



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

JANUARY 22, 1998

Mr. Frank T. Brogan
Commissioner of Education
Florida Department of Education
Capitol Building, Room PL 08
Tallahassee, Florida 32301

Dear Mr. Brogan:

Thank you for your letter of October 30, 1997, in response to the Office of Special Education Programs (OSEP) Monitoring Report (Report) regarding the Florida Department of Education (FLDE), dated September 26, 1997. In your letter, you stated that you are requesting reconsideration of several findings contained in the Report, as you believe that the evidence of noncompliance related to these findings is significantly inaccurate and/or incorrect. Appended to your letter were responses to the Report from the local educational agencies visited by OSEP during the onsite monitoring visit, including attachments of local policies and procedures.

As explained in OSEP's Report, findings in the Report are final unless the State educational agency provides evidence that one or more of the findings of noncompliance is significantly inaccurate or incorrect. Based upon its review of all of the information that FLDE submitted as part of its request for reconsideration, OSEP has determined that all of the findings in the Report are supported by fact and law, and OSEP will not, therefore, revise the Report. OSEP will, however, append Enclosure A of this letter to the Report, and that Enclosure includes OSEP's response to each of the issues that FLDE raised in its response to the Report, including clarifying information regarding OSEP's findings on Placement in the Least Restrictive Environment and Transition from Part H to Part B Programs.

OSEP's monitoring and Report focus on the effectiveness of FLDE's systems for ensuring compliance. As part of its response to the Report, FLDE submitted data provided by local educational agencies without including FLDE's own analysis regarding whether those data demonstrated compliance. OSEP has not, therefore, addressed those local educational agencies' data in its response to the FLDE response.

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

As noted in Enclosure B to the Report, FLDE has initiated many commendable initiatives throughout the State. Of particular note are FLDE's efforts to effect systems change through implementation of the Florida Education Finance Program. We appreciate your response to the Report, and look forward to working with you in the development of your corrective actions, which will be included in your Implementation Plan for the IDEA Amendments of 1997.

Sincerely,

Thomas Hehir
Director
Office of Special Education Programs

Enclosure

cc: Ms. Shan Goff

ENCLOSURE A

OSEP'S RESPONSE TO FLDE'S REQUEST FOR RECONSIDERATION OF THE FOLLOWING FINDINGS

FINDING - STATE EDUCATIONAL MONITORING: §300.504(a) PRIOR NOTICE

The Monitoring Work Papers include procedures to determine if notice is provided in the following situations: prior to reevaluation, dismissal from program, refusal to dismiss from program evaluation and determination of ineligibility and change in placement. The Monitoring Work Papers do not include a method to determine compliance with the requirement that public agencies provide prior written notice when they propose or refuse to change the provision of a free appropriate public education.

FLDE Request for Reconsideration: FLDE disagrees with this finding FLDE does not agree that increasing or decreasing a service at an annual review of an individualized education plan (IEP) with parental participation and agreement is a change in the provision of a free appropriate public education which requires prior written notice as set forth in §300.504(a). Additionally, FLDE states that this finding may be moot, given the effect of the 1997 Amendments to the IDEA (1415(d)(1)(B)), which require the provision of the notice of procedural safeguards with the written notification of the IEP meeting.

OSEP Response: OSEP's response in the Prior Notice section below is incorporated by reference.

FINDING - STATE EDUCATIONAL MONITORING: §300.550 - REMOVAL FROM THE REGULAR EDUCATION ENVIRONMENT

"The Federal requirement is referenced on pages 244 and 251 of the Monitoring Work Papers, however, the procedures state that the requirement applies to students who are removed from the regular classroom for more than 50% of the school day. The Federal regulation requires that this consideration be made prior to the removal of a student with disabilities from regular education for any portion of the school day."

FLDE Request for Reconsideration: FLDE's policies and procedures require that consideration of least restrictive environment be a part of the individualized education program (IEP) process for all students with disabilities every time the student's IEP is reviewed. Documentation of this process on a "paper" form is required when a student is removed from regular education for more than 50% of the school day. FLDE's procedures for consideration of the least restrictive environment were developed in response to the OSEP Monitoring Report of 1993 and were accepted as part of Florida's corrective action plan.

OSEP Response: OSEP's finding was that FLDE's monitoring procedures addressed the requirements of §300.550(b)(2) only when a student was removed from the regular education environment for more than 50% of the school day. FLDE in its response states that it monitors the LRE requirements in all cases but acknowledges that monitoring data are recorded only when removal is for more than 50% of the school day.

FLDE is correct that the 50% threshold was accepted as part of FLDE's 1993 revised monitoring procedures required by the corrective action plan; however, OSEP found in its 1997 Monitoring Report that even with this threshold, FLDE did not have an effective method for the identification of deficiencies in the area of the provision of services in the least restrictive environment. The finding, therefore, remains.

FINDING - PRIOR NOTICE: CONTENT AND TIMING OF NOTICE

"FLDE did not ensure that public agencies provide notice, which includes the content required by §300.505. each time the agency proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of free appropriate public education to the student. OSEP also finds that written notices informing parents of changes in the provision of a free appropriate public education at annual review did not contain all the information required by §300.505(a)(2) - specifically, a description of the action proposed or refused by the agency, an explanation of what the agency, proposes or refuses to take the action and a description of any options the agency considered and the reasons who those options were rejected."

FLDE Request for Consideration: FLDE requests that the narrative section on this finding be revised. FLDE states that the State has ensured that appropriate notice is provided as evidence by the fact that OSEP found no student records out of compliance as related to the identification, or evaluation of students. FLDE's fundamental disagreement relates to OSEP's interpretation of what action constitutes a change in the provision of a free appropriate public education which requires prior written notice.

OSEP Response: (This analysis pertains to FLDE's concerns regarding OSEP's finding in the State Educational Monitoring section of the Report as well as to the Prior Notice section.)

OSEP reaffirms its position that a change in the intensity or duration of special education and related services addressed by the IEP does constitute a change in the provision of a free appropriate public education.

Based on OSEP's review of records and interviews with State and local staff OSEP determined that FLDE does not always ensure the provision of prior written notice that includes the agency's decision, any options that were considered, and the reasons for rejecting these options. Further, the prior notice was not provided at all the appropriate times.

OSEP was informed that when parents attend an IEP meeting they are not provided a complete notice (i.e., meeting the requirements of §300.505) of the proposed changes in placement or in the provision of special education and related services, as determined in that meeting, prior to

implementation of those changes. In addition, OSEP staff were informed during interviews with teachers and administrators, that placement options considered (prior to the final placement decision) are not recorded either on the IEP, minutes, or any other document that is shared with the parent prior to implementation of the proposed placement.

As described in the OSEP policy letter dated February 23, 1990 (attached), prior notice "must be given to parents a reasonable time before the agency implements (an) action, but after the agency's decision on the proposal or refusal has been made." Inasmuch as the provision of a free appropriate public education and placement decisions are determined at a meeting, prior notice that includes the decision(s) and other pertinent requirements listed at §300.505, must be provided in writing to the parents subsequent to the decision. Such notice can be contained within the IEP document itself, and provided to the parents at the meeting.

FLDE requests that since OSEP found no student records out of compliance related to the identification or evaluation of students, that the narrative preceding the finding regarding Provision of Notice at §300.504 should be revised. When a State is found to be out of compliance with a particular Federal requirement, it is the practice of OSEP to set forth the specific regulation in its entirety. Following the statement of the regulation, OSEP describes the specific components of the regulation with which FLDE was found to be out of compliance.

The 1997 Amendments to the IDEA do not diminish the requirement in §300.504(a) regarding prior written notice to parents. When an agency proposes to change the provision of a free appropriate public education (§615(b)(3)) the content of such notice continues to require 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 rejected (§615(c)).

FINDING - FREE APPROPRIATE PUBLIC EDUCATION

Amount of Services : "FLDE does not ensure that the public agency includes a statement of the specific special education and related services to be provided to the child (§300.346a)(3)) that is based on the individual needs of the child."

FLDE Request for Reconsideration: FLDE states that a range of time may be used to accommodate the unique needs of a child and to provide teachers with sufficient flexibility to meet those needs within a given parameter. FLDE's policies require that the range of time for services must be clearly delineated on the IEP and explained to the parent. With the use of FLDE's revised funding model for exceptional student education programs, FLDE is moving from statements of special education expressed in "time" to a more descriptive narrative statement of the special education services. While FLDE acknowledges that this is clearly a more preferable practice, FLDE states that the use of a range of time for services, that does not constitute a change in the provision of a free appropriate public education, is still considered by FLDE to be in compliance with the IDEA and a reasonable practice to provide teachers the flexibility needed to meet the unique needs of students with disabilities.

