDE as well as during the 1994 review, is described below in Table X-A.

TABLE X-A

Year in Cycle	Description of Activity
One	District conducts self Study.
Two	MDE conducts comprehensive compliance review. District submits corrective action plan.
Three	District implements corrective action plan.
Four	District conducts self study to ensure that all corrective action have been effective.
Five	MDE conducts follow-up review to verify completion of corrective actions.
Six	District submits and implements corrective action plan for any remaining areas of noncompliance.

FINDING: MDE has an inadequate standard for determining compliance with the requirement that IEPs for students 16 years and older include a statement of need transition services. Item 4.2.2 of MDE's Compliance Monitoring Manual requires that the IEP address pupil's needs for transition services to "postsecondary education and training, employment, and community living." However, MDE's procedures do not address the Federal requirement that the statement of transition services include "instruction, community experiences, and the development of employment and

other post-school adult living objections" (§300.18(b)(2)).¹³

As discussed in Section I of this Report, OSEP found deficiencies with regard to transition statements in every public agency it visited. However, MDE had not identified deficiencies in its most recent reports to those agencies.

FINDING: Although MDE has methods for determining that students with disabilities are provided with the related services they need to receive FAPE, there were three cases where these methods did not result in the identification of deficiencies. When OSEP reviewed student records and conducted interviews at public agencies C, E and F, it found that the public agencies had not provided students with EBD counseling needed to benefit from their special education programs.

FINDING: MDE's monitoring system does not include a method to ensure that each public agency responsible for carrying out special education programs operates in compliance with Federal requirements.

Correctional Facilities In an interview with OSEP, MDE staff responsible for compliance monitoring stated that correctional facilities providing special education services have not been routinely monitored. There are ten correctional facilities in Minnesota which have inmate populations that include school-age youth and operate special education programs. One facility which serves 130 juveniles was monitored in 1991. Two other facilities were visited by MDE in Spring 1994, but no monitoring reports had been issued to these facilities at the time of OSEP's visit. MDE staff did not know when the other seven facilities had been monitored last.

Charter Schools At the time of OSEP's visit, MDE had not conducted compliance monitoring visits to any of the 15 charter schools that have been approved by the Minnesota State Board of Education. Charter schools, which have been in existence since 1991, are independent public programs sponsored by local school districts. Charter schools offer unique programs based on learner outcomes and serve children with and without disabilities. MDE staff told OSEP that OMC has scheduled a compliance review of one of the charter schools for January 1995.

B. MDE is responsible for the adoption and use of proper methods for the correction of deficiencies in program

¹³ When OSEP monitored MDE in December 1990 it did not identify deficiencies with regard to the transition requirements since these requirements had only recently gone into effect and therefore SEAs had not had sufficient time to fully implement the requirements.

operations that are identified through monitoring. (Sec. 441 of the General Education Provisions Act (GEPA), as amended by the Improving America's Schools Act of 1994 [formerly Sec. 435 of GEPA, 20 U.S.C. §1232d(b)(3)]).

Background In its 1991 report to MDE, OSEP found that MDE had not been effective in ensuring that deficiencies MDE identified through compliance monitoring had been corrected. Specifically, OSEP found that deficiencies first identified during comprehensive monitoring visits had not been corrected by the time MDE returned for follow-up visits three years later. In such cases where MDE determined that deficiencies had not been corrected, MDE required the affected public agency to submit a second corrective action plan. However, it was not MDE's procedure to verify implementation until the next comprehensive monitoring review.

OSEP required MDE to revise its monitoring procedures to include the steps it would take when previously identified deficiencies continue to exist. The Minnesota Special Education Monitoring Model, submitted by MDE as a corrective action, describes "The Process of Imposing Sanctions." In Steps II and III, below include the actions MDE can take where previously identified deficiencies continue to exist:

Step I An area of noncompliance exists. A Correction Action Plan is required of the district. The Department staff will assist the district in identifying possible sources of technical assistance. Staff may also suggest the use of Comprehensive System of Personal Development (CSPD) monies to support the needed technical assistance.

Step II An area of noncompliance is identified a second time. Department staff will identify and mandate technical assistance. They will mandate the use of CSPD monies. This technical assistance and use of monies will be supervised by the monitoring staff. Following this assistance in Correction Action Plan (CAP) implementation, the district will again be monitored for compliance. Approval of LEA application for funding may be contingent on correction of the citations.

Step III An area of noncompliance continues to exist following the implementation of Steps I and II. The district's application for funding will not be approved. The Chairperson of the local school board will be notified by letter from the Commissioner of Education that state aid will be withheld until corrections are completed.

