



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

FEBRUARY 21, 1996

Dr. Ed Richardson
Superintendent of Education
State Department of Education
Gordon Persons Office Building
Montgomery, Alabama 36104

Dear Superintendent Richardson:

During the week of September 18, 1995, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Alabama Department of Education's (ALDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether ALDE is meeting its responsibility to ensure that its educational programs for children with disabilities are administered in a manner consistent with the requirements of Part B. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives; and our findings and corrective actions are presented in Enclosure C.

Our review revealed that the actions ALDE took in response to OSEP's prior monitoring report of August 1993, appear to have been effective in resolving a number of the problems identified in that report. We found no systemic deficiencies in the areas of content of individualized education programs (IEPs), full explanation of procedural safeguards in notices to parents, protection in evaluation procedures, and review and approval of local educational agency applications -- all areas where ALDE took corrective action after OSEP's 1993 report.

Although this letter includes findings in the area of placement of students in the least restrictive environment and provision of transition services to children with disabilities, OSEP recognizes several initiatives undertaken by ALDE in these areas. These initiatives include ALDE's sponsorship of the Alabama Transition Conference, the Alabama Transition Pilot Project and ALDE's Least Restrictive Environment Inclusion Pilot Project. These initiatives are described in more detail in Enclosure B to this letter.

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C.

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that ALDE did not always ensure the provision of services in the least restrictive environment, implementation of the requirements for transition services and provision of services to eligible individuals in adult correctional facilities. In addition, we found problems in the provision of extended school year services, ALDE's complaint management system, its due process hearing system, and in the provision of prior written notice.

We noted in our review of Office for Civil Rights data in preparation for the visit that a relatively high percentage of children identified as children with mental retardation were black. In discussion with ALDE staff about this issue, we were informed that ALDE has identified this as a priority issue and has taken steps to address it, including appointing a task force to review the State's assessment guidelines and eligibility criteria for special education, and examine alternative assessment instruments. Based on the recommendations of the task force, ALDE will, as needed, revise procedures and provide training statewide to service providers. We have requested that special education unit staff keep us apprised of ALDE's progress in this endeavor.

The preliminary findings of the monitoring team were discussed with Dr. Bill East and staff members of the Division of Special Education Services at an exit conference held at the conclusion of OSEP's on-site visit. OSEP staff subsequently provided ALDE with further clarification of its findings through telephone conference calls and memoranda. ALDE was invited to provide any additional information it wanted OSEP to consider during the development of OSEP's monitoring report. No additional information was submitted by ALDE; therefore, the findings presented in Enclosure C are final.

In the event ALDE, after consideration of the data in this letter and its enclosures, concludes that evidence of noncompliance is significantly inaccurate and that one or more findings are incorrect, ALDE may request reconsideration of the finding(s). In such a case, ALDE must submit reasons for its reconsideration request and any supporting documentation within 15 days of receiving this letter. OSEP will review the request and, where appropriate, will issue a letter of response informing ALDE that the finding has been revised or withdrawn. Requests for reconsideration of a finding will not delay development of the

corrective action plan and implementation timelines for findings not part of the reconsideration request.

I thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Dr. Bill East and staff members of the Division of Special Education Services were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of Alabama's various systems to implement Part B.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of ALDE's corrective actions. Please let me know if we can be of assistance.

Before the enactment of the Individuals with Disabilities Education Act (IDEA), one million children with disabilities were excluded from school altogether, and another 3.5 million did not receive appropriate programs within the public schools. Because of the IDEA and the joint actions of schools, school districts, State educational agencies and the Department, more than 5.4 million children with disabilities are in school.

Thank you for your continued efforts toward the goal of improving education programs for these children and youth with disabilities in Alabama.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Dr. Bill East

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Preparation. OSEP staff began its review of documents related to ALDE's special education program in May 1995. The review included, but was not limited to, ALDE's State Plan, State regulations, interagency agreements and other materials that must comply with the requirements of Part B, such as the complaint management, due process hearings, and State monitoring systems. OSEP also reviewed ALDE's placement data based on the December 1994 child count.

At ALDE's request, staff members from the South Atlantic Regional Resource Center participated as observers during the interviews at ALDE's administrative offices, attended the three public meetings and the exit conference. OSEP understands that South Atlantic Regional Resource Center staff will assist ALDE with development and implementation of corrective action plan activities based on the findings contained in this letter.

