



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

**JUNE 21, 2000**

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Massachusetts Department of Education  
350 Main Street  
Malden, Massachusetts 02148

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Commissioner  
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250 Washington Street  
Boston, Massachusetts 02108-4619

Dear Drs. Driscoll and Koh:

The U.S. Department of Education's Office of Special Education Programs (OSEP) conducted a review in Massachusetts during the weeks of November 30, 1998, February 22, 1999 and April 6-8, 1999 for the purpose of assessing compliance in the implementation of the Individuals with Disabilities Education Act (IDEA) and assisting your State in developing strategies to improve results for children with disabilities. The IDEA Amendments of 1997 focus on "access to services" as well as "improving results" for infants, toddlers, children and youth with disabilities. In the same way, OSEP's Continuous Improvement Monitoring Process is designed to focus Federal, State and local resources on improved results for children with disabilities and their families through a working partnership among OSEP, the Massachusetts Department of Education (MASSDE), the Massachusetts Department of Public Health (DPH), and parents and advocates in Massachusetts.

In conducting its review of Massachusetts, OSEP applied the standards set forth in the IDEA 97 statute (20 U.S.C. §1400 *et. seq.*), and in the Part C regulations (34 CFR Part 303) and Part B regulations (34 CFR Part 300), in effect at the time of the OSEP review. The Part C regulations in effect February 1999 were those published by the Department on July 30, 1993, as revised by the Technical Amendments published on April 14, 1998. The Part B regulations in effect in February 1999 were those published on September 29, 1992. All citations to 34 CFR Parts 303 and 300 in this report are to the regulations, as published on those dates. On March 12, 1999, the Department published new final Part B regulations and conforming changes to the Part C regulations that took effect on May 11, 1999. In planning and implementing improvement strategies to address the findings in this report, MASSDE and DPH should ensure that all improvement strategies are consistent with the new final regulations.

A critical aspect of the Continuous Improvement Monitoring Process is collaboration between the Steering Committee of broad-based constituencies, including representatives from MASSDE, DPH and OSEP. The steering committee assessed the effectiveness of State systems in ensuring improved results for children with disabilities and protection of individual rights. In addition, the

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Steering Committee will be designing and coordinating implementation of concrete steps for improvement. Please see the Introduction to the report for a more detailed description of this process in your State, including representation on the steering committees.

OSEP's review placed a strong emphasis on those areas that are most closely associated with positive results for children with disabilities. In this review, OSEP clustered the Part B (services for children aged 3 through 21) requirements into four major areas: Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment, Secondary Transition and General Supervision. Part C (services for children aged birth through 2) requirements were clustered into five major areas: Child Find and Public Awareness, Family-Centered Systems of Services, Early Intervention Services in Natural Environments, Early Childhood Transition, and General Supervision. Components were identified by OSEP for each major area as a basis to review the State's performance through examination of State and local indicators.

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

Although MASSDE has made progress in some previously identified areas of noncompliance, OSEP is seriously concerned about continuing noncompliance that has not been corrected. These areas include: 1) MASSDE's IEP development process that results in delays in services and in children with disabilities not receiving services; 2) Children with disabilities, especially those placed in separate educational environments not being educated with nondisabled children to the maximum extent appropriate; and 3) MASSDE's failure to exercise its general supervisory authority in such a manner to insure that it has effective methods for identifying and correcting deficiencies in local school districts. These deficiencies have been allowed to exist for a number of years, impacting on services to children with disabilities. OSEP has documented these continued deficiencies in its prior monitoring reports to MASSDE from 1991 and 1995. These issues are addressed in detail in the enclosed Report.

The State must take action to ensure that the above long-standing, serious noncompliance is effectively and promptly corrected through out the State. MASSDE and DPH have indicated that this Report will be shared with members of the steering committee, the State Interagency Coordinating Council and the IDEA State Advisory Panel. OSEP will work with your steering committee to develop corrective actions and improvement strategies to ensure improved results for children with disabilities in all areas identified in this Report.

Thank you for the assistance and cooperation provided by your staffs during our review. Throughout the course of the review, Ms. Marcia Mitnacht and Mr. Ron Benham were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to work in partnership with the Steering Committee to better understand the State's systems for implementing the IDEA. An extraordinary effort was made by State staff to arrange the public input process during the Validation Planning week and, as a result of their efforts, OSEP obtained information from a large number of parents (including underrepresented

groups), advocates, service providers, school and agency personnel, agency administrators, and special education administrators. OSEP would also like to recognize the efforts that have taken place in Massachusetts to improve results for children with disabilities and the strong commitment of State staff to continue these efforts.

Thank you for your continued efforts toward the goal of achieving better results for infants, toddlers, children and youth with disabilities in Massachusetts. Since the enactment of the IDEA and its predecessor, the Education of All Handicapped Children Act, one of the basic goals of the law, ensuring that children with disabilities are not excluded from school, has largely been achieved. Today, families can have a positive vision for their child's future.

