



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

January 11, 2018

Honorable Mike Morath
Commissioner
Texas Education Agency
1701 N. Congress Ave.
Austin, Texas 78701

Dear Commissioner Morath:

This letter is to provide you with a summary of the results of the Office of Special Education Program's (OSEP) monitoring visit in Texas during the week of February 27, 2017. The visit was prompted by reports about the declining identification rate in Texas of children with disabilities under the Individuals with Disabilities Education Act (IDEA). As data from the Texas Education Agency (TEA) demonstrates, the number of children identified as children with disabilities under the IDEA significantly declined from the 2003-2004 to 2016-2017 school years from 509,401 to 477,281 students. While this represents a decrease of over 32,000 students, this decline is noteworthy given that during those same years, the total enrollment in Texas schools grew from 4,328,028 to 5,359,127 – an increase of 1,031,099 students.¹ Additionally, during this time period, Texas implemented a special education representation indicator in its Performance-Based Monitoring and Analysis System (PBMAS) to measure the percentage of students enrolled in special education and related services in an Independent School District (ISD) against a standard of 8.5 percent (8.5 percent indicator). Consequently, OSEP was interested in determining the extent to which the 8.5 percent indicator contributed to, or influenced, the identification and evaluation of children with disabilities under the IDEA.

Section 616 of the IDEA requires the U.S. Department of Education (Department) to monitor States with a focus on: (1) improving educational results and functional outcomes for all children with disabilities; and (2) ensuring that States meet the program requirements, particularly those most closely related to improving educational results for children with disabilities. One of these requirements is child find, described below.

The results of this monitoring visit were based on the following information:

- TEA's November 2, 2016 response to OSEP's October 3, 2016 letter regarding OSEP's concerns with Texas's PBMAS 8.5 percent Indicator;²

¹ This information is provided through TEA's enrollment trend reports, available at: http://tea.texas.gov/acctres/Enroll_2003-04.pdf and http://tea.texas.gov/acctres/enroll_2016-17.pdf.

² Both letters are available on the Office of Special Education and Rehabilitative Services' (OSERS) website: <https://www2.ed.gov/about/offices/list/osers/events/2016/texas-listening-sessions/index.html>.

- Feedback from parents of children with disabilities and other interested parties at five listening sessions held throughout Texas in December 2016;
- Review of over 400 individual comments received through a blog on the Department’s website established to provide an opportunity for members of the public to comment on the issue;³
- Review of State- and district-level documents related to the identification and evaluation of students with disabilities, and policies and procedures regarding Response to Intervention (RTI), provision of related aids and services under Section 504 of the Rehabilitation Act of 1973 (Section 504), and the Texas Dyslexia Program;
- OSEP’s visits to twelve ISDs to collect district-level and school-level data and to interview teachers, administrators, and ISD staff on referral, child find, and evaluation practices and procedures⁴; and
- Interviews with representatives from TEA to discuss TEA’s oversight of district special education programs, specifically issues regarding referral, child find, and evaluation of children suspected of having disabilities.

Additional Background Regarding Monitoring Visit

On October 3, 2016, in response to concerns highlighted in an investigative report on special education published in the September 11, 2016 edition of the *Houston Chronicle*, OSEP wrote to TEA to request information regarding the steps the State had taken and would continue to take to address the allegation that the use of the 8.5 percent indicator resulted in a failure to identify and evaluate all children in Texas suspected of having a disability under the IDEA. We acknowledge that TEA took steps to address some of the initial issues we outlined in our letter, including informing each ISD in the State that it may not violate the rights of children with disabilities by delaying or denying referrals, evaluations, or the provision of special education and related services and announcing that the 8.5 percent indicator would not be used for intervention staging in future years. However, following TEA’s November 2, 2016 response, OSEP determined there was a need to conduct listening sessions across the State to provide parents and other members of the public the opportunity to share concerns related to the 8.5 percent indicator.

We appreciated that TEA agreed to coordinate a series of evening listening sessions during the week of December 12, 2016.⁵ Both OSEP and TEA staff attended the sessions held in five locations throughout the State: Dallas, Houston, El Paso, Edinburg, and Austin. Additionally, OSEP created a blog that was open for comment from December 5, 2016 through January 6, 2017. The listening sessions and the blog attracted significant interest, with hundreds of community members attending the listening sessions and 423 individuals providing comments on the blog.

³ The OSEP blog is currently available on OSERS’ website: <https://sites.ed.gov/osers/2016/11/texas-listening-sessions/>.

⁴ During the week of the on-site visit, OSEP visited Aldine ISD, Austin ISD, Ector County ISD, Everman ISD, Del Valle ISD, Ft. Bend ISD, Harlandale ISD, Houston ISD, Laredo ISD, Leander ISD, North East ISD, and United ISD.

⁵ In each of the five locations, OSEP also held afternoon meetings with ISD staff to provide an opportunity for staff to comment on the impact of the 8.5 percent indicator on special education identification rates in their districts.