Involvement of Parents and Advocates During the week of August 21, 1995, OSEP held three public meetings in Birmingham, Montgomery and Mobile. The purpose of these public meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of ALDE's compliance with Part B. In addition, OSEP conducted outreach meetings with representatives from the Special Education Action Committee and the Alabama Disability Advocacy Program to receive additional information. The information obtained from the public meetings and outreach activities, as well as from interviews with State officials and a review of State documents assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Alabama; (2) selecting monitoring issues (e.g., the provision of extended school year services) to be emphasized while on-site; and (3) selecting the sites to be visited.

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

On-site Data Collection and Findings The OSEP team included Barbara Route, Catherine Cooke, Sheila Friedman and Linda Whitsett, who visited three elementary schools (including a preschool program located on an elementary school campus), two middle schools, two high schools, one special school, and one school serving students in grades kindergarten through twelve in six public agencies. In addition, OSEP visited one Department of Corrections facility. The team leader, Charles Laster, spent most of the week in ALDE's administrative offices in Montgomery.

Where appropriate, OSEP has included in this letter data collected from the six agencies to support or clarify OSEP's findings regarding the sufficiency and effectiveness of ALDE's systems for ensuring compliance with the requirements of Part B.

The agency in which the supporting or clarifying data were collected is indicated by a designation such as "Agency A." The agencies that OSEP visited and the designation used to identify those agencies in Enclosure C of this letter are set forth below:

Agency A: Baldwin County
Agency B: Huntsville City
Agency C: Limestone County
Agency D: Escambia County
Agency E: Mountain Brook City
Agency F: Jefferson County

Corrective Action Procedures

In the interest of developing a mutually agreeable corrective action plan specifically designed to address these findings, OSEP proposes that ALDE representatives discuss with OSEP staff, either in a meeting or telephone conference, the areas of noncompliance identified, the most effective methods for bringing about compliance and improving programs for children with disabilities in the State, and specific corrective actions. We also will invite a representative from Alabama's Special Education Advisory Panel to participate in that discussion. ALDE's corrective action plan must be developed within 45 days of receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

In order to begin immediate correction of deficient practices ALDE must undertake the following general corrective actions:

1. ALDE must issue a memorandum to all agencies advising them of OSEP's findings of deficiency. The memorandum must direct agencies to review their respective practices in regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to the agencies in which OSEP found deficiencies. Should these agencies determine that their current practice is inconsistent with the requirements identified in ALDE's memorandum, they must discontinue the current practice and implement procedures that are consistent with Part B. This memorandum must be submitted to OSEP within 30 days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to all agencies throughout the State providing special education or related services to students with disabilities.
2. ALDE must issue a memorandum to those agencies in which OSEP found deficient practices, as identified in Enclosure C of this letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to ALDE that the changes necessary to comply with Part B requirements have been implemented. This memorandum must be submitted to OSEP within thirty days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to those public agencies in which OSEP found deficient practices. ALDE must send to OSEP verification that all corrective actions have been completed by these public agencies.

ENCLOSURE B

COMMENDABLE INITIATIVES

Although this letter includes findings in the areas of placement of students in the least restrictive environment and provision of transition services to children with disabilities, OSEP would like to recognize the following Statewide initiatives undertaken by ALDE:

Alabama Transition Conference - For the past five years, ALDE, in cooperation with the Department of Rehabilitation Services, and Auburn University's Department of Rehabilitation and Special Education, has sponsored an annual Statewide conference on transition planning. The purpose of the conference is to create new transition programs, and improve the quality of existing transition programs, policies and strategies at both the local and State levels. In addition to presenting national authorities in the area of transition services, the conference includes workshops in the areas of agency coordination, vocational programming, community-based instruction, and supported work and living. ALDE recognizes outstanding students, employees, parents and transition programs through presentations of financial awards. Over 600 administrators, educators, consumers and agency personnel attended last year's conference.