OSEP Response: FLDE's position, that "a range of time may be used to accommodate the unique needs of a child" is consistent with the requirements of §300.346(a)(3); however, this was not the practice that OSEP observed in the local educational agencies it visited. As set forth in the Report, it was the practice of local educational agency personnel to identify a range of time from a printed list or menu of time ranges on the IEP form to indicate the amount of time that services were to be provided to students. A public agency may use a range rather than a specific amount of time to specify the amount of service for a child, only if the IEP team determines that using a range is necessary to meet the unique needs of an individual child.

FINDING: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

1. "FLDE did not always meet its responsibility under §300.550(a) to ensure that public agencies remove a student from the regular education environment only when the nature or services of the disability such that education in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily as required by §300.550(b)(2) and that FLDE has not ensured that the educational placement of each child with a disability is based on his or her IEP."

2. "FLDE has not ensured that each student with a disability is educated with nondisabled students, including participating in nonacademic and extracurricular services and activities, to the maximum extent appropriate to meet the needs of that student...In addition, the decision to provide opportunities in nonacademic and extracurricular activities is not an individualized decision that is based upon an IEP."

FLDE Request for Reconsideration: FLDE is requesting revisions to the narrative information "used for the basis of this finding." FLDE's response describes the process used by the State to collect data in the past and addresses future plans that will more accurately reflect how much time students are removed from being educated with their nondisabled peers.

OSEP Response: The narrative preceding the findings in the least restrictive environment section of the Report was included as background information rather than as the basis of the findings in this section. These findings, therefore, were not dependent upon the data reflected in the Background portion of this section of the Report. Although, as noted by FLDE in its response, the State's manner of collecting data may not have accurately reflected placement patterns, OSEP does not believe that the findings in this section of the Report were compromised.

FLDE provided the following explanatory language as part of its response to OSEP's Report:

Florida's placement data are derived directly from the statewide Automated Staff and Student Data Base. The database design for deriving these data has presented difficulties in accurately reflecting school district's evolving service delivery models. These data were gathered by collecting information on the number of hours/minutes a student received exceptional student education services; with no indication of where those services were provided. For example, instances in which co-teaching is used.

Co-teaching models use two teachers, one special education and one regular teacher in the same class for the delivery of instruction. The student composition is typically 30-40% special education students and the remaining basic education students. These models, which deliver special education services in the regular education classroom have become quite prevalent and are not accurately reflected in the data that was available. Similarly, Florida's database did not include any designation of community-based instruction settings where students are provided instruction in natural settings. Finally, Florida's placement data were based on a 25 hour standardized school week, when, in fact, most students attended school longer each week. Beginning with the 1997-98 school year. Florida has changed the way in which it collects placement data to more accurately reflect how much time the student is actually removed from his nondisabled peers. Prior to 1997-98, the data reflect more restrictive and segregated services than actually existed.

FINDING - TRANSITION FROM PART H TO PART B PROGRAMS

"FLDE's procedures have not been effective in ensuring a smooth transition for children with disabilities from early intervention programs into preschool programs in public agencies in **the** State."

FLDE Response: FLDE explained that it is inappropriate to cite the Florida Diagnostic and Learning Resources System as not having evaluated students in a timely manner. While FDLRS has the responsibility for coordinating the State's Child Find activities, FLDE requests that the narrative information in the Report be revised to clarify the fact that responsibility -for ensuring a smooth transition to Part B programs remains with the 67 local school districts.

OSEP Response: OSEP concurs that compliance with the Part B requirements for transition from Part H to Part B services is the responsibility of FLDE and local educational agencies, rather than the Florida Diagnostic and Learning Resources System.



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SEPTEMBER 26, 1997

Mr. Frank T. Brogan
Commissioner of Education
Florida Department of Education
Capitol Building, Room PL 08
Tallahassee, Florida 32301

Dear Mr. Brogan:

During the week of January 13, 1997, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Florida Department of Education's (FLDE) implementation of Part B of the Individuals with Disabilities Education Act (IDEA). The purpose of the review was to determine whether FLDE is meeting its responsibility to ensure that its educational programs for children and youth with disabilities are administered in a manner consistent with the requirements of Part B. During that week, OSEP also reviewed the Department of Health's (DOH) implementation of Part H of the IDEA, to determine the status of DOH's compliance with the Federal requirements related to the provision of early intervention and special education services for infants and toddlers with disabilities in Florida. OSEP's findings concerning Part H will be addressed in a separate letter to DOH. A copy of this letter will also be sent to FLDE.

Because OSEP conducted the on-site review prior to the June 4, 1997 enactment of the IDEA Amendments of 1997, OSEP's compliance determinations and the findings in this letter are based upon the requirements of Part B as in effect prior to the enactment of those Amendments. OSEP will work with the FLDE to ensure that all corrective actions, in addition to correcting all deficiencies, are consistent with the requirements of Part B as in effect at the time that the corrective actions are implemented.

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Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives by FLDE; and our findings are in Enclosure C.

FLDE implemented a number of corrective actions to address the findings in OSEP's November 1993 monitoring report. As part of our current review, OSEP found no deficiencies in: the establishment of policies and procedures by local educational agencies that include all Federal requirements for procedural safeguards; FLDE's procedures for the submission and approval of local educational agency applications; provision of special education and related services to eligible individuals in the State's adult correctional facilities; and procedures for ensuring that timely reevaluations are conducted in accordance with Federal requirements. It appears, therefore, that FLDE's corrective actions in these areas were effective.

As addressed in Enclosure B, we also found that FLDE has taken a number of noteworthy initiatives to improve educational services to students with disabilities including: the Assistive Technology Educational Network; the Clearinghouse/Information Center; the Mobility Opportunities Via Education Project; a training program to develop quality indicators for Individualized Education Programs and the Multiagency Network for Students with Severe Emotional Disabilities.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that FLDE has not ensured that public agencies provide related services, transition services, length of school day, and extended school year services that students require as a component of a free appropriate public education. We also found that FLDE does not ensure that prior written notice is provided in accordance with Federal requirements that services are provided based on the needs of the child rather than availability of providers, or that appropriate services are provided by a child's third birthday. In addition, we found problems with FLDE's due process hearing system and its procedures for monitoring of local school systems statewide for compliance with all Federal requirements. OSEP is particularly concerned with the persistence of serious problems in the area of provision of services to students with disabilities in the least restrictive environment. This finding was cited both in the 1993

monitoring report, and in the October 1995 letter issued to FLDE subsequent to OSEP's follow-up visit to FLDE in March of 1995.

Charles Laster, the OSEP monitoring team leader, discussed the team's preliminary findings with Ms. Shan Goff and other staff in FLDE's Bureau of Instructional Support and Community Services, and Dr. Denise Stewart from the South Atlantic Regional Resource Center, at an exit conference held at the conclusion of OSEP's on-site visit. At that time, Mr. Laster invited FLDE to provide any additional information for consideration by OSEP in the development of this letter of findings. Subsequent to the monitoring visit, OSEP provided FLDE with a written analysis regarding its review of FLDE's monitoring procedures. FLDE provided OSEP with additional information concerning these procedures, which was incorporated into this letter.

The findings in this Letter are final, unless--within 15 days from the date on which FLDE receives this letter--FLDE concludes that evidence of noncompliance is significantly inaccurate or that one or more findings is incorrect and requests reconsideration of such finding(s). Any request for reconsideration must specify the finding(s) for which FLDE requests reconsideration, the factual and/or legal basis or bases for the request, and must include documentation to support the request. OSEP will review any FLDE request for reconsideration and, if appropriate, issue a letter of response informing FLDE of any revision to the findings. Requests for reconsideration of a finding will not delay development of a Corrective Action Plan or implementation timelines for findings not part of the reconsideration request.

I thank you for the assistance and cooperation that Ms. Goff and her staff provided during our review. Throughout the monitoring process, they were very responsive in providing information that enabled OSEP staff to acquire an understanding of Florida's systems to implement Part B of the IDEA.

Our staff is available to provide technical assistance during any phase of the development and implementation of FLDE's corrective actions. Please let me know if we can be of assistance.

Prior to the enactment of the IDEA and its predecessor the Education of All Handicapped Children Act, one million children with disabilities were excluded from our nation's schools altogether, and another 3.5 million were not receiving appropriate programs within the public schools. The enactment of the IDEA, and the joint actions of schools, school districts, State educational agencies and the Department, have now made it possible for more than 5.4 million children with disabilities to participate in our country's public educational programs. Thank you for your continuing efforts to improve educational services and results for children and youth with disabilities in Florida.

