



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

OCT 19 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 the Office of Special Education Program's (OSEP) response to the Texas Education Agency (TEA) corrective action response (CAR). On April 23, 2018, TEA provided the CAR to OSEP to address OSEP's January 11, 2018 monitoring findings related to the State's implementation of the Individuals with Disabilities Education Act (IDEA).

We appreciate the dedication and attention that TEA has demonstrated in response to OSEP's findings of noncompliance. The Enclosure to this letter references the actions that TEA identified in response to each of OSEP's required corrective actions and provides OSEP's response to TEA's submission. OSEP acknowledges that the CAR outlines a number of necessary steps that TEA is taking, and plans to take, to address the findings included in OSEP's report. OSEP will work with TEA to schedule an additional onsite monitoring visit in early 2019 at which time we will review the State's progress in implementing the CAR and associated IDEA requirements.

OSEP appreciates the significant work that TEA has engaged in over the past year to improve the provision of special education and related services in Texas. We look forward to ensuring the successful implementation of the activities referenced in the CAR, and future resolution of the three findings of noncompliance.

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
State Director for Special Education

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OSEP Response to Texas Corrective Action Response 10/17/18

OSEP Requirement #1: Documentation that the State’s system of general supervision requires that each local educational agency (LEA)¹ identifies, locates, and evaluates all children suspected of having a disability who need special education and related services, in accordance with section 612(a)(3) of the IDEA and its implementing regulation at 34 CFR §300.111 and makes FAPE available to all eligible children with disabilities in accordance with section 612(a)(1) of the IDEA and its implementing regulation at 34 CFR §300.101.

- TEA Response 1.a. provides that TEA will “[c]ommunicate to all LEAs the Child Find and FAPE requirements and obligations in IDEA.” TEA’s timeline for completion of this corrective action is specified as November 17, 2016 and February 26, 2018. TEA’s Documentation/Evidence of Progress/Completion includes: a letter from the Deputy Commissioner dated November 17, 2016, which predated OSEP’s February 2017 monitoring visit, reminding every LEA of their child find and monitoring obligations to prevent the over-identification of students with disabilities; and a letter dated February 26, 2018, which was issued after OSEP’s/OSERS’ January 11, 2018 monitoring report, reiterating LEA’s child find obligations and responsibilities, including when parents request an evaluation under the IDEA and the relevant State provisions.
 - OSEP Response to TEA Response 1.a.: OSEP expects that TEA will identify and describe the additional activities it has carried out or is implementing, including providing the timeline for completion of such additional activities and the Documentation/Evidence of Progress/Completion of the activities.
- TEA response 1.b. provides that TEA will review and ensure that the assurance statements it receives from LEAs clearly convey that the LEA has accepted and assured compliance with relevant IDEA requirements. TEA’s timeline for completion of this corrective action is January 10, 2019. TEA’s Documentation/Evidence of Progress/Completion is that 100% of LEAs who receive IDEA formula and discretionary funds have provided the requisite assurances and documentation that they have policies, procedures, and programs in effect that are consistent with State policies and procedures under 34 CFR §§300.101 - 300.163 and 300.165 - 300.174 (34 CFR §300.201).
 - OSEP Response to TEA Response 1.b.: TEA must develop a process, as part of its general supervisory responsibility, to identify a representative sample of LEAs in the State and conduct a review of their policies and procedures relating to Child Find, evaluations, and FAPE. Any information or documentation collected by TEA to satisfy this requirement should be maintained for possible review by OSEP in conjunction with future monitoring of TEA.
- TEA response 1.c. provides that TEA will “[r]evise monitoring protocols and document review requirements to ensure evidence of supervision activities related specifically to

¹ OSEP used the term “Independent School District (ISD)” as used in Texas, for purposes of the monitoring letter. However, for consistency, in this response, OSEP will use “LEA”, as it is the term used in IDEA.

OSEP Response to Texas Corrective Action Response 10/17/18

implementing regulations for Child Find and FAPE requirements.” TEA’s timeline for completion of this corrective action is December 1, 2018. The Documentation/Evidence of Progress/Completion is that TEA will produce evidence of monitoring protocols that it will use for on-site and desk reviews that include information-gathering activities targeting LEAs’ implementation of Child Find and FAPE requirements.