Alabama Transition Pilot Project - ALDE, along with the Department of Rehabilitative Services, and the Department of Mental Health/Mental Retardation has jointly funded ten transition project sites during the 1994-95 school year. These sites, located in diverse geographic regions across the State, are to implement the four goals of the pilot project: 1) establish a local transition team; 2) adopt and implement the Life Centered Career Education Curriculum in the secondary school system; 3) provide a school-based job coach; and 4) provide a case manager responsible for arranging for services and supports for students and their families. Financial support and training for these activities are provided collaboratively by the participating State agencies. The goal of the project is to establish these programs permanently in these communities, and to generate new programs of this type in other communities in the area. ALDE has continued to fund these sites for the 1995-96 school year, in addition to two new sites.

Least Restrictive Environment Inclusion Pilot Projects - ALDE sponsors a competitive grants program for individual schools and public agencies to fund three-year model projects and/or programs which demonstrate effective methods for inclusion of students with disabilities into regular education programs. Project sites have been established in diverse geographic regions of the state across all age ranges. Some examples of projects funded in the 1994-95 school year include those designed to increase the number of students with disabilities served in regular classrooms, provide training for teachers and administrators in methods of collaboration, instructional strategies, establish parent support teams in schools, dissemination of promising practices, and expand successful inclusion programs into feeder schools.

ENCLOSURE C

FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED/TIMELINES

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ACTION REQUIRED/TIMELINES
<p><u>FREE APPROPRIATE PUBLIC EDUCATION:</u> Extended School Year \$300.300 [ALDE is responsible for ensuring that all children with disabilities are provided a free appropriate public education, including ensuring that public agencies consider and make available extended school year services as a component of a free appropriate public education, to students with disabilities, if necessary.]</p>	<p>BACKGROUND: As a result of the corrective action requirements from OSEP's 1993 monitoring report, ALDE developed a comprehensive training module on the requirements of extended school year services, and conducted training in each public agency in the State. In addition, public agencies that are found to be deficient in this area through ALDE's onsite program review process are required to participate in the State's extended school year training. ALDE's monitoring procedures include an interview question for teachers and administrators which asks for a description of the process for determining the need for extended school year services. The requirements for extended school year are set forth in the Alabama Administrative Code, which each public agency must ensure they follow, and ALDE does not require that local public agencies develop additional policies and procedures to address provision of extended school year services. OSEP's review of the most recent monitoring report issued by ALDE to each of the public agencies visited indicated that ALDE made a finding with regard to provision of extended school year services in public agencies A and B. ALDE subsequently provided additional training in the requirements for provision of extended school year services to these public agencies.</p> <p>FINDING: ALDE has not fully ensured that public agencies consider and make available extended school year services, as a component of a free, appropriate public education, to students with disabilities, if necessary, to ensure that the student receives a free appropriate public education. Interviews with teachers and administrators in public agencies A, B and D revealed that extended school year was not available for students in the facilities visited by OSEP. Teachers interviewed in public agencies A, B, and D stated that they were unsure as to the criteria for extended school year, and therefore did not know how to determine the need for extended school year services. None of these 11 teachers had ever participated in an IEP meeting where students were considered for such services. Both building level and district administrators from these public agencies confirmed that teachers and administrators were not aware of the criteria for extended school year services. Most teachers and administrators acknowledged that they had received some inservice training on extended school year from ALDE staff, but indicated that additional training and information was needed.</p>	<p>ALDE must ensure that students with disabilities receive extended school year services, if necessary, to ensure that the student receives a free appropriate public education.</p>

COMPLAINT MANAGEMENT
§300.661(a) and (b).

[ALDE is responsible for ensuring that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless ALDE has extended the time limit because exceptional circumstances exist with respect to a particular complaint.]

BACKGROUND:

When a complaint is received by ALDE, it is logged in, and assigned to a complaint contact person who has responsibility for tracking timelines, managing correspondence and communicating between the complainant, the local school district and ALDE. The public agency involved is notified by a letter, which indicates the issue involved in the complaint, the specific information required, and timelines for submission to ALDE. The public agency may then provide a corrective action plan if it agrees that there has been noncompliance. ALDE reviews the information received, and contacts the complainant who may submit additional information. ALDE then makes a determination as to the resolution of the compliant, and notifies the parties through a summary of actions and letter of findings. If the local district is found to be in noncompliance, the letter may contain a corrective action plan (either one proposed by the public agency or developed by ALDE). Approximately one month subsequent to the closing of a complaint, ALDE contacts all complainants who have prevailed in their complaint to verify that the public agency has implemented its corrective action plan.

