



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

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Dear Mr. Gover and Mr. Christie:

The U.S. Department of Education's Office of Special Education Programs (OSEP) conducted a review in Department of Interior education agencies and schools in North Dakota during the weeks of August 3 and September 21, 1998; in New Mexico during the weeks of October 5, and December 7, 1998; and in South Dakota during the weeks of April 12 and May 17, 1999, for the purpose of assessing compliance in the implementation of the Individuals with Disabilities Education Act (IDEA) and assisting the Department of the Interior, through the Bureau of Indian Affairs (BIA), in developing strategies to improve results for children with disabilities. The IDEA Amendments of 1997 (IDEA 97) focus on "access to services" as well as "improving results" for infants, toddlers, children and youth with disabilities. In the same way, OSEP's Continuous Improvement Monitoring Process is designed to focus Federal and local resources on improved results for American Indian children with disabilities and their families through a working partnership among OSEP, the BIA, local educational agencies, tribes and tribal organizations, other private and Federal service providers, advocates, and parents.

In conducting its review, OSEP applied the standards set forth in the IDEA 1997 statute and the Part B regulations (34 CFR Part 300), in effect at the time of the OSEP review. The Part B regulations in effect in September 1998 were those published on September 29, 1992. All citations to 34 CFR Part 300 in this report are to the regulations, as published on that date. On March 12, 1999, the Department published new final Part B regulations that became effective on May 11, 1999. In planning and implementing improvement strategies to address the findings in this report, the BIA should ensure that all improvement strategies are consistent with the new final regulations.

A critical aspect of the Continuous Improvement Monitoring Process is collaboration between a Steering Committee of broad-based constituencies, including representatives from the BIA and

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

OSEP. The Steering Committee assessed the effectiveness of BIA systems in ensuring improved results for children with disabilities and protection of individual rights. In addition, representatives from the initial Steering Committee and the IDEA Advisory Board (State advisory panel) formed a committee that has begun designing and coordinating implementation of concrete steps for improvement. Please see the Introduction to the Report for a more detailed description of this process for the BIA, including representation on the improvement planning committee.

OSEP's review placed a strong emphasis on those areas that are most closely associated with positive results for children with disabilities. In this review, OSEP clustered the Part B (services for children aged 3 through 21) requirements into four major areas: Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment (including Early Childhood Transition), Secondary Transition, and General Supervision. Components were identified by OSEP for each major area as a basis to review the BIA's performance through examination of system-wide and local indicators. As the Interior's Part B grant recipient, the BIA is treated as a "State educational agency" responsible for the general supervision of IDEA programs.

The enclosed Report addresses strengths noted in the BIA, areas that require corrective action because they represent noncompliance with the requirements of the IDEA, and technical assistance on improvement for best practice. Enclosed you will find an Executive Summary of the Report, an Introduction including background information, and a description of issues and findings.

The BIA's Branch of Exceptional Education has indicated that this Report will be shared with members of the Steering Committee, the improvement planning committee, and the IDEA Advisory Board. OSEP will work with your Branch of Exceptional Education and the improvement planning committee to develop corrective actions and improvement strategies to ensure improved results for children with disabilities.

Thank you for the assistance and cooperation provided by your staffs during our review. Throughout the course of the review, Dr. Angelita Felix, Mrs. Ann Leigh, Mr. Ken Whitehorn, agency Education Line Officers, and Special Education Coordinators were responsive to OSEP's requests for information. They provided access to necessary documentation that enabled OSEP staff to work in partnership with the Steering Committees to better understand the BIA's systems for implementing the IDEA. An extraordinary effort was made by the Education Line Officers, Special Education Coordinators, Tribal Education Directors, their staff members, and other tribal community representatives to arrange the public input process during the Validation Planning week. As a result of their efforts, OSEP obtained information from a large number of parents, advocates, service providers, interested community members, school, and agency personnel, and other agencies.

Thank you for your continued efforts toward the goal of achieving better results for children and youth with disabilities enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. Since the enactment of the IDEA and its predecessor, the Education of All Handicapped Children Act, one of the basic goals of the law, ensuring that children with disabilities are not excluded from school, has largely been achieved. Now our goal

is to ensure that all children receive the education they need to stay in school, graduate and move into higher education and/or employment. This is our challenge.

While schools and agencies have made great progress, significant challenges remain. The critical issue is to place greater emphasis on attaining better results. To that end, we look forward to working with you in partnership to continue to improve the lives of individuals with disabilities.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education Programs

Enclosures

cc: Dr. Angelita Felix

EXECUTIVE SUMMARY
BUREAU OF INDIAN AFFAIRS MONITORING 1998-1999

The attached report contains the results of the first two steps in OSEP's Continuous Improvement Monitoring of the Individuals with Disabilities Education Act (IDEA), Part B, in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. The organizational structure and geographic distribution of the BIA-operated or funded schools includes 23 area and agency offices in 23 States. OSEP collected data from tribal communities located in North Dakota during the weeks of August 3 and September 21, 1998; New Mexico during the weeks of October 5 and December 7, 1998; and South Dakota during the weeks of April 12 and May 17, 1999. The process is designed to focus existing resources on improving results for children and youth with disabilities and their families through enhanced partnerships between the BIA, tribal entities, OSEP, parents, advocates, and other agencies. The Validation Planning phase of the monitoring process included the completion of a Self-Assessment and analysis of the data, a series of public input meetings with guided discussions around core areas of IDEA, and the organization of a Steering Committee that provided further comments on the information. As part of the public input process, OSEP and the BIA made efforts to include broad representation from tribal communities in the locations visited and provided discussion opportunities with OSEP staff at national conferences of tribal school boards and educators. The Validation Data Collection phase included interviews with parents, agency administrators, local program and school administrators, service providers, and teachers, and review of students' records. Information obtained from these data sources was shared in meetings and teleconferences with participants from the BIA Central Office, parents, advocates, members of the Steering Committee, and representatives for the Advisory Board.

The Report contains a detailed description of the process utilized to collect data, and to determine strengths, areas of noncompliance with IDEA, and suggestions for improvement in each of the core IDEA areas.

Strengths

- Parental inclusion in system-wide policy making has increased, as seen in the composition of the Steering Committee and recently-appointed IDEA Advisory Board.
- The dual function of some schools that serve the education needs of children and also serve as community centers.
- BIA includes special education as an integral part of school reform efforts and each funded school submits this information with its Consolidated School Reform Plan.
- Guidelines on content and student performance standards have been developed and disseminated for all students, including students with disabilities.
- Adoption and implementation of culturally-relevant curriculum and instruction strategies is increasing in BIA-operated or funded schools and positive results were reported particularly for students with behavioral problems.
- BIA uses information from the Youth Risk Behavior Survey to identify actions to meet staff training needs.
- "User friendly" materials for the IDEA Advisory Board have been developed as resources to increase general understanding the rights and responsibilities addressed by IDEA.