Sincerely,

Thomas Hehir
Director
Office of Special
Education Programs

Enclosures

cc: Ms. Shan Goff

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Document Review: As in all States, OSEP used a multifaceted process to review compliance in Florida. In addition to on-site visits, this process included: review and approval of the State's Part B State plan, which sets out the State's statutes and regulations, policies and procedures, and interagency agreements that impact the provision of services to students with disabilities; and review of complaints, requests for secretarial review, other correspondence, and telephone calls that OSEP received regarding the State's compliance. Prior to its visit to Florida, OSEP also requested and reviewed additional documentation regarding the State's implementation of compliance with requirements regarding due process hearings, complaint resolution, and monitoring, as well as child count and placement data.

Involvement of Parents and Advocates: During the week of October 28, 1996, OSEP held five public meetings in Chipley, Ocala, Tampa, Miami and Oakland Park. Also during that week, Charles Laster and OSEP's Part B State contact for Florida, Sheila Friedman, met with representatives from advocacy groups and the Family Network on Disabilities in two outreach meetings, and conducted a meeting via audio conference with members of Florida's State Advisory Committee. In addition, Mr. Laster and Ms. Friedman met with representatives of local special education advisory committees in three public agencies. During that week, they also interviewed a number of FLDE officials, and reviewed numerous FLDE documents. The purpose of the public and outreach meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of FLDE's compliance with Part B. In the letters inviting interested parties to the public meetings, OSEP also invited them to provide written comments and telephone input regarding their perceptions.

During the on-site visit, OSEP conducted parent focus group meetings in two of the public agencies it visited in order to hear parents' impressions of special and regular education services provided to their children. These meetings provided OSEP staff with parents' views of the methods used by the public agency in providing a free appropriate public education to its children, as well as the challenges faced by the public agency in this endeavor.

Selection of Monitoring Issues and Agencies to Visit

OSEP focuses its compliance review in all States on those core requirements that are closely related to learner results: States' systems for identifying and ensuring the correction of deficiencies through monitoring; ensuring that all eligible students with disabilities receive a free appropriate public education as determined through the development and implementation of an individualized education plan; the provision of needed transition services; and ensuring that parents are appropriately included in decision-making regarding the education of their child with a disability.

The information that OSEP obtained from its pre-site public meetings and outreach meetings, interviews with State officials, and review of State and local documentation, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Florida; (2) selecting additional monitoring issues for review while on-site (e.g., the provision of related services); and (3) selecting the sites to be visited.

On-site Data Collection and Findings Charles Laster, the OSEP Team Leader, interviewed State education agency staff and reviewed relevant FLDE documentation. He also spent two days collecting implementation data in a local school system. Catherine Cooke, Sheila Friedman, Claudia Brewster, Barbara Route, Delores Barber, Lois Taylor and Carolyn Smith visited seven elementary schools, two middle schools, four high schools, one facility serving students preschool through age 21, and one center school serving students in the sixth through 12th grades in a total of eight public agencies. Where appropriate, OSEP has included in Enclosure C data that it collected from those agencies that support or clarify its findings regarding the sufficiency and effectiveness of FLDE's systems for ensuring compliance with the requirements of Part B. Because the findings in Enclosure C focus on the effectiveness of FLDE's systems for ensuring compliance rather than compliance in any particular local educational agency, OSEP has not used the name of any local educational agency in that Enclosure. Instead, local educational agencies visited by OSEP are identified only with designations such as "Agency A." The agencies that OSEP visited and the designation that OSEP has used in Enclosure C to identify each of those agencies are set forth as follows:

AGENCY	DESIGNATION
Marion County	AGENCY A
Orange County	AGENCY B
Osceola County	AGENCY C
Dade County	AGENCY D
Palm Beach County	AGENCY E
Escambia County	AGENCY F
Hernando County	AGENCY G
Hillsborough County	AGENCY H

Unless otherwise indicated, all regulatory references in Enclosure C are to 34 CFR Part 300.

CORRECTIVE ACTION PROCEDURES

In order to support the development of a mutually agreeable corrective action plan that will correct the findings in Enclosure C and improve results for students with disabilities, OSEP proposes that FLDE representatives meet with OSEP staff, in a meeting or telephone conference, to discuss the findings and the most effective methods for ensuring compliance and improving programs for children with disabilities in the State, and to agree upon specific corrective actions. We also invite a representative from Florida's Special Education Advisory Council to participate in that discussion. FLDE's corrective action plan must be developed within 45 days of FLDE's 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.

Enclosure C outlines the general corrective actions that FLDE must take to begin immediate correction of the findings in the Enclosure, as well as guidelines for the more specific actions that FLDE must take to ensure correction of each of the specific findings in Enclosure C.

ENCLOSURE B

COMMENDABLE INITIATIVES

OSEP identified the following commendable FLDE initiatives as part of its on-site review:

Assistive Technology Educational Network (ATEN): ATEN promotes, supports, and coordinates statewide delivery of assistive technology services to Florida's students with disabilities. ATEN also provides opportunities for awareness, preview, demonstration, and training for students, family members, teachers, and other professionals to integrate technology into the curriculum. Services to students ages 3-21 in Florida are free of charge and include the following:

- technical assistance and training;
- print resources;
- local assistive technology specialists (LATS);
- loan library; and
- Florida Resource Guide for Assistive Technology Devices and Services.

Clearinghouse/Information Center (CIC): The Clearinghouse operates a resource center that provides parents, educators, and other Floridians with access to materials about individuals with disabilities, exceptional student education, school improvement, student outcomes, parent/professional partnerships, and many other topics. This resource center contains more than 7,000 books, videotapes, films, multimedia kits, assessment tools, staff development materials, and other types of materials that Floridians may borrow on short-term loan. The center also maintains copies of about 400 items produced by FLDE and other public entities which are available free or at-cost, including annual reports, statistical reports, technical assistance papers and notes, resource manuals for particular special programs, annual program plans, parent resources, prekindergarten resources, and more.

Mobility Opportunities Via Education (MOVE): This project was funded in 1992 through Part B discretionary funds, to create alternatives for therapy service delivery to students with severe and profound physical and cognitive impairments by training teachers, therapists, and paraprofessionals in the MOVE curriculum. Although MOVE is no longer funded by FLDE, many districts have continued funding the project at the local level. During the duration of the project, nearly 500 people in 40 school districts were trained in the model and Florida had a cadre of 26 trainers, 3 of whom were MOVE international trainers. Equipment and materials bought throughout the project years remain in the schools for use by students and staff implementing MOVE curriculum.

Quality Indicators for Individualized Educational Programs (IEP): FLDE has targeted the development of quality IEPs as a priority statewide. In assisting districts toward meeting this goal, FLDE has developed and implemented a training program. The training addresses eleven essential parts of a quality IEP, which parallel the Federal requirements for IEP content. Each IEP component has a list of Quality Indicators which can be utilized in order to assure that all information is addressed. The document, ***Guide for Instructional Personnel: Regional Meetings Version***, has been developed to support this initiative.

The Multiagency Network for Students with Severe Emotional Disabilities (SEDNET) is a statewide multiagency network that facilitates quality education, mental health, and, when necessary, residential treatment essential to student success. SEDNET has established Regional Advisory Boards, funded by school boards within districts of the Department of Children and Families and the Department of Juvenile Justice for projects serving students within each region. The advisory boards serve as resources for information and support for children with severe emotional disabilities. The SEDNET regional projects represent over 500 child-serving agencies across the state, including the following:

- local Boards of Education;
- Department of Children and Families Alcohol, Drug Abuse and Mental Health programs;
- Department of Labor and Employment Security Vocational Rehabilitation programs;
- the Florida Federation of Families for Children's Mental Health;
- local community mental health centers;
- juvenile justice programs; and
- parent, child, and family advocacy groups.

ENCLOSURE C -- FINDINGS AND CORRECTIVE ACTIONS

GENERAL CORRECTIVE ACTIONS

In order to begin immediate correction of the findings set forth in the following table, FLDE must take these general corrective actions:

1. FLDE must develop a memorandum informing all public agencies of OSEP's findings, and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's Letter of Findings. The memorandum must further direct these agencies to discontinue any noncompliant practices and implement procedures that are consistent with Part B. FLDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval of the memorandum, FLDE must disseminate it to all public agencies throughout the State that provide special education or related services to students with disabilities.
2. FLDE must also disseminate 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 FLDE that they have implemented revised procedures that correct the deficiencies and comply with the Part B requirements. FLDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval, FLDE must disseminate the memorandum to those public agencies in which OSEP found deficient practices. FLDE must send to OSEP verification that these public agencies have completed all of these corrective actions.