FINDING:

OSEP finds that ALDE does not ensure that complaints are resolved within 60 calendar days after the complaint is filed, or within the extension granted because of exceptional circumstances. OSEP interviewed ALDE officials responsible for complaint resolution in the State, and reviewed complaint logs tracking complaints filed from January 1993 through August 1995. OSEP finds that ALDE does not always ensure that complaints were resolved within 60 calendar days unless the timeline was extended due to exceptional circumstances with respect to the complaint. Of the 138 complaints filed with ALDE during this period, 63 exceeded the established 60 day timeline or the extension. (OSEP notes, however, that during this three year period, the percentages of the total complaints resolved within the 60 day timeline and the amount of time that complaints exceeded this timeline improved. In 1993, 53 per cent of the 34 complaints filed were resolved beyond the timeline and the time for resolving complaints exceeded the 60 days by three months to one year and four months. In 1994, 45 percent of the 56 complaints filed were resolved beyond the 60 day timeline or the extension and the timelines were exceeded by six days to four months. At the time of OSEP's visit (September 1995) 38 per cent of the 48 complaints filed were resolved beyond the 60 day timeline or the extension and the amount of time that exceeded the timelines ranged from five days to one month.)

Ensure that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless ALDE has extended the time limit because exceptional circumstances exist with respect to a particular complaint.

<p>TRANSITION SERVICES</p> <p>§§300.344(c)(1)(ii), 300.345(b)(2), 300.346(b). [If a purpose of the IEP meeting is the consideration of transition services the public agency must ensure that (1) a representative of any other agency that is likely to be responsible for providing or paying for transition services is invited; (2) the notice sent to parents notifying them of the IEP meeting contain all requirements specified at §300.345(b)(2); and (3) the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.]</p>	<p>BACKGROUND:</p> <p>In addition to the initiatives described in Enclosure B, ALDE developed the document, <u>Transition and the IEP</u> in 1990 and updated it in 1993. This document is distributed to secondary teachers and administrators Statewide, and describes all State and Federal transition requirements. These requirements are also addressed in the technical assistance document, <u>Mastering the Maze</u>, which is widely utilized by all educational personnel in the State, and also includes information on procedures for evaluation, development of IEPs and placement of students with disabilities.</p> <p>OSEP reviewed the materials contained in ALDE's monitoring procedures (<u>Program Review and Improvement Procedures for Special Education Programs in Alabama</u>). OSEP's review indicated that ALDE monitors for the Federal requirements relating to provision of transition services through its onsite review of student folders, and review of district forms submitted to ALDE. Both the <u>Compliance Checklist for Students with Disabilities</u> and the <u>IDEA-B Compliance Requirements checklist</u> require verification of whether the student's IEP contains required transition services. The <u>Compliance Checklist for Students with Disabilities</u> requires the monitor to determine if the IEP meeting notice has completed transition information checked. In addition, ALDE's monitoring procedures include one general interview question for the special education coordinator, "Describe your process for determining transition services." There are no questions contained in these procedures that address specific requirements. OSEP's review of the most recent monitoring report issued by ALDE to each of the public agencies visited indicated that ALDE had not made any findings with regard to provision of transition services in any of these public agencies.</p> <p>FINDINGS:</p> <p>OSEP finds that ALDE did not ensure, in all cases, that public agencies implemented policies and procedures which complied with the requirements of Part B relative to transition services.</p> <p>OSEP visited secondary education programs in three public agencies (A, B, and C). The secondary programs included two high schools, one middle school, one separate day school, and one school serving students from kindergarten through twelfth grade. OSEP reviewed the records of 17 students from these programs who were 16 years of age or older. OSEP also interviewed the students' teachers who participated in the IEP meeting, the building principal, and administrators responsible for the provision of special education services in these three public agencies.</p> <p>§300.345(b)(2)(i) - Parent participation - Notice must include purpose. OSEP found that in six of the 15 files reviewed in public agencies A and B, the notice of the IEP meeting did not indicate that a purpose of the meeting would be the consideration of transition services.</p>	<p>ALDE must ensure that, if a purpose of the IEP meeting is the consideration of transition services, the public agency must ensure that (1) a representative of any other agency that is likely to be responsible for providing or paying for transition services is invited; (2) the notice sent to parents notifying them of the IEP meeting contain all requirements specified at §300.345(b)(2); and (3) the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.</p>
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§300.345(b)(2)(ii) - Parent participation - Notice must indicate agency will invite the student. OSEP found that in 15 of the 17 files reviewed for public agencies A, B and C, the notice of the IEP meeting did not indicate that the student would be invited to the meeting.