- Materials have been created in “plain language” to assist translation to tribal languages.
- Beginning in the 1998-99 school year, all Interior agencies develop and submit to the BIA their school improvement applications that must include how increased funding will be used to meet the needs of children and youth with disabilities, focusing on areas of IDEA that are linked to improved results.

Areas of Noncompliance

- The system-wide service coordination plan required by Section 611(i)(4) of IDEA does not exist.
- Rather than placing students with disabilities in classes that represent the least restrictive environment based on their IEPs, many IEP teams are basing decisions to remove students from regular education classes solely on factors such as service availability or the need for modifications in the general curriculum. In addition, BIA did not ensure that the corrective actions for the funding formula were implemented in a manner to ensure that funding did not impact placement decisions.
- Extended school year services are not available for all students who need those services in order to benefit from the provision of a free appropriate public education.
- Children with disabilities are not allowed to participate in State-wide and district-wide assessment programs to the maximum extent appropriate.
- Meeting notices and invitations to required IEP team participants do not always include that transition services are a purpose of the meetings or that the student and other agencies, when appropriate, may be invited. Students aged 16 and older (younger, if appropriate) and representatives of other agencies likely to pay for or provide services are not invited and often do not attend the meetings where transition services are discussed and decisions are made.
- Transition service statements do not represent a coordinated set of activities for each student with a disability aged 16 years or older (younger, if appropriate), designed within an outcome-oriented process that promotes movement from school to post-school activities.
- The complaint and due process hearing procedures that IDEA provide for parents were not carried out in manner that ensured the resolution of disputes in a timely manner.
- BIA closed corrective action plans for agencies that OSEP visited in 1994, but OSEP found that some of the same deficiencies that BIA identified remained during OSEP’s recent review.

BIA Monitoring Report
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INTRODUCTION¹

The Bureau of Indian Affairs (BIA) is a component of the U.S. Department of Interior. The Office of Indian Education Programs administers the BIA's education functions. Its responsibilities for education include the development of policies and procedures, supervision of all program activities, and the approval of appropriated funds for educational programs including elementary and secondary schools, and residential facilities funded through the Department of the Interior. Within this Office is the Branch of Exceptional Education. The mission of the Branch is "to ensure that Indian children with disabilities, aged 5 through 21 and who are enrolled in BIA-funded schools, have available to them a free appropriate public education in the least restrictive environment in accordance with an individualized education program." BIA-funded schools, field agencies and area offices are located in 23 States--Arizona, California, Florida, Idaho, Iowa, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

The BIA's education mission statement for all children includes that the Office of Indian Education Programs "shall manifest consideration of the whole person, taking into account the spiritual, mental, physical, and cultural aspects of the person within a family and Tribal or Alaska Village context." Factors that influence the effectiveness of the BIA's work on behalf of all children include: wide diversity among Indian tribes as cultural and governmental entities, balancing recognition of government-to-government relationships with tribes and the BIA's trust responsibility for the general supervision of its funded elementary and secondary schools for Indian children within its jurisdiction, geographical isolation for a substantial number of schools that impact recruitment and retention of qualified school personnel, and economic underdevelopment and unemployment rates that are substantially higher for tribal communities than for the majority of America's population.

Reserved Congressional Appropriations

Section 611(c) and (I)(1) of Part B of the Individuals with Disabilities Education Act (IDEA) requires that from the funds appropriated for any fiscal year for the purpose of implementing the Grants to States program, the Secretary of Education reserves 1.226 percent to provide assistance to the Secretary of Interior (Interior). Eighty percent of these funds are provided to the Secretary of the Interior "to meet the need for assistance for the education of children with disabilities on reservations aged five to 21, inclusive, enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior." The BIA may use five percent of these funds, or \$500,000, whichever is greater, for administrative costs of carrying out the requirements of IDEA. See 34 CFR §300.262.

Twenty percent of these funds are provided to the Secretary of the Interior to be distributed to tribes or tribal organizations or consortia of these tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities

¹ Information about the BIA administrative structure and functions in this section is based upon data provided by the BIA through its self-assessment and other documentation.

aged three through five on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The funds received by tribes or tribal organizations must be used to assist in child find, screening, and other procedures for the early identification of children, aged three through five, parent training and the provision of direct services. See 20 U.S.C. 1411(i)(3). None of these funds may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

Section 643(b) of Part C of IDEA requires that 1.25 percent of the aggregate amount available to States after the Secretary of Education determines the amount of payment, to be made to the jurisdiction under 34 CFR 303.204 must be used to provide assistance to the Secretary of the Interior. The funds must be distributed to tribes or tribal organizations, or consortia of those entities, to provide for the coordination of assistance in the provision of early intervention services by the State to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior. The funds must be used to provide (1) help to States in identifying Indian infants and toddlers with disabilities, (2) parent training, and (3) early intervention services. None of the early intervention allocations can be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

Administrative Structure and Children Served

Under the leadership of the Assistant Secretary for Indian Affairs, the Director for the BIA's Office of Indian Education Programs has responsibility for management of education functions. Within the Office, the Chief of the Branch of Exceptional Education guides administration of programs and services for children with disabilities in BIA schools. In each of the 23 area and agency locations, Education Line Officers administer and supervise programs in the field. Each area office and agency has a Special Education Coordinator to provide technical assistance and local school monitoring. All Interior-funded schools, whether operated by the BIA or by tribes under contracts or grants, are held accountable for full implementation of IDEA.

In 1998-99, the BIA funded 22 schools with Family and Child Education programs that served children aged birth to three in a home-based model and children aged three through five in a center-based model. The majority of infants, toddlers and children with disabilities from birth through age five are served by the States in which the reservations are located. Students and parents (or primary caregivers) were provided services, training, and opportunities to receive adult literacy services. During 1998-99, a total of 10,418 elementary and secondary school students with disabilities ages five through 21 were served in 9,959 day schools and 459 residential schools operated or funded by the BIA.

No data were reported by BIA regarding drop-out rates or completion rates for children and youth with disabilities served by BIA-funded schools.

Children attending schools on American Indian reservations participate in the State-wide assessment programs that are mandated for all public schools in the State where the reservation

is located. No data were reported by BIA regarding participation by children with disabilities in these assessment programs.

