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

March 6, 1995

Honorable Pascal D. Forgione, Jr.
Superintendent of Public Instruction
State Department of Public Instruction
Townsend Building #279
Federal and Lockerman Streets
Dover, Delaware 19901

Dear Superintendent Forgione:

During the week of December 5, 1994, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Delaware Department of Public Instruction's (DDPI) implementation of Part B of the Individuals with Disabilities Education Act (Part B) and the Education Department General Administrative Regulations (EDGAR). The purpose of the review was to determine whether DDPI 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 EDGAR. All regulatory citations that follow refer to sections of Title 34 of the Code of Federal Regulations.

It is OSEP's routine procedure to present its findings of noncompliance in a monitoring report. However, because OSEP found only a limited number of systemic problems in the implementation of Part B and EDGAR in Delaware, OSEP instead is notifying you of its findings in this Letter of Findings (Letter), rather than in a report. Specific areas in which OSEP previously identified systemic deficiencies but noted no such deficiencies during the current visit include: individualized education program (IEP) content, content of the State model parents' rights notice, timely complaint resolution, and approval of local educational agency (LEA) applications.

We would also like to recognize several statewide initiatives undertaken by DDPI to improve programs for children with disabilities, and increase opportunities for inclusion of all children with disabilities in regular education programs.

The first such project involves DDPI's efforts to include students with disabilities in Delaware's Interim Assessment Program (the Statewide Student Assessment Program). DDPI has issued the document, Delaware Interim Assessment Program - Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency to provide guidance to local school personnel in making decisions regarding accommodations and exemptions for the Interim Assessment Program. According to data provided by DDPI, the percentages of students with disabilities included in Statewide testing increased from 22 per cent in 1991 to 65 per cent in 1993. During that time, the percent of those students included in the testing program who received modifications increased from one per cent to 58 per cent.

The Interagency Collaborative Team (ICT) was created to develop a collaborative agency approach to service delivery for children with disabilities in the State whose needs cannot be addressed through the resources available in individual public agencies. The ICT is composed of department heads from DDPI, the Division of Mental Retardation, the Division of Child Mental Health Services, Division of Family Services, and the Office of the Budget, among others. The ICT meets monthly to review individual applications made under the Unique Alternatives program. ICT's review includes assessment data, case studies, medical needs and other relevant material. Subsequent to the review of this information, ICT determines the unique combination of services and programs that will best meet the needs of the individual child. When an application is accepted and a program is developed, the ICT then determines the means by which the program will be funded (and individual agency responsibility is assigned). ICT's efforts have resulted in a decrease in residential placements statewide, and more children with unique needs being served in their "home district."

DDPI has developed an extensive data collection system, which consists primarily of data gathered during the September 30 Audit phase of DDPI's Comprehensive Compliance Monitoring System. During the September 30 Audit, DDPI staff collect data in numerous areas in addition to verifying student enrollment and receipt of services on State reported child count. These areas include content of IEPs, attendance at IEP and Multidisciplinary

Team meetings, documentation of some LRE provisions, and level of participation in the State assessment program. The data are aggregated and is utilized to determine placement patterns both statewide and across individual public agencies, to plan for future personnel development needs, and to assess the effectiveness of DDPI's monitoring and technical assistance efforts. DDPI also conducts an ongoing inter-rater reliability study, which includes an analysis of the data gathered by individual monitors to determine levels of consensus and any disagreement in compliance determinations.
This information enables DDPI to target specific areas for inservice training for SEA staff.

In order to be eligible to receive Part B funds, DDPI 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 assuring that the requirements of this part are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency and shall meet educational standards of the State educational agency. [See also §300.600(a).]

In addition to DDPI's general supervisory responsibility, DDPI 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 requirements, including those identified above (See §§80.40, 300.402, 300.556, and 20 U.S.C. §1232d(b)(3)); and

(4) require that each application 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).

Pre-site Preparation. OSEP staff began its review of documents related to DDPI's special education programs in August 1994. The review included but was not limited to DDPI's State Plan, regulations, inter-agency agreements and other materials that must comply with the requirements of Part B, such as the complaint management, due process hearing, and state monitoring systems. OSEP also reviewed DDPI's placement data based on the December 1993 child count and projects in the State for children with disabilities funded through OSEP discretionary grants.

Involvement of Parents and Advocates During the week of October 10, 1994, OSEP held public meetings in Milford and Wilmington. Also during this week, OSEP staff met with members of the Governor's Advisory Council and with representatives of the Parent Information Center and the Disability Rights Center.