§300.344(c)(1)(ii) - Transition services participants in meetings - Agency representative. OSEP's found that in public agencies A, B and C, no individual determination was made as to whether it is appropriate for a representative of any other agency likely to be responsible for providing or paying for transition services be invited to the most recent IEP meeting, as required by §300.345(c)(1)(ii). In two instances, the parent invitation to attend the IEP meeting indicated that a representative from vocational rehabilitation would be an "anticipated participant" at the IEP meeting (one in public agency A and one in public agency B), however, there was no documentation that an agency representative had been invited, nor did a representative attend either meeting. OSEP was informed by teachers and administrators in public agency A, that with the exception of vocational rehabilitation, no other agencies are involved in transition planning in the public agency. One teacher stated, "if the vocational rehabilitation teacher is available on the date of the meeting, we grab him when we can get him; otherwise, there is no outside involvement." One teacher in public agency B indicated that there is no outside agency involvement for her students and that the parents of the students in her class will arrange for or otherwise provide the appropriate transition services. A district administrator from this public agency stated, "the only outside agency that is ever involved in transition planning is vocational rehabilitation. Vocational rehabilitation can come into play during the student's junior/senior year." OSEP notes that a representative from vocational rehabilitation was invited to attend an IEP meeting for only one student whose file was reviewed by OSEP in this public agency, but the representative from vocational rehabilitation was not in attendance. A teacher and an administrator in public agency C informed that vocational rehabilitation does not become involved with students until grade 12.

	<p>§300.346(b) - Content of individualized education program. OSEP found that two of the nine IEPs reviewed in public agency A did not contain community experiences nor a statement indicating that the IEP team had determined that services were not needed in that area, as required by §300.18(b)(2)(ii). Two additional IEPs in public agency A stated that the child's current functioning precluded consideration of these services, and that a community based day program would allow parents to keep the child[ren] at home for a longer period of time. When interviewed, this teacher stated, "this is very frustrating. My contact [in the district] does not know what to do. There is not much out there for these kids." Two IEPs from public agency B indicated that transition services would not be addressed on the students' IEPs or provided by the public agency as they would be arranged for the parents, as appropriate.</p>	
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GENERAL SUPERVISION
§300.600(a)(2)(ii)
[ALDE is responsible for ensuring that each educational program for children with disabilities administered within the State, including each program administered by any other public agency meets the requirements of Part B and the education standards of the SEA. See also §300.2(b)(4).]

BACKGROUND:

During the 1992 review of ALDE, OSEP found that ALDE did not have a procedure to ensure that individuals with disabilities incarcerated in Department of Corrections facilities were identified and evaluated and had available to them a free appropriate public education, which included special education and related services. In response to the corrective action plan, ALDE developed procedures to ensure that students placed in the State's adult correctional facilities who are suspected of having a disability are evaluated in accordance with the requirements of §300.530, and provided special education and related services in conformance with an IEP. ALDE also submitted documentation of implementation of these procedures, as well as verification that all staff responsible for implementing these procedures received appropriate training. At the time of OSEP's visit, any individual who was incarcerated in the State of Alabama who required educational services received such services in one facility.

FINDING:

OSEP finds that ALDE did not exercise its general supervisory responsibility in a manner that ensured that all individuals with disabilities, including those who are incarcerated, are provided a free appropriate public education in accordance with an IEP. OSEP interviewed ALDE staff and Department of Corrections administrators responsible for ensuring services to individuals with disabilities who are incarcerated in the adult correctional facility in Alabama, interviewed four teachers and reviewed student files from one correctional facility. At the time of OSEP's visit, there were approximately 400 individuals receiving general education services at this facility, 27 of whom had been determined eligible for special education services. OSEP found that special education services are not provided for all students identified as eligible for special education at this facility. Education for all students is provided in regular education classes by regular education teachers. All students who have been determined eligible for special education services have IEPs that state "special education will be provided on an as needed basis." Participants at these IEP meetings told OSEP that individualized determinations of the type and amount of special education that the students are to receive are not made at the time of the IEP meeting. Rather, the students or the students' teachers are told that the only services available are tutorial assistance or counseling, which may be requested as they perceive the need. OSEP was informed by both administrators and teachers that such assistance was seldom requested, and, when requested, was not always provided. Two ALDE administrators informed OSEP that they were aware that identified students at this facility were not receiving needed special education and related services, and described the resulting lack of services as "a real problem."