- OSEP Response to TEA Response 1.c.: OSEP appreciates TEA’s efforts and agrees that properly revising monitoring protocols to review implementation of the relevant requirements is an important way for TEA to exercise its general supervision authority in this area. Therefore, OSEP requires TEA to submit the revised monitoring protocols by December 1, 2018. OSEP will review the revised monitoring protocols and provide feedback, if needed, which may be provided in conjunction with a future on-site visit. OSEP will also review TEA’s implementation of the revised monitoring protocols as part of the State’s implementation of corrective actions associated with the report.
- TEA Response 1.d. provides that TEA will “[m]ake publicly available, easily accessible and understandable information regarding available dispute resolution programs (including IEP facilitation, mediation, state complaints, and due process hearings) specific to Child Find, FAPE, and other IDEA requirements.” TEA’s timeline for completion of this corrective action is December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion is TEA’s Special Education Dispute Resolution Handbook and “pamphlets that offer quick reference to parents about the dispute resolution programs.”
 - OSEP Response to TEA Response 1.d.: OSEP appreciates TEA’s response indicating that communications will be easily accessible and understandable. Please note that, to the extent that these materials are used to provide the procedural safeguards notice required by 34 CFR §300.504, TEA also must ensure that this information is provided to parents in their native language or other mode of communication used by the parent, unless clearly not feasible to do so, and in language that is understandable to the general public, consistent with 34 CFR §300.503(c).2
- TEA Response 1.e. provides for “ongoing training of hearing officers, mediators, and complaints investigators regarding legal provision [sic] of Child Find.” TEA’s timeline for completion of this corrective action is December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion only includes “the most recent training conducted by an independent expert in the field of special education law.”
 - OSEP Response to TEA Response 1.e.: TEA must provide documentation of trainings of hearing officers, mediators, and complaint investigators from January 11, 2018 through the end of the correction period.

2 Whether or not this information is included in the procedural safeguards notice, TEA also has an obligation to ensure that the information is effectively communicated to parents who are limited English proficient, in a language they can understand, consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, (Title VI) and the Equal Educational Opportunities Act of 1974, 20 U.S.C. §1703(f), (EEOA).

OSEP Response to Texas Corrective Action Response 10/17/18

OSEP Requirement # 2: A plan and timeline by which TEA will ensure that each LEA will (i) identify, locate, and evaluate children enrolled in the LEA who should have been referred for an initial evaluation under the IDEA, and (ii) require IEP Teams to consider, on an individual basis, whether additional services are needed for children previously suspected of having a disability who should have been referred for an initial evaluation and were later found eligible for special education and related services under the IDEA, taking into consideration supports and services previously provided to the child.

- TEA response 2.a. provides that TEA will require all LEAs to “distribute information to every enrolled student’s family regarding IDEA’s Child Find and FAPE requirements and obligations, to inform them of their rights under IDEA and to provide contact information to request an initial evaluation.” TEA’s timeline for completion of this corrective action is December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion includes that 100% of LEAs will have “materials to publish on their website” and that “LEAs must provide assurance [sic] of having met this requirement through the Legal Framework.”
 - OSEP Response to TEA Response 2.a.: OSEP requests that TEA provide additional information to describe TEA’s “Legal Framework” and its relationship to this corrective action. In addition, with regard to the published materials that TEA has committed to provide for LEAs to post on their websites, TEA must explain, where applicable, how it will ensure LEAs communicate this information to families through means other than postings on websites, when necessary. Further, to the extent that these documents are utilized in fulfilling the IDEA’s parent notice requirements in 34 CFR §300.503, 34 CFR §300.504, or 34 CFR §300.612, they must meet the requirements for accessible communications in 34 CFR §300.503(c), and if these published materials are not provided to meet IDEA’s notice requirements, they meet the effective communication requirements for parents who are limited English proficient as described in footnote 2 above.
- TEA response 2.b. provides that “TEA will provide guidance and information related to LEA legal responsibilities under state and federal law, including the identification of all eligible students and subsequent additional service guidelines, processes and best practices regarding provision of Child Find, Evaluation, Procedural Notice and Safeguards, and supports and services that results in positive school outcomes and success.” TEA’s timeline for completion of this corrective action is December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion states that 100% of LEAs will receive guidance and information related to their legal responsibilities under state and federal law, including the identification of all eligible students and subsequent compensatory service guidelines.”
 - OSEP Response to TEA Response 2.b.: OSEP will review the following information in conjunction with a future on-site visit: (i) the specific guidance and information TEA provides to its LEAs related to LEA legal responsibilities; (ii) specific details of TEA’s plan to inform 100 percent of its LEAs of their legal responsibilities related to