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

Sincerely,

Kenneth R. Warlick  
Director  
Office of Special Education Programs

Enclosures

cc: Ms. Marcia Mittnacht  
Mr. Ron Benham

## **EXECUTIVE SUMMARY**

### **MASSACHUSETTS 1999**

The attached report contains the results of the first two steps (Validation Planning and Validation Data Collection) in the Office of Special Education Program's (OSEP) Continuous Improvement Monitoring of the Individuals with Disabilities Education Act (IDEA), Parts B and C, in the State of Massachusetts during the weeks of November 30 and February 22, 1999 and April 6-8, 1999. The process is designed to focus resources on improving results for infants, toddlers and children with disabilities and their families through enhanced partnerships between the State agencies, OSEP, parents and advocates. The Validation Planning phase of the monitoring process included a series of public input meetings with guided discussions around core areas of IDEA and the organization of the Steering Committees that provided further comments on the status of implementation of IDEA. As part of the public input process, OSEP and the State made efforts to include multi-cultural and underrepresented populations. The Validation Data Collection phase included interviews with parents, agency administrators, local program and school administrators, service providers, teachers and service coordinators, and reviews of children's records. Information obtained from these data sources was shared in a meeting attended by staff from the Massachusetts Department of Education, The Massachusetts Department of Public Health, members of the State Interagency Coordinating Council and members of the Steering Committees.

The Report includes a detailed description of the process utilized to collect data, and to determine strengths, areas of non-compliance with IDEA, and suggestions for improved results for children. During the time OSEP conducted the Validation Planning and Data Collection phases of the monitoring process, the regulations implementing the 1997 statute had not been finalized. Therefore, in the Report and where appropriate, the phrase "*in effect at the time*" is used to show, for Part B, the section(s) cited from the IDEA 1992 regulation that the State was mandated to meet for Federal compliance standards.

### **Early Intervention Services for Infants and Toddlers with Disabilities: Part C of IDEA**

#### **Strengths**

OSEP observed the following strengths:

- Effective use of funding to provide expanded services to infants and toddlers who are at-risk for developmental disabilities.
- Early identification and linkage of infants and toddlers and their families to services and a client-based referral data system.
- Leadership by DPH to affect system change so that all early intervention services are provided in natural environments.
- Parent participation in service delivery at the local and State level.
- Interagency collaboration to ensure continuous services and community supports.

### **Suggestions for Improved Results for Infants and Toddlers with Disabilities**

OSEP provides the following suggestions for improved results for infants and toddlers with disabilities:

- Monitoring to ensure consistent implementation of Part C requirements across the State.
- Identification of child's and family's typical routines and daily schedules to support decision-making on service location within neighborhoods and communities.
- Training activities to support and build upon service delivery models that use family and community life as sources of learning opportunities for infants and toddlers with developmental disabilities and their families.
- For transition activities, staff training and guidance in community options for children at age three who do not qualify for special education services.
- Parent training in differences between Part C and Part B system requirements and procedures.

### **Area of Noncompliance**

OSEP observed the following area of non-compliance:

- Lack of justification for the provision of some early intervention services in settings other than natural environments.

## **Education of Children and Youth with Disabilities Part B of IDEA**

### **Strengths**

OSEP observed the following strengths:

- MASSDE's linkage with the Federation for Children with Special Needs to facilitate improved parent involvement in special education.

### **Suggestions for Improved Results for Children with Disabilities**

OSEP provides the following suggestions for improved results for children with disabilities:

- A renewed emphasis on building partnerships and cooperation between parents and the educational community.
- Heightened efforts to facilitate the participation of non-English speaking parents in special education.
- Consideration for providing continuity in children's programs in districts that utilize "school choice."

- Addressing challenges to ensure that children with disabilities are given appropriate supports in the State-wide assessment.

### **Areas of Noncompliance**

OSEP observed the following areas of non-compliance:

- Denial of right for parents to participate in the decision-making process regarding their children.
- An IEP development process that results in delays in services and in children with disabilities not receiving services agreed to in IEP meetings.
- Psychological counseling was not always provided as a part of a free appropriate public education when needed to enable children with disabilities to benefit from special education.
- Extended school year services were not always available.
- Children with disabilities placed in substantially separate educational environments did not have opportunities for participation with nondisabled children in nonacademic and extracurricular and to be involved and progress in the general education program.
- The lack of opportunity for children with disabilities to be involved and progress in the general curriculum.
- The lack of opportunity for involvement of children with disabilities in regular vocational education programs with appropriate supports as determined by an IEP team.
- Outcome oriented statements of transition services for students with disabilities who are 16 or older were missing.
- Districts did not have a method for ensuring that outside agencies, likely to be providing or paying for post-school activities, are invited to the IEP meeting and that there is a method for obtaining their input if they do not attend.
- Students with disabilities were not always invited to meetings if transition planning is a purpose of the meeting.
- IEPs did not always include a statement of transition service course of study for students with disabilities beginning at age 14.
- MASSDE did not have effective methods for identifying and correcting deficiencies in programs providing services to children with disabilities.
- MASSDE did not have an effective system for resolving complaints regarding violations of Part B.
- MASSDE did not ensure that children with disabilities, receiving services through charter schools, receive a free appropriate public education.

**MASSACHUSETTS MONITORING REPORT**  
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## **INTRODUCTION**

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The Massachusetts State Legislature provided the impetus for education reform by passing the Education Reform Act of 1993. Among the major improvements are greater and more equitable funding to schools, accountability for student learning and Statewide standards for students, educators, schools and districts. As a part of educational reform, the State will have contributed more than \$2 billion in new State funding by the year 2000. Major changes in accountability brought about by the Act include a school council in every school, continuing education for educators, more authority for every principal, a better-defined role for school committees, and clear, concise, measurable Statewide standards for students and schools. The capstone of these accountability changes will be a "high-stakes" test (the Massachusetts Comprehensive Assessment System) based on the new curriculum standards. Students from the graduating class of 2003, including children with disabilities, will need to pass the test in order to receive a regular diploma.

