



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

February 16, 1999

Honorable Eugene W. Hickok, Jr.
Secretary of Education
Pennsylvania Department of Education
333 Market Street, 10th Floor
Harrisburg, Pennsylvania 17126-0333

Dear Secretary Hickok:

During the week of May 11, 1998, the Office of Special Education Programs (OSEP) conducted a follow-up visit to determine whether the Pennsylvania Department of Education (PDE) had ensured the correction of deficiencies with regard to implementation of Part B of the Individuals with Disabilities Education Act (IDEA) that had been previously identified by OSEP. The deficiencies were included in OSEP's March 31, 1994 monitoring report as well as its October 3, 1996 follow-up report.

Although PDE has made progress in previously identified areas of noncompliance, OSEP is concerned about continuing noncompliance in those areas. Principally, OSEP finds that PDE has not exercised its general supervisory authority in such a way so as to ensure that local school districts correct identified deficiencies in a timely manner. As a result, serious deficiencies have been allowed to exist for a number of years impacting services for children with disabilities.

As you are aware, Pennsylvania's Part B section 611 (Grants to States) and 619 (Preschool) grant awards for funds appropriated for Federal Fiscal Year (FFY) 1998 under Part B of the IDEA were issued subject to special conditions. The reason for this action is PDE's failure to appropriately exercise general supervision, including, when necessary, enforcement to secure compliance with the requirements of IDEA.

The OSEP team of, Gregg Corr, Judy Gregorian, Deborah Morrow, Ruth Ryder, Paul Steenen and Linda Whitsett visited six school districts during the week of the monitoring visit. OSEP selected districts that it had visited during the 1993 and 1995 reviews, as well as several districts that OSEP had not visited previously. In each of the school districts, we reviewed student records and interviewed special education teachers and directors at the building and district levels. Ms. Gregorian and Dr. Corr also reviewed documents and conducted interviews at the PDE offices in Harrisburg. We used this information, along with individual public agency data, to determine the status of PDE's implementation of its corrective action plan, and ultimately, to assess how PDE is meeting its general

supervisory responsibilities under Part B.

Enclosure B describes the corrective actions that PDE must take to address the continuing deficiencies described in Enclosure A. We expect PDE's corrective action plan to be submitted to OSEP for approval within 45 days of your receipt of this report. The corrections addressing the deficiencies regarding PDE's general supervision are consistent with those contained in the July 20, 1998 Special Conditions letter that accompanied PDE's FFY 1998 grant awards under Part B. Please note that Enclosure B requires PDE to develop and implement corrective actions that will correct each of the identified deficiencies, and to include in its corrective action plan the steps that PDE will take to verify and provide documentation to OSEP that those corrective actions have been effective in ensuring compliance at both the State and local levels. Documentation of the effectiveness of corrective measures is especially critical in light of OSEP's findings that although PDE has implemented previously agreed-upon corrective action steps, noncompliance with the requirements of Part B continues.

OSEP staff are available to work collaboratively with PDE to address the issues included in this report. Please contact me or my staff if you have any questions about this report.

Sincerely,

Judith E. Heumann
Assistant Secretary

Thomas Hehir
Director
Office of Special Education Programs

Enclosure

cc: Dr. William Penn

ENCLOSURE A

OSEP'S FOLLOW-UP REVIEW PROCESS

On the first day of the onsite review, OSEP convened a meeting with parents and advocates from the State, who provided information in the areas identified as the focus of OSEP's follow-up visit, to assist OSEP in verifying the status of corrections set forth in OSEP's 1996 report to PDE. Over thirty participants attended the meeting and raised a number of concerns regarding compliance issues in Pennsylvania. A number of persons stated that PDE was not exercising its general supervisory authority through monitoring and complaint management and that, specifically, PDE had not taken enforcement actions against districts that failed to correct identified deficiencies.

Six OSEP staff visited eight school districts in the State. Two of those six staff members also conducted document reviews and interviews with PDE staff in Harrisburg. The districts visited included: New Brighton, Baldwin-Whitehall, Duquesne, Washington, Colonial, Chester-Upland, Spring-Ford and Harrisburg.

On the final day of the visit, four of the six OSEP staff members participating in the review met with PDE's Special Education Director and members of his staff to review OSEP's preliminary findings during the week.

ANALYSIS OF PDE'S COMPLIANCE EFFORTS

GENERAL SUPERVISION

Background

In its 1994 report, OSEP found that in a number of critical areas, PDE had not exercised its general supervisory authority over programs providing special education and related services to children with disabilities. PDE had not utilized a systematic method of monitoring public agencies to determine program compliance since 1988. OSEP identified extensive noncompliance in local agencies that PDE had not identified because it had discontinued consistent use of its compliance monitoring system. Furthermore, PDE officials had told OSEP that PDE did not have the authority to withhold State funds when public agencies failed to comply with State or Federal requirements. Additionally, PDE was not resolving its complaints within 60 days, as required by Part B regulations and had no system to identify and correct deficiencies in juvenile and adult correctional facilities.

In its 1996 follow-up report, OSEP noted progress in the following areas:

- PDE determined that it did have the authority to withhold State funds and sent a memorandum to public agencies informing them that failure to comply with special education requirements could result in withholding.
- PDE revised its monitoring system and began monitoring all public agencies on a five year cycle. At the time of OSEP's follow-up visit in December 1995, the new system had not been in use long enough for OSEP to reach any determinations about its effectiveness.
- PDE developed a system for monitoring juvenile correctional facilities, but had not developed a system for monitoring special education programs in adult facilities serving IDEA-eligible youth.
- PDE had reduced the percentage of complaints that were not resolved within the 60-day time limit, except where appropriate extensions were made. However, in about a quarter of the cases, PDE had exceeded the 60-day time limit, and had not extended the time limits due to extraordinary circumstances.

