



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

AUGUST 13, 1996

Dr. Andy Tompkins  
Commissioner of Education  
120 South East Tenth Avenue  
Topeka, Kansas 66612-1182

Dear Dr. Tompkins:

During the week of March 11, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Kansas State Board of Education's (KSBE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether KSBE is meeting its responsibility to ensure that its educational programs for children with disabilities are administered in a manner consistent with the requirements of Part B. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives; and our findings and corrective actions are presented in Enclosure C.

Our review revealed that the actions KSBE took in response to OSEP's prior monitoring report of May 1992 appear to have been effective in resolving a number of the problems identified in that report. We found no systemic deficiencies in the areas of individualized education programs (IEPs), provision of a free appropriate public education, administration of funds, general supervision, State educational agency monitoring, and review and approval of local educational agency applications -- all areas where KSBE took corrective action after OSEP's 1992 report.

OSEP also would like to recognize several initiatives undertaken by KSBE for providing services to students with disabilities. These initiatives include KSBE's efforts in the area of early childhood special education, KSBE's sponsorship of an annual special education law conference, and statewide support and training of paraprofessionals in special education. These initiatives are described in more detail in Enclosure B to this letter.

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

The preliminary findings of the monitoring team were discussed with Mr. Michael Remus, Director, Student Support Services, and staff members of KSBE's Student Support Services Team at an exit conference held at the conclusion of OSEP's on-site visit. OSEP staff subsequently provided KSBE with further clarification of its findings through telephone conference calls. KSBE was invited to provide any additional information it wanted OSEP to consider during the development of OSEP's monitoring report. No additional information was submitted by KSBE; therefore, the findings presented in Enclosure C are final.

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

I thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Mr. Remus and staff members of KSBE's Student Support Services Team were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of Kansas' various systems to implement Part B.

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

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

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

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures

cc: Mr. Michael Remus

## ENCLOSURE A

### OSEP's Monitoring Methodology

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

Involvement of Parents and Advocates During the week of January 22, 1996, OSEP held public meetings in Wichita and Shawnee Mission. The purpose of these public meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of KSBE's compliance with Part B. In addition, OSEP conducted outreach meetings with representatives from Families Together, the Parent Training Information Project, the Kansas Protection and Advocacy Program known as Keys for Networking, and the Kansas State Advisory Council to receive additional information. The information obtained from the public meetings and outreach activities, as well as from interviews with State officials and a review of State documents assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Kansas; (2) selecting monitoring issues (e.g., the provision of services for students with disabilities in the least restrictive environment) to be emphasized while on-site; and (3) selecting the sites to be visited.

On-site Data Collection and Findings Based upon the effectiveness of the corrective actions taken by KSBE in resolving problems in OSEP's 1992 report and preliminary data obtained during the presite preparation process for the current visit, OSEP decided to focus its investigation on specific Part B requirements, including the provision of a free appropriate public education, procedures for placement in the least restrictive environment, and provision of transition services to students with disabilities. The OSEP team consisted of two staff members: Chuck Laster, the Team Leader, and Sheila Friedman, the State Contact for Kansas. The team visited two high schools, one special school serving secondary level students with behavioral disorders, and one middle school in three public agencies. In addition, the team spent one and one half days in KSBE's administrative offices in Topeka. Where appropriate, OSEP has included in this letter data collected from the three agencies to support or clarify OSEP's findings regarding the sufficiency and effectiveness of KSBE's systems for ensuring compliance with the requirements of Part B. The agency in which the supporting or clarifying data were collected is indicated by a designation such as "Agency A." The agencies that OSEP visited and the designation used to identify those agencies in Enclosure C of this letter are set forth below:

Agency A: Salina USD #305  
Agency B: McPherson USD #418  
Agency C: Wichita USD #259

### **Corrective Action Procedures**

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

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

1. KSBE must issue a memorandum to all agencies advising them of OSEP's findings of deficiency. The memorandum must direct agencies to review their respective practices in regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to the agencies in which OSEP found deficiencies. Should these agencies determine that their current practice is inconsistent with the requirements identified in KSBE's memorandum, they must discontinue the current practice and implement procedures that are consistent with Part B. This memorandum must be submitted to OSEP within 30 days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to all agencies throughout the State providing special education or related services to students with disabilities.