FINDING: OSEP has concluded that MDE did not carry out its revised monitoring procedures so as to ensure that identified deficiencies were corrected in a timely manner. OSEP reviewed the follow-up reports for three agencies and noted that some of the previously identified deficiencies had not been corrected. In none of these three instances had MDE implemented its procedures for addressing the existence of continuing deficiencies. In an interview with OSEP, an MDE staff member responsible for administering the compliance unit stated that it was not MDE's policy to confirm the correction of deficiencies identified during follow-up visits until the next full compliance review, three years after the follow-up visit.

Agency D For instance, MDE conducted a Follow-up visit to Agency D in 1994, three years after MDE had conducted a Full Compliance review and identified a number of deficiencies.¹⁴ Although some deficiencies had been eliminated, several continued to exist:

- (1) Ten of the 25 IEPs reviewed contained insufficient annual goals;
- (2) The majority of IEPs reviewed did not contained schedules for evaluating whether short term objectives had been achieved;
- (3) The majority of records did not justify why students needed to be removed from regular education environment.¹⁵

When OSEP reviewed IEPs at Agency D, it found deficiencies regarding annual goals, short term objectives, and criteria, procedures and schedules for evaluating accomplishment of those objectives.

Agency G MDE conducted a Full Compliance review of Agency G in 1989 and a Follow-up visit in 1992. The follow-up report states that about two-thirds of the fifty records reviewed contained deficient annual goals and about half the records did not justify the removal of students with disabilities from the regular education environment. Despite the continued areas of noncompliance, MDE's follow-up report does not reflect MDE's new procedures to be used where continued deficiencies exist.

OSEP interviewed a consultant who had been the chairperson for

¹⁴ Also, OSEP had visited this district as a part of the 1990 monitoring review. OSEP also found IEPs that had deficient annual goals (10 of 14) and did not include schedules for evaluating short term objectives (5/14).

¹⁵ This information was included in a draft report dated September 13, 1994. The final report was not available at the time of OSEP's visit.

the Full Compliance review and was also familiar with the Follow-up visit. The consultant confirmed that the corrective actions for the follow-up visit were similar to those required for the full compliance visit three years earlier. The corrective actions will not be verified until the next full compliance review.

Agency H Agency H, a ten district cooperative, was the subject of a follow-up review in September 1992. The purpose of the visit was to determine the level of implementation of the agency's December 1990 CAP and a March 1991 CAP submitted to address deficiencies identified by OSEP when it visited Agency H as a part of its last review of MDE. Although MDE reported progress in many areas, some continuing compliance issues were identified in the follow-up visit. Also, the deficiencies identified by OSEP had not been completely addressed.

For instance, in 12 of 38 cases, meetings to develop IEPs did not include all of the required participants. Some IEPs had deficient present level of performance statements and many annual goal statements were insufficient. In an interview with OSEP, the chairperson for MDE's follow-up visit confirmed that there were systemic patterns of noncompliance regarding the required contents of IEPs. In addition, 12 of 38 student records had insufficient LRE statements. MDE's follow-up report noted that 25 percent of children with disabilities within Agency H are placed out of district. This was particularly true for students with mental retardation, serious emotional disturbance and low incidence disabilities. MDE states in its report that Agency H needs to ensure that its component districts develop and utilize more placement options in home districts.

MDE's follow-up report requires that the CAP describe the specifics of the inservice and technical assistance that the agency will provide to address the continuing deficiencies. Also a self-evaluation component is included as a part of the CAP. MDE did not, however, identify and mandate technical assistance; nor did it mandate the use of CSPD monies as required in its procedures for addressing the existence of continuing deficiencies.

Other Agencies MDE had also found LRE deficiencies in follow-up visits to public agencies A and B. Even though all correctives actions were to have been implemented by the September 1994, OSEP found continuing deficiencies when it reviewed records and conducted interviews at those agencies.

FINDING/FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p>A. MDE is responsible for the adoption and use of effective methods to monitor public agencies responsible for carrying out special education programs. 20 U.S.C. §1232d(b)(3)(A). A State shall keep records to show its compliance with program requirements.</p>	<p>MDE must revise its method of determining compliance with the requirement that statements of transition services include "instruction, community experiences, and the development of employment and other post-school adult living objections."</p>	<p>MDE must demonstrate that its revised procedure is effective in identifying instances of noncompliance with this requirement.</p>		
	<p>MDE must determine why its method for ensuring that necessary related services, including counseling services, are provided is ineffective and submit revisions that will result in the identification and correction of future deficiencies.</p>			
	<p>MDE must demonstrate that it has an effective method for identifying and correcting deficiencies in all public agencies that provide special education in Minnesota, including all correctional facilities and Charter Schools that provide special education and related services to children and youth with disabilities.</p>			
<p>B. MDE is responsible for the adoption and use of proper methods for the correction of deficiencies in program operations that are identified through monitoring. 20 U.S.C. §1232d(b)(3)(E).</p>	<p>MDE must demonstrate that it has in place and has implemented procedures to ensure that all identified deficiencies are corrected in a timely manner. This must include a method to verify that public agencies have completed all corrective actions within the timelines specified by MDE. MDE must also demonstrate that it has developed and implemented an effective method for ensuring correction of previously identified deficiencies.</p>			

V. COMPLAINT MANAGEMENT

Within 60 calendars after a complaint is filed, each SEA shall investigate and resolve any complaint that a public agency has violated a requirement of Part B and issue a written decision to the complainant that addresses each allegation. The 60 day timeline may be extended only if exceptional circumstance exist with respect to a particular complaint. §§300.660 - 300.662.