OSEP's 1994 report required that PDE develop the procedures necessary to ensure that the requirements of Part B are met through the exercise of its general supervisory authority over programs providing special education and related services to children with disabilities. Specifically, PDE was required to take the steps necessary (whether statutory, regulatory or other) to enable it to impose sanctions or otherwise compel school districts to comply with State or Federal requirements.

PDE issued Basic Education Circular (BEC) 10-94 which describes the steps PDE may take where it does not succeed in obtaining prompt compliance. These include:

- a local special education plan may be disapproved;
- the disbursement of State and Federal funds may be deferred;
- the amount of funds may be reduced;
- a court order may be sought to require the district to take specific action;
- litigation initiated by parents can be joined by PDE; and
- action may be taken affecting the commission of a commissioned officer responsible for administering the district.

PDE initiated its cyclical monitoring process, including follow-up visits to those districts that OSEP visited for the 1994 compliance report and 1996 follow-up report.

1998 Follow-up Review Findings

Complaint Management: PDE reported receiving 763 complaints during calendar year 1997; it projected that it would receive approximately 900 during calendar year 1998, based on the January

and February rate. The director of compliance reported to OSEP that PDE's 1997 rate for investigating complaint within 60 days was approximately 83 percent.

According to PDE's Complaint Management Data for January and February of 1998, PDE had received 128 complaints, of which 122 were closed within 60 days. PDE exceeded the 60 day time limit in only two of the cases (two complaints received in February 1998 remained open at the time of OSEP's visit). This indicates that 97 percent of PDE's complaints were investigated and resolved with the required time limit, which demonstrates significant improvement on the part of PDE.

Monitoring of Special Education Programs in Adult Corrections Facilities: The director of PDE's Bureau of Correctional Education reported to OSEP that his unit had adapted the monitoring process developed for juvenile correctional facilities for use in adult correctional facilities where school-aged youth with disabilities were housed. One third of the adult facilities will be monitored each year over a three year period beginning with the 1996-97 school year.

In addition, the bureau has assumed the responsibility for monitoring county adult jails where presentenced and convicted youth with disabilities may be held. OSEP was told by the director of correctional education that each local school district is responsible for ensuring that services are provided to youth with disabilities in its county jail. Over the next two years, the bureau will monitor all county jails in the Commonwealth.

SEA Monitoring: PDE has been maintaining its five-year monitoring cycle that it implemented with the 1994-95 school year, by conducting visits to approximately 100 schools districts per year. PDE's special education director noted that the years during which PDE did not monitor has had an impact on local district compliance. PDE has found it necessary to conduct extensive training with local district staff to ensure that all personnel are aware of Federal and State special education requirements.

PDE's process for monitoring local school districts includes a policy and procedure review, staff interviews, a study of service delivery, classroom observations, document review (including a sample of individualized education programs [IEPs]), and parent interviews. In preparing for a compliance review, PDE staff review due process hearings and complaints with which the district has been involved.

PDE has demonstrated progress with the development of compliance monitoring procedures and the implementation of its monitoring compliance reviews. Where PDE has found noncompliance with regard to local district practices, it has required districts to submit documentation that deficient practices have been satisfactorily addressed. OSEP was particularly impressed with the extent to which PDE has been willing to provide technical assistance to districts so that district personnel fully understand Federal and State special education requirements and how to ensure that those requirements are put into practice. For the majority of districts, PDE has been successful in identifying and ensuring the correction of deficient practices.

There remain, however, a minority of districts for which PDE has been unsuccessful in bringing about compliance. In these cases, PDE's efforts to identify and require correction of deficiencies and to provide extensive technical assistance have not been sufficient to achieve compliance.

Harrisburg School District:

As a part of its 1995 follow-up review, OSEP made visits to six local school districts, including the Harrisburg School District. OSEP identified serious deficiencies in the Harrisburg School District that PDE had not identified as it had not monitored the Harrisburg School District since before 1988, when PDE had suspended its cyclical monitoring process.

In the Harrisburg School District, OSEP found that 100 of 300 students who had speech services on their IEPs were not receiving any speech services, and that another 25 students were receiving reduced speech services. The administrator explained that this was due to a shortage of speech therapists. Extended school year services were available only for students with severe disabilities served in separate facilities, regardless of individual needs. Also all students with severe disabilities, hearing impairments, and physical disabilities who used wheelchairs were placed in the intermediate unit's separate school because of their related services needs. These students were not provided opportunities for integration with age-appropriate peers. In addition, students with moderate disabilities who were served in self-contained classes in regular school buildings did not have an opportunity for integration with their nondisabled peers.

Most IEPs for students sixteen and older reviewed by OSEP did not fully meet the requirement for the inclusion of a statement of needed transition services in the IEP. OSEP found that IEPs were missing one or more components required in a statement of needed transition services (i.e. instruction, community experiences, and the development of employment and other adult living experiences). There were no statements in these IEPs that the IEP teams had determined that services in the missing areas were not needed, and the basis for that determination.

IEP meeting notices to parents of students age 16 and older did not indicate that a purpose of the meeting was the consideration of need transition services. Notices did not indicate that the student would be invited to the meeting. Also, students 16 years of age and older were not always invited to their IEP meetings. OSEP found that individual decisions based on students' needs were not being made when considering whether to invite to IEP meetings representatives of agencies likely to provide or pay for transition services.

PDE issued to the Harrisburg School District a cyclical monitoring report on May 10, 1995 and a targeted monitoring report on July 1, 1996. The targeted monitoring report noted,

... the District had systemic problems in special education procedure beginning with the distribution of the permission to evaluate forms and culminating in the placement of students. The District did not meet those timelines in state regulations that pertained to the completion

of the MDE [multidisciplinary evaluation], the CER [comprehensive evaluation report], the development of the IEP and the placement of students into special education programs.