During the week of the on-site visit, OSEP conducted a parent focus group meeting in one public agency OSEP visited in the northern region of the State. The purpose of this meeting was to hear parents' impressions of special education services provided. At DDPI's request, a staff member from the Mid-South Regional Resource Center (MSRRC) participated as an observer in the pre-site meetings at the SEA and attended the two public meetings. As a result of information gathered pre-site, MSRRC staff developed a Technical Assistance Workplan which specified the involvement of the MSRRC in OSEP's monitoring of DDPI. MSRRC staff returned to Delaware to assist in completing the State's response to OSEP's request for presite information, and spent the latter part of the week of the onsite visit observing interviews at the SEA and attending the Exit Conference. OSEP understands that MSRRC staff will participate in assisting DDPI with development and implementation of Corrective Action Plan activities based on the findings contained in this Letter.

On-site Data Collection and Findings The OSEP team included Chuck Laster, Sheila Friedman, Doug Little, and Catherine Cooke who visited five public agencies providing special education and related services to children with disabilities: four school districts and one regional vocational technical center for high school students. The specific public agencies visited are identified in Enclosure A. Data collected from these site visits are used to support or clarify the OSEP findings regarding sufficiency and effectiveness in the implementation of DDPI's systems. The OSEP Team Leader, Chuck Laster, conducted interviews with DDPI staff responsible for administering special education programs in the State and reviewed compliance documents in the SEA.

OSEP investigated and did not find problems in DDPI's fulfillment of its general supervisory responsibilities in the following areas: SEA review and approval of LEA applications, timelines in due process hearings, content of parents' rights notice, complaint management, and individualized education programs. However, OSEP found that DDPI's systems for ensuring compliance have not been fully effective in meeting the following requirements:

SEA MONITORING: 20 U.S.C. §1232d(b)(3)(A). See also §80.40. [DDPI is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs.]

TRANSITION SERVICES: §§300.344(c)(1)(i), 300.346(b). [DDPI is responsible for ensuring that if the purpose of an IEP meeting is the consideration of transition services for a student, the public agency shall invite the student, and a representative of any other agency that is likely to be responsible for providing or paying for transition services; and the IEP for each student, beginning no later than age 16 (at a younger age, if determined appropriate), must include a statement of the needed transition services.]

LEAST RESTRICTIVE ENVIRONMENT: §§300.550, 300.553. [DDPI 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).]

FREE APPROPRIATE PUBLIC EDUCATION (FAPE): §300.300 Extended School Year Services (ESY). [DDPI is responsible for ensuring that FAPE is available to all children with disabilities within the State and must ensure that public agencies consider, on an individual basis, the need for and provide extended school year services, if necessary to ensure that each child with a disability receives FAPE.]

FREE APPROPRIATE PUBLIC EDUCATION: §§300.300; 300.8(d) Shortened School Day. [DDPI is responsible for ensuring that FAPE is available to all children with disabilities within the State and must ensure that each public agency provides special education and related services to a child with a disability in accordance State standards, including the length of school day.]

FREE APPROPRIATE PUBLIC EDUCATION: §§300.300; 300.16; 300.350

Provision of Related Services. [DDPI is responsible for ensuring that FAPE is available to all children with disabilities within the State, and must ensure that each eligible child with a disability receives the kind and amount of related services that are required to assist the child to benefit from special education consistent with the child's IEP.]

PROCEDURAL SAFEGUARDS: §300.504 - Prior Notice. [DDPI is responsible for ensuring that prior written notice, which includes a full explanation of procedural safeguards, is provided to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.]

CHILD COUNT: §300.752. [DDPI is responsible for implementing procedures for the verification of enrollment and receipt of services for children with disabilities who are reported on the December 1 child count in order to ensure that information regarding the number of children with disabilities represents an accurate and unduplicated count.]

The basis for our conclusions with respect to these issues is specified in Enclosure B to this letter. That enclosure also describes the results that DDPI must achieve through the implementation of corrective actions taken to address identified deficiencies. However, with the exception of some general notification actions required, 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 Delaware, OSEP proposes that DDPI representatives discuss with OSEP, either in a meeting or a telephone conference, the areas of noncompliance and the most effective methods for bringing about compliance and improving programs for children with disabilities in the State. We also will invite a representative(s) of Delaware's Governor's Advisory Council to participate in that discussion to represent the interests of the Council and its constituency. In this meeting, specific activities, timelines and resources will be identified and agreed upon. It is our hope that placing an emphasis on the careful development of a CAP that reflects your particular State's circumstances in relation to the requirements of the IDEA will result in a more meaningful and effective corrective action process.