FINDINGS AND SPECIFIC CORRECTIVE ACTIONS

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><u>SEA MONITORING</u></p> <p><u>BACKGROUND:</u> FLDE participates in a coordinated monitoring process, wherein its schedule of on-site reviews of public agencies is developed in conjunction with the State Departments of Transportation and of Finance, and programs for English for Speakers of Other Languages. FLDE monitors the special education programs in each public agency in the State on a four year cycle. During the year prior to the scheduled on-site visit, FLDE begins the process of training public agencies, including providing assistance in the preparation of a self-evaluation. Self-evaluation is considered to be a critical phase of the monitoring process, wherein a public agency undertakes an extensive review of the major components of its special education programs. The public agency completes a series of work papers contained in FLDE's <u>Monitoring Work Papers/Source Book (Monitoring Work Papers)</u>. The papers consist primarily of forms utilized in the review of a sample of student records from across all program areas in all schools in the district (at least one record in every program area available in each school). FLDE determines which student records are to be a part of the self-evaluation, and these records are reviewed as part of the self-evaluation phase of the monitoring process, prior to the on-site review. At least fifty per cent of the records reviewed are of students who were initially placed in special education by the public agency within the previous calendar year. In addition, the public agency must verify its procedures for determinations of eligibility, reevaluation, temporary assignment to special education, surrogate parents, dual enrollment, and mainstream cost factor (an accounting procedure for determining funding for special education). This information is confirmed on-site by FLDE.</p> <p>FLDE identifies schools to be visited prior to the on-site visit based on data from the self-evaluation and the random selection of one school. FLDE verifies the reliability of the self-evaluation process by reviewing a sample of a predetermined percentage of student records, and conducting interviews with administrators on the district's placement process. Interviews with special education teachers are conducted if a specific problem is identified in a student file. Otherwise, FLDE does not routinely interview teachers as part of the monitoring process. No parents or regular education personnel are interviewed. If information gathered from the randomly-selected school site indicates that information is inaccurate, the sample size is doubled. The district's summary of its self-evaluation, and the action plan designed to address any problems identified are included in FLDE's monitoring report, as well as any findings noted as a result of FLDE's verification process. The draft report is issued to the district, which must respond with its concurrence with (or corrections to) the accuracy of the findings and a plan for correction within 30 days. FLDE contacts each public agency within 90 days of release of the final report to verify its progress in the corrective action process. No further steps are taken by FLDE to verify implementation of district corrective actions.</p>	
<p><u>FINDING:</u> OSEP finds that FLDE has not adopted proper methods to monitor public agencies responsible for carrying out special education programs, and has not adopted effective methods for the correction of deficiencies identified through monitoring, as required by 34 C.F.R. §§80.40, 300.402 and 300.556, and 20 U.S.C. §1232d(b)(3)).</p>	<p>FLDE will revise its monitoring procedures and data collection instruments to ensure that it has an effective method to monitor for each Federal requirement related to Part B specified in this letter.</p>

OSEP reviewed FLDE's procedures for monitoring public agencies in the State, which are contained in the document, Monitoring Work Papers, and found that the procedures that were in effect at the time of OSEP's visit did not include a method to determine compliance regarding the following requirements:

- §300.300-Free appropriate public education - Extended school year,
- §300.300-Free appropriate public education - Length of school day that meets State standards,
- §300.305-Program options,
- §300.306-Nonacademic services, and
- §300.551-Continuum of alternative placements.

In addition, OSEP's review indicated that FLDE does not have a complete method to monitor for compliance with the following Federal Part B requirements:

§300.504(a) - Prior notice - The Monitoring Work Papers include procedures to determine if notice is provided in the following situations: prior to reevaluation, dismissal from program, refusal to dismiss from program, evaluation and determination of ineligibility, and change in placement. The Monitoring Work Papers do not include a method to determine compliance with the requirement that public agencies provide prior written notice when they propose or refuse to change the provision of a free appropriate public education. This was confirmed at the interview with SEA officials responsible for conducting monitoring activities.

§300.512 - Timelines in due process hearing decisions - As noted on page 11 of this Attachment, FLDE's procedures for monitoring compliance with the requirements of §300.512(a) and (c) are not consistent with the requirements of Part B.

§300.550(b) - Removal from the regular education environment - The Federal requirement is referenced on pages 244 and 251 of the Monitoring Work Papers, however, the procedures state that the requirement applies to students who are removed from the regular classroom for more than 50% of the school day. The Federal regulation requires that these considerations be made prior to the removal of a student with disabilities from regular education for any portion of the school day.

§300.553 - Nonacademic settings - FLDE's Monitoring Work Papers require that every time a student's IEP is reviewed, the IEP team determine if the student has opportunities to participate in nonacademic and extracurricular activities. The Federal regulation requires that the public agency, in providing or arranging for the provision of nonacademic and extracurricular services and activities, ensure that each child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to the needs of that child.

REQUIREMENTS AND FINDINGS

EXPECTED RESULTS

PRIOR NOTICE: CONTENT AND TIMING OF NOTICE

BACKGROUND: FLDE has issued several technical assistance documents to public agencies in the State that are primarily relied upon for the provision of notice to parents that meets the requirements of §§300.504(a) and 300.505. These documents include: Requirements for Notice to Parents of a District's Refusal to Take an Action Requested by a Parent, Parent Notification of Interrupted IEP Services and Ineligibility Procedures and Notification, with all accompanying forms. OSEP reviewed these materials and found that each document provided information specific to only certain actions (refusal of services, ineligibility, interruption of services) but none addressed the complete notice requirements of §§300.504 and 300.505, that 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.

OSEP's review of the most recent monitoring report issued by FLDE to each of the public agencies visited by OSEP indicated that FLDE made a finding of noncompliance related to provision of prior notice in the following instances: Agencies A, B, C, D, E, G and H - the form utilized to provide prior notice of special education actions lacked the content required by §300.505(a); Agency F - Prior notice was not provided in all instances required by §300.504(a).

FINDING: OSEP finds that FLDE did not ensure that public agencies provide notice, which includes the content required by §300.505 each time the agency proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of a free appropriate public education to the student. OSEP also finds that written notices informing parents of changes in the provision of a free appropriate public education at annual reviews did not contain all the information required by §300.505(a)(2) - specifically, 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 rejected. (§§300.504, 300.505(a).)

OSEP's review of student files and interviews with teachers and administrators in Agency B revealed that notice is not consistently provided to parents when changes are made in the provision of services to students with disabilities at annual review meetings. An Agency B district administrator stated that the invitation to the IEP meeting is sent to parents two weeks prior to the meeting and this is the only notice provided to the parents. Review of this document indicated that it does not contain the content required by §300.505(a). The administrator further stated that the agency already knows what changes are going to be proposed at the meeting, and the parent is informed verbally at the meeting. A teacher in this agency confirmed that notice is not provided to parents at annual reviews when a change in the type or amount of special education is made.

FLDE must ensure that public agencies provide prior written notice to 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. Such notice must include the content required by §615(c) of the IDEA Amendments of 1997.

A teacher in Agency A indicated that in instances where there are changes in services to a student with disabilities at annual reviews, the IEP would serve as notice. The teacher further stated that if the parent did not attend the meeting, the IEP would be mailed to the parent. An examination of students' records in Agencies A, indicates that the initiation of service date [begin date] documented on the IEP is the same date as the IEP meeting. In those instances where the parent did not attend the IEP meeting and the IEP was mailed to the parent at a later date, the notice was not given to the parent a reasonable time before the public agency implemented the changes in the special education services provided to the student. OSEP's review of student records indicated two instances where changes were made in the provision of services, the parent did not attend the IEP meeting, and the IEPs were sent to the parent. Another teacher in Agency A informed OSEP that placement options may be discussed at annual reviews, but the options are not documented in the records or IEP. A comparison of the IEPs for five students in Agency A documented changes in the provision of services from the previous year to the current school year. However, the IEPs did not include any information as to options considered and the reasons why those options were rejected.

OSEP found that in Agencies D and E, written notice is not always provided when the agency proposes or refuses to change the provision of a free appropriate public education to a child with a disability. The practice in these agencies is to make a telephone call to parents as the official notification of a proposal or refusal to make a change in the provision of a free appropriate public education. A teacher and an administrator in Agency D informed OSEP that if a child does not qualify for related services, a call to the parent would serve as notice, and that a written notice is not necessarily sent to the parent. Two other administrators in Agency D stated that if there is a change in the type or amount of a related service that is recommended, then the service provider will conduct an assessment to determine if the student still qualifies for those services. If it is determined that the student is no longer eligible for the service or program, a phone call is made to the parent, which is the official notification. All such changes to student programs are made outside of an IEP meeting, without provision of prior notice that contains the content of §300.505(a). Both building level and district administrators in Agency D reported that it is the practice in that Agency not to document options considered and the reasons why those options were rejected on notices or on students' IEPs.

