



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

MAY 14 1997

Shirley J. Holloway
Commissioner of Education
Alaska Department of Education
801 West 10th Street Suite 200
Juneau, Alaska 99801-1894

Dear Dr. Holloway:

During the week of September 23, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Alaska Department of Education's (AKDE's) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether AKDE is meeting its responsibility to ensure that its educational programs for children and youth with disabilities are administered in a manner consistent with the requirements of Part B. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives by AKDE; and our findings are in Enclosure C.

AKDE implemented a number of corrective actions to address the findings in OSEP's January 1994 monitoring report. As part of our current review, OSEP found no deficiencies in: procedures for ensuring that parents and agency representatives attend and participate in meetings to develop an individual education program (IEP); the content of IEPs; the monitoring procedures for identifying deficiencies; the establishment of policies and procedures for procedural safeguards by local educational agencies; the provision of a free appropriate public education through extended school year services; or the procedures for the submission and approval of local educational agency applications. It appears, therefore, that AKDE's corrective actions in these areas were effective.

As addressed in Enclosure B, we also found that AKDE has taken a number of noteworthy initiatives to improve educational services to students with disabilities including the Alaska Inclusion 2000 Program, AKDE's assistive technology grants, and the Alaska SPRUCE project for retraining school psychologists. OSEP also would like to recognize AKDE's outstanding system for complaint management, and its publication, Special Education in Alaska - A Parent's Handbook.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that AKDE has not ensured that: public agencies provide related services that students require as a component of a free appropriate public education; statements of needed transition services are developed as a component of IEPs for students 16 years of age or older; notices used to inform the participants of IEP meetings when a purpose of the meeting is to determine needed transition services contain all required information. In addition, OSEP noted that prior notice, which meets the content requirements of the Part B regulations is provided to parents a reasonable time prior to a public agency's proposal or refusal to initiate or change the provision of a free appropriate public education to a child.

OSEP is particularly concerned that AKDE has not implemented procedures to ensure that eligible persons with disabilities incarcerated in the State's adult correctional facilities are provided a free appropriate public education. This issue was cited as an area of noncompliance in OSEP's 1994 monitoring report to AKDE, however, at the time of OSEP's 1996 monitoring, AKDE had taken no definitive action in this area. OSEP will be contacting you in a separate letter regarding this concern. OSEP staff remain available to assist AKDE with the development and implementation of any corrective action activities.

Chuck Laster, the OSEP monitoring team leader, discussed the team's preliminary findings with Dr. Myra Howe and other staff in AKDE's Office of Special Education, and Mr. Clay Starling from the Northwest Regional Resource Center, at an exit conference held at the conclusion of OSEP's on-site visit. At that time, Mr. Laster invited AKDE to provide any additional information that it wanted OSEP to consider in developing the monitoring report. AKDE did not submit any additional information.

The findings in this Report are final, unless--within 15 days from the date on which AKDE receives this Report--AKDE concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect and requests reconsideration of such finding(s). Any request for reconsideration must specify the finding(s) for which AKDE requests reconsideration, the factual and/or legal basis or bases for the request, and must include documentation to support the request. OSEP will review any AKDE request for reconsideration and, if appropriate, issue a letter of response informing AKDE of any revision to the findings. 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 that Dr. Howe and her staff provided during our review. Throughout the monitoring

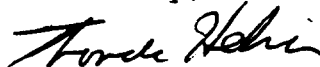
Page 3 - Honorable Shirley J. Holloway

process, they were very responsive in providing information that enabled OSEP staff to acquire an understanding of Alaska's systems to implement Part B.

Our staff is available to provide technical assistance during any phase of the development and implementation of AKDE's corrective actions. Please let me know if we can be of assistance.