Background In its June 14, 1991 final compliance report to MDE, OSEP found that MDE did not ensure that complaints were investigated and resolved within 60 days unless the timeline had been extended due to exceptional circumstances. In 12 of the 23 cases OSEP sampled, MDE had improperly exceeded the 60 day timeline. MDE was required in its corrective action plan to develop and implement procedures to address this deficiency. MDE diagnosed its system and identified internal steps that were contributing to its difficulty with meeting the 60 day time limit. The revised procedures MDE submitted to OSEP included a streamlined process for MDE's administration of complaints. These revised procedures were approved by OSEP in Fall 1991 and implemented by MDE during the 1991-92 school year.

During OSEP's 1994 presite process, a number of parents and advocates registered their concern that MDE was not resolving complaints in a timely manner. From the 1992-93 school year to the 1993-94 school year complaints increased significantly, from 75 to 100. At the same time, MDE's Office of Monitoring and Compliance (OMC) underwent significant personnel changes. OMC's manager left her position in Summer '92 and was replaced by a staff member administering in an acting capacity. Complaints, which had been the responsibility of at least two full-time staff during 1992-93, were largely the responsibility of one individual for most of the 1993-94 school year. This staff person also had responsibility for administering the due process hearing system as well as reviewing regular and special education expulsions.

FINDING: Table V-A shows that both the number of complaints MDE received, as well as the number it failed to resolve within 60 days, or within the extended timeline, increased between the 1992-93 and 1993-94 school years.¹⁶

¹⁶ MDE's complaint log for a school begins on July 1 and ends on June 30 of the following year.

TABLE V-A

School Year	No. of Complaints	Resolution Took Longer Than 60 Days
1992-93	75	24 ¹⁷
1993-94	100	58

As shown above in Table V-A, MDE did not resolve 58 of the 100 complaints, received during the 1993-94 school year, within 60 days except where the timeline was extended if an exceptional circumstance existed with respect to a particular case. In another 16 cases, MDE had extended the timeline (most extensions were approximately 50 days), and at the time of OSEP's visit, the extended date had not yet arrived. Table V-B shows, for the 58 that exceeded timelines, the number of days beyond the 60 day timeline, or MDE's extended timeline, that it took to resolve complaints for the 1993-94 school year.

TABLE V-B

No. of Cases Exceeding 60 Day Timeline 1993-94 School Year				
No. days beyond 60 day, or extended, timeline				
1-14 days	15-30 days	31-60 days	61-90 days	> 90 days
15	11	17	6	9

At the time of OSEP's visit, MDE provided OSEP with a current complaint log. This log included cases from the 1993-94 school year (ending June 30, 1994) that had not been resolved as well as cases received in July and August 1994. That log indicated that OMC had an active case load of 40 complaints and that for 28 of those the 60 day time line had already been exceeded. For 27 of these 28 cases, MDE had extended the due date for an additional 21 to 60 days.

In interviews with OSEP, the MDE staff person responsible for the Office of Compliance and Monitoring as well as the staff person chiefly responsible for resolving complaints stated that having only one person available to work on complaints was the primary contributing factor to the number of complaints not resolved

¹⁷ In seven cases of the 24 cases, MDE's complaint log shows that the 60 day timeline had been extended and new due dates determined. However, MDE exceeded the extended due date in each of these cases.

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within required timelines. In addition, it was noted that letters of findings had to be reviewed by the attorney general's office. Although, this process should take only three days, OSEP was told that it has typically taken from six to 14 days for the attorney general's office to review and approve complaint letters of findings.