OSEP Response to Texas Corrective Action Response 10/17/18

identification and evaluation of all eligible children and TEA's guidance for LEAs regarding subsequent additional service; and, (iii) TEA's plan and implementation procedures to monitor how LEAs are distributing this information internally (see Requirement #4). OSEP will provide feedback, if needed, in conjunction with a future on-site visit and review of TEA's implementation of the guidance as part of the State's implementation of corrective actions associated with the report.

- TEA response 2.c. provides that TEA will require LEAs to collect and retain data that includes: (i) each request for an evaluation made during the 2018-2019 school year; (ii) whether the reason for the request indicates a claim that the child should have been referred for an initial evaluation prior to the 2018-2019 school year; and (iii) if the child is found eligible, whether compensatory services are needed. LEAs may produce this data to TEA upon request, or through approved TEA data collection procedures. TEA's timeline for completion of this corrective action is September 1, 2018. TEA's Documentation/Evidence of Progress/Completion is that 100% of LEAs will receive information relating to this requirement and notice of how TEA will collect this data.
 - OSEP Response to TEA Response 2.c.: OSEP recognizes the efforts TEA has made in proposing that LEAs collect and retain this data to address corrective action #2. It is OSEP's understanding that TEA will use this data to determine that each LEA: (i) identifies, locates, and evaluates children enrolled in the LEA who should have been referred for an initial evaluation under the IDEA, and (ii) provides technical assistance, as appropriate, to IEP Teams as they consider, on an individual basis, whether additional services are needed for children previously suspected of having a disability who should have been referred for an initial evaluation and were later found eligible for special education and related services under the IDEA, taking into consideration supports and services previously provided to the child. OSEP will, possibly in conjunction with future monitoring activities, review these efforts.

OSEP Requirement # 3: A plan and timeline by which TEA will provide guidance to LEA staff in the State, including all general and special education teachers, necessary to ensure that LEAs (i) ensure that supports provided to struggling learners in the general education environment through RTI, Section 504, and the State's dyslexia program are not used to delay or deny a child's right to an initial evaluation for special education and related services under the IDEA; (ii) are provided information to share with the parents of children suspected of having a disability that describes the differences between RTI, the State dyslexia program, Section 504, and the IDEA, including how and when school staff and parents of children suspected of having a disability may request interventions and/or services under these programs; and (iii) disseminate such information to staff and the parents of children suspected of having a disability enrolled in the LEA's schools, consistent with 34 CFR §300.503(c).

- TEA Response 3.a. states that “[u]pon direction from the State Board of Education, TEA will facilitate a process to revise the Texas Dyslexia Handbook to clarify the difference between dyslexia and dyslexia-related services, IDEA, Section 504, and RtI, and ensure clear guidance in the field, especially as it relates to dyslexia and dyslexia-related disabilities being eligible for IDEA. TEA will ensure that any guidance is compliant with

OSEP Response to Texas Corrective Action Response 10/17/18

IDEA.” TEA’s timeline for completion of this corrective action is November 1, 2018. TEA’s Documentation/Evidence of Progress/Completion is the completed, approved, and adopted Dyslexia Handbook.