Comments received during the listening sessions and through the blog raised questions about the State's compliance with the child find requirements in section 612(a)(3) of the IDEA to identify, locate, and evaluate children with disabilities who need special education and related services and the requirement in section 612(a)(1) of the IDEA, to make available a free appropriate public education (FAPE) to all eligible children with disabilities residing in the State. Through the listening sessions and the blog, parents described in great detail the steps they had taken to obtain services for their children who were struggling to learn in the general education environment. A fuller description and analysis of comments provided by parents is found in the Enclosure to this letter. Among the numerous issues identified through public comments, a number of parents described how their children were unsuccessfully provided interventions through RTI programs for years before finally being referred for an initial evaluation for special education and related services under the IDEA. Some parents explained that their children were provided related aids and services under Section 504, but continued to encounter educational difficulties. Multiple parents commented that they were informed by school officials that their children's diagnoses of dyslexia indicated that the dyslexia was not "severe enough" to warrant an evaluation for special education and related services under the IDEA.

Due to the volume of the comments provided by parents, teachers, and other members of the public, OSEP decided to return to Texas to conduct site visits in select ISDs. OSEP provided TEA with additional details about this visit in a January 19, 2017 letter. We appreciated TEA's prompt attention to providing documentation from twelve ISDs in advance of the visit, coordinating the logistics for the visits across the State, and for attending each of the visits alongside OSEP staff. We also appreciated the opportunity to meet with TEA staff on March 3, 2017 to gain additional information about State-level policies, procedures, and practices.

Ten OSEP staff members conducted the onsite visits and were accompanied by a TEA staff member during each visit. OSEP staff generally visited two schools at each ISD. At each school, OSEP conducted interviews with two teams of teachers and a team of administrators. OSEP also conducted an interview with district administrators in each ISD. OSEP communicated to school and district staff that the intent of the visit was to gather additional information about the decline in the State's identification rate for children with disabilities, explaining that the interview would include questions about child find procedures, as well as questions about other programs and services offered in the school and/or district to serve students in need of additional support such as RTI, related aids and services under Section 504, and the State's dyslexia program. Although these interviews occurred at school and district levels, OSEP clarified that the purpose of the visit was to ensure that the State carried out its general supervisory responsibility under the IDEA by ensuring that ISDs properly implement requirements under the IDEA. Therefore, OSEP noted that findings would not be issued with respect to specific schools or ISDs but rather, the visit would result in the issuance of a report to TEA identifying any statewide areas of concern.

Summary of Findings of Noncompliance

A full description of OSEP's monitoring and analysis is found in the Enclosure to this letter. Of particular note, OSEP determined that some ISDs took actions specifically designed to decrease the percentage of students identified for special education and related services to 8.5 percent or below, even though there was no evidence to indicate that students were improperly referred and found eligible for special education and related services. Consequently, TEA's use of the 8.5 percent indicator did result in a decline in the State's overall special education identification rate

from 11.6 percent in 2004 to 8.6 percent in 2016.⁶ Through evidence collected during the monitoring visit, OSEP staff also identified many situations where ISDs engaged in practices that violated the IDEA's child find requirements, particularly in situations in which ISDs provided supports to struggling learners in the general education environment through mechanisms including RTI, Section 504, and the State dyslexia program, even though the students were suspected of having disabilities and needing special education and related services under the IDEA. As such, OSEP's monitoring demonstrated that TEA did not ensure that all ISDs in the State properly identified, located, and evaluated all children with disabilities residing in the State who were in need of special education and related services, as required by 34 CFR §300.111, and consequently, failed to make FAPE available to all eligible children with disabilities residing in the State, as required by 34 CFR §300.101.

OSEP's specific findings of noncompliance include the following:

1. TEA failed to ensure that all children with disabilities residing in the State who are in need of special education and related services were identified, located, and evaluated, regardless of the severity of their disability, as required by IDEA section 612(a)(3) and its implementing regulation at 34 CFR §300.111.
2. TEA failed to ensure that FAPE was made available to all children with disabilities residing in the State in Texas's mandated age ranges (ages 3 through 21), as required by IDEA section 612(a)(1) and its implementing regulation at 34 CFR §300.101.
3. TEA failed to fulfill its general supervisory and monitoring responsibilities as required by IDEA sections 612(a)(11) and 616(a)(1)(C), and their implementing regulations at 34 CFR §§300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A), to ensure that ISDs throughout the State properly implemented the IDEA child find and FAPE requirements.

OSEP appreciates the cooperation and assistance provided by your State staff and others, including staff from the regional Education Service Centers that hosted the December 2016 listening sessions, and the teachers and district staff who participated in onsite interviews, as well as the hundreds of parents of children and youth with disabilities and members of the public who offered feedback and input on the State's systems for providing special education and related services to eligible children with disabilities under the IDEA. We also acknowledge that the State is still working to recover from the impact of Hurricane Harvey and that many staff resources at TEA are dedicated to recovery efforts. Because we acknowledge additional time may be needed to address some of the corrective actions and next steps outlined in the attached Enclosure, OSEP will work with TEA upon issuance of this letter to establish an agreeable timeline by which TEA will provide OSEP with a plan for corrective action.

⁶ See data reported in the 2006 and 2016 PBMAS State Reports, available at <http://tea.texas.gov/pbm/stateReports.aspx>.

We look forward to actively working with the State to improve results for Texas' children and youth with disabilities and their families. If you have any questions or wish to request technical assistance, please do not hesitate to call your OSEP State Lead, Leslie Clithero, at 202-245-6754.

Sincerely,

/s/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

Enclosure

cc:

Justin Porter, Executive Director for Special Populations
Tammy Percy, Assistant Director for Special Education