Prior to the enactment of the Individuals with Disabilities Education Act (IDEA) and its predecessor the Education of All Handicapped Children Act, one million children with disabilities were excluded from school altogether, and another 3.5 million were not receiving appropriate programs within the public schools. The enactment of the IDEA, and the joint actions of schools, school districts, State educational agencies and the Department, have now made it possible for more than 5.4 million children with disabilities to participate in our country's public educational programs. Thank you for your continuing efforts to improve educational services and results for children and youth with disabilities in Alaska.

Sincerely,



Thomas Hehir

Director

Office of Special Education
Programs

Enclosures

cc: Dr. Myra Howe

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Document Review: As in all States, OSEP used a multifaceted process to review compliance in Alaska. In addition to on-site visits, this process included: review and approval of the State's Part B State plan, which sets out the State's statutes and regulations, policies and procedures, and interagency agreements that impact the provision of services to students with disabilities; and review of complaints, requests for secretarial review, other correspondence, and telephone calls that OSEP received regarding the State's compliance. Prior to its visit to Alaska, OSEP also requested and reviewed additional documentation regarding the State's implementation of compliance with requirements regarding due process hearings, complaint resolution, and monitoring, as well as child count and placement data.

Involvement of Parents and Advocates: During the week of May 27, OSEP held two public meetings in Anchorage and Juneau. In addition, a statewide audioconference was conducted to facilitate participation by interested parties in remote areas of the State. Also during that week, Dr. Catherine Cooke met with representatives from advocacy groups in two outreach meetings, interviewed a number of AKDE officials, and reviewed numerous AKDE documents. The purpose of the public and outreach meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of AKDE's compliance with Part B. In the letters inviting interested parties to the public meetings, OSEP also invited them to provide written comments and telephone input regarding their perceptions.

During the on-site visit, OSEP conducted a parent focus group meeting in one of the public agencies it visited in order to hear parents' impressions of special and regular education services provided to their children. This meeting provided OSEP staff with parents' views of the methods used by the public agency in providing a free appropriate public education to its children, as well as the challenges faced by the public agency in this endeavor.

Selection of Monitoring Issues and Agencies to Visit

OSEP focuses its compliance review in all States on those core requirements that are closely related to learner results: States' systems for identifying and ensuring the correction of deficiencies through monitoring; ensuring that all eligible students with disabilities receive a free appropriate public education, as determined through the development and implementation of an IEP; the provision of needed transition

services; and ensuring that parents are appropriately included in decision-making regarding the education of their child with a disability. The information that OSEP obtained from its pre-site public meetings and outreach meetings, interviews with State officials, and review of State and local documentation, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Alaska; (2) selecting additional monitoring issues (e.g., the provision of related services) for review while on-site; and (3) selecting the sites to be visited.

On-site Data Collection and Findings The OSEP team included Chuck Laster, the OSEP Team Leader, who interviewed State education agency staff and reviewed relevant AKDE documentation. He also spent one day collecting implementation data in a local school system. Catherine Cooke, Sheila Friedman and Claudia Brewster visited two elementary schools, one middle school, one junior high school, one high school and one juvenile detention facility in four additional agencies. Where appropriate, OSEP has included in Enclosure C data that it collected from those agencies that support or clarify its findings regarding the sufficiency and effectiveness of AKDE's systems for ensuring compliance with the requirements of Part B.

In order to reinforce that the findings in Enclosure C focus on the effectiveness of AKDE's systems for ensuring compliance rather than compliance in any particular local educational agency, OSEP has not used the name of any local educational agency within Enclosure C. Instead, OSEP has identified local educational agencies in Enclosure C only with designations such as "Agency A." The agencies that OSEP visited and the designation that OSEP has used in Enclosure C to identify each of those agencies are set forth below:

AGENCY	DESIGNATION
Matanuska-Susitna Borough Schools	AGENCY A
Northwest Arctic Borough Schools	AGENCY B
Anchorage Schools	AGENCY C
Chatham Schools	AGENCY D
Ketchikan Gateway Borough Schools	AGENCY E

Unless otherwise indicated, all regulatory references in Enclosure C are to 34 CFR Part 300.