The report also stated that the District did not meet timelines for evaluations and IEP development and the delivery of services. The district did not have a clear process for its special education system; staff were not knowledgeable about the special education process and requirements, record keeping was incomplete and poorly organized, students were improperly suspended from school. The report also pointed out that based on the results of the targeted monitoring review, five areas of noncompliance identified in the May 1995 cyclical monitoring report had not been corrected.

Although the Harrisburg School District submitted a corrective action plan on November 22, 1996, an internal PDE memorandum from the chief of PDE's compliance division (dated December 27, 1996) referred to the Harrisburg School District's continuing inactivity to be in compliance with the target monitoring and cyclical monitoring findings. Also, systemic problems affecting lack of services to children with disabilities exist.

PDE also communicated to the Harrisburg School District the findings from OSEP's October 1996 follow-up report. Monthly meetings with the Harrisburg School District staff to discuss progress with correcting these deficiencies, as well as deficiencies identified in PDE's own reports, were initiated in January 1997. A February 13, 1998 letter from PDE to the Harrisburg School District stated that the district needed to bring closure to the OSEP-identified issues, as well as those identified by PDE in its cyclical and target monitoring reports. In this letter, PDE stated that sanctions were considered prior to the departure of district's superintendent in the fall of 1997, and that if the district did not come into compliance, sanctions would be one option.

In its May 1998 follow-up visit to Pennsylvania, OSEP returned to Harrisburg in order to determine the effectiveness of PDE's efforts to ensure compliance in public agencies where deficiencies had been identified. Although OSEP noted some progress, it found continued evidence of noncompliance with regard to issues identified during OSEP's 1995 follow-up visit. These included: extended school year services, provision of services as required by IEPs, statement of needed transition services, and placement in the least restrictive environment.

The Harrisburg School District's acting special education director explained that both the superintendent and special education director left their positions in the fall of 1997 and that the district had placed a hiring freeze on all positions except special education teachers and related service providers. As a result of the freeze, a number of key special education administrative positions, including the special education director position, remained vacant or filled by staff in an acting capacity. Although PDE had provided extensive technical assistance to the Harrisburg School District, the acting special education director reported to OSEP that some corrective actions had not been completed to ensure timely provision of initial evaluations and reevaluations and the availability of required speech services.

PDE's special education director and his staff related to OSEP that in January 1998 PDE was considering sanctions after the Harrisburg School District had revised its corrective action time lines and then failed to meet those revised time lines.¹ PDE's special education director told OSEP that PDE met with the Harrisburg School District's management team and, because the management team was positive about completing the remaining corrective actions, PDE decided not to pursue the sanctions option. However, new complaints against the Harrisburg School District led PDE to conduct another target monitoring review in the spring of 1998 and PDE determined that there continued to be noncompliance with regard to several issues including delivery of services, and evaluation and reevaluation time lines. During its 1998 visit, OSEP learned from PDE that the district's acting special education director had recently submitted her resignation, and that her acting position, as well as her position of record (special education coordinator) would soon be vacant.

PDE's special education director told OSEP that PDE felt that it was time to bring closure to the Harrisburg issues and that consequences for failure to comply needed to be communicated to the district. At the time of OSEP's 1998 visit, PDE was in the process of determining what action to take with regard to the Harrisburg School District. In response to OSEP's question, the director stated that PDE had never withheld State or Federal special education funds from the Harrisburg School District or any other school district for failure to comply with requirements.

Chester-Upland School District:

¹ Most of the corrective actions resulting from PDE's 1996 targeted review were due to be completed by the beginning of the 1996-97 school year. Harrisburg's superintendent wrote to PDE in November 1996 and requested extensions of the timelines to allow the district to rebuild its special education infrastructure, develop procedures and conduct training. PDE approved the revised timelines, which required that most corrective actions be completed by December 31, 1996.

Also of concern are PDE's compliance activities related to the Chester-Upland School District. In January of 1990, a class action suit, Duane B. v. Chester-Upland School District, was brought against the Chester-Upland School District and PDE alleging that a free appropriate public education was not provided to students with emotional and behavioral disabilities. Over the following two years, the parties entered into a series of three stipulations (Remedial Orders) to resolve the lawsuit. PDE, as the central point of accountability, was ordered to ensure provision of a free appropriate public education for Duane B. class members. PDE's responsibilities included oversight, training and technical assistance, data collection and reporting. In December 1994, the court found that the district and PDE had failed to comply with the Remedial Orders developed to ensure that class members be provided with free appropriate public education. A special master was subsequently appointed.

Further complicating the situation in Chester-Upland, the district was determined to be financially distressed and placed under the authority of a three-member control board, with one member having been a PDE employee working in the Bureau of Special Education.

In addition, PDE has assigned a staff member to work full-time as the Duane B. Project Manager. He and other PDE staff have provided extensive technical assistance to the district which has been plagued by compliance problems, financial difficulties, and a high turnover of key staff.

It is OSEP's understanding that the Duane B. Remedial Orders focus on the special education students who are class members; that is, students with emotional and behavioral disabilities. To better understand how PDE carries out its responsibilities under the court order as well as its overall general supervisory responsibilities for all special education services in the district, OSEP conducted an interview with: PDE's assistant counsel responsible for the case; PDE's Duane B. Project Manager; and PDE's consultant responsible for compliance activities for the district.

OSEP learned through this interview that PDE's responsibilities have been directed primarily towards ensuring that activities required by the Remedial Orders are carried out. Although activities designed to address compliance issues affecting class members also impact non-class members with disabilities, PDE has not carried out cyclical monitoring activities to determine overall compliance in Chester-Upland. Even when PDE began monitoring on a five-year schedule in 1994-95 school year, it did not include Chester-Upland in its schedule. Although, PDE collected compliance data in a July 1996 review and developed a draft report, it did not issue the report.