2. KSBE must issue a memorandum to those agencies in which OSEP found deficient practices, as identified in Enclosure C of this letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to KSBE that the changes necessary to comply with Part B requirements have been implemented. This memorandum must be submitted to OSEP within thirty days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to those public agencies in which OSEP found deficient practices. KSBE must send to OSEP verification that all corrective actions have been completed by these public agencies.

## ENCLOSURE B

### COMMENDABLE INITIATIVES

Following are commendable KSBE initiatives that were identified by OSEP during the onsite review:

**EARLY CHILDHOOD SPECIAL EDUCATION** - KSBE has undertaken a comprehensive approach to promote the implementation of exemplary practices in the field of early childhood education. An interagency group, including parents, State agency administrators and policy makers, advocates and educators, has developed a document entitled "Quality Standards for Early Childhood Programs in Kansas." This document is designed to ensure quality early childhood services throughout Kansas. The Bridging Early Services Transition Taskforce, a committee of the Coordinating Council on Early Childhood Development Services, also consisting of a broad representation of individuals with an interest in early childhood special education, has developed several publications on early childhood transitions that have been widely disseminated. One of these publications, "A Guide for Transition to Kindergarten," has been printed in English and Spanish. An interagency public awareness campaign to locate and identify children from birth through age 5 was initiated in 1992 with the State's lead agency for the Infant and Toddlers with Disabilities Program. One recent example of this campaign is a 12-minute videotape entitled "A Future in Your Hands: Early Childhood Programs in Kansas." KSBE continues to promote the implementation of exemplary practices through special projects funded with KSBE's Title VI-B discretionary funds, including statewide training and technical assistance.

**KANSAS LEGAL ISSUES CONFERENCE** - For the past three years, KSBE has sponsored a Regional Special Education Law Conference. Speakers have included national authorities who have made presentations on both timely and controversial topics including related services, inclusion, private schools, assistive technology, and discipline. Attendees include a wide representation of special education personnel and parent advocacy groups. These conferences were cited by administrators from each of the school districts visited by OSEP as a significant technical assistance activity provided by KSBE.

**USE OF PARAPROFESSIONALS** - Currently, Kansas has 5,708 paraprofessionals providing services and support for special education statewide. State regulations establish the qualifications for paraprofessionals, and set forth the requirements for inservice training. In order to ensure that these individuals meet all State requirements, local educational agencies (LEAs) must ensure that each paraprofessional is provided not less than 20 hours of inservice training per year. KSBE conducts inservice training upon request, and sponsors an annual statewide paraprofessional conference to provide guidance and information on State and Federal special education requirements, as well as instructional techniques and strategies. Funding for paraprofessionals is provided through a combination of local, State and Federal funds. OSEP noted that paraprofessionals were widely utilized in each of the LEAs it visited, as a means to support students with disabilities in regular education programs.

ENCLOSURE C

FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED/TIMELINES

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
<p><u>COMPLAINT MANAGEMENT</u>            §§300.660(a) and            300.662            [KSBE is responsible            for adopting written            procedures for            resolving any            complaint that meets            the requirements of            §300.662 including a            statement that a            public agency has            violated a requirement            of Part B and the            facts on which the            statement is based.]</p>	<p><u>BACKGROUND:</u> KSBE's formal complaint procedures are detailed in the State regulations at K. S. A. 91-12-28. These procedures require that a complainant must file a written, signed complaint alleging that a local education agency is not in compliance with a State or Federal law or regulation. KSBE has 30 days in which to investigate and send a letter of findings and decision to the parties. The parties are advised in the letter of findings that either party may appeal the findings or corrective actions in the report by filing a written notice of appeal with the State commissioner of education within 10 days from the date the final report is sent. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 calendar days from the date of receipt of the notice of appeal, and a decision shall be rendered within 5 calendar days after the appeal process is completed. Unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint, all complaints must therefore be completed within a total of 60 days of receipt of the complaint.</p> <p><u>FINDING 1:</u> OSEP finds that KSBE's procedures for complaint management do not ensure that <u>any</u> complaint that meets the requirements of §300.662 filed with KSBE is investigated and resolved.</p>	<p>KSBE must demonstrate that its procedures ensure that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless KSBE has extended the time limit because exceptional circumstances exist with respect to a particular complaint.</p>