Validation Planning And Data Collection

In preparation for the Validation Planning and Data Collection visits to diverse tribal communities, OSEP recognized the need for increased staff awareness of cultural values, and different histories and traditions among the tribes. BIA staff offered to provide diversity training sessions that introduced OSEP staff to basic information and heightened cultural sensitivity.

OSEP reviewed a wide variety of written documentation in preparation for the visits, such as BIA School Report Cards (1997-98); the BIA's IDEA 1997 Implementation Plan; BIA Placement Data; the BIA Self-Assessment; BIA policies and procedures; and the 1994 OSEP monitoring report. The 1994 OSEP report identified deficiencies in the provision of a free appropriate public education, provision of procedural safeguards, individualized education programs (IEPs), placement in the least restrictive environment (including the impact of the BIA's funding mechanism), reevaluation, BIA monitoring of field agencies, and exercise of its general supervisory responsibility.

OSEP also conducted teleconferences with directors of American Indian Vocational Rehabilitation projects on five different reservations, reviewed information collected through personal contact, and worked with the BIA's 45-member Steering Committee. The Steering Committee included: parents, teachers, administrators, related service providers, a contractual monitoring consultant, State educational agency officials, persons with disabilities, representatives from protection and advocacy, tribal schools and school boards, tribal governments, and higher education, and BIA staff. OSEP participated in four Steering Committee meetings (face-to-face and teleconference) between July 1998 and August 1999.

Public input meetings were held in three States with parents, service providers and administrators from a variety of reservations. Meetings were held in North Dakota during the week of August 3, 1998, in New Mexico during the week of October 5, 1998, and in South Dakota during the week of April 21, 1999. Groups ranged in size from three to 80 participants. Discussions addressed child find and public awareness, transition from early intervention services to Part B services at age three, parent involvement in special education decision-making, free appropriate public education in the least restrictive environment, secondary transition from school to post-school activities, and general supervision by the BIA.

OSEP visited seven BIA-funded field agencies and eight schools for the purpose of collecting data to validate information provided through the planning process, including requirements under the Government Performance Results Act and the new requirements under the IDEA Amendments of 1997. The sites were located in North Dakota (Standing Rock and Turtle Mountain Agencies), New Mexico (Southern Pueblo, Northern Pueblo, and Eastern Navajo Agencies), and South Dakota (Pine Ridge and Crow Creek Agencies).

As part of the data collection process, OSEP reviewed student records, including IEPs, and policies and procedures. OSEP interviewed regular education teachers who serve children with

disabilities in their classrooms, special education teachers, and related service providers responsible for developing, reviewing, revising, and implementing IEPs, parents, advocates, tribal education personnel, and BIA field agency personnel. The individuals interviewed were selected by OSEP, in cooperation and consultation with field agency and tribal education officials.

Improvement Planning: In response to this report, BIA will develop an action plan addressing areas requiring improvement as identified in the report. On August 17-18, 1999, a 17-member committee, including participants from the Steering Committee and the IDEA Advisory Board, initiated work on areas of improvement. Subsequent meetings and teleconferences were held in September, October, and November 1999. Approximately 60 days after the issuance of this report, OSEP will work with the BIA to finalize the improvement plan, including time lines for completing strategies, and methods for evaluating the effectiveness of the plan.

I. PART B: PARENT INVOLVEMENT

A purpose of the IDEA Amendments of 1997 is to expand and promote opportunities for parents and school personnel to work in new partnerships at the State and local levels. Parents must now have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education to their child. Parental involvement has long been recognized as an important indicator of a school's success and parent involvement has positive effects on children's attitudes and social behavior. Partnerships positively impact achievement, improve parents' attitudes toward the school, and benefit school personnel as well.

Validation Planning and Data Collection

OSEP Monitoring: OSEP's 1994 monitoring report did not identify any findings of noncompliance in this area.

Self-Assessment: Section 6, "Parent and Student" compared two years of *Parent Questionnaire of Special Education Programs* survey data and concluded that respondents had greater satisfaction levels in 1994 than in 1993. A *Parent Survey of Training Needs* (December 1997) identified needs for training parents to help their children in academic and social skill areas, and in improving behavior. The BIA IDEA 1997 Implementation Plan "Highlights" (April 21, 1998) also identified a need for parent training and informing parents about their new role, as specified by the IDEA amendments, in evaluation, eligibility, and placement decision-making.

Public Input Process: A focus question asked during the public input and parent focus groups was: "How does the school involve you as a partner in decisions about your child's education?" Parents, advocates, and school personnel reported that opportunities for "formal" training were often limited. They also reported that schools did not always build adequate time into IEP meetings for parents to understand meeting procedures, the special education concepts and processes, and proposed or refused services for their children. They said that parents who needed or preferred to receive information before the meetings did not have this option. A result was that many parents did not have adequate time to consider information presented at the meetings. They felt pressured to simply "agree" and sign papers.

At the end of the Validation Planning week, after reviewing information obtained through the Self-Assessment and public input process, OSEP identified the following concerns: (1) parents of children with disabilities may not be involved in the secondary transition process; (2) parents do not receive training; and (3) parents do not actively participate in educational planning or special education decision-making.

To investigate the concerns identified during the Validation Planning process, OSEP collected information from the review of children's records and BIA and local policies and procedures, and interviews of BIA personnel, local program administrators, teachers, and parents. OSEP reviewed and analyzed the data and identified the following strengths and suggested areas for improvement.

A. STRENGTHS

1. Parents Included in Policy Making

BIA's IDEA Advisory Board includes representatives from tribal education units, individual parents, and representatives of parent advocacy organizations. The parent organizations help parents and family members increase their roles in the education of their children with special needs. Parents and tribal representatives also participated in the IDEA Implementation Plan development, Steering Committee, and improvement planning workgroups. The BIA's inclusive practices are intended to increase meaningful dialogue and obtain valuable parent input on key policy decisions influencing the education of all children, including those with disabilities.

2. Schools Open to Parents and the Community

BIA-funded schools often have the dual functions in tribal communities of education facilities and community centers. This is most apparent where reservations are far from any sizable town and/or economic underdevelopment is prevalent. A valued result for parents is the opportunity to build trust and mutual respect as school personnel, including those who are non-community members, interact with children and their families in non-academic situations.

B. SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES

1. Increasing Opportunities for Coordinated Parent Training

School personnel, parents, and advocates in each of the seven agencies visited by OSEP reported the need for more training on parental involvement. Formal training on improving parental involvement had not occurred for staff and information about IDEA was shared with parents primarily through IEP meetings or one-on-one conversations. Administrators and teachers in three agencies reported that parents are often passive during the meetings - providing parental "presence" rather than involvement. In one location, school personnel said that poor attendance by parents discouraged them from planning additional activities. Parents were not seen as empowered to effectively participate in discussions nor to make meaningful contributions to their children's education.