CORRECTIVE ACTION PROCEDURES

In order to support the development of a mutually agreeable corrective action plan that will correct the findings in Enclosure C and improve results for students with disabilities, OSEP proposes that AKDE representatives meet with OSEP staff, in a meeting or telephone conference, to discuss the findings and the most effective methods for ensuring compliance and improving programs for children with disabilities in the State, and to agree upon specific corrective actions. We also invite a representative from Alaska's Special Education Advisory Council to participate in that discussion. AKDE's corrective action plan must be developed within 45 days of AKDE's receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

Enclosure C outlines the general corrective actions that AKDE must take to begin immediate correction of the findings in the Enclosure, as well as guidelines for the more specific actions that AKDE must take to ensure correction of each of the specific findings in Enclosure C.

ENCLOSURE B

COMMENDABLE INITIATIVES

OSEP identified the following commendable AKDE initiatives as part of its on-site review:

- (1) **Assistive Technology Grants** are funded through the Special Education Service Agency, and in collaboration with the Anchorage School District. The focus of the grant is to provide services to public agencies in rural Alaska. The assistive technology grant, initiated in 1992, established an assistive technology information and equipment center in Anchorage, where assessments are conducted to determine individual needs for augmentative communication devices and strategies, recommendations are made for selected equipment for trial use, arrangements for long term loans of equipment to individual students are coordinated, and training for consumers and service providers from other agencies is conducted. The focus of the project has shifted from purchase of equipment for long term loans to purchasing such assistive technology equipment for agencies to then borrow to see if they want to buy it.
- (2) AKDE's has an outstanding **complaint management system**. OSEP's review of AKDE's log of complaints and individual complaint files investigated and resolved during the two years prior to OSEP's visit indicated that all complaints concerning Part B issues were investigated and resolved within 60 days. The availability of the system is widely publicized, and AKDE conducts its complaint investigations in a thorough manner - ensuring that follow-up activities occur to verify all district corrective actions that result from an investigation.
- (3) AKDE publishes an exemplary **Parent Handbook**, which is comprehensive and reader-friendly, and includes a thorough explanation of the rights of parents and children under State and Federal laws, definitions of educational terms and acronyms, an explanation of the various program offerings in the State, sample forms, and a list of parent advocacy and support groups in the State. Master copies of this document are provided to each school district in the State, and districts are encouraged to copy and disseminate it widely. Copies are also provided at all statewide conferences and other functions, and through Statewide organizations (such as the State Parent Training and Information Center). This document is updated regularly to provide clarification on regulations, statutes and State and Federal policy.
- (4) **Alaska Inclusion 2,000** is a collaborative effort by AKDE, the University of Alaska Southeast, the Alaska Staff Development Network and local school districts to support inclusive educational practices throughout the State. Its purpose is to implement and evaluate a comprehensive training program to improve the capacity of Alaskan educators to provide services to students with disabilities in inclusive environments. This training utilizes live interactive television, computer networking, audio conferencing and summer institutes in order to train teams from local school districts. These teams will become technical assistance consultants to their districts as well as neighboring districts. The intent is for district teams to obtain a variety of strategies to adapt to school and district needs, and promote site planning and site ownership of inclusive education.

COMMENDABLE INITIATIVES

(5) The **Alaska Spruce Project** is a statewide effort to retrain school psychologists in critical need areas. Its purpose is to retrain currently-employed psychologists to facilitate inclusion, conduct interviews in a classroom, and assist in the development of behavior management plans. The skills targeted in this program include: 1) problem solving skills, 2) expanded intervention skills, 3) functional assessment skills, 4) and data collection. The Alaska School Psychologists Association is the recipient of the three year funded project.