The Commonwealth has maintained one of the broadest eligibility definitions for Part C in the nation through inclusion of children at environmental and biological risk in the entitlement to early intervention services. The State has continuously sought out strategies to ensure reimbursement by appropriate payers, taking full advantage of the available diversity of funding resources for infants and toddlers with disabilities and their families. DPH and State Part C staffs are responsible for monitoring activities to ensure fiscal efficiency and program accountability.

The Early Intervention Program in the Division for Children with Special Health Care Needs, Bureau of Family and Community Health, is the administrative unit within the Massachusetts Department of Public Health (DPH) that has been appointed as lead agency for early intervention services in accordance with state and federal legislation. Early intervention staff work closely with the State Interagency Coordinating Council in developing and implementing policy and procedures for the statewide system, and in collaborating with other programs and agencies within and outside of DPH.

DPH administers the early intervention system through contracts with 65 certified providers. Providers are required to participate in the State's program certification process which includes an extensive three-to-four day compliance evaluation based on the Massachusetts Early Intervention Operational Standards. Early intervention services are provided directly by certified early intervention providers or purchased by them from providers of highly specialized services on behalf of individual children and their families.

As reported in the December 1, 1997 child count, Massachusetts provided early intervention services to 9,645 children, of which 1,841 children were under the age of one, 2,883 were between one and two and 4,921 were between two and three years old. Thus, DPH found 4.09% of the birth-to-three population in the State who are eligible for and receiving Part C services.

Massachusetts' December 1, 1997 annual count of children served was 159,023 for children three through 21. Based upon the total number of children of public school age, this represents a rate of 14.4 percent of students served in special education. This is the second highest

identification rate in the country. Massachusetts' child count generated \$64 million in Part B funds for fiscal year 1996. State aid is distributed to school districts to subsidize the total cost of education without distinguishing special education costs. In Fiscal Year 1999, state aid represented an average of 40 percent of the total school operating expenditures, although this varied from 4 to 96 percent depending upon the local district's ability to pay.

For Fiscal Year 1999 there were 357 operating school districts, 351 cities and towns, 34 educational collaboratives, 41 vocational or Voc-Tech high schools, and 54 regional academic school districts.

The Massachusetts Department of Education (MASSDE) employs an executive director of special education. Since the reorganization in 1993, many of the activities necessary to administer special education are incorporated into similar activities throughout MASSDE. For example, Program Quality Assurance is responsible for the resolution of complaints and monitoring activities, whether for special or general education students. Other "clusters" within MASSDE are responsible for activities which may include certain aspects of special education. The executive director for special education is responsible for coordinating special education activities between the clusters.

The Massachusetts Coordinated Program Review System addresses selected IDEA and State monitoring requirements for special education, as well as six other Federal programs. Depending upon the size of a district and the number of program areas to be reviewed, a team of three to eight MASSDE staff conduct a coordinated program review which includes interviews with parents, administrators, and school staff, classroom and facilities observations, and student record reviews. Following MASSDE's report of findings, districts must provide for MASSDE's approval, corrective actions for areas found to be either "partially implemented" or "not implemented." Districts are encouraged to incorporate the corrective action activities in their District and School Improvement Plans, including the District Professional Development Plan.

An important addition to the authorization of IDEA 1997 was to include children with disabilities in statewide assessments since educational reform that promotes accountability has been tied to these assessment programs. The Massachusetts Comprehensive Assessment System (MCAS) is the new statewide assessment program for public schools in Massachusetts. MCAS measures the performance of students, schools, and districts on the academic learning standards contained in the Massachusetts *Curriculum Frameworks*; and is designed to promote uniformly high academic standards for all public school students. In May 1998, students in grades 4, 8, and 10 participated in the first administration of the MCAS. Further discussion of the MCAS can be found on Page 42 of this Report.

### **Validation Planning and Data Collection**

In preparation for the Part B Validation Planning visit, OSEP reviewed previous Part B monitoring reports for Massachusetts. OSEP conducted an on-site monitoring review was conducted during the week of October 31, 1994 and the final report was issued on September 26, 1995. Issues identified as noncompliant included general supervision in monitoring, approval of funds for local education agency applications, investigating and resolving complaints and

conducting due process hearings within timelines, ensuring public agencies made placement decisions consistent with the least restrictive environment requirements and reviewed and revised IEPs annually, as appropriate.

A follow-up monitoring review was conducted during the week of May 12, 1997 and the written report was issued September 4, 1997. Results of this review indicated that MASSDE had taken steps to correct many of the issues identified in OSEP's 1994 visit. Additional corrective actions were instituted by OSEP for MASSDE to strengthen its procedures for monitoring and complaint resolution.

In preparation for the Validation Planning visit, OSEP reviewed the data from the 20<sup>th</sup> Annual Report to Congress; correspondence from parents, advocates and other interested parties; Part C annual reports; MASSDE's and DOH's Self-Study, DPH's monitoring reports, and Federal and State child count and services data.

Prior to OSEP's Validation Planning visit, MASSDE conducted a self-assessment and established a Part B Steering Committee comprised mostly of members for Massachusetts's State Advisory Panel. DPH also conducted a self-assessment and established a Part C Steering Committee which included members of the State Interagency Coordinating Council and other representatives of provider, advocacy and interagency groups. Throughout the monitoring process, the Part B and Part C Steering Committees met separately.