In an interview with OSEP, PDE's assistant counsel granted that there was confusion on PDE's part regarding its approach to Chester-Upland situation and how to sort out responsibilities related to the case from overall general supervisory responsibilities with regard to all students with disabilities served by that district. At the time of OSEP's 1998 visit, although PDE had extensive data regarding the compliance status of special education for class members, it had not conducted a comprehensive compliance monitoring visit to the district and could not document the overall status of compliance for the district's special education program.

Subsequent to OSEP's May 1998 compliance visit, the special master in for this case provided OSEP with Special Masters Findings of Fact (February 13, 1998 and July 21, 1998) in which the master concluded that PDE had failed to ensure provision of a free appropriate public education to class members.

Duquesne City School District:

In June 1994, PDE conducted target monitoring of the Duquesne City School District based on the complaint of a citizens' group. PDE staff related to OSEP that the conditions in Duquesne were as serious as those in Chester-Upland. Systemic noncompliance existed with regard to student records, facilities, screening and evaluation, availability of services and IEPs, especially with regard to transition services. The district had no special education director.

PDE has provided extensive assistance to the district. It provided significant financial assistance, helped the district hire a special education director, and conducted extensive training of special education personnel. Despite this assistance, the district was not able to correct all deficiencies during the 1994-95 school year.

PDE told OSEP that by the 1995-96 school year, improvements had been made in systemic areas. For instance, by November 1995 the district had completed a new comprehensive evaluation review (CER) and IEP for each student. The intermediate unit consulted with the district on transition services.

However, significant noncompliance remained uncorrected. Class size exceeded state maximums, and in February 1996, PDE found that speech services for many students were discontinued because of staff attrition. PDE required that the district provide compensatory services. By May 1996, the special education director had resigned. PDE assisted the district by recruiting the current special education director.

At the time of OSEP's May 1998 visit, nearly four years after PDE conducted its targeted review of Duquesne, PDE related to OSEP that the district was improving but that there were still significant compliance issues. There continued to be a large number of out of district placements for students who could be served in district had there been adequate facilities.² PDE reported that the district is moving to a more inclusive model by utilizing more part time and supportive intervention and hiring instructional aides. Although consideration of the provision of extended school year services is documented by checking the appropriate box on IEPs, the district makes no services available even where such services are need in order for students to receive a free appropriate public education. Related services such as speech, occupational and physical therapies are available, but there continues to be a need for mental health services for students who need such services to benefit from special education.

² Although the problem with inadequate facilities had not yet been addressed, a new building was expected to be ready by Fall 1998.

FREE APPROPRIATE PUBLIC EDUCATION

Background

To ensure a free, appropriate public education, PDE is required, among other things, to ensure that public agencies provide each child with a disability the kind and amount of related services necessary to assist the child to benefit from special education for the period of time set forth in each student's IEP. Also, PDE is required to ensure that extended school year services are considered and provided, if necessary to ensure that a student receives a free appropriate public education and that no student is excluded from such considerations based solely on category or severity of disability. A public agency may not restrict the availability of direct services provided by the special education teacher or therapist for students who, as determined by the IEP team, require such services.

In its 1994 compliance report, OSEP found that although PDE's monitoring system addressed the requirement to ensure that each student with a disability receives the kind and amount of related services students needed to benefit from special education, PDE had not monitored public agencies on a regular basis since prior to 1988. In two of the seven public districts that PDE had monitored in 1992, OSEP identified deficiencies that PDE failed to identify. OSEP found that neither agency made available psychological counseling to those students who it was determined needed the service to benefit from special education.

In 1994, OSEP also found that, in addition to PDE's failure to conduct monitoring reviews, its procedure for determining compliance with the requirement for extended school year services, even if used, was insufficient to make such determinations. OSEP made findings regarding the provision of extended school year services in six of the seven local agencies it visited. OSEP found in its review of student files that over half of the students were not considered for extended school year because of the category or severity of their disabilities. In some of these cases, students who might experience severe regression in areas other than those needed to maintain self-sufficiency from caretakers were not considered for extended school year services.

As a result of these findings, OSEP required PDE to ensure that these deficient practices be discontinued and the correct practices implemented. PDE completed all corrective actions related to the provision of free appropriate public education as required in OSEP's 1994 monitoring report.

In a follow-up review in 1995, OSEP staff reviewed student files and interviewed teachers, related service providers and district level administrators to determine the availability of psychological counseling services. In three of five agencies, OSEP found that the agencies did not provide or pay for psychological counseling services and did not include them in the IEP, regardless of student need. Instead these agencies referred the parents of students who needed psychological counseling services to benefit from special education to outside agencies to obtain the services on their own. In another agency, a district level administrator informed OSEP that 100 of 300 students who have speech

services on their IEPs were not receiving any speech services. The administrator explained that this was due to a shortage of speech therapists.

In the same 1995 follow-up review, OSEP identified deficiencies in four of the six agencies regarding the consideration and provision of extended school year services for students who need them in order to receive free appropriate public education. Two of the four agencies stated that they were only recently informed about the requirement to consider and provide extended school year services if necessary to ensure that a student receives free appropriate public education. Two other agencies OSEP visited made services available only for students served in separate facilities, regardless of the student's needs for such services.

In March 1995, OSEP reviewed PDE's proposed rule change to clarify the provision of extended school year services. OSEP determined that the language in 14.34 (a) was misleading and would need to be changed. Although PDE issued a Basic Education Circular informing districts of the proper standard for the consideration and provision of extended school year services, the State school boards association was advising districts that PDE did not have the authority to enforce provisions that were not explicitly referenced in State or Federal statute or regulation. PDE's special education director informed OSEP that there was considerable resistance and deliberate noncompliance by some districts. The State finally amended its regulation in early 1998 which satisfied the remaining corrective action requirements addressing this issue.