2. Increasing the Use of Qualified Tribal Language Interpreters and Family Liaisons

Public input participants reported that qualified personnel are not always available to meet parents' communication needs. Language interpreters can be important to ensure that parents have an adequate opportunity to understand their rights, as well as the procedural requirements of IDEA. Qualified translators are not always available across all of the agencies. Parents and school personnel in three agencies reported the use of parent liaisons and language interpreters. They made home visits and bridged communication gaps between schools and homes, especially in bilingual communities, and rural or isolated areas.

II. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT

The provision of a free appropriate public education in the least restrictive environment is the foundation of IDEA. The provisions of the statute and regulations (evaluation, IEP, parent and student involvement, transition, participation in State and district-wide assessment, eligibility and placement decisions, service provision, etc.) exist to achieve this single purpose. It means that children with disabilities receive educational services at no cost to their parents, and that the services provided meet their unique learning needs. These services are provided, to the maximum extent appropriate with children who do not have disabilities and, unless their IEP requires some other arrangement, in the school they would attend if they did not have a disability. Any 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.

The IDEA '97 Committee Reports of the Senate Committee on Labor and Human Resources and the House of Representatives Committee on Education and the Workforce emphasized that too many students with disabilities are failing courses and dropping out of school. Those Reports noted that almost twice as many children with disabilities drop out as compared to children without disabilities. They expressed a further concern about the continued inappropriate placement of children from minority backgrounds and children with limited English proficiency in special education. The Committees stated their intention that "once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it."

Validation Planning and Data Collection

OSEP Monitoring: The 1994 monitoring report stated that the BIA did not fully ensure that: (1) educational placements were based on each student's IEP; (2) the notice to parents included all required content; (3) placements were in the least restrictive environment; (4) extended school year services were considered and provided, if necessary, to ensure that a student received a free appropriate public education, and that no student was excluded from such consideration based on category of disability; (5) three-year reevaluations were conducted without delay; and (6) students with disabilities received the kind and amount of related services that were required to assist the child to benefit from special education and were provided special education and related services for the period of time required by their IEPs.

Self-Assessment: In Sections 2, 3, 4 and 5 (Free Appropriate Public Education; Evaluation; IEP; and Least Restrictive Environment), the BIA *IDEA 1997 Implementation Plan "Highlights"* identified needs for: improving child-find strategies and linkages between the many birth through five programs and BIA-funded schools; informing parents and school personnel about the

evaluation process; training materials; and conducting inservice training on the eligibility determination process.

The 19th and 20th Annual Reports to Congress (1996 and 1997) identified the number and percent of 6 - 21 year old students with disabilities placed in different BIA-funded school environments. The 1996 overall placement rates were reported as 0.71 percent in separate facilities, 13.88 percent in separate class, 57.99 percent in resource rooms, and 27.38 percent in regular classes. The 1997 overall placement rates were 0.98 percent in separate facilities, 12.87 percent in separate class, 44.4 percent in resource rooms, and 41.5 percent in regular classes. Thus, placement in regular classes increased by 50 percent, placement in resource rooms decreased by more than 20 percent, and separate class placements decreased by one percent. Placements in separate facilities, however, increased by more than 30 percent.

Public Input Process: One of the four focus questions asked during the public input meetings was: "Do students with disabilities receive a free appropriate public education in the least restrictive environment that promotes a high quality education and prepares them for employment and independent living after they exit school?" Responses included the need for: training on participation in local and Statewide assessment programs; provision of extended school year must be clarified; consistent interpretations of the BIA funding formula to avoid limiting placements in regular classes; improved services to facilitate transition from school to post-school activities; and regular education teacher training and better support to increase participation in their classes and improve access to the general curriculum. The public also reported that regular education teachers sometimes refused to implement modifications stated in IEPs and were then able to have students with disabilities removed to a resource room.

After reviewing available information, OSEP investigated the following concerns/issues: (1) whether a lack of qualified evaluators and providers exists, especially for low incidence populations and in rural areas; (2) whether children with disabilities receive a free appropriate public education, including, when appropriate, functional behavior assessments and behavior management plans; (3) whether extended school year services are considered and, when determined necessary, provided in accordance with an appropriate IEP; and (5) whether placements are made in accordance with the child's IEP and in the least restrictive environment for each child.

To investigate the concerns identified during the Validation Planning process, OSEP collected information from the review of children's records and BIA and local policies and procedures, and interviews of BIA personnel, local program administrators, teachers, related service providers, students, and parents.

OSEP reviewed and analyzed the data and identified the following strengths, areas of noncompliance and areas for improvement.

A. STRENGTHS

1. Special Education Included in School Reform and Schoolwide Plans

A philosophy of inclusive education in BIA-funded schools dates back to its initial school reform efforts with Effective Schools programs of 1988. A plan was recently adopted which is designed to further integrate regular and special education as a unified system through the funding and staffing of regional BIA technical assistance and training centers. Effective implementation of this plan may strengthen schoolwide programs and improve collaboration among the BIA, tribal communities, and tribal and State education units.

2. Guidelines on Content and Student Performance Standards for All Students

The BIA disseminated comprehensive guidance in August 1997 and October 1998 that identified content standard and assessment options and student proficiency levels, and described multiple measures that must be used. BIA-funded schools can choose to use: (1) the content standards and State and district-wide assessment programs of the State in which schools are located; or (2) national content standards or locally developed content standards and the BIA assessment system. The guidance highlights using authentic assessments (e.g., portfolios, checklists, projects) to benefit all children, ongoing training and communication among teachers acquiring new skills, and student performance data to help teachers refine and improve their teaching practices.

3. Support for Culturally-Relevant Curriculum and Instruction

The BIA set a goal that one-hundred percent of its funded schools will adopt challenging content standards that include Indian culture and languages and submit these standards to BIA in their Consolidated Plans by May of 2000. This increased adoption of instructional approaches that recognize differences in student learning styles, rates of learning and holistic methods of teaching is expected to impact all children and can lead to improved social and educational results. For example, school personnel and parents reported positive changes for some students with emotional or behavioral problems in schools that already involve tribal elders, parents, and other tribal community member as resources and role models in their inclusive education efforts.

4. Use of Youth Behavior and Staff Training Survey Data

Since 1994, the BIA has used data from the Indian Health Services "Youth Risk Behavior" survey. The BIA's strategic plan includes goals and indicators to address issues based on the survey data that impact students with disabilities. The plan also includes strategies to increase school attendance, lower dropout rates, and reduce incidents of behaviors leading to school administrative actions such as suspensions and expulsions. In addition, based on needs assessments of Education Line Officer and Special Education Coordinators, the BIA developed and initiated model training on behavioral assessments, behavior management, and appropriate handling of discipline situations.

