



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

September 29, 1995

Honorable Bob R. Etheridge  
Superintendent of Public Instruction  
State Department of Public Instruction  
301 North Wilmington Street  
Raleigh, North Carolina 27601-2825

Dear Mr. Etheridge:

During the week of May 1, 1995, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the North Carolina Department of Public Instruction's (NCDPI) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether NCDPI 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. A copy of our report, entitled "Office of Special Education Programs Monitoring Report: 1995 Review of the North Carolina Department of Public Instruction (Report)," is enclosed.

OSEP recognizes the various initiatives NCDPI has taken with regard to improving special education programs in North Carolina. For example, as a part of its corrective action plan required by OSEP's 1991 report, NCDPI undertook an extensive Statewide training effort and developed more detailed compliance monitoring standards regarding the development of individualized education programs (IEPs). The impact of NCDPI's and public agencies' intensive efforts to improve IEPs was evident to OSEP in the eight districts it visited during this review. In the Report, OSEP acknowledges other initiatives that NCDPI has taken to improve special education programs.

However, our monitoring revealed that problems exist with regard to the effectiveness of NCDPI's monitoring and complaint management procedures. In addition, we noted problems related to the provision of a free appropriate public education, least restrictive environment, transition services, due process and procedural safeguards and comprehensive system of personnel development.

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The preliminary findings of OSEP's on-site compliance team were discussed with Mr. E. Lowell Harris, Director of the Exceptional Children Support Team, and his staff at an exit conference held on May 5, 1995. At this time, NCDPI was invited to provide any additional information it wanted OSEP to consider during the development of findings for the compliance report. No further information was provided. Therefore, the findings included in this Report are final.

In a few instances this Report includes continuing findings that were first noted in the 1991 compliance report. For those findings, OSEP has specified the actions NCDPI must take to correct those deficiencies. To address the remaining findings, OSEP proposes that NCDPI and OSEP jointly develop a corrective action plan that includes the most effective methods for bringing about compliance and improving programs for children with disabilities in the State. Such a plan could be discussed and developed either in a meeting, or during a telephone conference. We also will invite a representative from North Carolina's Special Education Advisory Committee to participate in that discussion.

NCDPI's corrective action plan must be developed within 45 days of receipt of this Report. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

In the event NCDPI concludes, after consideration of the data in this Report, that evidence of noncompliance is significantly inaccurate and that one or more findings is insupportable, NCDPI may request reconsideration of the finding. In such a case, NCDPI 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 NCDPI that the finding has been appropriately revised or withdrawn. Requests for reconsideration of a finding will not delay corrective action plan development and implementation timelines for findings not part of the reconsideration request.

I thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Mr. Harris 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 NCDPI's various systems to implement Part B. I also want to thank Dr. Mardie Meany, Chief Consultant for Policy, Monitoring and Audit, for assisting 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 action plan. 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 North Carolina.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: Mr. E. Lowell Harris

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

**1995 REVIEW OF  
THE NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION'S  
IMPLEMENTATION OF PART B OF  
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

**SEPTEMBER 1995**

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## INTRODUCTION

**OSEP REVIEW PROCESS:** OSEP staff began its review of documents related to NCDPI's special education program in February 1995. During the week of February 20, OSEP met with Mr. E. Lowell Harris and NCDPI staff responsible for administering the State's special education programs in order to collect preliminary information about North Carolina's special education system and begin making arrangements for OSEP's on-site visit.

OSEP reviewed NCDPI's systems for ensuring that all education programs for children with disabilities for whom NCDPI is responsible comply with the requirements of Part B and EDGAR. During the week of May 1, OSEP conducted its on-site review of NCDPI. The team conducting the review was composed of Gregory Corr, Nell Eano, Judith Gregorian, Debra Sturdivant and Linda Whitsett. Gregory Corr, OSEP's compliance team leader, spent the week at NCDPI's office in Raleigh reviewing compliance documents and conducting interviews with NCDPI staff responsible for administering the State's special education program.

Members of OSEP's staff visited eight local educational agencies where they reviewed student records and interviewed LEA personnel 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 NCDPI's systems.

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.

In conducting this review, OSEP placed a strong emphasis on those requirements most closely associated with positive results for students with disabilities, and on the systems that NCDPI uses to meet its general supervision responsibility, including the provision of a free appropriate public education, education in the least restrictive environment, transition services for students with disabilities who are at least sixteen years of age (or younger if determined appropriate), and NCDPI's monitoring and complaint management procedures.

Information gathered by OSEP as part of its monitoring review demonstrates that NCDPI 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. 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 North Carolina. However, because NCDPI's systems for ensuring compliance have not been fully effective for the reasons cited in this Report, OSEP requires NCDPI to undertake certain corrective actions, including the corrective actions cited immediately below, to improve its systems for ensuring Statewide compliance with Part B.

### **CORRECTIVE ACTION REQUIRED**

- 1. NCDPI 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 NCDPI's memo, they must immediately discontinue the current practice and implement the correct procedure. This memorandum 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 NCDPI is responsible.**
- 2. NCDPI must issue a memorandum 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 NCDPI that the changes necessary to comply with Part B requirements have been implemented. NCDPI must send to OSEP verification that all corrective actions have been completed by these public agencies. This memorandum 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.**

**INVOLVEMENT OF PARENTS AND ADVOCATES:** The OSEP team conducted five meetings in North Carolina to give parents and other interested persons opportunities to provide information about North Carolina's special education programs. During the week of February 20, 1995, OSEP conducted public meetings in Asheville, Charlotte and Raleigh. In addition, OSEP participated in a meeting, convened by the Exceptional Children's Assistance Center in Davidson, with representatives of a number of parent and advocacy organizations in the State. OSEP also invited written public comment and received approximately 60 responses from individuals and organizations. On May 1, the first evening of the site visit, OSEP held a focus meeting with parents of youth with disabilities enrolled at public agency F in order to hear their impressions of special education services provided.