During the week of November 30, 1998, OSEP and the Steering Committees conducted four public input meetings for Parts B and C across the State to obtain information about issues and concerns regarding IDEA service delivery. Meetings consisted of 20 to 50 participants in each of the following locations: Boston, Waltham, Springfield, and Westport. Discussions addressed, for Part C: child find and public awareness, family-centered systems of services, early intervention services in natural environments, transition from Part C to other appropriate services, and general supervision by DPH. For Part B, discussion centered on: the provision of a free appropriate public education to children with disabilities from ages three through 21 in the least restrictive environment; parent involvement in special education decision-making; secondary transition for youth with disabilities from school to post-school activities; and general supervision of special education by MASSDE. At the end of the week, this information, along with self-assessment information and information from the public input meetings was discussed with the Part B and C Steering Committees to identify specific issues which could be investigated by OSEP, monitoring strategies, and sites that might be visited during OSEP's Validation Data Collection visit in February 1999.

OSEP returned to Massachusetts during the week of February 22, 1999 to collect data to validate information provided through the planning process, including new requirements under the IDEA Amendments of 1997 and the Government Performance Results Act. The following sites were visited for Part C: Northampton, Cambridge, Somerville and New Bedford. OSEP Part B sites included collaborative, elementary, middle, and secondary schools, and one charter school. The following sites were visited for Part B: Boston, Boston Renaissance Charter School, Nahant, North Shore Collaborative, Cambridge, Watertown, Worcester, Holyoke, Sandwich, and

Falmouth. Preliminary results were presented to MASSDE and the Part B Steering Committee and next steps were discussed to begin the process of improvement planning.

As part of the data collection process, OSEP reviewed children's records, including individualized family service plans (IFSPs) and individualized education programs (IEPs), and State and local policies and procedures. OSEP conducted interviews with personnel responsible for the implementation of both Parts B and C of IDEA, including local service providers, service coordinators, teachers, interagency collaborators, and administrators. Part C also interviewed small groups of parents at each site. General education teachers interviewed were those who serve children with disabilities in their classrooms, and special education teachers were those responsible for developing and/or implementing IEPs. OSEP also interviewed advocates and personnel from State agencies involved in the provision of services to infants, toddlers, children and youth with disabilities. The individuals interviewed were selected by OSEP, in cooperation and consultation with State and local officials.

### **Improvement Planning**

In response to this report, MASSDE and DPH will develop a plan addressing areas requiring improvement as identified in the Report. OSEP will work with MASSDE and DPH to finalize the improvement plan and will provide assistance to the Steering Committees in the identification of strategies for implementation, sources of technical assistance, time lines for completing strategies and methods for evaluating the effectiveness of the improvement plan.

## I. PART C: GENERAL SUPERVISION

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The State lead agency, DPH, is responsible for developing and maintaining a statewide, comprehensive, coordinated, multidisciplinary, interagency early intervention system. Administration, supervision and monitoring of the early intervention system are essential to ensure that each eligible child and family receives the services needed to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay. Early intervention services are provided by a variety of public and private entities. Through supervision and monitoring, the State assures that all agencies and individuals providing early intervention services meet the requirements of IDEA, whether or not they receive funds under Part C.

While each State must meet its general supervision and administration responsibilities, the State may determine how that will be accomplished. Mechanisms such as interagency agreements and/or contracts with other State-level or private agencies can serve as the vehicle for the lead agency's implementation of its monitoring responsibilities. The State's role in supervision and monitoring includes: (1) identifying areas in which implementation does not comply with Federal requirements; (2) providing assistance in correcting identified problems, and (3) as needed, using enforcement mechanisms to ensure correction of identified problems.

### **Validation Planning and Data Collection**

The Massachusetts Part C Self-Assessment document identified several issues regarding the State's oversight of the provision of early intervention services. DPH's analysis of respondents' comments clustered in the following areas: system administration, service delivery, reimbursement and funding staff training and certification. The concerns identified included: (1) the effectiveness of the lead agency's current monitoring system to evaluate quality early intervention services and (2) implementation of State policy regarding natural environments and a lack of statewide training and support for effective service models.

At each of the public input meetings that OSEP conducted during the Validation Planning visit, the following question was asked: "Does the State effectively supervise the implementation of the early intervention system?" Responses identified concern for the State's capacity to provide effective monitoring and supervision of early intervention services. Several local program administrators and providers stated that with the growth of the early intervention system to 65 certified providers, the administrative infrastructure of the DPH consisting of the Part C Coordinator and five regional specialists who are directly responsible to implement Part C may be compromised. Providers stated that staff resources at the State level have remained the same, while the needs of providers for guidance have increased.

Local program administrators indicated that there is inconsistency among the State's regional specialists who provide technical assistance and conduct program certification visits (Massachusetts' term for monitoring) as to the manner and depth of their investigations and follow-up activities. Other providers emphasized that service provision is more difficult than it was ten years ago because of the challenges of implementing current regulatory requirements, increased staff training and supervision needs, and the service needs of a large population of

children who are at risk. Many participants at the meetings, including family members, praised the lead agency staff stating that “DPH is their favorite State agency” and that “they want us to be successful” in our work with children and families.

In order to investigate the issues identified during the Validation Planning process, OSEP collected information from the review of children’s records, examined State and local policies and procedures, reviewed monitoring reports, and conducted interviews with State personnel, local program directors, service coordinators/providers, parents and interagency collaborators.

OSEP also reviewed and analyzed the data and identified the following area of strength and suggestion for improved results for infants and toddlers and their families.