<p><u>COMPLAINT MANAGEMENT</u></p> <p>[continued]</p> <p>§300.660(b)  [KSBE is responsible for having written procedures for informing parents and other interested individuals about the procedures in §§300.660-300.662.]</p>	<p>KSBE has no written policy or guidelines outlining its procedures for conducting complaint investigations. KSBE officials informed OSEP that KSBE does not issue a report outlining its findings when the complaint involves "IEP team decisions." IEP team decisions are defined by KSBE to include appropriateness of identification or placement decisions, or appropriateness of decisions involving types and amount of services. KSBE limits its complaint resolution to procedural issues alleging State or Federal violations, such as whether the district is providing the type and amount of services listed on an IEP, or whether the service providers meet specific State or Federal criteria. When KSBE determines that a complaint is substantive rather than procedural, the parents are contacted, usually via phone, and advised that their appropriate avenue of relief is through a due process hearing. KSBE officials stated that records of requests for complaint investigation that are denied are not kept by KSBE. In the file on one complaint, OSEP found the following notation: "This is not an issue which can be adjudicated through the formal complaint process, as the State Department of Education will not substitute its judgment for that of the IEP team. Therefore, no corrective action is required pursuant to this issue." §300.660(a)</p> <p><u>FINDING 2:</u> OSEP finds that KSBE does not have written procedures for informing parents and other interested individuals who are not parties to a complaint that has been appealed to the State commissioner that both the complainant and the public agency have a right to request the Secretary to review the State Educational Agency's final decision. KSBE informs parents of their right to request a formal complaint investigation and to appeal that decision to the State Commissioner of Education in its parents rights notice, "Revised Procedural Safeguards Available to Exceptional Children and their Parents and Local Education Agency Responsibilities" (Notice). Also, when parents call KSBE to request assistance, they are informed that they have a right to request a formal complaint investigation. The parties are advised in the letter of findings that either party may appeal the findings or corrective actions in the report by filing a written notice of appeal with the State commissioner of education. When there is an appeal to the State commissioner, the parties are advised, in the decision, that they may request a review of that decision by the Secretary of the U.S. Department of Education. When there is no appeal to the State commissioner, the parties are not informed of their right to request a review of the final decision by the Secretary. According to KSBE staff, there have been only two requests for reviews to the State Commissioner in the past six years.</p> <p>§300.661(d)</p>	<p>KSBE must develop written procedures that ensure that parents and other interested parties are informed of the right of the complainant or the public agency to request the Secretary to review the SEA's final decision.</p>
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<p><u>TRANSITION SERVICES</u>  §§300.344(c)(3),  300.345(b)(2),  300.346(b). [If a purpose of the IEP meeting is the consideration of transition services the public agency must ensure that (1) if an agency that is likely to be responsible for providing or paying for transition services is invited to the meeting but does not send a representative, the public agency takes other steps to obtain the agency's participation in the planning of any transition services; (2) the notice sent to parents notifying them of the IEP meeting contains all the information specified at §300.345(b)(2); and (3) the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) includes a