Although most commenters raised concerns about the program quality and compliance, it should be noted that positive comments were made about the provision of services by LEAs and about the responsiveness of NCDPI staff. 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. NCDPI does not effectively handle complaints or compliance monitoring.
2. When students with disabilities are long-term suspended, public agencies do not continue to provide services.
3. Transition services are not planned with community agencies/sites; there are no community-based training programs.
4. Appropriate extended school year services are not available.
5. There are shortages in related service personnel resulting in a failure to provide FAPE to some students. In particularly short supply are speech therapy, occupational therapy and physical therapy services.
6. In some public agencies, most if not all students with mental retardation are served in separate school facilities or in age-inappropriate settings.

OSEP carefully examined the issues raised by parents and advocates. OSEP made findings of noncompliance regarding some or all aspects of each of the issues raised above. These findings can be found in the appropriate sections in this Report.

**DESCRIPTION OF NCDPI's SPECIAL EDUCATION SYSTEM:** North Carolina's Part B child count is 139,560 (December 1, 1994), generating \$58,238,977 in Part B funds for appropriation year 1996. There are 100 county and 19 city school districts in the State that submit annual applications for Part B funds to NCDPI.

NCDPI's Exceptional Children Support Team (ECST) is composed of a Director and 21 professional staff. The four sections within the ECST are the (1) Policy, Monitoring and Audit Section, (2) Areas of Exceptionality Section, (3) Special Programs Section, and (4) Willie M. Section.

The Policy, Monitoring and Audit Section is responsible for complaint management and due process as well as the functions described in its title. The Areas of Exceptionality Section provides technical assistance and training. The Special Programs Section is responsible for the Comprehensive System of Personnel Development (CSPD), local educational agency (LEA) applications, and State operated and State supported programs. The Willie M. Section is responsible for implementation of the Willie M. settlement, regarding students with behavioral problems.

**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 the focus of this Report is the specification of the areas in which NCDPI's systems have not been fully effective in ensuring compliance with those requirements.



However, OSEP acknowledges NCDPI for undertaking the following initiatives:

1. NCDPI has undertaken major technical assistance and staff development activities to address compliance issues and effect program improvement. In its 1991 report to NCDPI, OSEP noted that many IEPs it reviewed did not meet Part B requirements. Over the last two years, NCDPI visited all 119 LEAs and trained over two thousand teachers and administrators using a "training the trainer" model. In addition, it has developed an IEP manual that it makes available to all districts. When OSEP reviewed IEPs during its 1995 visit, it found no IEP deficiencies in areas that previously had been out of compliance.

NCDPI provides technical assistance in the area of assistive technology to 34 LEAs, reaching 327 teachers and administrators. Staff development has been provided to 68 participants in five districts. NCDPI also produced a video tape which introduces the concept of assistive technology and demonstrates how it can be used in school settings.

Additional significant technical assistance activities have also been undertaken with regard to postsecondary transition and LRE. These are briefly described in Sections I and II of this Report.

2. NCDPI staff told OSEP that it places a high value on ensuring that its compliance and program staff are accessible to LEA personnel to provide informal technical assistance, guidance and advice. In the nineteen month period prior to OSEP's visit, NCDPI staff returned 14,000 telephone calls from LEA staff.

3. NCDPI produces numerous publications for parents and professionals on a variety of special education topics. Topics addressed include serious emotional disturbance, effective instruction for students with deaf-blindness, adaptive physical education, guidelines for occupational therapy, visual impairments, vision screening, speech language guidelines, specific learning disabilities and IEPs.

4. Summer Institutes are offered each year in a number of areas. During the summers of 1993 and 1994, over 2,000 teachers enrolled in institutes on visual impairments, hearing impairments, speech and language impairments, serious emotional disturbance, multiple disabilities, severe and profound disabilities/deaf blindness, arts for the disabled, assistive technology, safe schools and inclusion.

## **I. TRANSITION SERVICES**

**NCDPI 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.

### **NORTH CAROLINA'S TRANSITION SERVICES**

North Carolina has implemented several initiatives to improve transition services for students with disabilities. In 1992, NCDPI and the North Carolina Division of Vocational Rehabilitation Services, Department of Human Resources, 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. During the first year of the grant, NCDPI provided Statewide training for all local educational agencies. The next year follow-up training was provided upon request. Approximately 2,500 personnel have been trained through these efforts. Also, NCDPI established four transition pilot sites. Subsequent to implementing their own programs, LEAs must provide training to other districts. Also, NCDPI has contracted with the Exceptional Children's Assistance Center to provide training to parents to help them become more effective in the development and implementation of transition programs for their children.

Other initiatives include the funding of Special Populations Vocational Coordinators in about 300 schools and training for regular vocational education teachers in modification of curriculum for special populations.

### **OSEP'S MONITORING PROCEDURES FOR TRANSITION SERVICES**

In five of the eight public agencies it visited (C, D, E, F and H), OSEP focused on secondary education programs. The secondary programs included three high schools and two separate schools. OSEP reviewed the IEPs of 27 students who were 16 or older, 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 NCDPI 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 the determination was made ('300.346(b)(2)).<sup>1</sup>

A review of the records of the 27 students aged 16 or older indicated that in some cases, the statements of needed transition services did not include each of the three areas required by '300.18(b)(2)(i) through (b)(2)(iii). 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.

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<sup>1</sup> 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.

**TABLE I-A**  
**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	Included all 3 Areas	Included only 2 Areas	Included only 1 Area	Included No Areas
C	2	2	0	0	0
D	6	3	2	1	0
E	6	1	0	5	0
F	6	0	3	3	0
H	7	5	0	1	1
<b>TOTAL</b>	<b>27</b>	<b>11</b>	<b>5</b>	<b>10</b>	<b>1</b>

**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 four of the five public agencies with secondary programs visited by OSEP, OSEP found that public agencies did not determine, on an individual basis, whether representatives of other agencies likely to provide or pay for transition services should be invited to IEP meetings.