An administrator in Agency E informed OSEP that a phone call was made to the parent as notification when a student's placement was changed from special classes to regular classes based on the student's request. Another administrator in Agency E stated that a student was changed from participation in a high school program to participate in an alternative school in the community. An IEP meeting was not held, nor was a notice provided, because it was not considered a change in placement.

OSEP FINDING	EXPECTED RESULTS
<p><u>TRANSITION SERVICES</u></p> <p><u>BACKGROUND:</u> A major initiative to improve and expand transition services for youth with disabilities in Florida is supported by a systems change grant administered by FLDE's Division for Vocational, Adult and Community Education. The purpose of the project is to connect students and educational professionals with employers and members of the community to improve post-secondary outcomes for students with disabilities as they transition from school to adult community life. This project is in the fourth year of a five year grant. The outcomes of the project include: establishment of an ongoing process designed to continue systematic improvement in interagency planning and service delivery, and expansion of collaborative efforts into the private sector. A tracking system will be established for linking electronic data systems combining student status and progress information. The program in general is expected to result in improved graduation rates, employment rates, earnings rates and entry into postsecondary education and training.</p> <p>OSEP reviewed FLDE's monitoring procedures, the <u>Monitoring Workpapers</u>, and determined that FLDE has a procedure to determine compliance with each of the Federal requirements related to transition services. OSEP's review of the most recent monitoring report issued by FLDE to each of the public agencies visited by OSEP indicated that FLDE made a finding of noncompliance related to transition services in Agency F, that student files did not include a statement of needed transition services, as required by §300.346(b).</p>	
<p><u>FINDING:</u> OSEP finds that FLDE did not ensure, in all cases, that, if a purpose of the IEP meeting is the consideration of transition services for a student, then the public agency invites a representative of any other agency that is likely to be responsible for providing or paying for transition services. (§§300.344(c)(ii) and 300.345(b)(2)(iii).)</p> <p>OSEP visited secondary programs in six of eight agencies monitored (Agencies A, B, D, E, F, and H). These included four high schools and two separate facilities. OSEP reviewed the records of 38 students age 16 and older in these facilities. OSEP also interviewed the students' teachers who had participated in the most recent IEP meeting, the building principals, and school-based and agency administrators responsible for the provision of special education services in these agencies. Based on these interviews and record reviews, OSEP made the following findings:</p> <p>OSEP found that there is no procedure in Agencies A, B, D and E for ensuring that if a purpose of the IEP meeting is the consideration of transition services for a student, then the agency invites a representative of any other agency that is likely to be responsible for providing or paying for transition services. Administrators and teachers in these agencies informed OSEP that these agencies do not routinely consider inviting or invite representatives from outside agencies to IEP meetings where transition services are to be discussed. OSEP was further informed that in each of these agencies, the Department of Vocational Rehabilitation does not have any involvement with a student until the student is ready to exit the high school program. As a result, these agencies do not routinely consider inviting representatives from the Department of Vocational Rehabilitation until at least a student's junior year.</p>	<p>FLDE must ensure that, if a purpose of the IEP meeting is the consideration of transition services for a student, then the public agency must invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><u>FREE APPROPRIATE PUBLIC EDUCATION - Related Services</u></p> <p><u>BACKGROUND:</u> OSEP reviewed the most recent monitoring reports issued by FLDE for each of the eight public agencies visited. OSEP determined that FLDE did not make any findings with regard to the provision of psychological counseling as a related service and as a component of a free appropriate public education in any of these agencies.</p> <p><u>FINDING:</u> FLDE has not fully ensured that public agencies provide psychological counseling as a related service, if required to assist a child with a disability to benefit from special education. (§§300.300, 300.16.)</p> <p>OSEP was informed in interviews with district and building-based administrators, teachers and related services personnel in Agencies F, G and H that psychological counseling, as a related service, is not available to students with disabilities, regardless of need. A building-based administrator in Agency E indicated that many students need psychological counseling but it is not available as a related service. This administrator indicated that a psychologist comes to the school one time per week but only to conduct evaluations. If students require more services than those available through the school guidance counselor(s), the parents may be referred to a private counselor (not paid for by the district) and must obtain the needed services through their own initiative.</p> <p>In Agency F, a district-level administrator and a related service provider informed OSEP that while there are limited counseling staff available in schools to provide some counseling and psychological services, there are not sufficient qualified personnel to plan and manage a program of psychological counseling, as defined by §300.15. When a child needs such psychological counseling to benefit from special education, schools refer parents to a mental health facility that is operated by the Department of Mental Health. Parents must take the initiative to set up the provision of services and to provide transportation. A related service provider told OSEP that only group therapy is provided as a related service because there is not enough staff time to provide individual therapy. This individual further stated that some students need individual therapy, but it takes time away from the group, and "funding is the issue" in obtaining more staff to provide these needed psychological counseling services.</p> <p>OSEP was informed by two related service providers in Agency G that they were instructed not to list individual therapy on their caseload(s). They stated that they will provide the service informally, but it is not reflected on the student's IEP (there are no goals and objectives). It was reported to OSEP that the previous year, there were two related services staff, but during the current year the number was reduced. These related services personnel informed OSEP that no individual therapy is provided because it takes time away from the group. OSEP also was informed by district-level administrators in Agencies G and H that psychological counseling is not available as a related service on an IEP nor is it an IEP driven decision. These individuals also informed OSEP that counseling is available to all special education students just as it is for regular education students, however, the more serious needs for psychological counseling are referred to the family counseling center at the Department of Mental Health. All such counseling services are parent initiated, and parents must provide the transportation.</p> <p>A special education teacher in Agency H told OSEP that students may have to go to a center-based or day program if they need more intense counseling services. Two other teachers in this agency indicated that students may receive services from the outside agency (Mental Health). A memo is sent home from the guidance counselor advising the parents that services are available through social services. There is no follow-up by the school to determine whether students receive these services. These teachers also confirmed that decisions as to the provision of counseling services are not made at IEP meetings.</p>	<p>FLDE must ensure that public agencies provide psychological counseling as a related service to those students who require such services to benefit from special education. Such services must be provided based on the student's unique needs, as specified in the student's IEP, and at no cost to the parents.</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><u>FREE APPROPRIATE PUBLIC EDUCATION - Extended School Year Services</u></p> <p><u>BACKGROUND:</u> OSEP reviewed FLDE's May 1982 technical assistance paper entitled, "Extended School Year for Exceptional Student Education." The paper describes the State's requirements for making determinations of the need for extended school year programming, including the requirement that such decisions are predicated on individual need as part of the IEP process. The paper also stipulated the use of regression/recoupment criteria in making these decisions.</p> <p><u>FINDING:</u> FLDE has not fully ensured that public agencies consider and make available extended school year services if needed as a component of a free appropriate public education, to students with disabilities. (§300.300.) In preparation for its onsite visit, OSEP reviewed FLDE's procedures for monitoring public agencies in the State through the review of FLDE's <u>Monitoring Work Papers</u>. OSEP found that FLDE does not have a method or procedure to monitor for compliance with this requirement. Teachers, building-level administrators and district administrators interviewed in Agencies A, B, C, D, E and F informed OSEP that decisions regarding the provision of extended school year services (referred to in these agencies as "summer school")¹ are made at the district level, based on the availability of funds, category of disability and amount of time spent in special education programs, and are not individually determined, nor made pursuant to an IEP.</p> <p>Administrators and teachers in Agencies A, B and E informed OSEP that extended school year services are only available to students in full-time special education programming, or to students in certain categories of disability. A district administrator and a building-level administrator in Agency B stated that the program is only for students in physically impaired and other health impaired programs, and is not considered for students identified as having a specific learning disability or mild retardation.</p> <p>Administrators in Agencies D and F stated that extended school year programming is offered to all students in special education programs, regardless of need, time in special education or category of disability, and to regular education students who fail a course. The length and type of program varies from year to year, based on available funds. All decisions as to the scope and length of the programs are made by the districts and are not individually determined for students, based on their IEPs.</p> <p>Two teachers in Agency C informed OSEP that the decision to offer summer programming is made at the district level, is based on availability of funding, and is offered upon the request of the parents. The teacher of preschool students at the facility visited by OSEP, stated that extended school year/summer programming is not available for preschool students in this district, regardless of need. Decisions regarding extended school year services are made at the district level, based on the availability of funds, category of disability and amount of time spent in special education programs, and are not individually determined, nor made pursuant to an IEP.</p>	<p>FLDE 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>

¹ Although district personnel in some agencies used the term "summer school," OSEP clarified with all individuals interviewed that all questions referred to extended school year services, which are special education and related services provided, pursuant to an IEP and at no cost to the parents, beyond a 180 day school year.