ALDE will ensure that eligible inmates at State's adult correctional facility who are 21 years of age or younger are provided special education and related services in accordance with an IEP.

<p><u>PROCEDURAL SAFEGUARDS:</u> Impartial due process hearings §300.512(a) and (c) [ALDE is responsible for ensuring that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension is granted at the request of either party.]</p>	<p><u>BACKGROUND:</u> ALDE operates a one tier due process hearing system. Within 45 days after the school receives a request or initiates a due process hearing a final decision must be reached and mailed to the parties. The hearing officer has authority to grant an extension for a specific period of time at the request of either party. ALDE assigns six due process hearing officers on a rotating basis to conduct the hearings.</p> <p><u>FINDING:</u> OSEP finds that extensions in due process hearings are granted for nonspecific periods of time. Two ALDE administrators acknowledged that its hearing officers grant extensions for unspecified periods of time, even though ALDE provided instruction to all the hearing officers in 1993, and again in 1994, that when they grant extensions, they must do so for a specific period of time.</p> <p>OSEP reviewed a log of hearings from January 1993 through December of 1994. Of these 114 requests, 63 entries indicated that extensions of timelines were granted. The log, however, did not indicate whether any of these 63 extensions were for specific periods of time. OSEP reviewed six cases, two filed in 1994 and four filed in 1995, in which four of the six hearing officers presided. In four instances, timelines were extended, but were not extended for specific periods of time. In these four cases, three different hearing officers presided. Of the other two due process hearings, one was completed within timelines, and one was extended for a specific period of time.</p>	<p>ALDE will ensure that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties unless a specific time extension is granted at the request of either party.</p>
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Prior notice; parent consent. **§300.504** [Written notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency -- Proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.]

Content of notice. **§300.505** [The notice under §300.504 must include -- (1) A full explanation of all of the procedural safeguards available to the parents; (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were

BACKGROUND:

OSEP's review of the most recent monitoring report issued by ALDE to each of the public agencies visited indicated that ALDE had not made any findings with regard to provision of prior written notice in any of these public agencies. OSEP also reviewed ALDE's technical assistance document, *Mastering the Maze* which ALDE provides as guidance to public agencies, and could find no reference to the requirement that public agencies must provide parents with notice that meets the requirements of §300.504-505 prior to the proposal to initiate or change the provision of a free appropriate public education to the child. The only reference to the provision of notice prior to a proposal of a change in the provision of a free appropriate public education is when the parents are invited to an IEP meeting. The document states, on page 59: "To revise the IEP, the teacher must first send the parents the Request to Attend an IEP Meeting form along with a small-print copy of Special Education Student and Parent Rights. If the parents are unwilling to attend such a meeting, their participation in the revision of the IEP can be attained through other means, including individual or conference telephone calls."

FINDINGS:

OSEP finds that ALDE does not ensure that written notice that meets the requirements of §300.505 is given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

An ALDE administrator informed OSEP that prior written notice, which meets the requirements of §300.505(a)(1) is provided to parents when the agency proposes to initiate the identification, evaluation, or placement of a child, when the agency proposes to reevaluate a child, when the agency dismisses the child from a special education program, and when the agency invites the parents to the IEP meeting; however, public agencies are not required to provide a notice that meets these requirements when the agency proposes a change in the provision of a free appropriate public education to a student.

OSEP reviewed student records and interviewed teachers and administrators in public agencies A and B, and determined that prior notice, which contains the content requirements of §300.505(a) is not provided to parents when a public agency proposes to change the placement or provision of a free appropriate public education to a child. OSEP was informed by administrators in both public agencies, and by ALDE administrators, that the only notice that is provided to parents is the invitation to the IEP meeting, which is accompanied by a copy of Special Education Student and Parent Rights. When asked whether parents were informed of the requirements at §300.505 (including a description of the action

ALDE must ensure that parents are provided notice, which contains the content requirements of §300.504 and §300.505.