ENCLOSURE C -- FINDINGS AND CORRECTIVE ACTIONS

GENERAL CORRECTIVE ACTIONS

In order to begin immediate correction of the findings set forth in the table following, AKDE must take the following general corrective actions:

1. AKDE must develop a memorandum informing all public agencies of OSEP's findings, and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's report. The memorandum must further direct these agencies to discontinue any noncompliant practices and implement procedures that are consistent with Part B. AKDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval of the memorandum, AKDE must disseminate it to all public agencies throughout the State providing special education or related services to students with disabilities.
2. AKDE must also disseminate a memorandum to those agencies in which OSEP found deficient practices, as identified in Enclosure C of this letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to AKDE that they have implemented revised procedures that correct the deficiencies and comply with Part B requirements. AKDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval, AKDE must disseminate the memorandum to those public agencies in which OSEP found deficient practices. AKDE must send to OSEP verification that these public agencies have completed all of these corrective actions.

FINDINGS AND SPECIFIC CORRECTIVE ACTIONS

OSEP FINDINGS	EXPECTED RESULTS
<p><u>Transition Services</u></p> <p><u>BACKGROUND:</u> AKDE's document <u>Alaska Special Education Handbook</u>, contains special education policies and procedures for implementing programs in local school districts, model forms for provision of prior notice, a sample IEP form, guidelines for developing local interagency agreements, instructions on implementing a 504 plan, and information on other State requirements. Each local educational agency in the state adopts the Handbook as their operational policies and procedures, but may develop local procedures in addition to those presented in the Handbook. Of the public agencies visited by OSEP, agencies A, C and E have developed local procedures which supplement the Handbook. AKDE informed OSEP that the Handbook also provides technical assistance to public agencies on program implementation in the Secondary Transition section of the Handbook. This section contains information on IEP development, a checklist for schools to assist in transition planning, sample interagency cooperative agreements, and a copy of the State interagency agreement between AKDE and the Division of Vocational Rehabilitation. OSEP reviewed these materials as part of its review of the provision of transition services at both the State and local levels. OSEP also reviewed AKDE's monitoring procedures, contained in Section X of this document, and determined that AKDE has procedures in place for determining compliance with each of the Part B requirements related to the provision of transition services.</p> <p>OSEP's review of the most recent monitoring report issued by AKDE to each of the five agencies visited by OSEP, indicated that AKDE had made findings of non-compliance with regard to the provision of transition services in two of the public agencies visited. In Agency C: (1) the content of the IEP did not address the required components of needed transition services and/or did not document team's determination that services were not needed and the basis for the determination; (2) files did not contain a transition plan for two eligible students; (3) files indicated parent invitations did not clearly document that a purpose of the IEP meeting was the consideration of transition services, and, whether students had been invited to attend. In Agency A: (1) files did not contain a transition plan for some eligible students; (2) files did not contain information as to the reasons why students did not require transition services in instruction, community experiences or employment. AKDE did not make any findings of noncompliance with transition requirements in agencies B, D and E.</p>	

OSEP FINDINGS	EXPECTED RESULTS
<p>FINDINGS: OSEP finds that AKDE did not ensure, in all cases, that public agencies implemented policies and procedures which complied with the transition services requirements of Part B.</p> <p>OSEP visited secondary programs in two of the five agencies monitored (Agencies C and D). These included two high schools, and one separate juvenile detention facility.¹ OSEP reviewed the records of 15 students age 16 and older in these facilities. OSEP also interviewed the students' teachers who participated in the most recent IEP meeting, the building principals, and school-based and agency administrators responsible for the provision of special education services in these agencies. Based on these interviews and record reviews, OSEP made the following findings:</p> <p>§300.345(b)(2)(i) - Parent participation - Notice must include purpose. In the 15 files reviewed in agencies C and D, the notice of the meeting did not indicate that a purpose of the meeting would be the consideration of transition services.</p> <p>§300.345(b)(2)(ii) - Parent participation - Notice must indicate that the student is invited to attend if a purpose of the IEP meeting is the consideration of transition services. OSEP found that in seven of the twelve files reviewed in Agency C, and the three files reviewed in agency D, the notice of the IEP meeting did not indicate that the student was invited to attend the IEP meeting.</p> <p>§300.346(b) - Statement of needed transition services.² OSEP found through both review of student files and staff interviews, that in the juvenile detention facility visited in Agency C, eligible students do not participate in transition services, and that transition plans are not currently completed for any of these eligible students at this facility. A building level staff person indicated that "this is a weak area for us." OSEP was informed by staff members from this facility that students will be able to participate in transition planning upon release from the facility, but that no transition planning occurs during the students' detention. Student IEPs indicated that the basis for not providing transition services at the present time included: "upon release from [the facility], [the student] should explore vocational training opportunities at King Career Center" and "not determined" in Projected Adult Education, Working and Living Environments.</p>	<p>AKDE must ensure that, if a purpose of the IEP meeting is the consideration of transition services, the public agency comply with the Part B regulations including: (1) that the IEP notice sent to the parents contains all required information specified at §300.345(b)(2); and (2) that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) 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</p>