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

The findings included in this Letter are final. The preliminary findings of OSEP's on-site compliance team were discussed with Dr. Martha Brooks and members of her staff at an exit conference held on December 9, 1994, and during a conference call on January 20, 1995, with Dr. Brooks, and Dr. Vaughn Lauer, of DDPI's staff. At both times, DDPI was invited to provide any additional information it wanted OSEP to consider during the development of findings for this Letter. We believe the information presented in this Letter to be accurate and look forward to working with DDPI in the development of its CAP.

In the event DDPI, after consideration of the data in this Letter, concludes that evidence of noncompliance is significantly inaccurate or that one or more findings is insupportable, DDPI may request reconsideration of the finding. In such a case, DDPI must submit reasons for its reconsideration request and any supporting documentation within 15 days of receiving this Letter. OSEP will review the request and, where it agrees that the facts contained in the Letter 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 thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Dr. Brooks and her 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.

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 and youth with disabilities in Delaware.

Sincerely,

Thomas Hehir
Director
Office of Special Education Programs

Enclosures

cc: Dr. Martha Brooks

ENCLOSURE A

Public Agency Key Reference

OSEP visited ten public agencies as part of its review of DDPI's implementation of Part B. Where appropriate, OSEP has included in this Letter data collected from those agencies to support or clarify the OSEP findings regarding the sufficiency and effectiveness of DDPI'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 Letter are set forth below:

Public agency A: Caesar Rodney School District
Public agency B: Sussex Voc-Tech
Public agency C: Red Clay School District
Public agency D: Brandywine School District
Public agency E: Cape Henlopen School District

ENCLOSURE B

FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED

OSEP FINDING	EXPECTED RESULTS/ACTION REQUIRED
SEA Monitoring (§§80.40, 300.402, 300.556, and 20 U.S.C. §1232d(b)(3)) OSEP reviewed DDPI's monitoring procedures contained in the document, Revised Comprehensive Monitoring System Manual, and all other ancillary monitoring procedures and materials, and finds that the procedures that were in effect at the time of OSEP's visit did not include a method to determine compliance regarding the following requirements: §§300.300 - FAPE: ESY 300.343(b) - IEP meetings 300.344(c) Transition participants in IEP Meetings 300.550(b) - LRE: Removal 300.553 - LRE - Nonacademics 300.565 - List of types and location of information In addition, OSEP's review indicated that DDPI does not have a complete method for monitoring compliance with the following requirements: §300.346(b) IEP content - Transition services - DDPI's September 30 Individual Case Review Checklist for 1994 requires monitors to review IEPs to determine "For High school, evidence of transition planning," however, there is no information or requirement that the monitor review for specific content of transition plans required by this regulation. The State IEP form, which is required for use across all public agencies, contains an element which requires that the IEP team check if a transition plan is either "N/A" or "Attached." §300.347 - Agency responsibilities for transition - DDPI's September 30 Individual Case Review Checklist for 1994 requires monitors to review IEPs to determine "For High school, evidence of transition planning," however, there is no information or requirement that the monitor review for the specific requirements of this regulation.	DDPI will revise its monitoring procedures and data collection instruments to ensure that it has an effective method to monitor for each Federal requirement related to Part B specified in this Letter.

Transition Services (§§300.344(c)(1), 300.346(b)). - OSEP finds that DDPI did not ensure, in all cases, that public agencies implemented policies and procedures which fully implemented the requirements of Part B relative to transition. OSEP's finds that DDPI's procedures for monitoring public agencies contain no method to monitor for the requirements of §300.344(c) (Transition participants in IEP Meetings), and an incomplete method to monitor the requirements of §300.346(b) - (IEP content - Transition services) and §300.347 - (Agency responsibilities for transition). OSEP visited secondary education programs in three public agencies (A, B and D). The secondary programs included two high schools, one vocational technical high school and one separate school. OSEP reviewed the records of 17 students from these programs, all of whom were 16 years of age or older. OSEP also interviewed the students' teachers who participated in the IEP meetings, related service providers, the building principals and other administrators responsible for the provision of special education services in these three public agencies. **§300.344(c)(1)(i) - Participants in meetings - Student.** DDPI has not in all cases ensured that public agencies invite students to participate in IEP team meetings for transition services planning. In nine of the 17 files reviewed by OSEP from public agencies A and D, the student was not present at the meeting, nor was there any indication in the files of the steps the public agency had taken to ensure that the preferences and interest of the student were considered in the development of the statement of needed transition services. **§300.346(b) - Content of individualized education program.** DDPI has not in all cases ensured public agencies develop IEPs for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) which 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. The IEPs of students age 16 years or older from public agencies A, B and D did not include the transition components required by §300.18 (instruction, community experience, the development of employment and other post-school adult living objectives and if appropriate, acquisition of daily living skills and functional vocational evaluation).	DDPI must ensure that if a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite the student, and 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.