statement of the needed transition services as defined in §300.18, including, if</p>	<p><u>BACKGROUND:</u> A major initiative to improve and expand transition services for youth with disabilities in Kansas is supported by a systems change grant administered jointly by KSBE, Kansas Rehabilitation Services, and the University of Kansas. This project, the purpose of which is to develop a statewide network of comprehensive transition services that increase the postsecondary success for students with disabilities, was in the fourth year of a five year grant. Among the outcomes of the project are the establishment of a State Transition Council to support project planning and continuation planning beyond the grant period; a skill-based inservice and technical assistance process; and the availability and dissemination of validated exemplary practices training materials. Also, one of KSBE's priorities is to coordinate with other stakeholders, such as the personnel responsible for the School To Work Program, parent groups, and adult service providers to encourage students to optimize all available resources for transition services.</p> <p>OSEP reviewed the document, <u>Master Requirements Checklist</u>, utilized in the monitoring of public agencies in Kansas, in addition to the <u>On-Site/Administrative File</u>, <u>On-Site/Record Review</u>, and <u>On-Site IEP Review</u> checklists to determine how KSBE monitors for the Federal requirements related to the provision of transition services. OSEP determined that KSBE utilizes a variety of methods to determine compliance with most of these requirements, including review of local policies and procedures, student record review, examination of administrative records, and interviews with district staff to document or clarify findings, as necessary. OSEP's review of the most recent monitoring report issued by KSBE to each of the public agencies visited by OSEP indicated that KSBE made findings of noncompliance related to transition in the following areas: Content of IEPs - public agencies A and C; Transition participants - Public agencies A and C; Consideration of student preferences and interests - public agency C; Teams reconvene meetings if agency fails to provide agreed-upon transition services - public agency C. KSBE did not make any findings relative to provision of transition services in public agency B.</p> <p><u>FINDINGS:</u> OSEP finds that KSBE did not ensure, in all cases, that public agencies implemented policies and procedures which complied with the requirements of Part B relative to transition services. OSEP's review of KSBE's procedures and documents utilized in the monitoring of public agencies in the State indicated that KSBE does not have a method for monitoring compliance with the requirements of §300.345(b)(2) - content of notice of invitation to IEP meetings when a purpose of the meeting is the consideration of transition services.</p> <p>OSEP visited secondary education programs in three public agencies. The secondary programs included two high schools, one middle school, and one separate day school. OSEP reviewed the records of 15 students from these programs who were 14 years of age or older.<sup>1</sup> OSEP also interviewed the students' teachers who participated in the IEP</p>	<p>KSBE must ensure that, if a purpose of the IEP meeting is the consideration of transition services, the public agency must ensure that (1) a representative of any other agency that is likely to be responsible for providing or paying for transition services is invited; (2) the notice sent to parents notifying them of the IEP meeting contain all requirements specified at §300.345(b)(2); and (3) the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) must include a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.</p>
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<sup>1</sup> K.A.R. 91-12-41 requires that the IEP for all students receiving special education must include a statement of needed transition