B. AREAS OF NONCOMPLIANCE

1. Coordination of Services

Section 611(i)(4) of IDEA requires the Secretary of the Interior to develop and implement a plan for the coordination of services for all Indian children with disabilities covered under IDEA residing on reservations. This plan must provide for the coordination of services benefiting children with disabilities from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the required service coordination plan, there must be consultation with all interested and involved parties. The coordination plan must be based on the needs of the children and the system best suited for meeting those needs and may involve the establishment of cooperative agreements among the BIA, other Federal agencies, and other entities.

OSEP determined that the BIA has not developed and implemented the required system-wide service coordination plan. BIA staff confirmed that no plan for system-wide coordination of service had been developed. State personnel confirmed that coordination with BIA did not occur. The following information demonstrates the need for a service coordination plan.

Parents, advocates, and BIA staff also told OSEP that communication does not always occur between the State and BIA-funded and operated agencies that need to cooperate to ensure the smooth and effective transition for young children with disabilities entering BIA-operated or funded schools. This results in denial and delay of services.

Parents, advocates, as well as personnel in local public educational agency, preschool, and tribal early intervention programs in five agencies reported problems primarily with child find and service delays that result from the lack of appropriate communication among early intervention service providers, schools and families. They also told OSEP that many young children were kept at home without any service provision from ages three through five. In addition, the lack of coordination results in many children being enrolled in kindergarten at age five without school personnel learning about their special education and related service needs until the middle of the school year.

Parents, teachers, and administrators in these five agencies reported limited communication and collaboration among school staff and other entities needed for the provision of appropriate services. They told OSEP that beyond Indian Health Services, few agency or school agreements were effectively implemented with other entities. For example, administrators and teachers in two agencies told OSEP that the Division of Vocational Rehabilitation has little involvement with students who reside on reservations.

Administrators for American Indian Rehabilitation projects on reservations told OSEP that staff at BIA-funded schools did not always cooperate by providing student information when project staff requested referrals or that information provided was sometimes outdated (e.g., eligibility evaluation data). In one of these locations, the administrators said that they were aware of youth and families who needed services that the project could provide, but that school staff was not

helping them to gain access. OSEP was also told that a school administrator unilaterally decided that no students needed the project's services or linkages.

2. Placement in the Least Restrictive Environment with Appropriate Supports

Section 612(a)(5)(A) of IDEA and 34 CFR §300.550(b) requires that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. Removal of children with disabilities from the regular education environment may occur 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. In addition, 34 CFR §300.552(a)(2) requires that the educational placement of each child with a disability is based on his or her IEP.

Section §612(a)(5)(B) of IDEA requires that if the State, in this case the BIA, uses a funding mechanism by which it distributes funds on the basis of the type of setting in which a child is served, the funding mechanism may not result in placements that violate the least restrictive environment requirements and that if the BIA's policies and procedures do not ensure compliance, the funding mechanism must be revised as soon as feasible to ensure that it does not result in such placements.

OSEP determined that the BIA did not ensure that each child's placement decision was determined on the basis of individual student needs

BIA did not ensure effective implementation of the 1994 corrective action plan. BIA was required to: "identify the extent to which the funding formula results in students not being served in the least restrictive environment (e.g., regular class with supplementary aids and services), and establish procedures to eliminate, or otherwise address systemic barriers to serving students in the least restrictive environment." BIA's Indian School Equalization Program calculates per pupil allocations and uses weighted factors for counting students in the kindergarten through grade 12 for basic education programs. Children eligible for special education and related services receive additional weights and funding based on whether they are assigned service levels that are "high" (15 hours or more special education per week) or "moderate" (less than 15 hours special education per week).

BIA guidelines to field agencies also assign high and moderate service levels to specific types of disabilities by identifying which disability categories can be designated for high or moderate service levels. The Self-Assessment indicated that the guidelines state: "All High Service Level students may be eligible for Exceptional Child Residential (ECR). Only student with the following Moderate Service Levels may be considered: Orthopedically Impaired, Other Health Impaired, Emotionally Disturbed, Mentally retarded, Multi-Disabled, Autistic, Traumatic Brain Injury." Although BIA issued a 1996 memorandum informing the field that students no longer needed to be removed to a special education class in order to receive services, IEP teams must still use the system of assigning moderate or high service levels.

Perceptions about the impact of the funding formula on placement decisions were varied. Administrators in three agencies hesitated to identify the funding mechanism as a greater barrier

to regular class placements than the need for more qualified paraprofessionals. They felt that if more staff were available, more students would be placed in a regular class. However, two of these administrators confirmed that service level, along with disability category, continued to drive placements for some students, especially those with mental retardation, and emotional disturbance, and some with learning disabilities, or orthopedic impairments. Administrators in two agencies reported that: most often the high service levels are interpreted to mean that students will be placed outside the regular class to receive services; services are primarily provided in a self-contained or resource room classes based also on the type of disability; few students with high service levels are served through “an inclusive program” in regular education classes; and changing some parents’ beliefs to get them to agree with serving high and moderate service level students in regular classes is difficult.

Parents, administrators, and teachers in six agencies told OSEP that regular education teachers need support to assist them in meeting the needs of children with disabilities in their classrooms. Administrators and teachers in these six agencies reported that educating children with disabilities in general education classes is not considered because of personnel shortages and training needs. Teachers in all six agencies reported that parents whose children are already in segregated placements are given their choice of segregated placements, despite IEP teams’ determinations that, with the necessary supports, students could be educated in regular education classes.

3. Availability and Provision of Extended School Year Services

Section 612(a)(1) of IDEA and 34 CFR §300.300 requires that a free appropriate public education be made available to all children with disabilities. In addition, 34 CFR §300.8, now 34 CFR §300.13, requires that services be provided in accordance with an appropriate IEP.

OSEP determined that extended school year services are not available for all children with disabilities who need such services in order to receive a free appropriate public education in BIA-funded schools.

In five agencies, administrators confirmed reports by parents and teachers that IEP teams did not determine whether students with disabilities need extended school year services as part of a free appropriate public education. Voluntary summer school attendance was the only option available for some students with disabilities who demonstrated the need for extended school year services. In these cases, voluntary summer school programs did not include special education and related services to address individual IEP goals and objectives. OSEP was also told that philosophical differences, as well as the need to balance school recommendations with what tribes and families value for their children, influence extended school year services decisions. For example, in two agencies, the desire not to “single out students with disabilities in a negative way” resulted in offering voluntary participation in summer school programs rather than the provision of extended school year services, regardless of individual student need.