1998 Follow-up Review Findings

Extended School Year Services: In OSEP's 1998 follow-up visit, OSEP identified deficiencies in four of the eight agencies visited regarding the consideration and provision of extended school year services. In Washington, Duquesne, and New Brighton, only students placed out of district in separate intermediate units placements were provided with extended school year services. In 23 of 24 files reviewed in Washington and New Brighton, no consideration of extended school year services was documented on the IEP's.

In Washington, a special education teacher told OSEP that the students she had were not severe enough to be considered for extended school year services, regardless of individual need for service. The special education director acknowledged the lack of understanding and problems with considering and providing extended school year services and plans to provide future training to staff to address deficiencies in this area.

In New Brighton, teachers told OSEP that none of their students are considered for extended school year services. One of the teachers interviewed stated that when extended school year services are discussed during IEP meetings, the special education director, who attends IEP meetings, makes the determination that such services are not needed.

In Duquesne and Harrisburg, all of the IEP forms documented consideration of extended school year services. In Duquesne, the special education director acknowledged that teachers checked off the box that extended school year services were considered, but that students who needed these services were not always provided with it due to a lack of understanding in the district concerning consideration and provision of extended school year services. In Harrisburg, two of the three files reviewed indicated that students needed extended school year services, but the students' teacher informed OSEP that these services had not been provided. The special education director believed that the information was not communicated properly to the central office in order to coordinate services.

Lack of Availability of Related Services: As a part of its 1998 follow up visit, OSEP staff reviewed student files and interviewed teachers, related service providers, school building administrators and district level administrators. OSEP focused on the availability of psychological counseling services and speech and language services. Of the eight agencies visited, two (New Brighton and Duquesne) provided no psychological counseling services, even if students needed them to benefit from special education. In two other agencies -- Baldwin-Whitehall and Washington -- psychological counseling services were available to some but not all students who need this service to benefit from special education..

In New Brighton, two special education teachers and the principal identified two students who were in need of psychological counseling services in order to benefit from special education, although this need was not documented in their records. The placements for both students had been changed from resource class to homebound, because of behavior. The district had not considered the provision of psychological counseling for those students. The special education director explained to OSEP that when students need psychological counseling services, their parents were referred to outside agencies but that the district does not provide or ensure the provision of such services..

In Duquesne, although there was no documented need for psychological counseling in the student files reviewed by OSEP, a special education teacher, the guidance counselor, the psychologist, and the director of special education all reported to OSEP that there were children with disabilities in the district who had emotional and behavioral needs requiring the provision of psychological counseling services to benefit from special education. The principal told OSEP that the district would not recommend services that they were unable to provide. The director of special education told OSEP that she had neither the staff nor funding to provide psychological counseling services. She added, "Why document something that you cannot provide?" She said parents are referred to other public agencies when their children are in need of psychological counseling services.

In Washington, although there were no documented needs in the student records, a special education teacher stated that 7 of 9 of his students placed in an emotional support classroom were in need of psychological counseling services. Two building administrators stated that the only counseling provided in the high school was crisis intervention, and that it was provided to both students with and without disabilities on an "as needed" basis. The special education director reported counseling services were available at the elementary and middle schools, and that those services would be

available as a component of a free appropriate public education at the high school during the 1998-99 school year.

In Baldwin-Whitehall, individualized psychological counseling was not available to students with disabilities who needed this service to benefit from special education. Although some students had counseling included on their IEPs, OSEP was told by a guidance counselor and a social worker that this service -- mental health counseling, drug and alcohol intervention, and anger control counseling -- was provided to groups comprised of students with and without disabilities. The services are not individualized and the statements on the IEPs reviewed by OSEP did not specify the amount of service to be provided. These groups are led by the guidance counselors and the social workers. Individual counseling, provided pursuant to an IEP, was not available, regardless of individual need. These groups are led by the guidance counselor or social worker. The guidance counselor who had been employed by the district for ten years told OSEP that she deals primarily with issues such as class scheduling, academic difficulties, and peer relationships, while the social worker, who had worked for the district for two years, stated that she works on a consultative basis on mental health issues, family problems and drug and alcohol use. These two professionals reported that if more intensive individual therapy on a regular basis were needed by a student, the student's parent would be referred to an outside agency. They said the parent would be responsible for contacting the agencies and, that if a fee for service was required, the parent or their insurer would be responsible for payment.

OSEP noted in one student record it reviewed at Baldwin-Whitehall that although the student had participated in the school's mental health group, the student's behavior had continued to deteriorate. OSEP reviewed documentation in the record stating that the services offered to the student were not meeting the student's needs. Although psychological counseling services had been recommended by district personnel to the student's parent several times, the parent did not contact the agency suggested by the school district. The last time the district referred the parent to the agency, the parent reported to the district that she could not afford the service. The social worker explained to OSEP that in those cases where a parent did not follow up on a recommendation to obtain therapy from another agency, school staff had no option other than continuing to recommend that the parents contact the agency. The social worker reported that she had been recommending therapy for one of her students since the fall of 1997, and it was not until May 1998 that the parent had agreed to seek out the counseling. The guidance counselor told OSEP that she would not recommend for inclusion on a student's IEP services that could not be provided by the school district. When the principal and special education director were interviewed about the provision of psychological counseling for students who need that service to benefit from special education, they reported to OSEP that the school district could not provide those services directly but would contract for the services and that the guidance counselor and the social worker were apparently unaware of this option.