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><u>FREE APPROPRIATE PUBLIC EDUCATION - Amount of Services</u></p> <p><u>FINDING:</u> OSEP finds that FLDE does not ensure that the public agencies include a statement of the specific special education and related services to be provided to the child (§300.346(a)(3)) that is based on the individual needs of the child. Question and Response 51 in Appendix C to 34 CFR Part 300, explains that Part B requires that "the amount of services to be provided must be stated in the IEP, so that the level of the agency's commitment of resources will be clear to the parents and other IEP team members."²</p> <p>OSEP determined in its review of records, that a range of time was utilized on IEPs to indicate the amount of time that services are to provided to students in Agencies A, B, C, D, F, and H. The IEP forms in Agencies B and F include a printed list or menu of time ranges for programs and services and the IEP team indicates its selection from the ranges listed. The IEP form utilized by Agency F listed part-time placement options in ranges of time from 15 to 105 minutes, 60 to 150 minutes, 120 to 210 minutes, 15 to 300 minutes, 300 to 450 minutes and 450 to 720 minutes per week. Other agencies indicated the amount of time that special education and related services were to be provided by stating a range. For example, an IEP in Agency A stated that the amount of time that a student would spend in special education was "316-600 minutes per week." Another IEP in Agency A listed the amount of time for a related service to be provided as "30-90 minutes per week."</p> <p>Further, OSEP finds that FLDE has provided guidance to its public agencies through a technical assistance paper, dated May 1993 which addresses the use of a range of time to indicate the amount of time a student will receive special educational services. The paper states that: "It is permissible to use a range of time on the IEP to indicate the amount of time a student will receive special education services. Should a range of time be (used) the range should only span three to five hours per week except for the physical therapy, occupational therapy, and speech/language programs for which a range should not vary more than 30 minutes to one and one half hours."</p> <p>All administrators who were queried by OSEP asserted that they were utilizing ranges in stating the amount of services to be provided in accordance with guidance provided by the State. Several teachers also stated that ranges were adopted from guidance provided by the State. A teacher in Agency C told OSEP that "if the IEP states specific amounts of service, and (the students) don't get that amount, we would be out of compliance." OSEP was told by teachers in Agency F that special education and related services are listed as a range of time on IEPs, in accordance with instructions provided by the district; however, the parent is informed of the exact time at the IEP meeting. A teacher in Agency H stated that the reason that a range of services was used on IEPs is in order to accommodate the schedule at the high school.</p>	<p>FLDE must ensure that all IEPs for children with disabilities contain an individualized statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs.</p>

² While an IEP team may, on an individualized basis, state the amount of services in a range to accommodate the unique needs of a child, the public agency may not, as here, use a range in order to accommodate the administrative convenience of the public agency.

REQUIREMENTS AND FINDINGS

EXPECTED RESULTS

FREE APPROPRIATE PUBLIC EDUCATION - Length of School Day That Meets State Standards

BACKGROUND: Florida Statute 228.041(13) defines the required length of a student's school day as follows: "for students in kindergarten and prekindergarten, three hours per day; for students in grades one through grade three, not less than four net hours; for students in grades above third grade, five hours."

FINDING: OSEP finds that FLDE did not fully meet its responsibility under §300.300 and §300.8(b) to ensure that all children with disabilities are provided a free appropriate public education that meets the standards of the SEA. Data collected by OSEP indicated that three public agencies do not consistently ensure that students receive the State mandated length of school day, due to administrative problems with transportation. (§§300.300; 300.8(b).)

OSEP's review of FLDE's monitoring procedures (Monitoring Work Papers) indicates that they do not include a specific method to determine compliance with this requirement. OSEP also reviewed student records, and interviewed teachers and administrators in public agencies visited by OSEP and found in Agencies A, C, and E that some students with disabilities did not receive a full instructional day as required by State standards due to school bus scheduling problems. A teacher in Agency A confirmed that routing problems with school buses cause some students to have a shortened school day. The teacher expressed concern that the students get off to a bad start when they miss out on part of the day. The teacher stated that only one of six students enrolled in the class is a part-time student based on the child's IEP; five of the six are full-time students. A teacher in Agency C reported that some of the students who participate in the breakfast program have a shortened instructional day because buses arrive late for breakfast, consequently, students are late for class. (This was confirmed by an administrator in Agency C). The teacher stated that buses arrive early in the afternoon, and bus drivers expect the students to leave when they arrive, even before the close of school. The teacher stated that one bus arrives 55 minutes prior to the end of the school day. It was reported in Agency E that students in a class for Trainable Mentally Handicapped students leave 30 to 45 minutes early each afternoon due to the bus scheduling problems. A review of IEPs for these students did not indicate the need for a shortened school day.

During the public meetings that OSEP held in 5 different locations throughout the State, the issue of transportation problems was a major concern voiced by public meeting participants. The Advocacy Center for Persons with Disabilities, Inc, provided written comments stating that certain students with disabilities in a number of districts statewide have extremely long bus rides that cause late arrivals and early departures to and from school.

FLDE must ensure that all children with disabilities are provided a free appropriate public education that meets the standards of FLDE for the length of school days.

REQUIREMENTS AND FINDINGS

EXPECTED RESULTS

PROCEDURAL SAFEGUARDS - Impartial Due Process Hearings

BACKGROUND: The Division of Administrative Hearings is the agency in Florida that conducts all impartial due process hearings. State procedures require that parents file requests for due process hearings with their local educational agency. When a local district receives a request for due process hearing, it forwards the request to the Division of Administrative Hearings. The Division of Administrative Hearings sends copies of correspondence concerning all hearing activities, including the request, findings, pleadings, and orders, to FLDE. FLDE tracks the proceedings by entering data provided by the Division of Administrative Hearings into a Due Process Hearings Log (Log).

FINDING 1: Monitoring for compliance with §300.512 -- OSEP finds that FLDE's procedures for monitoring compliance with the timelines requirements of §300.512(a) and (c) are not consistent with the requirements of Part B.

(a) Calculation of timelines not consistent with §300.512(a) -- Section 300.512(a) and (c) requires that not later than 45 days after the receipt of a request for a hearing, a final decision is reached and a copy mailed to each of the parties, unless a specific extension is granted by the hearing officer at the request of a party. Although parents must file the request for a hearing with their local educational agency, FLDE does not begin the 45-day timeline until FLDE receives the request after forwarding by the local educational agency. FLDE maintains a log to monitor compliance with the hearing timeline requirements. FLDE computes the 45-day timeline from the day that the request is filed with the Division of Administrative Hearings, not the date that the request was received by the local district. Indeed, the date that the request is received by the local educational agency is not recorded on the log. Only the date noted by the parent on the letter of request ("request" date) and the date that the request was received by the Division of Administrative Hearings ("filing" date) are recorded on the log, and the "request" date is not used in calculating the timelines.

(b) No method to ensure extensions of timelines consistent with §300.512(c) -- FLDE's monitoring procedures do not include a method to ensure that any extension of the 45-day timeline is by a hearing officer, for a specific period of time, and at the request of a party. FLDE's log indicates whether a "waiver" of the timeline has been granted, but does not indicate whether the hearing officer granted the waiver at the request of a party, or whether the waiver was for a specific period of time. Further, one cannot determine from the log whether the hearing decision was reached within an extended timeline. Inasmuch as FLDE computes the 45-day timeline from the date of the "filing," OSEP reviewed the Log to determine whether final decisions were reached and mailed to the parties within 45 days of the "filing" date, and, if not, whether extensions were properly documented. Of the 142 requests listed on the Log that were filed between January 6, 1995 and May 30, 1996, 72 entries indicated that the 45 day timelines between the "filing" and the "dismissal" date or "order" date were waived. (The "order" date is the date of the hearing officer's decision.) Of the 72 entries that indicated that timelines had been waived, 14 were within 45 days of the "filing" date, and 58 were not within 45 days of the "filing" date, with 16 of those still pending as of September 30, 1996. There was no notation on the Log as to whether the timelines were waived by the hearing officer for a specific amount of time, whether the extended timelines were met, or whether the timelines were extended at the request of a party. Therefore, FLDE cannot discern from its monitoring procedures whether the due process hearings for which there were timeline extensions met the Federal requirements. FLDE officials confirmed that FLDE does not monitor to determine whether hearing officers grant specific extensions at the request of a party, nor does FLDE monitor to determine whether the timeline extensions are met.

FLDE will revise its monitoring procedures to ensure that the requirements of §300.512(a) and (c) are met.