Administrators and teachers in three of the agencies reported that extended school year services were also not available for other reasons that included: “a little summer school” is offered during June, but “in July they need to play;” school administrators override IEP team decisions for the

provision of extended school year services without allowing the teams to make the final decision; transportation funds and staff were unavailable; and students are referred to larger public school districts likely to have services, but parents must provide transportation. Teachers and administrators in all of the agencies visited by OSEP also reported that additional clarification and training on extended school year service was needed.

4. Participation in State and District-wide Assessments

Section 612(a)(17) of IDEA requires that children with disabilities be included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. Section 614(d)(1)(A)(v) requires that the IEP include a statement of any individual modifications in the administration of State or district-wide assessments of student achievement that are needed in order for the child to participate in such assessments and if the IEP team determines that the child will not participate in a particular State or district-wide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for that child and how the child will be assessed. Children attending schools on American Indian reservations participate in the State-wide assessment programs that are mandated for all public schools in the State where the reservation is located. If children attend BIA-funded schools that participate in the BIA assessment programs, children with disabilities must participate in those assessment programs. OSEP reviewed 21 IEPs that were developed, reviewed, or revised after July 1, 1998 in five of the seven agencies visited. Although the BIA disseminated comprehensive information about the IDEA requirements for participation in Statewide assessment, accommodations, and modifications in its Goals 2000/Improving America's Schools Act Bulletin (February/March, 1998), only five IEPs, in one of the five agencies, included all of the IDEA requirements. There was no information about participation in assessment programs in 11 IEPs of children with disabilities who could participate in assessments across the five agencies nor about individual accommodations or modifications in assessment administration in four of the IEPs, although teachers reported that the students needed the same accommodations used in their daily instruction. Three IEPs contained vague statements about accommodations. Examples include: "as needed;" and "_____ may ask for help from resource room teacher."

An administrator in one of the agencies reported that some students were excluded from the assessment program and that more exclusions could be expected, particularly where assistive technology is used for instruction, but not allowed for standardized testing or where children have reading problems and the test cannot be read to them. A teacher in another agency described unilateral decision-making: "If students are very low functioning academically, I will not have them participate based on the type of test." Two teachers and an administrator from two different agencies reported having limited awareness of the new requirements on assessments. Two administrators in a different agency told OSEP that school personnel were not yet "at a place of understanding about assessment and how to make the accommodations and modifications for children; some schools are including assessment, some are struggling." They also stated that the BIA was developing guideline and that training would occur when those guidelines are available.

III. PART B: SECONDARY TRANSITION

The National Longitudinal Transition Study states that the rate of competitive employment for youth with disabilities out of school for three to five years was 57 percent, compared to an employment rate of 69 percent for youth in the general population. The Study identifies several factors that were associated with post-school success in obtaining employment and earning higher wages for youth with disabilities. These include completing high school, spending more time in regular education, and taking vocational education in secondary school. The Study also shows that post-school success is associated with youth who had a transition plan in high school that specifies an outcome, such as employment, as a goal. The secondary transition requirements of IDEA focus on the active involvement of students in transition planning, consideration of students' preferences and interests by the IEP team, and the reflection, in the IEP, of a coordinated set of activities within an outcome-oriented process which promotes movement from school to post-school activities. Through parent and student involvement, along with the involvement of all agencies that can provide transition services, student needs can be appropriately identified and services provided that best meet those needs.

Validation Planning and Data Collection

OSEP Monitoring: The 1994 monitoring report stated that the BIA had an incomplete method for monitoring the requirements for transition services statements for each student aged 16 and older (younger, if appropriate).

Self-Assessment: Section 5, "IEP" included limited information on transition services. *IDEA 1997 Highlights* reported staff needs, including development and revision of forms, information dissemination and training on the requirements which begin at age 14. The self-assessment data collection team included a note on "Transition Activities Age 14-21" that stated: "The data collection team feels there is much more happening in this area (transition services) than what has been received to date and perhaps we need to survey the high schools to provide more information."

BIA Monitoring: A summary of 1994-98 monitoring reported "systemic areas" of noncompliance with transition services requirements (20% or more of the sampled student records did not comply with Part B). Areas of noncompliance included: (1) students and other agency representatives did not attend transition service IEP meetings and meeting notices did not invite the student and other agencies when needed; (2) IEPs did not include a statement of needed transition services for students aged 16 and older (younger, if appropriate); and (3) needed areas of community experience, employment, post-school living, daily living skills and functional vocational education were not addressed.

Public Input Process: A focus question asked during the public input meetings was: "Do students with disabilities, ages 14 and older, receive instruction and coordinated services that facilitate transition from school to work or from school to post-secondary education?" Responses identified barriers to transition services such as geographic isolation, high unemployment, and limited economic development; limited service coordination and

communication between schools and other agencies; and the need for ongoing training on outcome-oriented transition services.

At the end of the Validation Planning week, after reviewing information obtained through the Self-Assessment and public input process, OSEP investigated reports that: (1) agency linkages are not facilitated; (2) appropriate transition goals, services and activities are not addressed in IEPs; (3) students are not informed at age 17 of rights and responsibilities that will become theirs upon turning age 18; and (4) opportunities for agency involvement, community experiences, and the development of independent living skills are insufficient.

OSEP reviewed and analyzed the data and identified the following areas of noncompliance and suggestions for improved results for children.

AREAS OF NONCOMPLIANCE

1. Meeting Notice and Invitations to Required Participants

34 CFR §300.345(b)(2) requires that when transition is a purpose of an IEP meeting, the meeting notice must include transition as a purpose, state that the agency will invite the student, and identify any other agency that will be invited to send a representative. In addition, 34 CFR §300.344(c) requires that, if a purpose of the meeting is the consideration of transition services for a student, the public agency shall invite the student and a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. If an agency invited to send a representative to a meeting does not do so, the public agency must take other steps to obtain the agency's participation in the planning of any transition services.

OSEP found that BIA did not consistently ensure that parents receive notice, including required content, of meetings where secondary transition service planning was a purpose. Administrators of three agencies confirmed that, for students whose files OSEP reviewed, parents did not receive the required notice. Parents were not always notified that the student or any other agency representatives would be invited. Students did not always attend and other agencies rarely attended these IEP meetings. There was no indication that students' preferences and interests were considered when they did not attend the meetings.

OSEP reviewed 16 records in four agencies for students, ages 16 years or older, for whom transition services was a purpose of the meeting. Half of the meeting notices did not state that the student would be invited. Administrators and school personnel in two agencies said that staff encouraged students to attend meetings, but many do not wish to participate. School personnel in only three agencies reported that they use alternative methods of obtaining information on students' present interests and preferences and use it when students do not attend meetings.