- OSEP Response to TEA Response 3.a.: OSEP will review the revised Texas Dyslexia Handbook.
- TEA response 3.c. provides that TEA “will leverage resources to enable the creation of a suite of information intended to be shared with parents of children suspected of having a disability.” These resources will describe the differences between RtI, the State dyslexia program (for dyslexia or dyslexia-related needs), Section 504, and the IDEA, and would be developed in conjunction with extensive stakeholder feedback. TEA states that it will “provide resources and guidance to support LEA understanding of IDEA and state statute compliance.” TEA’s timeline for completion of this corrective action is December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion is that “100% of LEAs will receive materials that can be used to: present their statutory and professional requirements to their local school boards; publish information on their websites; and, provide assurances of this requirement through the Legal Framework.”
 - OSEP Response to TEA Response 3.c.: OSEP requires TEA to provide additional information. TEA must: (i) provide for OSEP’s review a representative sample of the documents it has produced to satisfy this Corrective Action. As previously noted, to the extent that the materials are utilized to meet the requirements of 34 CFR §§300.503, 300.504 and 300.612 they must be provided in a manner that is consistent with the accessible communication requirements in 34 CFR §300.503(c) and if not provided to meet IDEA’s notice requirements, the published materials must meet the requirements for effective communication with parents who are limited English proficient as described in footnote 2 above). TEA must specify how it will ensure LEAs’ broader dissemination of these materials, to the extent that not all families in Texas may have access to such websites.

OSEP Requirement # 4: A plan and timeline by which TEA will monitor LEAs’ implementation of the IDEA requirements described above when struggling learners suspected of having a disability and needing special education and related services under the IDEA are receiving services and supports through RTI, Section 504, and the State’s dyslexia program.

- TEA response 4.a. states that “TEA will restructure Agency oversight with increased capacity and monitoring expertise, ensuring a balanced system of compliance and results-driven accountability monitoring and intervention practices in the state, that includes specific monitoring requirements to review LEAs’ implementation of the IDEA requirements found in 34 CFR §§300.111 and 300.101 when struggling learners suspected of having a disability and needing special education and related services under the IDEA are receiving supports through RTI, Section 504, and/or the State’s dyslexia program.” TEA’s timeline for completion of this corrective action is that the reorganization will be completed by August 2018. TEA’s Documentation/Evidence of Progress/Completion is the transition of the Special Education monitoring duties from

OSEP Response to Texas Corrective Action Response 10/17/18

School Improvement to Special Populations (in the Office of Academics) as part of a new Review and Support Team. Until the transition is complete, TEA will require School Improvement to include specific monitoring requirements to review LEAs' implementation of the IDEA child find, evaluations, and FAPE requirements "and other requirements of IDEA found in this Corrective Action Response."

- OSEP Response to TEA Response 4.a.: TEA must maintain a plan and timeline that specifies how its overall monitoring system will be implemented to ensure compliance with the statutory and regulatory provisions of the IDEA that are reflected in these corrective actions. TEA must specify how it will identify noncompliance by each LEA and describe the specific actions it may take to ensure that LEAs correct any noncompliance identified as soon as possible, but in no case later than one year from the State's identification of the noncompliance, as required by 34 CFR §300.600(e). OSEP will review the implementation of TEA's plan and timeline in conjunction with future monitoring activities
- TEA Response 4.b. specifies that TEA will establish broad stakeholder involvement opportunities, including input from the State's Continuing Advisory Committee (CAC) to inform and provide feedback on effective monitoring practices that will be additionally developed and implemented by TEA to ensure LEAs are meeting regulatory requirements under IDEA for struggling learners suspected of having a disability and needing special education and related services, regardless of whether they are receiving other services and supports through RTI, Section 504, and the State's dyslexia program. TEA's timeline for completion of this corrective action is December 2018. TEA's Documentation/Evidence of Progress/Completion is that at least six stakeholder meetings would be held between May 2018 and December 2018, inclusive of representative stakeholder groups.
- OSEP Response to TEA Response 4.b.: OSEP appreciates TEA's continuing efforts to obtain and respond to stakeholder input. Because of the value of this input and OSEP's previous outreach in the State, OSEP will continue to request updates from TEA to learn of ongoing and meaningful stakeholder involvement as TEA implements the corrective actions outlined in this response.