<p>appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.]</p>	<p>meetings, the building principals, and administrators responsible for the provision of special education services in these three public agencies. Based on these interviews and record reviews, OSEP made the following findings:</p>	
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services beginning at **age 14**. This means that this requirement must be met when developing the IEP for a student who will turn 14 during the year covered by that IEP. Of 15 student files OSEP reviewed from the three public agencies, two were files of students who were then 14 years of age.

<p><u>TRANSITION SERVICES</u></p> <p>[Continued]</p>	<p>§300.344(c)(3) - Transition services participants in meetings - other steps to obtain participation.</p> <p>OSEP found that, in some cases, public agencies B and C did not always have a method to ensure that other steps are taken to obtain the participation of an outside agency in the planning of transition services, if the representative of the agency invited to attend the IEP meeting is unable to do so. In public agency B, the notices in four of the five files reviewed indicated that an agency representative would be a participant at the IEP meeting, however, in each case, the agency representative did not attend the meeting. When interviewed, these teachers stated that if an invited representative from an "outside agency" did not attend the IEP meeting, that there would be no follow-up, or additional steps taken to secure the agency's participation. Two teachers from public agency C also stated that when an "outside agency" is invited to a meeting, there is no follow-up when a representative does not attend the meeting. OSEP reviewed the policies and procedures from each of these public agencies, and determined that although IEP teams are required to consider the participation of outside agencies, and, if appropriate, to invite a representative from these agencies to attend IEP meetings to discuss the provision of transition services, none of the procedures addressed the issue of what steps to take to obtain the participation of an outside agency in the planning of transition services, if the representative of the agency invited to attend the IEP meeting is unable to do so.</p> <p>§300.345(b)(2)(i) - Parent participation - Notice must include purpose. Of the 15 student files reviewed by OSEP, only 12 files included notices of invitation to the IEP meeting.<sup>2</sup> OSEP found that none of these 12 notices indicated that a purpose of the meeting would be the consideration of transition services.</p> <p>§300.345(b)(2)(ii) - Parent participation - Notice must indicate agency will invite the student. Of the 15 student files reviewed by OSEP, only 12 files included notices of invitation to the IEP meeting. OSEP found that none of these 12 notices indicated that the student would be invited to the meeting.</p> <p>§300.346(b) - Content of individualized education program - OSEP found that in four of the ten files reviewed in public agencies A and B, the statement of needed transition services did not address community experiences nor was there a statement indicating that the IEP team had determined that services were not needed in that area, as required by §300.18(b)(2)(ii). These areas are: instruction, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation. One additional</p>	
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<sup>2</sup> In three of the 15 student files reviewed, there was no documentation of provision of notice. Interviews with public agency staff revealed that notices of invitation to meetings are provided orally; however, no record is made of such invitations.

	<p>student's IEP did contain goals and short term objectives that addressed community experiences; however, a notation in the IEP indicated that, due to a scheduling conflict with English class, the student did not enroll in the class that would have addressed this area.</p>	
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<p><u>PROCEDURAL SAFEGUARDS:</u> Impartial due process hearings §300.512(a) and (c) [KSBE is responsible for ensuring that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension is granted at the request of either party.]</p>	<p><u>BACKGROUND:</u> Kansas has a two tier system for due process hearings and State level reviews. Records of hearings are maintained at the local level; copies are not forwarded to KSBE. KSBE maintains a log for tracking due process hearings that includes the request date for the hearing, the hearing due date, the hearing date, the report date, and a summary of the hearing. Until August 1995, the log did not include information to determine whether extensions were granted for specific periods of time, or whether an extension was granted at the request of a party. On August 1, 1995, the due process hearing log was amended to include "Number of Extensions" and the "Number of Days of Extension." The completeness of the log is dependent on the information provided by the public agency.</p> <p><u>FINDING:</u> OSEP reviewed KSBE administrative records, including hearing logs and summaries of hearing files, and interviewed KSBE administrators. OSEP finds that KSBE does not have a method to determine whether final decisions in due process hearings are reached and mailed within 45 days of receipt of the request for a hearing. KSBE derives its information on status of timelines for its hearing log from the public agency. The public agency is required to inform KSBE when a due process hearing has been requested, and the hearing officer is instructed to provide KSBE with a summary of the disposition of the case at the conclusion of the hearing. Monitoring staff informed OSEP that they do not monitor to ensure that the required timeline of 45 days for resolution of a due process hearing is met.</p> <p>KSBE staff also stated that they do not monitor to determine whether extensions of time are granted for specific periods. KSBE does not obtain any records or other data from parents, the public agency or hearing officers from which it could determine whether these requirements are met. OSEP reviewed KSBE's log of all due process hearing requested from August 1, 1995 to January 1, 1996. Thirty six requests were recorded.<sup>3</sup> Information was incomplete for the 16 requests that were dated after Nov 12, 1995. Only the Hearing Request Date and Hearing Due Date were listed for these entries. In addition, for six other requests for hearings, made between August 5, 1985 through November 2, 1995, there was no information other than the Hearing Request Date and the Hearing Due Date. None of the summaries of the hearings were included on any of the entries. Due to a lack of available information, OSEP could not determine if decisions in due process hearings are reached and mailed to the parties within 45 days, or if decisions in hearings are reached within specific extensions of time granted by the hearing officer.</p>	<p>KSBE must ensure that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties unless a <u>specific</u> time extension is granted at the request of either party.</p>
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<sup>3</sup> KSBE informed OSEP that, typically, over 90% of the hearing requests in the State occur in one district, and that the majority of these hearing requests are dismissed, usually at the prehearing conference.