¹ In AKDE, the responsibilities for the educational component in each juvenile detention facility resides with the public agency when the facility is located within that district's boundaries.

² The IEP for each student with a disability must include a statement of needed transition services. 34 CFR §300.346(b)(1). As defined at 34 CFR §300.18, "transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." Thus, the team developing a student's IEP must, as part of the process of developing a statement of needed transition services, identify one or more post-secondary outcome(s) for the student.

Section 300.18(b)(2) further requires that the statement of needed transition services include instruction, community experiences, and the development of employment and other post-school adult living objectives; as required at §300.346(b)(2), if the IEP team determines that services are not needed in one or more of these areas, the IEP must include a statement to that effect and the basis upon which the determination was made.

OSEP FINDINGS**EXPECTED RESULTS**

OSEP was informed by two building-level staff in interviews in Agency C (outside of the separate facility), that a full transition program/plan is not available for medically fragile students or students who are very severely disabled (i.e., those with the most significant needs). A building-based special education staff person stated that administrators and staff are working toward this goal. The only transition content in one IEP was an indication under the Present Levels of Performance, "in discussing [the student's] transition situation, mother stated that she has already contacted the agency for Supplemental Security Income (SSI) and Developmental Disabilities agency concerning [the student]."

In Agency D, two of three student files reviewed had no postsecondary outcomes identified; in both of these files, the option of "not determined" was selected. OSEP was informed by these students' teacher that, "we don't know yet--this will need to be nailed down. We are still looking at options. I do not want to put a lid on those options by identifying an outcome." These two files did not address community experiences. Further, one of the files identified goal areas in community experiences and employment, however, there was no information contained in the IEP or elsewhere in the student file to determine the specific services and/or curriculum for these areas. A third student file had the various areas checked, however, there are no corresponding goals and short-term objectives or any other information relating to transition services present in the IEP.

OSEP FINDINGS

EXPECTED RESULTS

Free Appropriate Public Education - Related Services

BACKGROUND: OSEP reviewed AKDE's procedures for monitoring public agencies in the State, as contained in the Alaska Special Education Handbook (Section X - Compliance Monitoring). OSEP determined that AKDE monitors for this requirement by reviewing current IEPs developed by public agencies, and verifying that services are implemented as written on the IEP, but does not have a method to determine how decisions are made regarding provision of needed related services. OSEP also reviewed the most recent monitoring reports issued by AKDE for each of the public agencies to be visited. OSEP determined that AKDE did not make any findings with regard to the provision of related services as a component of a free appropriate public education in any of these agencies.

FINDINGS: AKDE has not fully ensured that public agencies provide special education and related services based on the student's unique needs and as specified by an IEP. **\$300.300.**

Administrators, teachers and related service personnel from agencies B, C and E informed OSEP that psychological counseling services are not determined based on individual student needs, nor provided to students based on an IEP. Individuals from these agencies informed OSEP that if a student requires counseling in order to receive a free appropriate public education, families must obtain these services themselves through community mental health organizations. These services are not reflected on student IEPs. Two administrators in Agency B and a local mental health services provider informed OSEP that counseling services were not available through the school, even though "fully half of our kids need counseling." All counseling services in this agency are provided through a community family counseling service, and are parent initiated.