FAPE: Extended School Year Services (ESY) §300.300. DDPI did not in all cases ensure that all public agencies make ESY available for consideration as a component of FAPE, if necessary, to meet the unique needs of an individual child with a disability. In Delaware, an extended school year is mandated for Level 5 students and autistic students. In every public agency, OSEP was informed that ESY is made available to these students. OSEP finds that DDPI's procedures for monitoring public agencies contain no method to monitor for compliance with the requirements of §300.300 - FAPE: ESY. Three administrators in public agency A informed OSEP that in addition to the Level 5 and autistic students, summer school is made available to special education students in the elementary schools, but their participation is determined by parent choice, not by the IEP. The IEPs are made available to the staff at the summer school, but the program is not based on the IEP. Summer school is not made available to students in high school. A building level administrator in public agency B informed OSEP that there is no ESY available to students attending that facility. The administrator added that there is no funding structure for this; that if the State would provide funds, that ESY could be available. In public agency C the Director informed OSEP that the summer school program for their Level 5 students is an enrichment and respite program, and is not based on the IEP. ESY is not considered for any other classification or category of student. An administrator and a special education teacher in public agency D and an administrator and a special education teacher in public agency E also stated that the only students in these agencies who are considered for ESY are the Level 5 and autistic students. No other students in these public agencies receive ESY services.	DDPI must ensure that all public agencies make ESY available for consideration as a component of FAPE, if necessary, to meet the unique needs of an individual child with a disability.
FAPE: Shortened School Day §§300.300; 300.8(b). DDPI did not fully meet its responsibility under §300.300 and §300.8(b) to ensure that all children with disabilities are provided FAPE that meets the standards of the SEA. DDPI attendance standards require a six hour day. Data collected by OSEP indicated that two public agencies were inconsistently applying this standard for certain students because of difficulties in arraigning transportation. A special education administrator in public agency A and two administrators in public agency C reported that some students (approximately ten in public agency A and seven in public agency C) had their school day shortened by an hour and a half each day because of transportation schedules.	DDPI must ensure that all children with disabilities are provided FAPE that meets the standards of the SEA (DDPI's attendance standards require a six hour day.)

FAPE: Delay in provision of related services - §§300.300, 300.350. DDPI did not fully meet its responsibility to ensure that all public agencies provide a program consistent with each child's IEP as a component of FAPE. As set forth at §300.300, each State must ensure that FAPE is available to all children with disabilities including all related services, as set forth at §300.16. OSEP finds, however, that DDPI has not ensured the availability of FAPE, including needed related services to all children with disabilities due to a lack of qualified personnel as specified below: Delays in providing related services were reported by administrators responsible for the special education programs in public agencies A, C, and E. An administrator in public agency A informed OSEP that students in three schools were not receiving OT services and there was a reduction of services from the amounts specified on their IEPs to students in a special education facility, due to lack of OT personnel. Special education administrators in public agencies C and E reported that delivery of related services is delayed at the beginning of the school year in order to allow the related service providers time to evaluate students. Provision of speech and psychological services is delayed in public agency C for the first six weeks of school, and speech services are delayed in public agency E for the first 30 days of school.	DDPI must ensure that all public agencies provide a program consistent with each child's IEP. (As set forth at §300.300, each State must ensure that FAPE is available to all children with disabilities including all related services, as set forth at §300.16.
Procedural Safeguards: Prior Notice §§300.504(a), 300.505(a). DDPI did not ensure that prior written notice, which includes a full explanation of procedural safeguards, was provided to the parents at each of the required times in public agencies A, B, C, and E, as indicated by the following: An administrator in public agency A informed OSEP that a parents rights notice which includes a full explanation of procedural safeguards is sent to parents every fall, along with other school-related information. The public agency doesn't provide a copy of the procedural safeguards to parents at any other time, unless the parent requests it. OSEP also noted that in one of the student records in public agency A, change in placement was instituted without documentation of prior notice. OSEP found, in its review of students' records in public agency B, that notification of placement decisions made outside of IEP meetings, and notification of three-year reevaluations, were transmitted to parents via letter, without including the prior notice requirements at §300.505(a). An administrator of special education from public agency C informed OSEP that prior written notice is not provided to parents in all required instances. This information was confirmed by special education teacher and a building administrator. An administrator of special education and a special education teacher in public agency E informed OSEP that all of the required content of prior notice is not always included in the information required to be provided to parents. The administrator stated that one component that needs to be added to the notice used by that public agency is an explanation of why the public agency proposes (or refuses) to take an action.	DDPI will ensure that prior written notice, which includes a full explanation of procedural safeguards, is provided to parents at each of the times required by §300.504.