#### **A. STRENGTHS**

##### ***Effective Use of Funding to Provide Expanded Services to Infants and Toddlers Who Are At-Risk for Developmental Disabilities***

DPH has ensured the availability of payments that support the statewide system of Part C services for 18,322 infants and toddlers and their families (cumulative total of children served over the course of a year). DPH has been successful under 1990 legislation in making available private insurance funding which provides 25 percent of the State’s early intervention budget. The legislation includes coverage for medically necessary early intervention services namely, occupational, physical and speech therapy, nursing care and psychological counseling. Of the total third party funds, Medicaid contributes 23 percent of the funding needed to expand services to all children who have developmental disabilities or developmental delay (State’s FY 1998 Annual Performance Report).

#### **B. SUGGESTION FOR IMPROVED RESULTS FOR INFANTS, TODDLERS, AND THEIR FAMILIES**

##### ***Monitoring to Ensure Consistent Implementation of Part C Requirements across the State***

The DPH’s monitoring process for Part C includes a program certification/recertification process, which is required for all 65 provider agencies. Regional specialists complete the certification process, which includes parent and staff interviews, child evaluation and assessment observations, family home visits, and completion of family and community resource questionnaires, in addition to reviewing staff credentials, early intervention records, a facility checklist, and a program standards checklist. The regional specialist also completes a Paper Trail Billing Audit. Program recertification visits are conducted every two years or more frequently, if deemed appropriate by the regional specialist. Regional specialists also provide technical assistance and training activities to the 65 providers.

Service providers, administrators and parents stated that it would be beneficial to increase the present level of State Interagency Coordinating Council members, parent and provider involvement in local monitoring activities, including the dissemination of monitoring reports to participants, and to conduct consistent follow up to improve identified program issues and ensure

correction action. The State may want to want to develop additional strategies to monitor implementation of Part C natural environments policy across agencies, to build community resources such as childcare, and to meet child and family needs.

## II. PART C: CHILD FIND AND PUBLIC AWARENESS

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The needs of infants and toddlers with disabilities and their families are generally met through a variety of agencies. However, prior to the enactment of Part C of IDEA, there was little coordination or collaboration of service provision, and many families had difficulty locating and obtaining needed services.

With the passage of Part C in 1986, Congress sought to assure that all children needing services would be identified, evaluated, and served, especially those children who are typically underrepresented, (e.g., minority, low-income, inner-city, Indian and rural populations) through an interagency, coordinated, multidisciplinary system of early intervention services.

Each State's early intervention system must include child find and public awareness activities that are coordinated and collaborated with all other child find efforts in the State. Part C recognizes the need for early referral and short timelines for evaluation as development occurs at a more rapid rate during the first three years of life than at any other age.

Early brain development research has demonstrated what early interventionists have known for years, that children begin to learn and develop from the moment of birth. Therefore, the facilitation of early learning and the provision of timely early intervention services to infants and toddlers with disabilities is critical.

### **Validation Planning and Data Collection**

The Part C Self-Assessment identified numerous accomplishments related to the State's efforts to locate and identify infants and toddlers with disabilities:

- (1) effective parent-to-parent outreach;
- (2) DPH development of other programs for young children such as Healthy Families, Teen Parenting, and FIRSTLink;
- (3) the DPH Early Intervention Information System which collects statewide early intervention services data;
- (4) increased awareness of early intervention among community providers because of the use of natural community settings for service delivery;
- (5) increased interaction between early intervention and child care providers; and
- (6) the Parent Leadership Initiative at the State level which promotes full parent participation in policy development and implementation.

OSEP reviewed Federal child count tables from December 1, 1997 and noted that Massachusetts served 4.3 percent of the birth through three year old population with over two percent of children served by age two. OSEP also reviewed the State's data from the Early Intervention Information System, which validate a strong referral effort that comes from physicians and hospitals, with 49 percent of all referrals coming from the medical community.

One of the focus questions asked during the public meetings was: "Are all infants and toddlers with developmental delays or disabilities identified, evaluated and referred for services?"

Responses indicated those young children with autism or mental health needs are not identified and referred by the medical community early enough. Participants stated that the medical centers are doing a good job of referral but that the physicians in private practice are not. Many parents at the meetings indicated that physicians needed additional education about the range and types of early intervention services that are available. One parent described being given the telephone number of an early intervention program by her child's pediatrician with no further explanation as to who she was to call or why. Local administrators described successful efforts at outreach, through childbirth education classes, homeless shelters for women, and screenings at child care centers. Several providers indicated concerns related to the need for specific outreach activities to non-English speaking families.

At the end of the Validation Planning process, the steering committee identified the following as issues that OSEP should investigate during the data collection week: (1) variability in understanding of early intervention by physicians; and (2) increased intra-agency coordination of early identification and referral.

In order to investigate the child find and awareness issues, OSEP collected data from parents, local program administrators, service providers/service coordinators, interagency representatives, and State personnel.

OSEP reviewed and analyzed the data and identified the following strengths. OSEP did not find areas of noncompliance or identify suggestions for improvement.

## **A. STRENGTHS**

### ***1. Early Identification and Linkage of Infants and Toddlers and Their Families to Services***

DPH has successfully implemented a variety of strategies to provide information and access to the early intervention system, as well as access to other State prevention initiatives such as FIRSTLink. FIRSTLink establishes a statewide referral system for universal screening and identification of newborns and families who may be at risk for adverse health or developmental outcomes. Infants and their families are linked with a variety of community services, including early intervention for those who are eligible. FIRSTLink is a significant component of the State's child find efforts and underscores DPH's commitment to maintain a broad definition of eligibility for early intervention services. Massachusetts is one of only nine States in the nation to support these vulnerable at-risk infants and toddlers through Part C of IDEA.