A building administrator in Agency C reported that the agency does not provide long term counseling services to students. "We prepare referrals for parents if a student is in crisis, and a psychologist is called in to do crisis counseling and short-term follow up counseling." An agency administrator and a related service provider confirmed that the school provides crisis/intervention counseling only, and referrals for [long term] counseling are made to parents.

A building administrator and a related service provider in Agency E informed OSEP that no counseling services are provided in the school. "We lost all of our counselors this year. Its a funding thing." The building administrator stated that "we can refer students to the community agency, but counseling is not on the IEP." A teacher of seriously emotionally disturbed students from this facility confirmed that all counseling service [at this school] were eliminated because of financial reasons. This teacher stated that at least half of the students in this individual's class could benefit from counseling services, but the only psychological services available are provided through a community mental health agency.

AKDE must ensure that public agencies provide special education and related services based on the student's unique needs and as specified by an IEP.

OSEP FINDINGS

EXPECTED RESULTS

Prior notice; parent consent. §300.504 Content of notice. §300.505

BACKGROUND: OSEP reviewed AKDE's procedures for monitoring public agencies in the State, as contained in the Alaska Special Education Handbook (Section X - Compliance Monitoring) and determined that AKDE monitors for these requirements primarily through review of student records, to determine if written prior notice is provided in certain instances for specific actions. The actions included in AKDE's procedures are: "3 year reevaluation, change in IEP when parent disagrees, change in IEP when parents miss IEP meeting, district refused action (involving identification, evaluation, placement)" and when a student is exiting a special education program. OSEP also reviewed the most recent monitoring report issued by AKDE to each of the agencies visited. OSEP determined that AKDE made findings with regard to the notice requirements at §300.504 in the following instances: Agency A - review of student files indicated that the agency took actions (the example of change in placement was cited in the Report) but did not provide prior notice; Agency B - of the student files reviewed, none contained evidence that prior notice was provided; Agency D - files did not include documentation that notices of proposed action were provided prior to conducting reevaluations; and Agency E - five instances where the reviewed files did not contain evidence that a notice of proposed action was provided prior to conducting a reevaluation;

FINDING: AKDE does not always ensure that public agencies provide notice when proposing a change in the provision of a free appropriate public education to a student. As defined at 34 CFR §300.8, a free appropriate public education must consist of special education and related services that are "provided in conformity with an IEP ..." A change in the special education and related services set forth in a student's IEP which constitutes a change in the provision of a free appropriate public education to the student may include, but is not limited to: a change in the type or amount of specially designed instruction, type or amount of related services, type or amount of special accommodations, and type or amount of supplementary aids and services. In such instances, written prior notice that fulfills all the requirements of §300.505 must be provided. OSEP's review of AKDE's policies and procedures, student files from agencies A, B, C, D and E, and interviews with teachers and administrators from these agencies indicates that if parents attend the IEP meeting and agree with the public agency on the contents of the IEP, written notice that meets the requirements of §300.505(a)(2)-(4) is not provided.

In the document, Alaska's Special Education Handbook (Handbook) AKDE provides guidance to agencies regarding the required content of notice and when it must be provided. This document includes a model explanation of procedural safeguards available to parents, "Your Rights as the Parent of a Child with a Disability," and a model "Notice of Proposed or Refused Action" (NOPA).

AKDE's notice procedures are deficient because in certain instances covered by the notice requirements of §300.504, guidance set out in the Handbook states that prior written notice can be dispensed with altogether. The Handbook specifically excludes the requirement that NOPA be provided when a change in the IEP is proposed where the parent is in attendance at the IEP meeting. The Handbook states, "[t]he following procedure is recommended for providing notice in relationship to IEP meetings: If parents attend the IEP meeting and agree with the district on the IEP, written notice is not required."