FINDING/FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p>A. §300.660 (adoption of State complaint procedures)</p> <p>B. §300.661(a)(4) (Issue a written decision)</p>	<p>MDE must demonstrate that it has in place a complaint management system that results in the investigation and resolution of complaints within 60 days, unless an extraordinary circumstance exists with regard to a particular complaint.</p>	<p>1. MDE must demonstrate to OSEP that it has sufficient staff and resources to carry out this responsibility.</p> <p>2. MDE must issue quarterly reports to OSEP verifying that complaints are investigated and resolved within 60 days except where there has been an extraordinary circumstance.</p>		

APPENDIX A
Public Agency Key Reference

OSEP visited eight local educational agencies (LEAs) as part of its review of MDE's implementation of Part B. Where appropriate, OSEP has included in this Report data collected from those LEAs to support or clarify the OSEP findings regarding the sufficiency and effectiveness of MDE's systems for ensuring compliance with the requirements of Part B. The agency in which the supporting or clarifying data were collected is indicated by a designation such as "public agency A." The agencies that OSEP visited and the designation used to identify those agencies in this Report are set forth below:

Public agency A	:	Anoka Hennepin
Public agency B	:	St. Paul
Public agency C	:	Minneapolis
Public agency D	:	Duluth
Public agency E	:	Austin
Public agency F	:	Virginia
Public agency G	:	Rosemount-Apple Valley-Egan
Public agency H	:	Cloquet

APPENDIX B

OSEP's review process included the involvement of parents and advocacy groups. Information obtained from these sources assisted OSEP in selecting sites to visit, programs to review and issues upon which to focus. An analysis of the information provided by parents and advocates is presented on page v. In some instances findings of noncompliance with Part B were made as a result of investigations of the issues. These findings are included in the appropriate sections of this report. The purpose of this appendix is to discuss the issues that were raised but for which no findings of noncompliance were made.

SUSPENSIONS AND EXPULSIONS: OSEP reviewed the list of students with disabilities who had been suspended or expelled, and the amount of time of the suspension and expulsion in each public agency it visited. In addition, OSEP reviewed records of students who had been suspended and expelled. Teachers of those students were interviewed, as well as administrators of the programs. OSEP did find that many students with disabilities were being suspended. However, OSEP did not find instances where the practices regarding suspension and expulsion were inconsistent with Part B.

OVER-REPRESENTATION OF AFRICAN-AMERICANS IN EBD: In public agencies B and C, OSEP found that the percentage of African-American students with EBD was greater at the more restrictive points on the continuum (e.g., separate class and separate facility) than at other points. However, African-American students were well represented at all points in the continuum of educational environments, including the less restrictive environments. OSEP did not find that individual African-American students were placed inappropriately in more restrictive points of the continuum of educational placements.

OSEP reviewed data for each public agency it visited that included: the number of students, by ethnic group, in each category of disability, and in each educational environment (e.g., regular classroom with supplementary aids and services, resource room, separate class, etc.). OSEP reviewed the records of African-American students with EBD in the most restrictive educational settings, and interviewed their teachers, and the administrators.

DUE PROCESS HEARINGS: OSEP noted that the number of hearings in Minnesota had increased dramatically since OSEP's previous review. In 1990, there were six hearings requested and six decisions issued. Two of the six decisions were appealed to the State level. In contrast, during 1994 there had been 29 hearings requested with five decisions issued and 24 settled or withdrawn. Four of the five decisions were appealed to MDE.

In a conference call with a number of parents and advocates familiar with MDE's due process hearing procedures, OSEP was told that the hearing system was not operating effectively. The following major concerns emerged.

Parents and advocates who had been involved in due process hearings stated that the hearing officers did not seem well-versed in special education law and regulations. OSEP was told that MDE did not train the administrative law judges who hear all of MDE's due process cases. As a result, parents and advocates alleged that the hearings were not conducted properly and decisions were not always based on proper application of law and regulation. OSEP was also told that hearing decisions were never issued within the 45 time limit and that school districts' attorneys were discourteous to parents.

OSEP selected for review the case files of several parents who had spoken to OSEP about the due process hearing system. With regard to meeting the 45 day timeline, OSEP found, from reviewing these cases as well as MDE's hearing log, that the 45 day timeline had been exceeded. However, §300.512(c) allows that extensions of the 45 day timeline may be granted by a hearing officer at the request of either party. OSEP found evidence in the case files that requests by parties for extensions were granted by the hearing officer for reasons such as scheduling conflicts and the length of hearings. In one instance, a hearing officer's suggestion that parties be restricted to a limited amount of hearing time was rejected by attorneys for both parties.

Although not a violation, OSEP did note in one case it reviewed that it took 13 days and the written inquiries from a parent's attorney for MDE to appoint a hearing officer. In addition, the hearing date was not scheduled promptly.

OSEP also investigated the allegation that hearing officers are not trained and do not base their decisions on proper application of law and regulations. MDE told OSEP that it has trained its hearing officers and had scheduled a two-day training session for the week following OSEP's visit. In the case files that OSEP reviewed, OSEP noted that generally the hearing decisions were thorough and complete, and that appropriate Federal and State requirements and court and hearing precedents were cited and applied to the facts.

Part B does not address the personal conduct of parties to a hearing or their legal counsel. Although the hearing decisions made no reference to the behaviors of parties or their attorneys, OSEP did share the parents' and advocates' concern with MDE.