### ***2. Client-Based Referral Data System***

The State's Early Intervention Information System is excellent in providing data regarding specific referral sources, including: early intervention programs, community social service agencies, home health services, community health centers, child care centers, DPH Women, Infants and Children Program, DPH Case Management, DPH Hearing Aid Program, and adolescent parenting programs. This breakout of specific referral information provides DPH with an additional tool to monitor its outreach efforts across the State as well as a mechanism to provide guidance to local communities on improvements in child find activities.

### **III. PART C: EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS**

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In creating the Part C legislation, Congress recognized the urgent need to ensure that all infants and toddlers with disabilities and their families receive early intervention services according to their individual needs. Three of the principles on which Part C was enacted are: 1) enhancing the child's developmental potential; 2) enhancing the capacity of families to meet the needs of their infant or toddler with disabilities; and 3) improving and expanding existing early intervention services being provided to children with disabilities and their families.

To assist families in this process, Congress also requires that each family be provided with a service coordinator, to act as a single point of contact for the family. The service coordinator ensures the rights of children and families are provided, arranges for assessments and IFSP meetings, and facilitates the provision of needed services. The service coordinator coordinates required early intervention services, as well as medical and other services the child and the child's family may need. With a single point of contact, families are relieved of the burden of searching for essential services, negotiating with multiple agencies and trying to coordinate their own service needs.

Part C requires the development and implementation of an IFSP for each eligible child. The evaluation, assessment, and IFSP process is designed to ensure that appropriate evaluation and assessments of the unique needs of the child and of the family, related to enhancing the development of their child, are conducted in a timely manner. Parents are active members of the IFSP multidisciplinary team. The team must take into consideration all the information gleaned from the evaluation and child and family assessments in determining the appropriate services needed to meet the needs.

The IFSP must also include a statement of the natural environments in which early intervention services will be provided for the child. Children with disabilities should receive services in community settings and places where normally-developing children and their families would be found, so that they will not be denied opportunities that all children have – to be included in all aspects of our society. Since 1991, IDEA has required that infants and toddlers with disabilities receive early intervention services in natural environments. This requirement was further reinforced by the addition of a new requirement in 1997 that early intervention can occur in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in the natural environment. In the event that early intervention cannot be achieved satisfactorily in a natural environment, the IFSP must include a justification of the extent, if any, to which the services will not be provided in a natural environment.

#### **Validation Planning and Data Collection**

The Self-Study identified several accomplishments and concerns regarding the provision of early intervention services in natural environments. Accomplishments identified included: provision of services in natural settings, such as family child care and homeless shelters; serving children who are at risk for developmental delay; and provision of services to over four percent of the

population of children birth to three. Concerns identified included: (1) difficulty accessing services and other resources in rural areas; (2) a lack of family participation in needs assessment and identification of services and supports; (3) the availability of personnel to meet individual needs of children in natural environments; and (4) inconsistent monitoring of IFSPs, including arranging the periodic reviews and annual reviews, by service coordinators.

At each of the public meetings that OSEP attended during the Validation Planning visit, the following question was asked: “Do all infants and toddlers and their families receive early intervention services in natural environments?” Responses indicated concern that: (1) evaluation and assessment information is not consistently linked to service planning; (2) training in IFSP development on methods of individualizing services, service location and outcome measures is inadequate; and (3) present funding methodology supports segregated infant and toddler center-based groups. Parents and service providers indicated that services are provided in a variety of settings such as the home, childcare and in early intervention center center-based groups. A program administrator stated that “best practice” in Massachusetts has always been home-based services. Parents stated that their children take a bus provided by the DPH to attend center-based groups at the early intervention center. The parents further stated that they do not always attend these center-based groups and when they do attend they join a parent support group. Several providers stated that when suggestions for services in community settings are made, parents *choose* to come to the center to have “specialized providers.” Providers also stated that they are trying to expand options for families that include childcare settings for those parents who are working.

At the end of the Validation Planning process, the following issues were identified as areas that could be investigated during the data collection week: (1) evaluation, assessment and service planning; (2) family participation in the IFSP process; and (3) services provided based on individualized needs.

OSEP reviewed and analyzed the data and identified the following strength, area of non-compliance, and suggestions for improved results for infants, toddlers and their families.

## **A. STRENGTH**

### ***Supervisory Leadership***

DPH is to be commended on its recent actions and efforts of leadership to affect system change so that all early intervention services are provided to infants and toddlers with disabilities and their families in natural environments throughout the State. Consistent with its general supervision responsibilities, the State determined that there was a problem with local practices around individualizing services and providing services in community settings that included young children without disabilities, in some areas of the State. DPH instituted several strategies for improvement including: direct negotiation onsite with providers and families; the provision of training opportunities; and the withholding of program funds. To ensure system change, the State has recently issued a Request for Proposals for six regional consultant teams to train other providers to work with infants and toddlers with multiple needs and their families. The grants

include funds specific to parent training and support activities and training for child care providers to improve opportunities for quality care for families with infants with disabilities

## **B. AREA OF NONCOMPLIANCE**

34 CFR §303.344(d) requires that the IFSP must include a statement of specific early intervention services necessary to meet the unique needs of the child and the child's family to achieve the outcomes identified, including the frequency, intensity, and method of delivering services, the location in which early intervention services will be provided, and a justification of the extent, if any, to which services will not be in natural environments. These decisions must be based on the results of evaluation and assessment and are made by the IFSP team, on an individual basis, to meet the child and family's unique needs.