<p>rejected; (3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and (4) A description of any other factors that are relevant to the agency's proposal or refusal].</p>	<p>proposed or refused by the public agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected), OSEP was informed by the administrators in public agencies A, C and D, and an ALDE administrator that the content of §300.505(a), including a discussion of placement options considered and rejected, and other factors related to the decision are recorded on the section of the State-mandated IEP form entitled, "Justification for the Least Restrictive Environment." OSEP was also informed by administrators in agencies A, C and D that options, including regular class placement, may be discussed at the IEP meeting, but only the final placement decision is recorded on the IEP. In its review of student files, OSEP noted that a change in the provision of a free, appropriate public education had been made for students in public agencies A and B (a change in the type or amount of special education services provided), however, neither the notice of invitation to attend the IEP meeting, nor the "justification" section of the students' IEPs contained any of the information required by §300.505(a)(2)-(4).</p>	
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u> (§300.550(b)) [Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily].</p>	<p><u>BACKGROUND:</u> The document, <u>Procedures for Placement in the Least Restrictive Environment</u> was developed by ALDE to provide technical assistance to public agency personnel and to "assist IEP committees in making appropriate LRE decisions for students with disabilities." During the program review process, each public agency must demonstrate to ALDE that it has provided this document to all appropriate personnel, and conducted training activities.</p> <p>OSEP reviewed the materials contained in <u>ALDE's Program Review and Improvement Procedures for Special Education Programs in Alabama</u> to determine the method by which ALDE monitors for compliance with the Federal requirements relating to least restrictive environment. OSEP determined that ALDE monitors for these requirements through evaluation of student folders reviewed onsite to determine whether specific information required on the IEP is completed (ALDE requires that the justification of least restrictive environment section be completed, that the placement determination is checked, and that student participation in nonacademic/extracurricular activities is addressed), and through interviews with teachers and administrators to assess implementation of these procedures in individual schools and throughout the public agency. ALDE also reviews public agency forms and policies and procedures submitted to ALDE. OSEP's review of the most recent monitoring report issued by ALDE to each of the public agencies OSEP visited indicated that ALDE made a finding in the area of placement in the least restrictive environment in public agency B (specifically, that the public agency did not disseminate the document and provide appropriate training).</p> <p>In order to meet the requirement of §300.550, a public agency must, at least annually, make a placement decision for each child with a disability that is based upon that child's IEP. In making that decision, the public agency must, prior to making any decision to remove the child from the regular education environment-- determine whether the child's education can be achieved satisfactorily in the regular education environment with the provision of supplementary aids and services. In determining whether a child with disabilities can be educated in a regular education class or activity with supplementary aids and services, several factors must be considered including: (1) whether reasonable efforts have been made to accommodate the child in the regular classroom or other regular education environment; (2) the educational benefits available to the child in the regular education environment, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class or other separate environment; and (3) the possible negative effect of the inclusion of a child on the education of the other students in the class. If, after considering these factors, the IEP team determines that, even with the use of supplementary aids and services, some removal from the regular educational environment is necessary, the IEP team must</p>	<p>ALDE must ensure that public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p>
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	<p>then determine those portions of the day (both academic and nonacademic) for which the child's education can be achieved satisfactorily in regular education with the use of supplementary aids and services.</p> <p>The findings set forth below are based upon a review of student records, statements from teachers regarding placement determinations as made in IEP meetings in which they participated, and interviews with administrators regarding the placement practices throughout public agencies or specific schools.</p> <p>FINDINGS: OSEP finds that ALDE did not always meet its responsibility under §300.550(a) to ensure that public agencies ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the</p> <p>(§300.550)</p> <p>OSEP found that, in public agencies A, B, and D, the decision to remove students with disabilities from regular education is not based on an individual determination that the student's education could be achieved satisfactorily in a regular education classroom with the use of supplementary aids and services.</p>	