FINDING 2 -- Hearing decisions within 45-day timeline: As noted above, FLDE does not have an accurate method to monitor for compliance with the requirements of §300.512(a). Because FLDE does not maintain records that show the date on which a local educational agency received a hearing request from a parent, neither OSEP nor FLDE could calculate the number of days between the receipt by a public agency of a hearing request and the date of the hearing decision. Consequently, the only manner in which OSEP could make any determination of the timeliness of hearing decisions was to calculate the time between receipt of the hearing request by the Division of Administrative Hearings ("filing date") and the date of the hearing decisions. OSEP reviewed FLDE's hearing log data regarding the 142 hearing requests that were received by the Division of Administrative Hearings between January 6, 1995 and May 30, 1996. Of those 142 hearing requests, the log indicated no waiver or extension of the timelines for 70 hearing requests. The period between the "filing" date and the date of the final hearing decision for 22 of the 70 hearings exceeded the 45-day timelines by six to 167 days.

FLDE must ensure that final decisions in hearings are reached and mailed to the parties within 45 days of the public agency's receipt of the hearing request, unless the timeline is extended as provided in §300.512(c).

FINDING 3 -- Waiver of hearing timelines with no documentation of extensions for a specific amount of time and at the request of a party: As noted above, OSEP found that FLDE's does not have a monitoring method to ensure that any extension of the 45 day timeline for hearing decisions is for a specific period of time and at the request of a party. OSEP reviewed both FLDE's log and seven hearing files to determine whether hearing officers were granting extensions only for a specific period of time and at the request of a party. As previously noted, of the 72 hearing requests for which the log indicated a waiver of the timelines, there was no documentation in the log of specific extensions of the timelines for these hearing requests, or that the "waivers" had been at the request of a party.

OSEP randomly selected and reviewed seven files that FLDE utilized to prepare its Log in order to determine whether the files contained information that would indicate whether timelines were extended at the request of a party for a specific period of time; and if, when extensions were granted, the hearing was completed within the extended timelines. OSEP will refer to the records selected and reviewed as Records A-G.

Records A, D, and F were listed on FLDE's Log as not having waived timelines, and as exceeding the 45-day timelines. In these three records, however, the "Final Order" documents prepared by the hearing officer contained a statement that the 45-day timeline had been waived, at the request of the parties. It was not possible to determine, based on the information in the records, whether the waivers were for a specific amount of time, and, therefore, whether the extended timelines had been met.

The log indicated, and OSEP's review of the records confirmed, that the due process hearing information in Records B and D had not included timeline waivers, and that the timelines in both hearings had been exceeded.

The log indicated, and OSEP's review of the records confirmed, that the due process hearing information in Record C had included timeline waivers at the request of a party, but no specific amount of time for the extension was reported. Therefore, it was not possible to determine, from the information in Record C, whether the timeline extension had been exceeded.

The log indicated, and OSEP's review of the records confirmed, that the due process hearing information in Record G included timeline waivers at the request of a party. The "orders" included specific timelines, however the extended timelines were exceeded by twelve days.

FLDE must ensure that any extension of the timeline for a hearing decision is for a specific period of time at the request of a party.

REQUIREMENTS AND FINDINGS**EXPECTED RESULTS****PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**

BACKGROUND: FLDE developed the document, A Guide to Least Restrictive Environment Decision Making (Guide to LRE) to assist school districts, State agencies which support educational programs, and parents in the provision of special programs for exceptional students. This document describes issues that must be considered when making decisions to enhance placement in the least restrictive environment. The document instructs school districts to utilize an LRE checklist to verify, as part of the IEP meeting, that the process for making placement decisions is in accordance with Federal least restrictive environment requirements. The Guide to LRE contains a model LRE checklist, which was developed in response to the Corrective Action Plan requirement from OSEP's 1993 monitoring Report to FLDE. Public agencies in the State may either utilize the checklist included in the Guide to LRE or develop their own version.

FLDE is in the process of implementing a new funding model for special education, the Florida Education Finance Program. This program was developed in an effort to simplify the funding process while allowing schools to identify and implement instructional strategies that are educationally effective and encourage placements in regular education. OSEP was informed by teachers, administrators, parents and FLDE administrators that the previous funding formula encouraged categorical placements and provided a financial incentive to place students in substantially separate programs. The model utilizes a matrix of services to determine the funding level for each special education student in five areas, or "domains" (curriculum, social/emotional behavior, independent functioning, health care and communication). The level of service for each domain is identified based on the intensity of the service required. The result yields the student's cost factor as well as the configuration of needed services. The Florida Education Finance Program is currently in the third year of its pilot phase, and FLDE officials informed OSEP that they expect full statewide implementation by the beginning of the 1997-98 school year.

Prior to its onsite visit, OSEP reviewed the most recent monitoring report issued by FLDE to each of the public agencies to be visited. FLDE made the following findings with regard to the Federal requirements for placement in the least restrictive environment: In Agency F, FLDE found that placement decisions were made prior to the development of students' IEPs (§300.552(a)(2)) and in Agency G, FLDE found that student files did not contain documentation of the rationale for removal of students from regular education for students spending more than 50 percent of their time in special education, which is a State requirement (§300.550).

Placement data reported by FLDE to OSEP for the 1993-94, 1994-95, and 1995-96 school years show separate class settings to be the primary placement for four fifths of the students with mental retardation. This includes students identified as "educable mentally handicapped, trainable mentally handicapped" and "profoundly mentally handicapped." Florida Statute and State Board of Education Rules 6A-6.0311 define "special class" as the provision of instruction to exceptional students who receive the major portion of their instructional program in special classes located in regular schools. The specific data reported by FLDE for students with mental retardation in separate class settings and their comparison with national averages are as follows: 1993-94 - 79% (national average - 57%), 1994-95 - 80% (national average - 56%), 1995-96 - 80% (national average not available at issuance of this Report). Placement data provided by each of the public agencies visited by OSEP were consistent with the State data reported above; that is, the primary placement for the majority of students with mental retardation in Florida continues to be in separate settings (self-contained classes or separate facilities).

The findings set forth below are based upon a review of student records, statements from special education teachers regarding placement determinations made in IEP meetings in which they participated, interviews with regular education teachers regarding the availability of training opportunities, the use of supplementary aids and services within regular education classrooms, opportunities for integration for students with disabilities and their nondisabled peers and interviews with administrators regarding the placement practices throughout public agencies or specific schools.

FINDING 1: OSEP finds that FLDE did not always meet its responsibility under §300.550(a) to ensure that public agencies remove a student from the regular education environment only when the nature or severity of the disability is such that education in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily as required by §300.550(b)(2); and that FLDE has not ensured that the educational placement of each child with a disability is based on his or her IEP (§300.552(a)(2)).

OSEP's review of FLDE's monitoring procedures (Monitoring Work Papers) indicated that the document contains an incomplete method for monitoring compliance with the requirements of §300.550(b) and no method for monitoring for §300.551 (see page 3 of this report).

OSEP found that in six of the agencies visited (A, D, E, F, G, and H) placement decisions for students with disabilities, especially students with mental retardation, are not based on the individualized needs of each student in accordance with an IEP. Rather, placement decisions in these agencies are based on one or more of the following factors:

- Disability label;
- Administrative convenience such as scheduling;
- Financial constraints that involve the availability of support staff (aides);
- Parent requests;
- Attitudes of school personnel;
- Lack of training for regular educators.

OSEP visited one separate facility for students classified as "trainable mentally handicapped," "profoundly mentally handicapped," and autistic and one elementary school on a regular campus in Agency A. At the separate facility, OSEP reviewed student files from a class of students at the secondary level classified as "profoundly mentally handicapped." When asked about consideration of other program options for this particular group of students, the teacher reported that no other placement options were considered for these students. One administrator stated that parental choice is a key factor for placing students at the separate facility and, within the past two years, no students have been placed from this facility into a less restrictive setting.

In Agency D, OSEP visited three facilities, one each at the elementary, middle and high school levels. Three administrators and four teachers indicated that regular education with the use of supplementary aids and services was not always considered at annual review meetings when making placement decisions for individual students.

One administrator in Agency D reported that regular education with supplementary aids and services would be considered only if the team felt that the student "had a chance" in a regular education class. For example, a less restrictive setting would not be considered for a child classified as "borderline educable mentally handicapped/trainable mentally handicapped," because "regular education is not an appropriate option." Another administrator stated that regular education is not routinely considered at annual review meetings unless "unusual circumstances trigger it." A third administrator explained that, for students completing eighth grade in Florida, a determination is made as to the type of diploma (special education or regular education) that students will receive. Students on a regular education diploma track are required to pass a State competency exam in eleventh grade. Students with disabilities who are not on the regular education diploma track are required to take all of their academic subjects in self-contained special education classes.

FLDE must ensure that in the public agencies, 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.