### ***Lack of Justification for Provision of Some Early Intervention Services in Settings Other than Natural Environments***

OSEP found that DPH provides most early intervention services in natural environments. However, the majority of IFSPs that OSEP reviewed across all sites contained some services in a center-based setting; parents, service providers and administrators stated that the center-based groups typically do not include children without disabilities. Such settings do not constitute natural environments for the child under the definition in §303.18. Although a State may provide services in such settings if a justification, based on the individual child's needs, is included in the child's IFSP, §303.167(c), 303.344(d)(1)(ii), in every IFSP that OSEP reviewed in Massachusetts, there was no written justification.

In one site, two records indicated a discussion of center-based groups which focused solely on the age of the child rather than on the identified developmental needs of the child. OSEP found that two of six IFSPs reviewed in a second site indicated center-based group services with no justification statement. In a third site, one IFSP indicated the child received home visits by an educator but had to attend the center-based group to receive occupational and speech therapy services.

Administrators and providers told OSEP that parents choose center-based services for their children because parent support groups are available simultaneously. Parents in all sites visited reported that they participate in parent support groups exclusively at the early intervention centers "to meet other parents". When OSEP asked parents whether other options for parent services were presented to them, parents reported that there is no discussion in IFSP meetings of parent services such as support groups in any context other than the center-based services. 34 CFR §303.322(d) requires that information concerning the resources, priorities, and concerns of the family related to enhancing the development of the child and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child, are designed to be included in discussions at intake and during the evaluation and assessment. The IFSP team, which includes the parent, identifies parent support, training or counseling, as a needed early intervention service, that can be provided through Part C, or by referral to an organization that offers these particular services (e.g., a Parent Training and Information Center, a Parent -to Parent program, other family support or advocacy organizations

within their communities). A variety of locations for training activities could be considered, such as a public library, another family's home, the local toddlers swim program etc. Because a parent's need for time with other parents of children with disabilities can be successfully accommodated in the natural environments where the child receives services, or in separate meetings, this parent need can not be used as justification to deny the child the appropriate services in natural environments. (See OSEP 10/19/99 letter to Pennsylvania).

DPH must ensure that determinations of service location are made by the IFSP team based on the child's needs, and that a justification statement is included in the IFSP when the team determines that early intervention cannot be achieved satisfactorily in a natural environment for a particular service for that child.

### **C. SUGGESTIONS FOR IMPROVED RESULTS FOR INFANTS, TODDLERS AND THEIR FAMILIES**

#### ***1. Identification of child's and family's typical routines and daily schedules to support decision-making on service location within neighborhoods and communities***

Service providers, parents, service coordinators and administrators told OSEP that while many children received services at home or in other natural environments including child care settings, segregated parent/child groups and developmental toddler groups at the early intervention center were routinely offered to families and included on IFSPs. Providers explained the lack of justification on IFSPs on the fact that other services that the child needed were delivered in community settings that included children without disabilities. OSEP recommends that DPH provide a focused training on the methods of linking identified needs and services to each child's specific developmental outcomes within the context of typical family and community life.

#### ***2. Training activities to support and build upon service delivery models that use family and community life as sources of learning opportunities for infants and toddlers with developmental disabilities and their families.***

Given the training needs identified by the Steering Committee during validation planning, OSEP recommends that DPH, as part of its comprehensive system of personnel development, consider the development of joint training opportunities for parents and service providers in service provision in community settings, and natural environment requirements, challenges, and barriers. In addition, DPH should identify the historical programmatic issues and funding concerns that affect the kinds of practices associated with the child, the parent and the family.

## **IV. PART C: FAMILY-CENTERED SYSTEM OF SERVICES**

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Research has shown that improved outcomes for young children are most likely to occur when services are based on the premise that parents or primary caregivers are the most important factors influencing a child's development. Family-centered practices are those in which families are involved in all aspects of the decision-making, families' culture and values are respected, and families are provided with accurate and sufficient information to be able to make informed decisions. A family-centered approach keeps the focus on the developmental needs of the child, while including family concerns and needs in the decision-making process. Family-centered practices include establishing trust and rapport with families, and helping families develop skills to best meet their child's needs.

Parents and other family members are recognized as the linchpins of Part C. As such, States must include parents as an integral part of decision-making and service provision, from assessments, through development of the IFSP, to transition activities before their child turns three. Parents bring a wealth of knowledge about their own children and family's abilities and dreams for the future, as well as an understanding of the community in which they live.

In 1986, Part C of the IDEA was recognized as the first piece of Federal legislation to specifically focus attention on the needs of the family related to enhancing the development of children with disabilities. In enacting Part C, Congress acknowledged the need to support families and enhance their capacity to meet the needs of their infants and toddlers with disabilities. On the cutting edge of education legislation, Part C challenged systems of care to focus on the family as the unit of services, rather than the child. Viewing the child in the context of her/his family and the family in the context of their community, Congress created challenges for the States as they designed and implemented a family-centered system of services.

### **Validation Planning and Data Collection**

Several sections of the Part C Self-Study provided information relative to the family's satisfaction with their involvement in the early intervention system. More than one-third of the families responding indicated positive experiences concerning policy information and the implementation of services, which met child and family needs. Providers indicated that multiple funding streams for children birth to three administered by DPH were duplicative and acted as barriers to carrying out services. Some respondents felt that the State's reimbursement system drives service delivery models, which are not congruent with addressing child and family needs and outcomes within a community context. It was reported that paperwork demands prevented staff from meeting family needs.

One of the focus questions asked during the public input meetings was: "Are family and child outcomes enhanced by family-centered supports and systems of services?" Parents, providers and advocates reported that while many programs do have staff who are fluent in languages other than English, there is an increasing need for qualified providers representing diverse cultures in rural parts of the State.