At public agency D, OSEP interviewed two teachers whose students' records it had reviewed and a coordinating teacher who attends school-based committee meetings. One teacher said that no individual determinations were made about the appropriateness of inviting representatives of other agencies and that, in her experience, such representatives were never invited to attend IEP meetings where statements of transition services were developed. A second teacher stated that in some cases, representatives of a sheltered workshop and representatives of the vocational rehabilitation agency had been involved in IEP meetings, but usually not until the student had turned 18. The teacher reported that no individual determinations were made for students under the age of 18. A coordinating teacher who attends school-based committees added that, unless social services or correctional agencies are involved, individual determinations are not made regarding the appropriateness of inviting representatives of other agencies to IEP meetings.

At public agency E, two teachers and the special education director told OSEP that the public agency did not individually determine whether representatives of other public agencies should be invited to IEP meeting. Even though a representative of the vocational rehabilitation agency that could pay or provide transition services worked in the school building, this person was not invited to attend IEP meetings and participate in the development of transition statements.

Two teachers and the special education director at public agency F told OSEP that, at about age 18, students are referred to the vocational rehabilitation agency, but that there was no attempt made, on an individual basis beginning when a student turns 16, to invite to IEP meetings representatives of other agencies responsible for providing or paying for the provision of transition services.

At public agency H, a teacher told OSEP that representatives of the vocational rehabilitation agency are invited to IEP meetings for seniors who will be exiting the program but that for students 16 years and older who were not yet seniors, no determinations were made regarding the appropriateness of inviting representatives of other representatives. Public agency H's special education director confirmed this information.

### **3. Notice Requirements**

Part B requires that if the purpose of the IEP meeting includes the consideration of transition services for the student, the notice must indicate this purpose and state that the agency will invite the student ('300.345(b)(2)(i-ii)).

#### Notices did not indicate purpose of IEP meeting

OSEP found that in most instances the notices used by public agencies D, E, F and H to inform parents of IEP meetings 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. Table I-B, below, shows the number of IEP notices not including transition as a purpose of the meeting, as compared to the total number of notices reviewed.

#### Notices did not indicate that students were invited

OSEP found that in some cases, public agencies' notices used to inform parents of IEP meetings did not indicate that students were invited to IEP meetings in which transition statements were to be developed.

At public agency E, OSEP reviewed six records and found that the IEP meeting notices did not indicate that the student would be invited to participate in the meeting. The special education director confirmed that because it was not the agency's practice to invite students, aged 16 and

older, to IEP meetings, notices did not include this information.

Public agencies F and H did not consistently ensure that IEP notices indicated that students, aged sixteen or older, would be invited to attend IEP meetings. At public agency F, four of six records OSEP reviewed did not meet this requirement, and at public agency H, three of seven records did not meet this requirement. OSEP was told that by these students' teachers that although students were verbally invited, the notice did not consistently indicate that students would be invited to IEP meetings where the consideration of transition services was to be discussed.

**TABLE I-B**

**Number of IEP Notices Not Including Transition  
as Purpose of Meeting or That Student Would Be Invited,  
Compared to Total Number of Notices Reviewed**

Information Not Indicated in Notice	Public Agency					TOTAL
	C	D	E	F	H	
Purpose	$\frac{0}{2}$	$\frac{6}{6}$	$\frac{6}{6}$	$\frac{4}{6}$	$\frac{7}{7}$	$\frac{23}{27}$
Student Invited	$\frac{0}{2}$	$\frac{0}{6}$	$\frac{6}{6}$	$\frac{4}{6}$	$\frac{3}{7}$	$\frac{13}{27}$

FINDING/ FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<b>Transition</b>  <b>1. Statement of needed transition services - required IEP content ['300.18, 300.346(b)]</b>	<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>			
<b>2. Meeting participants ['300.344(c)(ii)]</b>	<p>If the purpose of the IEP meeting is consideration of transition services, the public agency must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.</p>			
<b>3. Content of notice ['300.345(b)(2)(i- ii)]</b>	<p>The notice of IEP meetings to consider the provision of transition services must indicate that: (1) such consideration is a purpose of the meeting; and (2) the student will be invited.</p>			

## **II. PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT**

**NCDPI 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 NCDPI.**

Background In its 1991 monitoring report to NCDPI, OSEP made significant findings with regard to LRE requirements. For instance, State procedures limited placement options for certain categories of disability. The only placement options for students identified as "trainable mentally handicapped," "severely/profoundly handicapped," "autistic" and "multihandicapped" were separate classes or separate facilities.<sup>2</sup> When OSEP collected data in LEAs, it found that, in some cases, the placement practices of those districts reflected the deficient State procedures. Additionally, OSEP found that removal from the regular educational environment was often based on the category of disability, level of functioning, availability of space and the willingness of local school staff to accept some children with disabilities in less restrictive settings.

During OSEP's 1995 visit, NCDPI staff stated that inclusion in the regular education environment has been a major emphasis of its technical assistance and staff development efforts. Technical assistance was provided to all 119 LEAs involving 2,005 participants. Beginning in July 1994, staff development activities were also conducted in every district and involved 4,657 teachers and administrators. In addition, NCDPI purchased three texts on inclusion for each of the 119 LEAs to use as references.

Placement trends in North Carolina show an increase in the number of students educated in the regular classroom over a three school year period, 1990-91 to 1992-93.<sup>3</sup> A corresponding decrease in the use of resource placements is noted over this same period. However, placements in separate classes and separate facilities showed very little change: placement in separate classes increased slightly while placements in separate facilities decreased only slightly during this time period.

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<sup>2</sup> As a part of its corrective action plan, NCDPI was required to amend those procedures that limited placement options for particular categories of students with disabilities.

<sup>3</sup> The 1992-93 school year is the most recent school year for which OSEP has verified placement data available by State.



**TABLE II**  
**Placement Trends in North Carolina by Percent**

	1990-91	1991-92	1992-93
Regular class	51.57	54.17	55.49
Resource room	28.17	25.69	24.08
Separate class	16.57	16.84	17.17
Separate school <sup>4</sup>	3.36	3.02	2.86

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<sup>4</sup> 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."