Forty-four percent of meeting notices reviewed did not include that other agencies were invited. In three of the agencies, IEP meeting summaries supported school personnel reports that students needed linkages with other agencies likely to be responsible for paying for or providing needed

transition services. Administrators in three agencies told OSEP that other agency participation in meetings on transition services was a challenge and led to not inviting them. Administrators for the other two agencies reported that the State Division of Vocational Rehabilitation was understaffed and therefore, was unable to serve all of the State's clients who needed service. Another administrator reported that activities are carried out with other agencies that are not always a part of the IEP process, such as contacts with local colleges and universities, social service agencies, or private industry. Agency and school staff in five of the agencies that were visited by OSEP reported that secondary transition service was an area that needed additional training. BIA staff agreed with these findings.

2. Transition Services Statement

Section 614(d)(1)(A)(vii)(I) of IDEA requires that the IEP for each student, beginning at age 14 and updated annually, include a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's course of study (such as participation in advance placement courses or a vocational education program). Section 614(d)(1)(A)(viii)(II) of IDEA requires that the IEP for each student 16 years and older (younger if appropriate) include a statement of the needed transition services including, when appropriate, a statement of the interagency responsibilities or any need linkages. Under Section 602(3)(c), transition service means a coordinated set of activities, designed within an outcome-oriented process, that promotes movement from school to post-school activities. The transition services must be based on the individual student's needs, taking into account the student's preferences and interests and includes instruction, related services, community experiences, development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation.

As stated earlier, transition planning is a collaborative process requiring the efforts of parents, student, school staff and, when an appropriate other agencies. In three agencies where OSEP reviewed transition service information, the transition services statements for students age 16 years and older were absent or vague, if included. No other parts of the students' records, including their IEPs included evidence that coordinated outcome oriented transition strategies or activities had been developed and provided. Examples from IEPs reviewed are included below.

"work experience if it can be arranged through school; refer to school-to-work program." The student's records, including the IEP, contained no goals/objectives or services linked to this "work experience." The student's IEP included "Adult Services" as one of the student's needs, although no adult service providers were invited and there was no evidence of any other efforts to involve other service providers.

"____ is thinking about going to Job Corps when [s/he] graduates to study welding/carpentry." The student's records, including the IEP, contained no goals/objectives or services linked to either welding or carpentry. There were no identified linkages to further training in either area nor were adult service providers related to these areas invited to the IEP meeting.

"____ will look into the Job Corps program to see if it is something [s/he] would be interested in." The student's records, including the IEP, contained no goals/objectives or services linked to

Job Corps training nor was there any indication that attempts were made to link the student to the Job Corps program.

IV. PART B: GENERAL SUPERVISION

IDEA assigns responsibility to State education agencies for ensuring that its requirements are met and that all educational programs for children with disabilities, including all such programs administered by any other State or local agency, are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities and that these programs meet the educational standards of the State educational agency. State support and involvement at the local level are critical to the successful implementation of the provisions of IDEA. To carry out their responsibilities, States provide dispute resolution mechanisms (mediation, complaint resolution and due process), monitor the implementation of State and Federal statutes and regulations, establish standards for personnel development and certification as well as educational programs, and provide technical assistance and training across the State. Effective general supervision promotes positive student outcomes by promoting appropriate educational services to children with disabilities, ensuring the successful and timely correction of identified deficiencies, and providing personnel who work with children with disabilities the knowledge, skills and abilities necessary to carry out their assigned responsibilities.

Validation Planning and Data Collection

OSEP Monitoring: The 1994 monitoring report stated that BIA did not meet its responsibilities to: (1) exercise its general supervisory authority over programs providing special education and related services to students with disabilities in schools that were funded by the BIA and operated by the tribes under a contract or grant agreement; (2) determine compliance of all BIA-funded schools and agencies in meeting the IDEA requirements and ensure effective implementation of its revised monitoring procedures, including adequate methods to identify and correct deficiencies through monitoring; (3) ensure that educational placement decisions for children with disabilities were not impacted by the funding formula and that the BIA's funding formula was not a major barrier to serving students with disabilities in inclusive regular education classes; (4) ensure that public agencies provided notice to parents which includes a full explanation of procedural safeguards available to parents, and that parents were provided the full explanation as written notice prior to each circumstance of agency proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision a free appropriate public education to the child; (5) ensure that the notice was provided in the parents' native languages, steps were taken to translate the notice to ensure that parents understood its content, and that public agencies kept written records of these steps; and (6) ensure that the BIA's due process regulations included a provision providing a party aggrieved by the decision in a hearing the right to bring a civil action under IDEA

Self-Assessment: Section 6, "Parent and Student," of the Parent Survey of Training Needs (December 1997), included the need for "an updated procedural safeguards document, all materials developed in clear language using a step-by-step approach that includes mediation, due process hearings, and complaints procedures."

A task force developed and submitted revised funding mechanism proposals to the Tribal Consultation process (April-May 1998). None of the proposals was selected. The groups also met with nationally recognized experts on school funding mechanisms for technical assistance

(November 1998 and January 1999). In addition, the Branch of Exceptional Education provided written reminders to Special Education Coordinators that stated that "eligibility and educational placement must be determined on the basis of individual needs, not the Indian Student Equalization guidelines" (1998-99 school year).

BIA revised its internal system for tracking complaints in 1999. Strategies include documenting complaints received and investigative actions step-by-step, using a consistent reporting format, and where appropriate, conducting a follow-up to the written reports, including further review of local systems and supports in place to remedy the situation that prompted the complaint. The revised Notice of Procedural Safeguards identifies the BIA Central Office as the recipient of written complaints and as one of three places for filing a written request for a due process hearing.

The Self-assessment stated that written agreements for staff training, diagnostic or direct services to children are being implemented at the local and regional level that involve area offices and agencies and other entities, including: Minneapolis Area Office, Eastern Navajo Agency, Cheyenne River Agency, Portland Area, Oklahoma Area, and Turtle Mountain Agency.

Public Input Process: Two of the focus questions asked during the public input sessions for Part B were: "Does the State exercise effective general supervision of the implementation of IDEA? Does this occur through the development and utilization of tools, mechanisms and activities that result in all eligible students having an opportunity to receive a free appropriate public education in the least restrictive environment?" Parents and advocates identified the lack of enforcement and follow-up to ensure that deficiencies identified through monitoring, complaints and due process hearings were corrected. Concerns were also raised about inconsistent policies and procedures for implementing IDEA provisions that resulted in service denial or delays for children and youth with disabilities in some BIA-operated and tribal operated schools.