<p><u>PROCEDURAL SAFEGUARDS:</u> Impartial due process hearings §300.512(a) and (c) [KSBE is responsible for ensuring that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension is granted at the request of either party.]</p>	<p>Of the remaining Hearing Requests, 10 resulted in dismissals, three resulted in a hearing, and one was "negotiated". (KSBE explained that "negotiated" usually means that the hearing officer has made an interim decision, is leaving the case open, and is maintaining jurisdiction over the case.) Of the 10 hearing requests that resulted in dismissals, three entries indicated that an extension had been granted, the number of days ranging from 17 to 36 days. The log did not specify, however, whether the extensions were granted for a specific period of time, or whether they were granted at the request of a party. KSBE staff stated that they did not collect this data, and that it was not available from any other source.</p> <p>Of the three hearing requests that resulted in hearings, one was completed within timelines with no indication of an extension, one listed an extension for 97 days, and one listed an extension of 27 days. Again, there was no indication of whether the extension was granted at the request of a party or for a specific period of time.</p>	
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<p><u>Prior notice: parent consent.</u> §300.504 [Written notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency -- Proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.]</p> <p><u>Content of notice.</u> §300.505 [The notice under §300.504 must include -- (1) A full explanation of all of the procedural safeguards available to the parents; (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected; (3) description of each evaluation</p>	<p><u>BACKGROUND:</u> OSEP reviewed KSBE's monitoring procedures and documents, including the document, <u>Master Requirements Checklist</u>, utilized in the monitoring of public agencies in Kansas, in addition to the <u>On-Site/Administrative File</u>, <u>On-Site/Record Review</u>, and <u>On-Site IEP Review</u> checklists to determine how KSBE monitors for the Federal requirements related to the provision of prior notice. OSEP determined that KSBE requires public agencies to establish standards for provision of prior notice, and also utilizes a variety of methods to determine compliance with this requirement, including review of student records and interviews with parents. OSEP's review of the most recent monitoring report issued by KSBE to each of the public agencies visited indicated that KSBE made findings of noncompliance and required corrective action relating to provision of prior notice in public agencies A and B.</p> <p><u>FINDINGS:</u> OSEP finds that KSBE does not ensure that written notice that meets the requirements of §300.505 is given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the provision of a free appropriate public education to the child. In interviews with KSBE administrators, OSEP was informed that KSBE requires that public agencies in the State provide parents with prior notice a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation or placement of a student, to include changes proposed or refused which would alter the child's placement category (for example, from a self-contained class to a resource setting) or the addition or deletion of a related service) but does not require notice prior to a change in the provision of a free appropriate public education to the child (in this instance, the amount of time the child participates in regular and/or special education classes).</p> <p>OSEP reviewed student records and interviewed teachers and administrators in public agencies A, B, and C and determined that prior notice, which contains the content requirements of §300.505(a), is not provided to parents when a public agency proposes to change the provision of a free appropriate public education to a child, specifically, when the public agency proposes a change in the amount of time the child participates in regular and/or special education classes. In its review of student files, OSEP noted that a change in the provision of a free appropriate public education had been made for students in seven out of 18 files reviewed in public agencies A, B, and C; however, teachers reported that, except for discussions that took place at IEP meetings, parents were not provided with prior written notice that contained the information required by §300.505(a)(2)-(4). Administrators from each of these agencies confirmed that prior written notice is not always provided in instances where such a change in the provision of a free appropriate public education occurs. An administrator in public agency A explained that the practice in this district has been to discuss this information formally at the IEP meeting as verified by the parent's signature on the IEP. An administrator in public agency C reported that prior notice is provided to parents only in instances where there is a change in the placement category along the continuum of services, e.g., from 61 -</p>	<p>KSBE must ensure that public agencies provide 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.</p>
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procedure, test, record, or report the agency uses as a basis for the proposal or refusal.	100% time in special education to 21 - 60% time in special education.	
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u>  (\$300.550(b))  [Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily].</p>	<p><u>BACKGROUND:</u> OSEP reviewed KSBE's procedures and documents utilized in its monitoring of public agencies, including: the <u>Master Requirements Checklist</u>, the <u>On-Site/Administrative File</u> checklist, the <u>On-Site/Record Review</u> checklist, and the <u>On-Site IEP Review</u> checklist to determine how KSBE monitors for the Federal requirements related to placement in the least restrictive environment. OSEP determined that KSBE's procedures contain incomplete or incorrect methods to determine compliance with certain Federal requirements, as described in the finding below. OSEP's review of the most recent monitoring report issued by KSBE to each of the public agencies visited indicated that KSBE made findings of noncompliance related to placement in the least restrictive environment in the following areas: §300.550(b)(2) - Removal - public agencies A, B and C; §300.551 - Continuum of placement options - public agency B; §300.552(a)(1) - Annual placement determination - public agency C; §300.552(d) - Consideration of harmful effects - public agencies B and C; §300.556 - [KSBE determined that public agencies A and B did not include a justification for placement in certain student IEPs reviewed]; and §300.552(a)(3) - no documentation that placement was as close as possible to the child's home - public agency B.</p> <p>The findings set forth below are based upon a review of KSBE monitoring procedures, student records, statements from teachers regarding placement determinations as made in IEP meetings in which they participated, and interviews with administrators regarding the placement practices throughout public agencies or specific schools.</p>	<p>KSBE must ensure that public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p>
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LEAST RESTRICTIVE ENVIRONMENT