## **FINDINGS:**

### **A. [300.550(b), 300.551, and 300.552(a)(2)]**

OSEP found that NCDPI did not fully meet its responsibility in all of the public agencies visited by OSEP to ensure that the requirements of 300.550(b), 300.551, 300.552(a)(2), and 300.552(b) are met.<sup>5</sup> NCDPI did not ensure that:

- to the maximum extent appropriate, students with disabilities are educated with students who are not disabled;
- the decision to remove students with disabilities from the regular education classroom is based on a determination that, due to the nature or extent of the disability, the student's education cannot not be achieved satisfactorily, even with the use of supplementary aids and services;
- a continuum of alternative placements is available to meet the needs of students with disabilities; and
- the placement decision is based on each student's IEP.

These findings are based upon the review of placement data provided by all of the public agencies, the review of student records, and interviews with responsible administrators and teachers who participated in meetings in which placement decisions were made.

The placement data provided to OSEP by the public agencies showed that for students identified as trainable mentally handicapped (TMH) and severe and profoundly handicapped (SPH), only the more restrictive options on the continuum of alternative placements are available. In interviews with OSEP, teachers and administrators confirmed that these students are placed only in separate school programs or separate classes in regular education buildings other than the schools they would attend if not disabled. In most cases, these placements were not based on IEPs, but rather on the basis of a student's disability label, availability of services, or the parent's preference.

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<sup>5</sup> NCDPI's monitoring procedures for identifying and/or correcting deficiencies regarding LRE requirements had not been effective in some or all of each of the agencies identified in the findings. However, beginning with the 1994-95 school year, NCDPI began the use of procedures that resulted in an increased capacity to identify LRE deficiencies (see Section IV).

OSEP also was told that students with moderate to severe disabilities are removed from regular classrooms in their neighborhood schools to more restrictive settings (i.e., separate classes or separate facilities) without first considering whether the student could be educated satisfactorily in the regular classroom with the provision of supplementary aids and services. Although the provision of special education instruction in regular education classes (i.e., special education instruction pursuant to an IEP, without removal to a special education setting) is considered for students with mild disabilities (such as students with learning disabilities), this option is not considered for students with moderate to significant disabilities.

It was confirmed by administrators and teachers interviewed in all of the public agencies visited that there are no attempts made to modify the instruction or curriculum provided in regular education classes to accommodate students with moderate to severe disabilities. The reasons given for not considering or providing integration opportunities for these students on an individual basis were: (1) assistants are not available for these students to participate in regular education classes; (2) a lack of necessary training for both regular and special education teachers; and (3) conflicts between the regular class schedule and special education services schedule. It was also reported that parents were reluctant to have their children placed in regular education classes because the services and supports these students needed were available only in separate classrooms and separate facilities. Because it is the practice of these public agencies to provide services to these students only in separate classrooms and separate schools, other than the school that the student would attend if nondisabled, individual consideration is not given to whether the IEP can be implemented in a less restrictive setting.

For instance, in public agencies E and C, most students labeled TMH were placed in separate facilities. Administrators in public agency E stated that although about 30 students labeled TMH had been moved to separate classes in regular education buildings, the remainder were still placed in separate school programs because the vocational programming and functional curriculum these students needed were not provided in less restrictive settings. Also cited as reasons for separate school placements were the students' poor social skills. OSEP was told that parents preferred these separate schools because of the availability of services, including an "after-care" program provided after the regular school day, were made available only in these facilities. Administrators in public agency C clarified that all but two of its students labeled TMH were placed in a separate school program which exclusively serves students with disabilities, kindergarten through grade 12. The administrators explained to OSEP that no consideration is given to implementing the student's IEP in less restrictive settings because the functional curriculum these students need is only available in the separate school program.

Although public agency H had begun to provide for integration of students labeled TMH in regular education activities, the opportunities were limited and dependent on the volunteer efforts of regular program students who assist students labeled TMH in regular education settings. Administrators and teachers in public agency H told OSEP that in a regular high school, a teacher organized a club in which 20 nondisabled students have volunteered to work one-on-one with students labeled TMH to facilitate their participation in selected regular education activities. In an interview with OSEP, one public agency H teacher stated that through this "buddy system," nondisabled club members could provide assistance to students labeled TMH in regular education classes and activities. Other than through the club, there are no opportunities for these students to participate in regular education classes.

**B. [300.552(a)(1)]**

OSEP found that NCDPI did not fully meet its responsibility to ensure that public agencies determine placements at least annually as required by 300.552(a)(1).

Administrators and teachers in public agencies C, D, F and H reported to OSEP that educational placement decisions for students with disabilities were not determined at least annually. An administrator and two teachers in public agency C informed OSEP that placement determinations are reviewed after the triennial reevaluation unless the child's parents want a program change prior to the reevaluation. An administrator and one teacher from public agency D stated that placements for students with disabilities are determined at the time of initial placement into the special education program and thereafter at three-year intervals coinciding with the time of the student's reevaluation, unless special circumstances arise indicating that a change may be needed. Teachers from public agencies F and H told OSEP that the IEP team does not reconsider the student's placement until the student is ready for a higher functioning program, or the student "ages out" to the next level.

### C. ['300.553]

OSEP found that NCDPI did not fully meet its responsibility to ensure that all of the public agencies visited by OSEP made individual determinations of the maximum extent to which it was appropriate, for each child with a disability to participate with children who do not have disabilities in nonacademic and extracurricular services and activities as required by '300.553. Administrators from public agencies B, C, D, E, G and H reported that there are no opportunities for students with disabilities who are served in separate schools to participate with nondisabled students in nonacademic and extracurricular activities. It was further explained to OSEP by administrators and teachers from public agencies A, D, F, G and H that TMH, SPH and MH students placed in separate classrooms in regular education buildings were provided little opportunity for integration in nonacademic and extracurricular activities. Usually such opportunities occur only at lunch; however, in public agency F, lunch for these students was provided separately from students who do not have disabilities. Public agency D administrators and teachers reported to OSEP that although integration opportunities in art and music classes had been provided for students labeled TMH in previous years, that this year it had been discontinued due to scheduling conflicts.