IMPLEMENTATION OF TRANSITION SERVICES REQUIREMENTS

Background

In its 1993 review, OSEP did not review the implementation of the required components for a statement of needed transition services as described in §300.346(b) because the Federal regulations for this requirements had only recently gone into effect. To determine PDE's compliance with the transition requirements, OSEP added this area to the set of requirements reviewed in the 1995 follow-up visit. OSEP collected implementation data regarding the transition requirements in all of the public agencies visited and found that PDE had not fully met its responsibility to ensure that in all cases, the transition requirements were being met. Specifically, PDE failed to ensure that: (1) IEPs included statements of needed transition services that included all of the required components; (2) that parents were provided notice of the IEP meeting that informed them that the consideration of transition services was a purpose of the meeting and that the student would be invited to the meeting; and (3) that representatives of other agencies responsible for providing or paying for transition services were invited to IEP meetings.

In 1998, OSEP again reviewed PDE's compliance with the existing transition requirements to determine the effectiveness of the corrective actions taken by PDE. As discussed below, OSEP found PDE efforts did not result in all responsible agencies complying fully with the transition requirements. Requirements addressed by the amendments of 1997 to IDEA were not reviewed because the revised IEP requirements did not take effect until July 1, 1998.

PDE must ensure that if a purpose of the IEP meeting is the consideration of transition services, the public agency ensures that: (1) the student is invited and, if the student does not attend, other steps are taken to ensure that the student's preferences and interests are considered [§300.344(c)(1)-(2)]; (2) the transition services identified represent a coordinated set of activities, designed within an outcome-oriented process, that promotes movement from school to post-school activities [§300.18(a)]; and (3) activities are included which address (a) instruction, (b) community experiences, (c) the development of employment and other post-school adult living objectives, and (d) if appropriate, the acquisition of daily living skills and functional vocational evaluation [300.18(b)(2)].

Follow up review findings

In OSEP's 1998 follow-up visit, OSEP reviewed a total of 53 records for students 16 years and older in four school districts (Washington, New Brighton, Harrisburg and Chester-Upland). Eight of the files in New Brighton had no transition services identified on the IEP. Five files in New Brighton had transition components that were not in effect by the time the student turned 16, but had been developed after the student's sixteenth birthday. Review of the files indicated that few efforts had been made to secure the participation of any other agency that would be responsible for providing or paying for a needed transition service. In Washington, Harrisburg and New Brighton, a total of 21 students did not attend the IEP meetings where transition services were considered and there was no documented process for identifying and considering the students' preferences and interests. Most of the transition services in the files reviewed did not reflect a coordinated set of activities, designed within an outcome-oriented process, that promotes movement from school to post-school activities.

For instance, for a student with mental retardation the instructional service to be provided was: "To improve reading skills; to improve motor skills." Although these are clearly important skills to attain, the IEP did not make clear how attainment of these skills were to be linked with the employment goal: "Continue to develop vocation(al) skills." In short, the statement of needed transition services did not represent a clear thought out and coordinated set of activities; rather it was a collection of general and disconnected activities.

Through interviews with teachers and administrators, OSEP found that there was no process established for consistently considering students' preferences and interests, except in Chester-Upland which uses student and parent survey forms.

In all four districts reviewed, OSEP was told that the Office of Vocational Rehabilitation did not typically get involved until the students' senior year. Knowing this, school districts did not usually invite Office of Vocational Rehabilitation representatives until a student was in the senior year. In three of the districts, OSEP saw little evidence of school districts attempting to involve any outside agencies in the development of statements of needed transition services, beginning at age 16. In one district, OSEP was told by a teacher that prior to the year of graduation, outside agencies would participate in meetings addressing transition only when working with the youth and family outside of the context of the school setting. The teacher explained that representatives of those agencies were not invited by the school district, but that parents were told that they could invite such representatives of agencies with which they were already involved. Chester-Upland involves outside agencies as early as ninth grade and the transition coordinator for Colonial (where OSEP did not review student files for students ages 16 and older) reported to OSEP that linkages begin in that district as early as ninth grade although agencies usually do not attend meetings prior to the senior year.

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Background

In its 1994 monitoring report, OSEP made extensive findings in the area of least restrictive environment. PDE was required to initiate a number of corrective actions to address the least restrictive environment findings included in this report. These findings included revising and implementing PDE's monitoring system, issuing a memorandum to all agencies across the State on the requirements for least restrictive environment, and conducting Statewide training on the implementation of the least restrictive environment requirements for children with disabilities. PDE completed all the corrective actions required to address the deficiencies identified by OSEP in the 1994 monitoring report.

In December 1995, OSEP conducted a follow-up visit to determine the impact of PDE's corrective action plan on placements of students with disabilities in the least restrictive environment. OSEP noted progress in some of the districts visited in the use of alternative methods of providing special education in less restrictive settings through resource room programming and neighborhood schools

for students with mild disabilities, but again made extensive findings in the area of least restrictive environment in the majority of school districts visited. For example, OSEP found that: 1) students with disabilities were not being educated to the maximum extent appropriate with nondisabled students; 2) students with disabilities were removed from the regular education environment without a determination that their education could be achieved satisfactorily in regular classes with the use of supplementary aids and services; 3) a continuum of alternative placements was not available to for all students with disabilities; 4) placements were not based on the IEP; and 5) individual determinations were not made regarding the appropriateness of each child with a disability to participate with nondisabled children in nonacademic and extracurricular services and activities. As a result of these findings, PDE was required to initiate corrective actions to address the findings in the 1996 follow-up Monitoring Report. These actions included the development and implementation of a plan to include procedures to ensure that placements are not based on the category of disability, configuration of service delivery system or administrative convenience. OSEP also required that the plan address the need to: 1) develop additional placements for certain students in settings that are less restrictive than separate day classes and separate facilities; 2) review the placements of students currently placed in separate day classes and separate facilities; and 3) where appropriate, change the placement of these students to less restrictive settings.