Least Restrictive Environment (LRE): §§300.550; 300.553 **Background:** In order to meet the requirement of §300.550, 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 aids and services. The selection of the appropriate supplementary aids and services must be determined by the IEP committee during the annual development of the IEP, must be a component of the specially designed instruction to meet the child's unique educational needs and must be described in the IEP. 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. As part of the presite activities conducted prior to the onsite monitoring of DDPI, OSEP requested placement data for the public agencies to be visited. OSEP was provided placement data based on the information provided to DDPI by public agencies in submitting Delaware's Federal December 1, 1993 child count. As part of its review of this data, OSEP noted several instances of small numbers of students placed in the "regular setting" category (removed from regular class less than 20 per cent of the school day). Specifically, of the 455 special education students 6-21 in public agency A, 12 received their education in regular education environments. In public agency C, of the total special education population of 1,321 students ages 6-21, seven were being educated in regular education, and in public agency E, five of 397 special education students 6-21 were receiving services in regular education environments. These figures do not include students who are only receiving speech services. Administrators and special education teachers in public agencies A, C and E indicated that removal of children with disabilities from the regular education environment did not occur only when the children's education cannot be achieved satisfactorily in regular classes with the use of supplementary aids and services. Administrators responsible for administration of special education in each of these public agencies indicated that the current State funding formula is a significant barrier to regular education placement in that it creates disincentives for those placements and services. DDPI administrators confirmed that the funding formula creates such a barrier. Under the current State funding system, students cannot receive special education in a regular education setting (with supplementary aids and services) from a regular education teacher with consultation from a special education teacher and be counted as a special education student for purposes of State special education funding. In order for a student to be counted under special education, the services must be delivered directly by a special education teacher. **FINDINGS:** OSEP finds that DDPI's procedures for monitoring public agencies contain no method to monitor for compliance with the requirements of §§300.550(b) and 300.553. OSEP finds that DDPI did not fully meet its responsibility to ensure that public agencies establish and implement procedures which meet the requirements regarding the placement of students in the least restrictive environment. Specifically, DDPI did not fully ensure that: 1) to the maximum extent appropriate, public agencies educate children with disabilities, including children in public or private institutions or other care facilities, with children who are nondisabled (§300.550(b)(1)); 2) public agencies remove a child with a disability from the regular education environment only if the child's education cannot be achieved satisfactorily in regular classes with the use of supplementary aids and services (§300.550(b)(2)), and 3) that public agencies ensure that 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).	DDPI must ensure that: 1) to the maximum extent appropriate, public agencies educate children with disabilities, including children in public or private institutions or other care facilities, with children who are nondisabled and; 2) public agencies remove a child with a disability from the regular education environment only if the child's education cannot be achieved satisfactorily in regular classes with the use of supplementary aids and services, and 3) that public agencies ensure that 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. .