<b>FINDING/ FEDERAL REQUIREMENT</b>	<b>EXPECTED OUTCOME/ACTION REQUIRED</b>	<b>ACTIVITIES TO MEET OUTCOME REQUIREMENT</b>	<b>RESOURCES</b>	<b>TIMELINE FOR SUBMISSION</b>
<p><b>A. Removal from the Regular Education Environment and Continuum of Alternative Placements to Implement IEP [300.550(b) and 300.551.</b></p>	<p>To the maximum extent appropriate, students with disabilities, are educated with nondisabled students;</p> <p>The decision to remove students with disabilities from the regular education classroom is based on an individual determination that the nature and severity of the student's disability is such that education in the regular classroom, even with the use of supplementary aids and services, could not be achieved satisfactorily; and</p> <p>A continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.</p>	<p>NCDPI must develop specific procedures which will result in full implementation of the LRE requirements. The procedures must include a method to verify that the implementation of LRE requirements has resulted in placement patterns that reflect an increase in the use of less restrictive placements, particularly for those students in disability categories currently placed predominantly in separate classes and separate facilities.</p>		

<p><b>B. Placement determined annually and based on IEP [300.552(a)(1) and (2)]</b></p>	<p>The placement decision is determined at least annually; and based on the student's IEP.</p>			
<p><b>C. Nonacademic and Extracurricular Activities with Nondisabled Peers [300.553]</b></p>	<p>There must be consideration of the maximum extent to which students with disabilities can participate in extra-curricular or nonacademic programs and activities 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**

**NCDPI 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).**

#### **Previous Finding**

When OSEP monitored NCDPI in 1990, it found that NCDPI did not meet its general responsibility under '300.300 to ensure that each child with a disability: (1) received related services necessary to benefit from special education; and (2) were provided with a school day that is commensurate in length to that provided for students who do not have disabilities, unless the IEP specifies the need for a shortened school day.

**FINDING:** Based on the facts provided below, OSEP finds that NCDPI 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 and is provided with a free appropriate public education even during periods of long-term suspension or expulsion. "300.300 and 300.16(a).

#### **(1) Related Services Not Provided**

Teachers and administrators from public agencies F and H told OSEP that, due to a shortage of service providers, some students were not receiving the related services specified on IEPs and needed to benefit from special education.

**Public agency F** - The special education director of public agency F told OSEP that 14 students in the public agency were not receiving occupational therapy (OT), as specified on their IEPs, that they needed to benefit from special education. The public agency has only one occupational therapist on staff and provides some additional services on a contractual basis. The director explained that he had advertised nationally but had been unsuccessful in hiring additional therapists. He attributed part of the problem with hiring more therapists to the "low State salary scale." In addition, 13 students were not receiving necessary speech services included in their IEPs because of staff shortages. The director said that public agency F has found it increasingly difficult to find and retain speech and language therapists because of low salaries. Formerly, the public agency had been able to meet its need for service with its own staff. Now approximately half of the speech services provided by the public agency are delivered on a contractual basis. Teachers interviewed by OSEP added that IEP teams determined the amount of speech services their students received based on the availability of the therapists' services, not on the needs of the students. One teacher stated that students who receive speech only once every two weeks need more service, but that IEP teams were unable to specify the needed amount of services on IEP because of shortages.



Another teacher stated that two students were not receiving consultative services from a visual impairment (VI) teacher, despite the fact that the need for that service was included in their IEPs. The principal confirmed that, to his knowledge, the services of a VI teacher had not been made available to students in his school whose IEPs specified those services.

**Public Agency H** - The special education director of public agency H reported to OSEP that in that public agency, there were seven students not receiving OT services and five students not receiving physical therapy (PT) services specified in their IEPs. The public agency had personnel vacancies in the following areas:

OT	- 2 full-time employees (FTEs)
PT	- 3.5 FTEs
Audiologists	- 1 FTE

In addition, the principal at the elementary school visited by OSEP stated that students who needed counseling as a related service did not have this service specified in their IEPs because the agency did not make counseling available. Instead, the students were referred to the community mental health agency, and parents were expected to take their children to their counseling appointments. However, in some cases, students were not receiving counseling services because parents were not taking their children to the counseling appointments.<sup>6</sup>

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<sup>6</sup> 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 included on IEPs and provided at no cost to the parent or child. The LEA cannot transfer to the parent responsibility for locating or funding such services. In those instances where the parent cannot or will not take the child to receive counseling services from another service provider, it remains the responsibility of the public agency to ensure that the student receives the counseling services determined necessary to benefit from special education.

## **(2) Continuation of Services for Students Long-Term Suspended or Expelled**

Background Through a November 30, 1994 letter from the North Carolina Governor's Advisory Council for Persons with Disabilities, OSEP learned that some public agencies in the State incorrectly understood that they had no obligation to continue the provision of services to a student with a disability who has been suspended long-term or expelled for misconduct not related to a student's disability. In a January 6, 1995 letter, OSEP informed NCDPI that it is the Department's policy that, under the FAPE requirements of Part B, at 20 U.S.C. '1412(1)-(2), all States receiving funds under Part B must continue to provide educational services to students with disabilities during periods of long-term suspension or expulsion from school for misconduct that is determined to be unrelated to their disability. In an April 20, 1995 letter, NCDPI informed OSEP that the State Board of Education had approved an amendment to its 1996-98 State plan that would, as of July 1, 1995, revise Section .1523 Disciplinary Procedures of Procedures Governing Programs and Services for Children with Special Needs to conform to the requirements of Part B. It also stated that a memorandum of notification of the Board's action would be sent to all local superintendents within a month.<sup>7</sup>

**FINDING:** Special education directors from public agencies A, C and H, informed OSEP that they did not ensure that services continued to be provided to students with disabilities during periods of long-term suspension or expulsion from school. At public agency H, parents are notified that if they want their child to receive services during a long-term suspension, they should contact the school system. Otherwise, no services are provided. At public agencies A and C, the special education directors said that they would be changing their policies, effective for the next school year, but that the current policy was to suspend without services when a determination was reached that there was no relationship between the misconduct and the disability.