(§300.550(b))

[Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily].

**FINDINGS:** OSEP finds that KSBE did not always meet its responsibility under §300.550(a) to ensure that public agencies ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. OSEP's review of KSBE's monitoring procedures indicated that KSBE has an incorrect method for monitoring for the requirements of §300.550(b)(2). KSBE's Master Requirements Checklist at 8.0.5 states that "student records contain evidence that a less restrictive environment was considered at the IEP meeting." In order to meet this Federal requirement, a public agency must demonstrate that, prior to making any decision to remove a child from the regular education environment it must determine whether the child's education can be achieved satisfactorily in the regular education environment with the provision of supplementary aids and services. KSBE's method does not assess whether this requirement is met, rather, it merely requires that IEP teams document whether a less restrictive environment was considered prior to making the [final] placement decision. Utilizing this standard, a public agency could comply if it indicated that IEP teams considered placement in a resource setting prior to placement in a self-contained classroom, without any consideration of regular education programming.

OSEP found that, in public agencies A and B, decisions to remove students with disabilities from regular education are not always based on a determination that the student's education could not be achieved in a regular education classroom with the use of supplementary aids and services (§300.550(b)). In public agencies A and B, OSEP visited two regular secondary education facilities at the high school level. Interviews with three administrators and two teachers from these agencies indicated that, at annual review meetings, regular education with the use of supplementary aids and services is not always considered as a placement option for each disabled student before a more restrictive placement is considered. When asked whether regular education with the use of supplementary aids and services is considered prior to removing a student from the regular education setting, an administrator from public agency A stated that the IEP team "looks to see if the IEP continues to be appropriate." This individual explained that, while the district policy requires consideration of regular education with the use of supplementary aids and services when placement options are discussed, the administrator stated, "we're not there yet - this has not been the practice at annual review meetings in this agency." The administrator informed OSEP that IEP teams typically begin with the current placement, and, based on the success of the student, may consider other placement options, including regular education. When asked whether regular education is considered prior to removing a child from the regular education environment, a second administrator from public agency A confirmed that student participation in regular education programming is

	<p>dependent on the student's previous experience in regular education and the level of success that the student had experienced. An administrator and one teacher from public agency B also described the process as similar to that described by public agency A administrators, emphasizing the fact that parents have the "ultimate choice" in all placement decisions.</p>	
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