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u> (§300.550(b)) [Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily].</p>	<p>Disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily (§300.550(b)); and each child with a disability participates with children who do not have disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child (§300.553).</p> <p>In public agency A, OSEP visited two regular education facilities, including a middle school and a high school. Interviews with six teachers and an administrator indicated that regular education with the use of supplementary aids and services was not considered at the annual review meetings for the students in these teachers' classes. While confirming information from individual student records reviewed by OSEP, one teacher stated that, for each of these students, there was no discussion of regular education with modifications at the annual IEP meeting because these students "cannot handle regular education." A teacher from another class informed OSEP that placement in regular education is never discussed for the students in this teacher's class because the parents are happy with their child's current placement. This teacher confirmed that no individual determinations had been made regarding whether or not students could participate in either academic or nonacademic activities with the use of supplementary aids and services. Another teacher reported that not many modifications are available, and further stated that if more modifications were available, they could create more opportunities for inclusion and students would receive more services in regular classes. An administrator acknowledged that while consultation, resource and self-contained options are provided in this public agency, there are "gaps" in the range of services available to students with disabilities, including supports in the regular classroom.</p> <p>OSEP also found that students at the middle school were removed from the regular education environment due to administrative convenience, even if the child's education could be achieved satisfactorily in regular education with supplementary aids and services. OSEP was informed by a teacher that some students received their instruction in resource classes; however, the IEPs of these students indicated that regular education classes would be the least restrictive placement "if the schedule permits." A teacher informed OSEP that these students could not receive services in the regular education setting due to scheduling conflicts (the teacher "couldn't be in two places at once").</p>	
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	<p>In public agency B, OSEP visited one separate facility and one regular education facility. At the separate facility, OSEP determined that, in some cases, placement of students with severe disabilities is based on administrative convenience. One administrator from public agency B reported that the logistics for intense therapy services are difficult to arrange in a regular facility because the itinerant personnel needed to deliver services require significant traveling time. This individual also indicated that the separate facility is a "state of the art" building and offers a "protected and secure environment." Another administrator informed OSEP that in accordance with district policy, IEP teams are required to consider regular education placement with supplementary aids and services as the first option. However, this administrator acknowledged that this is not always the practice. For students with severe emotional conflicts, regular education with supplementary aids and services is not considered at all annual IEP reviews. A teacher from one class in public agency B reported that, while placement is discussed at every annual IEP meeting, the focus of the discussion is on whether the current placement is still appropriate. This individual further stated that there is no discussion at the annual IEP meetings of regular education with the use of supplementary aids and services. Most of the students from this teacher's class remain in the program until they "age out."</p>	
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u> (§300.550(b)) [Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.]</p>	<p>In public agency D, OSEP visited one regular education facility serving students at the elementary level. Two teachers from this facility reported that placement of students with disabilities in regular education with supplementary aids and services was not considered at the annual review meetings. Another teacher stated that the IEP teams do not address regular education [at annual reviews] because intervention and modifications were considered prior to placement in special education [in regular education]. The second teacher indicated that no consideration of regular education with supplementary aids and services was made for the students in this self-contained class, because the parents, who are very supportive of the current placement would be very upset if the students were placed in less restrictive settings. Administrators from this public agency confirmed that regular education with supplementary aids and services was not considered for the students in these classes. OSEP notes that Alabama's most recent Federal child count data for this public agency indicate that none of the five students identified as multidisabled from this public agency received educational services in regular education settings, and were placed in self-contained settings.</p>	
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LEAST RESTRICTIVE ENVIRONMENT
(§300.553)

[Each child with a disability participates with children who do not have disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child].

In public agencies A, B, and F, OSEP determined that students who were placed in separate facilities and, in some cases, students with multiple disabilities who were placed in self contained classes located on regular education campuses were not provided with opportunities for participation with nondisabled students in nonacademic and extracurricular services and activities. In public agency A, a teacher and an administrator stated that the students, ages 11 - 20, with severe multiple disabilities who were placed in a class located on a middle school campus had no opportunities for integration with nondisabled peers. OSEP was informed that integration activities were difficult to arrange due to the wide range in age and ability levels between the students with disabilities and those who were not disabled. An administrator in public agency B reported that there is no consistent effort to integrate students placed in the separate facility with nondisabled peers in nonacademic and extracurricular activities. This individual indicated that a few times each year, nondisabled students from a neighboring regular education facility attended an assembly or other special programs at the separate facility. OSEP determined from a review of student records from public agency B, that integration activities were not described on the IEPs. Administrators in public agency F also confirmed that participation in nonacademic and extracurricular services and activities for students with multiple disabilities placed in a separate center based program were not available in that public agency.

ALDE must ensure that each child with a disability participates with children who do not have disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of that child.