NCDPI has no method of monitoring to ensure that students who are properly suspended long-term or expelled, continue to receive FAPE (see page 21).

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<sup>7</sup> OSEP recently obtained a copy of this memorandum, which was sent to all LEA superintendents in North Carolina on May 26, 1995.

FINDING/ FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p><b>NCDPI 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).</b></p>	<p>Where the provision of related 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. Where the public agency is experiencing personnel shortages, other methods, such as contracting for services with private providers, must be used to ensure the delivery of FAPE.</p>			
	<p>Public agencies continue to make FAPE available to students who have been properly suspended long-term or expelled.</p>			

#### **IV. STATE EDUCATIONAL AGENCY MONITORING**

**NCDPI 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 State shall keep records to show its compliance with program requirements. '76.731.**

Background In its 1991 monitoring report to NCDPI, OSEP found that NCDPI had no, or incomplete, methods for determining compliance with certain Federal requirements. NCDPI subsequently revised its monitoring procedures which were approved by OSEP in 1992. NCDPI monitors every district and State operated or State supported program during a five-year cycle. The minimum length of a visit is a day and a half for small districts, while visits to larger districts can take a week or more.

NCDPI's procedures for its Program Compliance Audit (PCA) include the following steps:

**1. Desk top audit** - Each LEA is required to compile compliance information for a desk top audit which occurs one month prior to the on-site visit. The desk top audit is used to collect information in the following nine areas: child identification; right to education; nondiscriminatory testing; LRE; pupil-teacher ratios; procedural safeguards; personnel certification and qualifications; CSPD; and facilities. The LEA special education director is invited to the NCDPI offices in Raleigh to discuss information in the desk top audit and in the PCA Notebook.

**2. On-site visit** - One of three NCDPI monitoring staff leads all visits and are assigned on the basis of technical assistance regions.<sup>8</sup> The teams are composed of volunteer members from districts other than the one being monitored. The volunteer teams may include LEA directors, principals, and teachers and vary in size from three to 15 members. Training consists of a closed one-hour session at the beginning of the on-site visit. At the training session monitoring team leaders review the agenda and monitoring procedures.

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<sup>8</sup> There are six technical assistance regions in the State. Each NCDPI monitor is assigned to two and is thereby made responsible for leading PCAs for all LEAs in those two regions.

The on-site visit begins with the Program Administrator Interview. Other LEA staff may attend this session at the discretion of the program administrator. The interview covers a number of topics including the availability of services, nondiscriminatory testing, IEP meetings, confidentiality, and due process procedures.

Student records from every disability category are reviewed following the Program Administrator Interview. Compliance/noncompliance determinations are made across at least five major areas including confidentiality, referral, evaluation/reevaluation, placement/change in placement and IEP. In addition, a fiscal review or "headcount audit" has been included in NCDPI's Program Compliance Review. Previously, this activity was not the responsibility of ECST, but was conducted as an independent activity by the fiscal office of NCDPI. LEAs must return funds to NCDPI when it is determined, on the basis of the file review, that: (1) the IEP was not in effect on the headcount date; (2) there was no documentation of consent for placement; or (3) there was no documentation of placement committee signatures for initial placement or reevaluation. Also, the district is required to submit a fiscal corrective action plan when there are missing evaluation components, or when the reevaluation has exceeded the three year timeline. Failure to carry out a fiscal corrective action plan within the stipulated timelines will result in the return of funds for those records out of compliance.

NCDPI's monitoring procedures had not been fully effective in identifying all public agency deficiencies. This is especially evident for those public agencies visited during the 1991-92 school year, since NCDPI had not yet completed the revision of its monitoring procedures required by OSEP's August 1991 report. OSEP noted, and NCDPI monitoring staff agreed, that since the 1991-92 school year, NCDPI procedures had become increasingly more rigorous, resulting in an increased capacity to identify significant deficiencies.

During its May 1995 review of NCDPI, OSEP found deficiencies regarding least restrictive environment requirements that were not identified by NCDPI in its reports to public agencies A, C, D and F. The public agencies had last been monitored by NCDPI during the 1991-92 school year. At the time those agencies were monitored, NCDPI determined compliance with LRE requirements by reviewing student IEPs to ensure that the consideration of more than one option was documented and that a rationale for the placement was included, but generally made no judgments concerning the criteria used for removing the student from the regular class environment. NCDPI also reviewed the agency's policies and procedures, examined its continuum of services listed and interviewed the agency's special education director about placement procedures and the types of nonacademic and extracurricular activities that were available within the agency. No specific determinations were made with regard to particular students or to students within any specific category of disability. NCDPI monitoring staff told OSEP that these monitoring strategies seldom resulted in findings of deficiency.

NCDPI monitoring staff told OSEP that, beginning with the 1994-95 school year, it began applying a "tougher standard" to public agencies and selectively using more in-depth procedures to determine compliance with LRE requirements. At public agencies E and G, NCDPI found extensive LRE violations using these new procedures. For example, NCDPI examined placement justification statements for students served in the public agency's two separate schools and determined that the statements did not provide a sufficient rationale for removing these students from the regular education environment. NCDPI noted that none of these students had access to any regular education program or to nonacademic or extracurricular activities with students who did not have disabilities. In addition, NCDPI wrote that many students placed in the separate schools could be appropriately served in regular schools with the use of supplementary aids and services.

In public agency G, NCDPI expanded the structure of its monitoring visit to more thoroughly examine on-going issues in that school system. For instance, the monitoring team, which typically would include volunteer members, was composed exclusively of NCDPI staff. In this visit, NCDPI piloted the use of structured interviews with special education teachers, representing each grade level and disability category and also interviewed school principals. In addition, interviews with randomly-selected parents were included. These procedures resulted in findings that many students in public agency G were placed in inappropriately restrictive educational settings. This deficiency was confirmed by OSEP when it visited several months later. NCDPI told OSEP that it is considering incorporating the new interview and data collection procedures used during this visit into its standard monitoring procedures for the 1995-96 school year.