In describing how the "LRE Checklist" was utilized, one teacher at the middle school in Agency D explained that completion of this document is based on the decision of the school team prior to annual IEP review meetings. The LRE checklist from student records reviewed by OSEP for this class did not indicate that other less restrictive options along the continuum were considered. Interviews with three other teachers from this facility revealed that, of the 100 students receiving special education, only three students were mainstreamed into regular education for one or more "core classes" (academic subject areas). These teachers explained that more students with severe disabilities could be served successfully in regular education classes if class sizes were smaller and aides were available. A fourth teacher who taught a self-contained program for students classified as trainable mentally handicapped stated that regular class placement was not considered for the students in this class.

Administrators and staff in Agency E reported that all students classified as "trainable mentally handicapped" are placed in separate facilities or self contained classes on regular education campuses. When asked why no students were educated in regular education or resource placements, a district level administrator cited the current funding formula, parent preference, lack of training and support for regular educators, and lack of administrative support as barriers. The administrator cited these same barriers as reasons why very few students identified as "educable mentally handicapped" are educated in regular education or resource placements. Two regular education teachers explained that while instruction for students with disabilities in regular education is planned, the planning is not an individualized decision that is part of the IEP process. Special education teachers indicated that the decision for determining the type and amount of regular education instruction is based on the willingness of regular education teachers to accept children into their classrooms. All of the teachers reported that additional training for both special and regular education teachers at the preservice and inservice was needed.

Administrators from Agency F explained that district policy prohibits teacher training during the school day. "Without training, teachers are not willing to take students into their classrooms." Consequently, many of the students in this agency who are classified as "educable mentally handicapped," "trainable mentally handicapped," and "profoundly mentally handicapped" are enrolled in a separate facility or in self contained classes in a cluster program in a regular school (and not in their "home school").

Two teachers in Agency G stated that all students classified as "trainable mentally handicapped" are placed in separate classes at all grade levels. "The label drives the placement," they said. One teacher further remarked that "some of the students are so low [academically] that they would never be put into regular education classes. We discuss regular education when it is appropriate based on the student's need and potential for success."

Records reviewed by OSEP in a class for students classified as "educable mentally handicapped" in Agency H included these statements: "regular education - none needed or n/a." The teacher explained that students are integrated into regular education if they are on grade level. This teacher identified lack of training as an issue, further explaining that regular education teachers do not know how to make modifications for certain students depending upon their disability categories. A second teacher stated that in order to integrate more students with disabilities into regular education, the regular education classes would need to be smaller and additional support, such as an aide would be needed.

FINDING 2: OSEP finds that FLDE has not ensured that each student with a disability is educated with nondisabled students, including participating in nonacademic and extracurricular services and activities, to the maximum extent appropriate to meet the needs of that student (§§300.550(b)(1) and 300.553). In addition, the decision to provide opportunities in nonacademic and extracurricular activities is not an individualized decision that is based upon an IEP.

OSEP's review of FLDE's Monitoring Work Papers indicated that FLDE has an incomplete method for monitoring the requirements of §300.553 (see page 3 of this letter). In Agencies A, B, C, D, E, F and H, OSEP determined that, for students placed in separate facilities, and in self-contained classes located on regular education campuses, consideration of the extent to which each student can participate in extracurricular or nonacademic programs and services with their nondisabled peers is based on factors such as availability and cost of transportation, administrative convenience, attitudes of school personnel, and lack of training for regular educators, rather than on the individualized needs of the child.

Administrators and teachers from separate facilities in Agencies A and F explained that, at the high school level, for students classified as "educable mentally handicapped," "trainable mentally handicapped," "profoundly mentally handicapped" and autistic, the only opportunity for integration with nondisabled students is in the form of "reverse mainstreaming," where students from the regular education campus visit the separate facility to conduct an activity. In the separate facility in Agency F, OSEP learned that there were two elementary schools located on the same campus and a middle school nearby. The integration opportunities that existed for the students served in these separate facilities did not occur on an ongoing basis and were not individualized in accordance with an IEP. These opportunities for participation with nondisabled students in nonacademic and extracurricular activities are further restricted for students in both of the schools visited by OSEP in Agency F due to the fact that these students spend approximately one and one-half hours on the school bus to and from school each day. Student records reviewed by OSEP in both of these agencies confirmed this information and contained a statement of "0 per cent regular education."

Students at the preschool level in Agencies A and C were provided with very few opportunities to interact with nondisabled peers. In Agency A, an administrator stated that "due to the severity of disability of some of the students, there is no interaction for the preschoolers with nondisabled peers." A teacher and a second administrator confirmed that even though the student records stated that a range of time is spent in regular education, there really is no opportunity for such participation, except for assemblies. A preschool teacher from Agency C explained that while opportunities for integration existed (recess, assemblies, lunch and going into the regular kindergarten class); they did not occur on a regular basis because the teacher's schedule would not allow her to accommodate the children's needs in the regular classroom.

Student records from two self-contained classes in Agencies B and H indicated that the students in these classes were not provided with any opportunities for integration with nondisabled students for nonacademic activities. Interviews with two administrators and two teachers from these agencies revealed that integration opportunities occurred only at assemblies and lunch. A teacher from Agency H stated that students classified as having specific learning disabilities were just beginning to be integrated into art classes with nondisabled peers. This individual further explained that scheduling problems were a factor which limited integration opportunities. A teacher in Agency D reported that, although students ate lunch with their nondisabled peers, they were required to sit at assigned tables, with their classroom aide. This individual also stated that attempts to provide involvement with regular classes occurred during "exceptional student education week" when regular class students volunteer to come into the class for "trainable mentally handicapped" students and serve as peer tutors.

In Agency E, OSEP was informed by teachers that for students classified as "trainable mentally handicapped" at the high school level, no individualized determination is made regarding participation in nonacademic and extracurricular activities with nondisabled peers. Teachers reported (and a review of student records confirmed) that the students' curriculum provided for the only opportunities for interaction for these students (community-based instruction).

FLDE 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.

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><u>TRANSITION FROM PART H TO PART B PROGRAMS</u></p> <p>BACKGROUND: FLDE's Fiscal Year 1995-97 State plan contains procedures for ensuring a smooth transition for those children participating in the early intervention program, administered by the Department of Health and FLDE's preschool programs operated by the public agencies statewide. FLDE has entered into an interagency agreement with the Department of Health in the administration of Part H programs statewide. FLDE monitors public agencies for the requirements of §300.154 by interviewing individuals responsible for ensuring the transition of children from early intervention programs to preschool. FLDE also reviews any locally established agreements with the Department of Health and the public agency.</p> <p>FINDING: OSEP finds that FLDE's procedures have not been effective in ensuring a smooth transition for children with disabilities from early intervention programs into preschool programs in public agencies in the State. (§300.154.)</p> <p>OSEP was informed by an FLDE administrator that public agencies in the State do not consistently ensure that a meeting is held for the purpose of ensuring a smooth transition from early intervention to preschool programs.¹ In interviews with service coordinators and parents from five public agencies, OSEP was informed that public agency staff do not participate in transition planning meetings. OSEP was informed that public agency representatives are invited but often do not attend or respond to the invitation.</p> <p>FLDE operates a state network of 18 technical assistance centers that provide diagnostic and instructional support to school district programs statewide. The Florida Diagnostic and Learning Resources System (FDLRS) centers are funded through State and Federal funds, and provide a variety of services to local districts, including evaluation of students transitioning from the State's early intervention programs to preschool programs. OSEP was informed by parents, service providers and coordinators in four of five public agencies (with the exception of Agency H) that the FDLRS network does not evaluate students in a timely manner and does not consistently accept current evaluations from Part H programs. Instead, the FDLRS centers receive the children's records, and conduct evaluations for the purpose of determining eligibility for Part B (preschool) programs. This often causes unnecessary delay, resulting in a delay in the provision of a free appropriate public education after a child's third birthday.²</p>	<p>FLDE must ensure a smooth transition for those individuals participating in the early intervention program under Part H of the Act who will participate in preschool programs, including a method of ensuring that when a child turns age 3, an IEP, or, an individualized family service plan has been developed and implemented by the child's third birthday.</p>

3 An FLDE official responsible for monitoring public agencies in the State informed OSEP that as part of its monitoring process, FLDE interviews public agency officials regarding their responsibilities in ensuring transition of children from Part H programs to preschool programs. This official acknowledged that ensuring a smooth transition for these children is often a problem in many public agencies across the State, however, at the time of OSEP's monitoring, FLDE had not made any findings of noncompliance in this area.

4 FLDE officials informed OSEP that FLDE's procedures for program operation allow for a "temporary placement rule," which allows LEAs to use an existing family service plan for up to six months in order to develop an appropriate IEP. This procedure facilitates a smooth transition by allowing services to continue while LEAs conduct additional evaluations as appropriate and determine program eligibility, to ensure that children receive a free appropriate public education by their third birthday. OSEP was informed by this official, however, that this procedure is not consistently utilized in public agencies in the State.