Current Status: PDE has submitted documentation necessary to satisfy each of the specific corrective actions required to address the deficiencies identified by OSEP in the 1996 Follow-up Monitoring Report with respect to the least restrictive environment requirements. These actions included revising monitoring instruments to include probes and cues for monitors to identify issues regarding placement in the least restrictive environment, refining training materials to clarify that special education intervention, either through consultation to the regular education teacher, or direct service in the regular education setting, should be considered as an option before removing the child to a more segregated setting, and analyzing attendance rates at regional training sessions conducted Statewide. OSEP conducted its 1998 review to determine the effectiveness of PDE's corrective actions.

1998 Follow-up Findings

While onsite, OSEP staff reviewed student files and interviewed both regular and special education teachers, related service providers, district-level administrators and intermediate unit administrators. OSEP noted progress since 1995, when OSEP found that five districts visited were not educating students with disabilities to the maximum extent appropriate with nondisabled students, to 1998 when OSEP made such findings in only three of the districts. In these three districts, OSEP also found that students were removed from the regular classes without consideration as to whether education with the use of supplementary aids and services could be achieved satisfactorily, that placements were not based on the IEP but rather on the configuration of the service delivery system, and that individual determinations were not always made regarding the appropriateness of each child with a disability to participate with nondisabled children in academic and nonacademic and extracurricular activities.

OSEP was informed by administrators and teachers in three agencies (Harrisburg, Washington and New Brighton) that only two placement options -- separate class and separate facility -- were available for consideration for students who require Life Skills Support programming (primarily students with moderate disabilities such as moderate mental retardation). Most students with moderate mental retardation who require this programming are placed in separate classes located in general education buildings while other students with moderate mental retardation are placed in separate facilities. In one of the three agencies, all students with emotional disturbance were provided Full Time Emotional Support programming, and were placed in either separate classes located in general education buildings, or separate facilities. In one agency, all students with multiple disabilities were placed in a separate facility, while students with multiple disabilities in another agency were placed in separate classes located in a general education building, or separate facilities. For students with disabilities placed in separate class and separate schools, OSEP found a lack of opportunity for participation in academic or nonacademic and extracurricular services and activities with their nondisabled peers, and in some cases, no individual considerations of the appropriateness for such participation were made.

District administrators in three agencies were unable to report whether any opportunities were made available for students with disabilities placed in separate facilities to be educated with their nondisabled peers in general education settings. When OSEP visited the Harrisburg School District during the 1995 follow-up visit, students with disabilities in separate schools were not provided opportunities for integration with nondisabled students, regardless of need. An administrator in the Washington School District reported that the private school staff made decisions about whether to provide students in private separate schools with opportunities for participation with nondisabled students, and that such opportunities were not being made available for these students. An administrator in the New Brighton School District stated that students in separate facilities are not provided transportation to general education facilities necessary to enable them to participate in academic, nonacademic and extracurricular activities to the maximum extent appropriate with their nondisabled peers.

Administrators and special education teachers in the Harrisburg School District reported to OSEP that students in Life-Skills Support classes (separate classes in a general education building) are provided all of their academics in a separate classroom because they need the structure. The file for one student in the Life-Skills Support classroom included a rationale for placement that stated that other options were not structured enough to meet the student's needs. The rationale for placement in another student's file stated that the student would benefit from a smaller class size with a low student-to-teacher ratio. In addition, teachers stated, and administrators confirmed, that opportunities for educating students with disabilities in general education classes are limited because the class sizes in general education are too large. In all instances, individual determinations were not made regarding the appropriateness of each child with a disability to participate with nondisabled children in academic and nonacademic and extracurricular activities and no consideration was given as to whether the child's education could be achieved in regular classes with the use of supplementary aids and services.

In the Harrisburg, Washington, and New Brighton School Districts, teachers and administrators stated that more students could be educated in regular education classrooms if there were sufficient numbers of teacher aides to assist students placed in those classrooms. In the Harrisburg School District, teachers and administrators reported that they had an insufficient number of teacher aides to work with students with disabilities in general education environments, or even to escort to regular classes individual students who did not require assistance in the regular classroom. A teacher reported that one year, when her class had two students with disabilities for whom participation in a regular art class was inappropriate, the remaining majority of students with disabilities in the class, for whom participation was appropriate, were denied the opportunity to attend regular art class because there were no aides available to escort them to the class. A building administrator in the Washington School District, where nineteen students with mild mental retardation are placed in separate classes, stated that more students could be in less restrictive settings if the agency had additional teacher aides. A teacher of a high school Learning Support class in the New Brighton School District stated that 5 or 6 students could be in less restrictive placements if more teacher aides were available. A building administrator confirmed that the availability of more teacher aides would make possible less restrictive placements for some students. The shortage of teacher aides necessary to enable students to participate to the maximum extent appropriate with their nondisabled peers in general education classes was identified as a systemic issue by participants in a focus group discussion held by OSEP in Harrisburg during the 1998 follow-up visit. Therefore, this district was unable to make individual decisions regarding the appropriate level of participation with nondisabled students.

While all students in the Life Skills Support class participate in art, music and physical education with students who do not have disabilities, they attend as a class. A teacher of a Life Skills Support class in the Harrisburg School District reported that the amount of time each student will spend in general education classes and activities is not determined on an individual basis and based on the IEP, but instead is determined by class. The teacher reported that determinations cannot be made on an individual basis because a teacher aide is not available to take individual children to general education classes. An administrator in the Washington School District told OSEP that even though the separate program operated through the intermediate unit is housed in the regular education high school building, opportunities for students with disabilities to participate in activities such as assemblies and lunch with their nondisabled peers are limited because the students in the intermediate unit's program remain with their class in assemblies and eat lunch as a class, regardless of individual student need.