AKDE must ensure that written notice that meets the requirements of §300.505 is given to the parents of a child with a disability 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. Such notice must include a full explanation of all of the procedural safeguards available to the parents, a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected, a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal and a description of any other factors that are relevant to the agency's proposal or refusal.

OSEP FINDINGS

EXPECTED RESULTS

The model NOPA form included in the Handbook states that "[t]he purpose of this letter is to notify (the parent) of the district's proposal to make a change, or the refusal to make a change, in (the student's) educational program." The first item on the NOPA form includes four possible descriptions and explanations for the proposed or refused action: "Change in IEP when parent disagrees;" "Change in IEP when parent misses meeting;" "Re-evaluation;" "District refusal;" and "Other." The district is expected to complete this form by indicating the appropriate choice.

With regards to the content requirements, the model NOPA does include a section for the information required by §300.505(2) - (4) - reason(s) for proposed or refused action, a description of evaluation procedure, test, record or report used in deciding to propose or refuse action, a description of other options considered, if any, and reason for rejecting them, and, other factors which are relevant to the proposal or refusal. However, since a NOPA is not required in all instances required by §300.504, OSEP also reviewed AKDE's procedures for providing notice by means other than the NOPA.

Failure to provide the parents with a NOPA is not a violation of Part B if notice that meets the requirements of §300.505(a) is provided in a different format (for example, through written statements in an IEP). However, AKDE only requires that some of the content requirements of §300.505 be included in IEPs in certain situations. As an example, when addressing a change in placement, the Handbook states, "[t]he IEP team should provide a written statement on the IEP which justifies the need for special education services which are more restrictive than full-time services within the regular classroom. Justification statements should document consideration of other placement options and reasons for rejecting these options." (Emphasis added.) Under this guidance, AKDE requires a statement which fulfills the notice requirements of §300.505(a)(2) be included in the IEP if the district recommends a change in placement, but does not require statements which comply with §300.505(a)(3) and (4). Therefore, AKDE does not require compliance with all the notice content requirements through statements in the IEP, nor is proper notice required in all instances where the district proposes a change in FAPE.

Special education teachers in Agencies B, C, D, and E and a program administrator in agency A stated that they do not provide a NOPA form or any other written notice that meets the requirements of §300.505 to parents if they attend the IEP meeting and are in agreement with the placement and IEP. Three special education teachers in Agency C stated that a NOPA is provided to parents if they disagree with the IEP or the IEP amendment, or if parents don't attend the IEP meeting, or when a three year reevaluation is due. No summary or written documentation of discussion of options that were considered and rejected are provided to parents if they attend the IEP meeting and sign the IEP. The teachers interviewed did not articulate any connection between the purpose of the NOPA form and providing parents with written notice of the placement, program, service, or instructional options considered when making placement and IEP decisions for their child, and the reasons why these options were rejected.

One of the special education teachers in Agency C, who is responsible for sending the IEPs and NOPAs to all parents in that school who do not attend IEP meetings, said that she always checks the "Other" category as the reason for sending the NOPA. The teacher was unable to describe any uses for the NOPA form other than to inform the parents that a new

OSEP FINDINGS

EXPECTED RESULTS

IEP had been developed. She said that she had never used it for any other purpose. A special education teacher in Agency B stated that they provide the NOPA forms when a student is referred for testing, at three year reevaluations, and when the parent does not come to the annual review. She stated that "We attach the IEP and tell them that they have 10 days to let us know if they disagree."