When asked if regular education with supplementary aids and services is the first consideration for placement, an administrator from public agency C stated "No, not in too many places that I know of. The funding formula discourages this placement." Another administrator from public agency C explained that the current funding formula "keeps the kids from mainstreaming opportunities... the district takes the 20 percent, plus the principals take additional units to hire other personnel (art teachers, etc.).[1] They justify this by saying that those teachers serve regular and special education students....The special education teachers have such a large caseload that they don't provide adequate services. There is no incentive to serve special education students in regular education settings." A building level administrator from this public agency stated that some students are in regular education classes, but the decision to integrate the students from the separate facility into regular education environments was not an individual determination made through the IEP process, but rather a group decision. A special education teacher, clarifying this practice, stated that the amount of regular education and specific subject areas are not discussed at IEP meetings, but are determined afterwards based on administrative convenience, i.e., classes with space, teachers willing to accept kids, scheduling, etc. In addition, the teacher stated that there is no discussion of needed supplementary aids and services to support placement in the regular education environment. The teacher further informed OSEP that until the previous week, all of the students served by this teacher were integrated into a regular class for academics; however, these students were all returned to full time special education. The teacher stated "it was not functioning well and had to be changed. There was no IEP meeting conducted for the change in placement." When OSEP asked another special education teacher whether students had access to any regular academic classes, the teacher stated that there was a problem with scheduling into regular education classes, and that the lack of access had nothing to do with the disability.

When asked about regular class placement for students with disabilities, an administrator of special education programs in public agency E informed OSEP that the State funding formula inhibited this agency's ability to provide services in regular education environments with appropriate aids and services. The administrator stated, "we can't count them if they are only consultative. If consultative could count, we would move more quickly to provide services under this model." A building level administrator stated, "there is only one type of service available at certain grade levels, for example, at the kindergarten level, only self-contained." When asked if some of these students could be served in a lesser restrictive setting, the administrator stated, "yes, the kindergarten students." When interviewed about the use of modifications, including supplementary aids and services in the regular education classroom, a special education teacher in this public agency informed OSEP staff that modifications are not made in regular education, they are made only in special education pull out programs.

Public agency A administers a "multi-district" day program in a separate facility primarily for students categorized as "Trainably Mentally Handicapped" or "Severely Mentally Handicapped" who reside within the county. (This is one of two county programs in the State.) Students from the six school districts within the county can be placed in this facility and are bussed there from their home school districts. At the time of OSEP's visit, the school's population was comprised of 150 students ages three through 21 who attended elementary, intermediate and secondary classes in the building. The program also included one satellite class in a public high school in the county. Excepting the several students at the high school class who participate in vocational training in the community, there is no integration of the students attending this separate facility with students who are nondisabled. An administrator and a teacher of students with disabilities from this public agency confirmed that there is no consideration of the maximum extent to which students at the separate school can participate in regular education classes or extracurricular and nonacademic services with nondisabled students. One administrator at public agency A stated, "if Delaware [SEA] would say, why don't you start integrating these children, we will see that you do not lose [funding for] services, we would do it. It is more expensive to serve kids in their home school on a regular campus

[1] Under Delaware's current funding formula, public agencies may request that up to 20 per cent of the special education units (non-special programs units) may be applied towards non-special education activities (art, music, physical education, etc.). These requests, or waivers, are made to the State Board annually. The waiver request must include the number and/or percentage of units and how they will be used.

than to cluster them." This administrator also explained that placement in the satellite class at the high school is based on the students' ability to "function in the world of work."	
Child Count (§300.752) DDPI does not implement procedures for the verification of enrollment and receipt of services for children with disabilities who are reported on the December 1 child count in order to ensure that information regarding the number of children with disabilities represents an accurate and unduplicated count. Although DDPI conducts extensive activities to verify enrollment and receipt of services for children with disabilities who are reported on the State's September 30 child count (the September 30 Audit process) DDPI officials informed OSEP that no subsequent procedures are implemented to verify enrollment and receipt of services and ensure an accurate and unduplicated count for students reported on the Federal December 1 child count.	DDPI must implement procedures for the verification of enrollment and receipt of services for children with disabilities who are reported on the December 1 child count in order to ensure that information regarding the number of children with disabilities represents an accurate and unduplicated count.

REQUIRED CORRECTIVE ACTION

GENERAL CORRECTIVE ACTIONS THAT DDPI MUST IMPLEMENT TO NOTIFY PUBLIC AGENCIES OF THEIR RESPONSIBILITIES AND ENSURE IMMEDIATE CORRECTION OF DEFICIENT PRACTICES

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

2. DDPI must issue a memo to those agencies in which OSEP found deficient practices, as identified in this Letter, requiring those public agencies to immediately discontinue the deficient practice(s) and submit documentation to DDPI that the changes necessary to comply with Part B requirements have been implemented. DDPI 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 Letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to those agencies in which OSEP found deficient practices.