CONCLUSION

Despite progress PDE has made in addressing previously identified areas of noncompliance, OSEP is concerned about continuing noncompliance as documented above in this report. Because PDE has not exercised its general supervisory authority in such a way so as to ensure that local school districts correct identified deficiencies in a timely manner, serious deficiencies have continued to exist for a number of years impacting services for children with disabilities.

Therefore Pennsylvania's Part B section 611 (Grants to States) and 619 (Preschool) grant awards for funds appropriated for Federal Fiscal Year (FFY) 1998 under Part B of the IDEA were issued subject to special conditions. The reason for this action is PDE's failure to appropriately exercise general supervision, including, when necessary, enforcement to secure compliance with the requirements of IDEA. OSEP also is requiring that PDE take further corrective action, as included in Enclosure B, to address deficiencies described in this report.

ENCLOSURE B
Corrective Actions

FINDING/FEDERAL REQUIREMENT	RESULTS/ACTIONS REQUIRED	TIMELINE FOR SUBMISSION
<p>GENERAL SUPERVISION</p> <p>PDE must ensure that all public agencies meet the requirements of Part B and standards of the State. §300.600(a)(1) and (a)(2)(ii)</p>	<p>PDE will provide quarterly reports to the Office of Special Education Programs (OSEP) detailing:</p> <ul style="list-style-type: none"> A. The steps it has taken to ensure that the Harrisburg School District fully complies with Part B, including that PDE has taken enforcement actions against the Harrisburg School District if the Harrisburg School District has failed to complete corrective actions in a timely manner. B. The steps it has taken to ensure that timely corrective action is taken by other public agencies for which PDE has identified deficiencies in meeting Part B requirements. As a part of the first quarterly report, PDE must submit to OSEP a report of all public agencies that have failed to complete corrective actions according to the time lines set out by PDE. In the subsequent quarterly reports, PDE must indicate for such public agencies what steps it will take, or has taken, including time lines for completion, to either: (a) bring the public agencies into full compliance; or (b) take enforcement action against such agencies. 	
<p>FREE APPROPRIATE PUBLIC EDUCATION</p> <p>PDE must ensure that all public agencies make available a free appropriate public education to all children with disabilities in the Commonwealth, including related services as set forth in §300.16.</p> <p>PDE must ensure that public agencies provide extended school year services to all students with disabilities who require such services to receive a free</p>	<p>PDE must describe the steps it will take to ensure that psychological counseling services are provided as defined under 300.16(b)(8) for all students who need them to benefit from special education.</p> <p>PDE must develop and implement an effective plan to ensure that all public agencies provide extended school year services to all students with disabilities who require such services to receive a free appropriate public education. The plan must include procedures to ensure that eligibility for extended school year services is not based on category or severity of disability. In addition, PDE must submit a plan that would address the need to: (1) establish clear eligibility criteria for the provision of extended school year services; and (2) provide training and technical assistance to all public agencies on extended school year services. PDE must identify a method for documenting the effectiveness of these corrective actions to OSEP.</p>	

FINDING/FEDERAL REQUIREMENT	RESULTS/ACTIONS REQUIRED	TIMELINE FOR SUBMISSION
<p>appropriate public education. §§300.300, 300.8 and 300.16.</p>		
<p>STATEMENT OF NEEDED TRANSITION SERVICES</p> <p>1. Beginning no later than age 16 (and at a younger age, if determined appropriate), 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)(1) and (2).</p>	<p>PDE must describe the steps it will take to ensure that each public agency, beginning no later than age 16 (and at a younger age, if determined appropriate):</p> <p>(1) develops an IEP for each student which includes a statement of needed transition services that represents a coordinated set of activities promoting movement from school to post-school activities. In those instances where one or more content areas as specified in 300.18 (b)(2)(i - iii) (i.e., instruction, community experiences, and the development of employment and other adult living experiences) are omitted, the IEP must include a statement to that effect and the basis upon which the determination is made.</p> <p>(2) invites to IEP meetings representatives of other agencies that may be responsible for providing or paying for the provision of transition services, and, where they are unable to attend, otherwise arranges for their participation;</p> <p>(3) invites the student to the IEP meeting and ensures that the student's preferences and interests are considered.</p> <p>PDE must identify a method for documenting the effectiveness of the corrective actions to OSEP.</p>	
<p>PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT</p> <p>PDE must ensure that:</p> <p>Children with disabilities educated with nondisabled §300.550(b)(1);</p> <p>Removal only for nature and severity of disability §300.550(b)(2);</p> <p>Continuum of alternative placements [§300.551];</p>	<p>PDE must develop and implement an effective plan to ensure that all placement decisions are consistent with the least restrictive environment requirements cited in this section. The plan must include procedures to ensure placement decisions are not based on category of disability, configuration of the service delivery system or administrative convenience. In addition, PDE must submit a plan that would address the need to: (1) develop additional placements for certain students with disabilities included in this section, in settings that are less restrictive than separate day classes and separate facilities (such as, self-contained classes in regular education buildings, resource rooms, and regular classes with supplementary aids and services provided); (2) review the placements of students currently placed in separate day classes and separate facilities; and (3) where appropriate, change the placement of these students to less restrictive settings. The proposal should also include a timeline for implementation. PDE must identify a method for documenting the effectiveness of the corrective actions to OSEP.</p>	

FINDING/FEDERAL REQUIREMENT	RESULTS/ACTIONS REQUIRED	TIMELINE FOR SUBMISSION
<p>Children participate with nondisabled for nonacademic and extracurricular [§300.553]; and</p> <p>Placement individually determined based on IEP [§300.552(a)(2)]</p>		