A review of student records in agencies A, B, C, D and E indicated that notice which included all of the content required by §300.505(a) was not provided to parents at all of the times required by §300.504. In Agency A the records indicated that at the annual review of the IEP, the services for a student in special education increased from 1160 minutes per week to 1330 minutes per week (almost three hours per week), and speech and language therapy was reduced from 40 minutes per week by the therapist to 20 minutes per week by regular class teacher. There was no explanation or evaluation information within the IEP that provided an explanation for the increase in the amount of special education and decrease in the amount of speech services, nor was there a NOPA that addressed the reasons for these changes. The only reference on the IEP to the student's present level of functioning in speech and language stated: "He continues to demonstrate difficulty with expressive language skills, particularly syntax."

A NOPA form in one of the records in Agency C stated, under Proposed action: "changes in class schedule." The reason for the proposed action listed was: "new semester." In another record in Agency C, the NOPA form stated that the proposed action is to "implement new IEP, continue goals in appropriate classroom behaviors, social skills, and study skills." The reason for the proposed action: "an annual review is required by federal law." While it is not impermissible for the NOPA to be used to convey this information, such use indicates to OSEP that the agency has an incomplete understanding of the intended purpose of the NOPA form.

Three IEPs in Agency D indicated that students' amount of services were significantly decreased this year, but, according to the director, parents were not provided with a NOPA (the content requirements of §300.505(a)(2) - (4)), because the parents attended the IEP meetings.

The IEPs did not contain written statements which address the reasons for changing the students from placement in resource classes to full-time regular class placement. In Agency E, the IEP form includes a checklist of 12 "Placement Options Considered," ranging from (a) "regular class with no additional service," through (l) "Special education instruction on a homebound basis," and "Why Rejected/Chosen" column beside the 12 options. There are no instructions on the IEP form to also list any additional changes in FAPE that were considered and why these changes were chosen or rejected.

OSEP FINDINGS

EXPECTED RESULTS

General Supervision

BACKGROUND: In its January 1994 monitoring report, OSEP found that AKDE had no mechanism to ensure that students eligible for special education and related services who were incarcerated in the State's adult correctional facilities were identified, evaluated, and, as appropriate, received special education and related services. In its corrective action plan, AKDE was required to develop and implement procedures to ensure that individuals of school age who are incarcerated who have or are suspected of having a disability are evaluated, and, if determined eligible, are provided with special education and related services in accordance with an IEP.

FINDING: OSEP finds that AKDE did not ensure that all school-aged individuals with disabilities, including those who are incarcerated in adult correctional facilities, are identified, located and evaluated, and have available to them a free, appropriate public education. §§300.600, 300.300

At the time of OSEP's September 1996 onsite review, AKDE did not have procedures to ensure that a free appropriate public education is made available to all eligible youth with disabilities incarcerated in the State's adult correctional facilities. According to AKDE State officials interviewed by OSEP, AKDE was in the process of finalizing an interagency agreement with the Department of Corrections which would establish procedures to ensure the availability of a free appropriate public education to these individuals. AKDE explained that the delay in formalizing this agreement was due to a number of factors, including a lack of understanding and agreement as to which agency was responsible for providing educational services to this population, and a change in the administration of the Department of Corrections, which required both Departments to start the process again from the beginning.

AKDE informed OSEP that it was working closely with the current administration of the Department of Corrections to: provide technical assistance regarding identification, evaluation, eligibility, IEP development and documentation, and procedural safeguards; develop procedures for identification, and initial evaluation of students who have, or are suspected of having a disability; develop contracts with public school systems or independent agencies to conduct appropriate evaluations; and, when necessary, provide of special education and related services that cannot be provided through existing Department of Corrections personnel. In addition, AKDE is working to implement its procedures for monitoring public agencies in the State, to include review of the provision of special education and related services to individuals incarcerated in the State's adult correctional facilities. AKDE personnel indicated that it expected a final agreement to be signed in early 1997, to be fully implemented by July 1997.

AKDE must ensure that a free appropriate public education is made available to all eligible youth with disabilities incarcerated in the State's adult correctional facilities.

Due to the history of non-compliance in this area, OSEP will be forwarding a separate letter to further address final resolution of this issue.