The table below shows the findings that OSEP identified in public agencies as compared to findings that NCDPI identified in its most recent reports to those same public agencies.<sup>9</sup> This table illustrates the increased effectiveness of NCDPI's new monitoring procedures used in more recent visits.<sup>10</sup>

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<sup>9</sup> On some requirements, OSEP identified the same deficiencies as NCDPI had identified in public agencies E and G. NCDPI had visited both agencies during the 1994-95 school year and, consequently, the public agencies had not had sufficient time to complete corrective actions. Therefore, in these cases, OSEP makes no judgment regarding the effectiveness of NCDPI's procedures to ensure that public agencies correct identified deficiencies.

<sup>10</sup> For instance, during the 1991-92 school year when public agency C was monitored by NCDPI, NCDPI had no procedure for determining whether extended school year services were made available, as a necessary component of FAPE. When OSEP visited this agency in 1995, it identified continuing deficiencies with regard to this requirement. This is not included as a finding in the Report, because OSEP does not consider this single instance to demonstrate systemic noncompliance. When NCDPI revised its procedures as a part of its corrective action process, it developed an effective method for determining deficiencies, as evidenced by the finding it made at public agency G during the 1994-95 school year.

**TABLE IV**  
**Deficiencies Identified by NCDPI and by OSEP**

FEDERAL REQUIREMENT	PUBLIC AGENCY AND DATE OF NCDPI VISIT							
	A 4/92	B 11/92	C 3/92	D 1/92	E 9/94	F 10/91	G 1/95	H 3/93
<b>Transition statement</b> '300.346(b)(2)	NA	NA		X	O	X	NA	X
<b>Student invited</b> '300.344(c)(1)(i)	NA	NA			O	X	NA	X
<b>Representatives of other agencies invited</b> '300.344(c)(1)(ii)	NA	NA		X	O	X	NA	X
<b>IEP notice: transition as purpose</b> '300.345(b)(2)	NA	NA		X	X	X	NA	X
<b>LRE: removal, continuum, based on IEP</b> "300.550(b)(2), 300.552(a)(1-2) 300.552(b-c)	X	X	X	X	O	X	O	X
<b>Placement determined annually</b> '300.552(a)(1)			X	X		X		X
<b>Nonacademics and extracurricular</b> '300.553	X		X		O	X	O	X



FEDERAL REQUIREMENT	PUBLIC AGENCY AND DATE OF NCDPI VISIT							
	A 4/92	B 11/92	C 3/92	D 1/92	E 9/94	F 10/91	G 1/95	H 3/93
<b>FAPE: delivery or availability of services</b> '300.300						X		X
<b>FAPE: continuation of services during long-term suspension</b> '300.300	X		X					X
<b>FAPE: ESY</b> '300.300			X				O	
<b>Content of notice (placement)</b> '300.505(a)(2)	X	X	X	X	X	X	X	X
<p><b>KEY: "X"</b> = OSEP identified a deficiency not included by NCDPI in its reports.  <b>"O"</b> = OSEP found the same deficiency as NCDPI.  <b>"NA"</b> = OSEP did not review the files of students for whom consideration of transition services was a requirement, and therefore could not determine as to the public agency's compliance with regard to transition requirements.</p>								

## **FINDING:**

### **No method for determining deficiencies**

**'300.300 [continuation of services during long-term suspension or expulsion]** NCDPI monitored only to determine that once a suspension or expulsion reached ten days, a multidisciplinary team reviewed completed evaluations for a child with a disability and conducted any additional evaluations, if necessary, to determine whether the behavior was caused by the child's disability. NCDPI has no method to determine whether services continue to be provided to students who are properly suspended long-term or expelled.

**'300.345(b)(2)(i) [IEP notice: transition as purpose]** NCDPI has a monitoring procedure to determine whether parental notification of IEP meetings indicates the purpose of the meeting, as required by '300.345(a)(1). However, NCDPI does not have a method to ensure that, in those instances where the meeting is to include the consideration of transition services for a student, the notice indicates consideration of transition as a purpose, as required by '300.345(b)(2)(i). As noted in Section I, OSEP found numerous instances where public agencies did not meet the notification requirements of '300.345(b)(2)(i) (see page 4). These deficiencies had not been identified by NCDPI in its most recent reports to those agencies.

### **Incomplete or ineffective methods for determining compliance**

**'300.505(a)(2) [content of notice]** In order to determine whether the public agency provides prior written notice for placement that includes all the required content, NCDPI reviews the IEP form which, in North Carolina, serves as that notice. If this section of the IEP form is completed, NCDPI determines that the content of prior notice requirement has been met.

Although the State-developed form requires that a reason be provided for the placement option selected, it does not specifically direct the IEP team to provide reasons why other options considered were rejected. Therefore, this monitoring method did not result in the identification of deficiencies with the content of prior notice requirement for initial placements or changes in placements.

**'300.300 [provision of services]** NCDPI's method of determining whether students with disabilities are receiving all the services they need in order to receive FAPE is to interview the program administrator (special education director) about provision of services. It also reviews contracts for services with private providers and examines the agency's use of funds. NCDPI has no method to verify that services are delivered as specified on the IEP. Similarly, it has no method to determine whether the IEP reflects all the services a child may need to receive FAPE and that services indicated in IEPs are not limited or omitted due to service provision shortages. When OSEP reviewed records and interviewed program administrators, teachers and related service providers, it found deficiencies with regard to the provision of services that NCDPI, using its monitoring method, did not find.