After reviewing the 1994 OSEP monitoring report, the Self-Assessment and information from the public input process, OSEP investigated: (1) whether monitoring results in systemic changes and improvement in results for children with disabilities; (2) whether enforcement actions are taken, when appropriate, and whether such actions result in systemic changes; (3) whether disputes mechanisms (complaint investigation and due process procedures) result in the timely resolution of disputes; (4) whether BIA provides appropriate service coordination required under IDEA; and (5) whether the BIA funding mechanism is placement-neutral.

To investigate the concerns identified during the Validation Planning process, OSEP collected and analyzed information from the review of children's records and BIA and local policies and procedures, and interviews of BIA personnel, local program administrators, teachers, and parents.

OSEP collected, reviewed and analyzed the data from all sources on general supervision and identified the following strengths, areas of noncompliance and suggested area for improvement.

A. STRENGTHS

1. IDEA Advisory Board Handbook, Resource Manual, and Pocket Guide

With technical assistance from the Mountain Plains Regional Resource Center and BIA Advisory Board representatives, the BIA developed a "user friendly" handbook and resource manual for Board members. The materials will be useful for Board members' understanding of the Office of Indian Education Programs' vision, mission and goals, as well as Congressional intent for the Board's role in the education of American Indian children with disabilities under IDEA. In addition, they developed a quick reference pocket guide to inform the public about the recently appointed board.

2. Materials for Tribal Language Translations

BIA has collaborated with the Mountain Plains Regional Resource Center to develop materials for parents on IDEA in clear language, rather than professional jargon. Materials include "Parent's Guide to the Special Education Process" and "Parent Rights for Special Education: Notice of Procedural Safeguards." The intent is to provide culturally sensitive information that bilingual interpreters can translate more appropriately to unwritten tribal languages. This will be more meaningful to parents whose primary or preferred language is other than English. Continued expansion of this strategy is planned in order to reach additional individuals who may speak one of 250 tribal languages as their primary mode of communication.

3. School Improvement Applications

The increased IDEA funding appropriated for the 1998-99 school year was distributed by the BIA to its funded schools based on school improvement applications submitted by each agency's Education Line Officers. The procedure required each field agency to base information on agency-wide needs assessment, school report card results, and input from local shareholders. The funds were used to address local priorities for systemic change to improve services, including areas such as assistive technology devices and services, early intervention activities (e.g., family resource centers, parent/community workshops), and training for general and special education to meet the needs of all students.

B. AREAS OF NONCOMPLIANCE

2. Resolution of Disputes: Complaint Procedures and Due Process Hearings

Section 615(f)(1) of IDEA provides that a parent or public educational agency may initiate a hearing in matters pertaining to proposals or refusals to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education. In addition, 34 CFR §§300.660-300.662 require that each State educational agency shall adopt written procedures for resolving any complaint that includes a statement that a public agency has violated a requirement of IDEA Part B, and the facts on which the statement is based.

OSEP found that BIA did not ensure the timely resolution of disputes through the implementation of due process and complaint resolution procedures.

OSEP received letters of concern from parent advocates and information through the public input process indicating that due process hearings requested through local schools were not provided and that complaints filed with the BIA's Central Office were not always investigated in a timely manner.

BIA procedures provide for complaints or requests for due process hearings to be submitted to either the BIA Central Office or to the local schools who are then required to forward them to the BIA Central Office. BIA staff told OSEP that complaints or requests for due process hearings received by tribal-operated schools are not always reported to the BIA. Parents and advocates reported that they are not informed that they can file complaints or requests for due process hearings directly with the Central Office of the BIA and BIA confirmed that staff shortages have prevented them from ensuring that parents are informed either through mailings or other contacts. BIA staff also reported that they are unable to resolve complaints within 60 days due to staff shortages.

3. BIA Monitoring to Ensure Consistent Implementation of Part B Requirements

Section 612(a)(11) of IDEA requires the BIA to ensure that the requirements of IDEA are carried out and that each educational program for children with disabilities is under its general supervision and meets the education standards of the BIA. This includes the BIA's system for monitoring, including the enforcement of appropriate corrective actions to ensure effective implementation of all IDEA provisions.

OSEP determined that BIA did not ensure correction of all deficiencies identified in OSEP's 1994 monitoring report and in the 1995, 1996, and 1997 BIA reports of monitoring of agencies conducted by the contracted monitoring team.

In 1994, OSEP required BIA to revise its funding mechanism to ensure that its impact on placement decisions was eliminated. No change has been made since that time and the BIA's monitoring procedures do not include a method to determine the impact of the funding mechanism on placement decisions. BIA concurred in OSEP's determination that failure to resolve the funding issue has resulted in the inappropriate removal of some students from regular education classes to more restrictive environments.

BIA revised its monitoring procedures after the 1994 OSEP visit. Although the monitoring contractors used the revised monitoring procedures from 1995, the BIA did not ensure the correction of identified noncompliance.

Recent monitoring reports for five of the seven agencies OSEP visited included deficiencies that OSEP identified during the current data collection. Examples include the provision of extended school year services, secondary transition, and placement in the least restrictive environment.

OSEP also determined that BIA does not have an effective method to ensure that the 23 area and agency offices have written policies and procedures comply with IDEA requirements. As a result, OSEP determined that information disseminated to schools and used for daily operations was not consistent with all Federal requirements. Information on the review of agency policies and procedure was not included as part of BIA's monitoring procedures.

C. SUGGESTION FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES

Supervisory Responsibilities Impacted by Central Office Staffing

Significant turnover and delays in filling positions have negatively impacted BIA's efforts to fulfill general supervisory responsibilities under IDEA. The Washington, DC office has two full-time staff members, and there is one full-time staff member in the Albuquerque office. Efforts to carry out the general supervisory requirements included bringing in a college intern, Special Education Coordinators from field agencies and the staff member from the BIA's Albuquerque, New Mexico Office. These persons have been assigned at various times to work on temporary assignments to assist in the implementation of general supervisory responsibilities.

As documented in previous monitoring reports and described in this report, several continuing noncompliance areas are linked to the BIA's exercise of its supervisory authority. The hiring of sufficient BIA supervisory staff with knowledge, skills, and abilities in the areas of focus for this report can improve results for children with disabilities. OSEP was told that the Office of Indian Education Programs is restructuring its administrative organization to place supervisory and technical assistance personnel in strategic regional locations. Positive changes that address these needs, including full staffing of positions needed within the Branch of Exceptional Education can build the capacity necessary to implement supervisory responsibilities for the education of children with disabilities served in BIA-funded schools.