FINDING/ FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p><b>NCDPI 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.</b></p>	<p>Through its monitoring system, NCDPI will be able to identify deficiencies with Part B requirements, including those requirements described in Section IV of this Report.</p>			

## **V. COMPLAINT MANAGEMENT AND DUE PROCESS AND PROCEDURAL SAFEGUARDS**

- A. Within 60 calendars days 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.**

Previous Finding In its August 12, 1991 final compliance report to NCDPI, OSEP found that NCDPI did not ensure that all complaints were investigated and resolved within 60 days unless the timeline had been extended due to exceptional circumstances. In 3 of the 12 cases OSEP sampled, NCDPI had improperly exceeded the 60 day timeline. NCDPI was required in its corrective action plan to develop and implement procedures to address this deficiency.

**FINDING:** NCDPI did not ensure that all complaints were investigated and resolved within 60 days, unless the timeline had been extended due to exceptional circumstances that existed with respect to particular complaints. To determine NCDPI's current status with regard to complaint management, OSEP reviewed complaint logs for 1992-93, 1993-94 and for the current school year.<sup>11</sup> OSEP noted that the number of complaints had increased over time.

1992-93 - 26  
1993-94 - 59  
1994-95 - 44

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<sup>11</sup> NCDPI considers the school year to begin July 1 and end June 30 of each year. Data for the current school year was available for the period ending May 1, 1995. Although NCDPI had received 44 complaints during the 1994-95 school year, only 35 were due by May 1, the date OSEP's visit began.

In some instances, NCDPI exceeded the 60 day timeline for investigating and resolving complaints and had not extended the timeline due to the existence of exceptional circumstances with respect to particular complaints. For some cases, the LEA was late in responding to NCDPI's requests for documentation needed to make compliance determinations. NCDPI provided OSEP with a sample of a letter written to a district informing it that the timeline for submitting a response had elapsed. It is NCDPI's practice to send such "reminder" letters several weeks before the end of the 60 day timeline for resolving the complaint. In other instances, the 60-day timeline was exceeded because the case manager's schedule was interrupted by other duties.<sup>12</sup>

As shown below in Table V, over the last three school years 19 of the 120 complaints exceeded the 60 days without exceptional circumstances in the particular case ("LEA Response Late" = 9, "Schedule Interruption = 10). While NCDPI's ability to resolve complaints within 60 days has improved during the past two years, about one in ten complaints is not resolved within the prescribed timeline. OSEP also noted that most overdue complaints were less than three weeks overdue. For instance, in 1994-95 the four cases that exceeded the 60-day time limit for reasons other than exceptional circumstances were 16, 8, 41 and 4 days overdue.

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<sup>12</sup> When OSEP asked NCDPI's case manager about reasons for the delays in resolving complaints, it learned that for the last five years, only one staff member has been responsible for investigating and resolving complaints, and that other duties such as administering portions of the due process hearing system, responding to parent calls, participating in some compliance visits, etc. have interfered with the ability to resolve complaints within the 60 day timeline.

**TABLE V-A**  
**Analysis of NCDPI Complaint Timelines**

SCHOOL YEAR	Total Complaints	Resolved Within 60 Days	Timeline Extended Due to Exceptional Circumstances	Exceeded 60 Days, Timeline not Extended Due to Exceptional Circumstances		Percentage Overdue
				LEA Response Late	Schedule Interruption	
1992-93	26	14	4	3	5	30%
1993-94	59	43	9	3	4	12%
1994-95	35	25	6	3	1	11%
Totals	120	82	19	9	10	16%

**B. The public agency must provide to parents prior written notice that includes placement options considered and reasons rejected ('300.505(a)(2)).**

**FINDING:** It was reported to OSEP by administrators and teachers in all of the public agencies visited by OSEP that the IEP includes information about placement options proposed or refused and serves as the written notice to parents for any placement decision, including initial placements and changes in placement. In the student records reviewed in public agencies A, C, D, E, F, G, and H, OSEP found that the written prior notice provided to parents did not meet Part B's requirements to ensure that parents were given the reasons why any options the agency considered were rejected by the public agency as it pertains to the student's initial placement or change in placement.

One possible explanation for this frequent omission may be related to the forms used by the public agencies visited by OSEP.<sup>13</sup> The forms were based on the model form developed by

<sup>13</sup> The public agencies OSEP visited use the form developed by NCDPI. The form does not require the IEP team to document the reasons why any options the agency considered were rejected. However, IEP teams in public agency B did include this information on the IEP. Some IEP forms reviewed in public agency C included directions to the IEP team to provide reasons for

NCDPI, which directed the IEP team to, "check the services considered by the committee, and circle the decision reached. Give reason(s) for the decision reached. A continuum of services must be considered." The directions do not specify the need to address the reasons why any options the agency considered were rejected.

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options rejected; however, OSEP confirmed with administrators and teachers that this information was not documented on the IEP.



FINDING/ FEDERAL REQUIREMENT	EXPECTED OUTCOME/ACTION REQUIRED	ACTIVITIES TO MEET OUTCOME REQUIREMENT	RESOURCES	TIMELINE FOR SUBMISSION
<p><b>A. Resolve complaint and issue a written decision within 60 days</b> ['300.661(a)]</p>	<p>NCDPI's complaint management system results in the investigation and resolution of complaints within 60 days, unless an exceptional circumstance exists with regard to a particular complaint.</p>	<p>1. NCDPI must demonstrate to OSEP that it has sufficient staff and resources to carry out this responsibility.</p> <p>2. NCDPI must issue quarterly reports to OSEP verifying that complaints are investigated and resolved within 60 days except where there has been an exceptional circumstance.</p>		
<p><b>B. Prior written notices including options considered and reasons rejected</b> ['300.505(a)(2)]</p>	<p>Public agencies must provided prior written notice of placement that includes other placement options that were considered and the reasons those options were rejected.</p>			

**APPENDIX**  
**Public Agency Key Reference**

OSEP visited eight local educational agencies (LEAs) as part of its review of NCDPI'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 NCDPI'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 : Forsyth County
- Public agency B : Catawba County
- Public agency C : Shelby City
- Public agency D : Mecklenburg County
- Public agency E : Guilford County
- Public agency F : Durham County
- Public agency G : Vance County
- Public agency H : Wake County