At the end of the Validation Planning week, after discussing information obtained through the Self-Study and public input process, the Steering Committee requested that OSEP investigate the following concern/issue: the provision of family-centered services by culturally representative staff. OSEP reviewed State personnel data and found that 30 percent of the early intervention staff are bilingual.

To investigate the concern identified during the Validation Planning process, OSEP collected information from the review of children's records and State and local policies and procedures, and interviews of State personnel, local program directors, service coordinators/providers, and parents and interagency collaborators and did not find areas of noncompliance.

OSEP reviewed and analyzed the data and identified the following strength.

**A. STRENGTH**

***Parent Participation in Service Delivery at Local and State Level***

The DPH promotes the participation of families in the planning and implementation of services to their children and in statewide system development and monitoring of program policies and procedures. The Parent Leadership Resources Project is one example of the State's commitment to parent/ professional partnerships. DPH provides funding and support for the Project, which employs parent consultants. Parents facilitate parent-to-parent networking, provide parent participation resource materials to local early intervention programs, and act as conduits for the flow of information from local programs to and from DPH and the State Interagency Coordinating Council. Parents and professional early intervention personnel conduct joint in-service training activities, a model, which enhances family-centered approaches because of the active participation of parent trainers and shared leadership.

## V. PART C: EARLY CHILDHOOD TRANSITION

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Congress included provisions to assure that preschool or other appropriate services would be provided to eligible children leaving early intervention at age three. Transition is a multifaceted process to prepare the child and the child's family to leave early intervention services. Congress recognized the importance of coordination and cooperation between the educational agency and the early intervention system by requiring that a specific set of activities occur as part of a transition plan. Transition activities typically include: (1) identification of steps to be taken to prepare the child for changes in service delivery and to help the child adjust to a new setting, (2) preparation of the family (i.e., discussions, training, visitations), and (3) determination of other programs and services for which a child might be eligible. Transition planning for children who may be eligible for Part B preschool services must include scheduling a meeting, with approval of the family, among the lead agency, the educational agency and the family at least 90 days (with parental permission up to six months) prior to the child's third birthday. Transition of children who are not eligible for special education also includes making reasonable efforts to convene a meeting to assist families in obtaining other appropriate community-based services. For all Part C children, States must review the child's program options for the period from the child's third birthday through the remainder of the school year and must establish a transition plan.

### **Validation Planning and Data Collection**

The Self-Study survey results show that there is a perception by providers and parents that children who are potentially eligible for special education at age three are not always served by local school districts. Overall, respondents indicated that progress is being made in transition, particularly for children with low incidence conditions. The lack of sufficient preparation of parents for transition to special education services by early intervention providers and special education staff was identified as a concern.

One of the focus questions asked during the public input meetings was: "Are appropriate supports and services available to a child, and to the child's family, by the child's third birthday?" Respondents indicated that transition planning is working well overall with occasional gaps in services for children who turn three in the spring.

Participants also reported that some school districts contract with early intervention programs to provide early intervention services after age three to those children with spring birthdays. Others reported experiencing eight-week delays in the start of special education services at age three for some children due to local school district requirements for ongoing "diagnostic evaluations."

Administrators and service providers described a series of transition meetings taking place rather than relying solely on the required 90-day transition conference for decision-making. They also indicated that transition plans are frequently developed at home with the parents, service coordinator and school district representative. Other providers indicated that the transition process is expedited when school districts accept current evaluations or evaluations that are less than six months old from local early intervention providers. Several participants stated that this practice is effective in their communities. At the end of the Validation Planning week, after

discussing information obtained through the Self-Study and public input process, the Steering Committee requested that OSEP investigate the following concerns/issues: (1) parent training in transition procedures, and (2) options at age three for children who are at risk and who are likely not eligible for special education services.

To investigate the concerns identified during the Validation Planning process, OSEP collected information from the review of children's records and State and local policies and procedures, and interviews of State personnel, local program directors, service coordinators/providers, parents and interagency collaborators.

OSEP reviewed and analyzed the data and identified the following strength and suggestions for improved results for infants, toddlers and their families. OSEP did not find areas of noncompliance.

#### **A. STRENGTH**

##### ***Interagency Collaboration to Ensure Continuous Services and Community Supports***

The efforts of the State over the last ten years to collaborate with other agencies around a transition policy for children moving from early intervention settings into special education and/or Head Start services are to be commended. This long term commitment to interagency capacity building has attracted participation from other State agencies, such as the Office for Children, the Departments of Social Services and Mental Retardation, in addition to parent groups such as the Federation for Children with Special Needs. The group, which includes the founding members, DPH, the Department of Education and Head Start, meets on a regular basis to plan and implement regional workshops targeted at transition issues and inclusion practices. Currently, this group is focusing on inclusive childcare settings and opportunities that will increase options for community supports in natural settings for infants, toddlers and young children with disabilities.

#### **B. SUGGESTIONS FOR IMPROVED RESULTS FOR INFANTS, TODDLERS AND THEIR FAMILIES**

##### ***1. For Transition Activities, Staff Training and Guidance in Community Options for Children At Age Three Who Do Not Qualify For Special Education Services***

Providers told OSEP that there was no training designed to increase their awareness of community services and supports for children at age three who do not continue on to special education services. Parents stated that specific activities for them regarding other educational or childcare services for their young children were not available. Information on program options and supports for families before leaving Part C services could assist in achieving positive results for infants and toddlers and their families.

The Steering Committee recommended the following systemic improvements to address the identified concerns which include: (1) identify and universalize best practices for transition preparation, (2) identify strategies for bringing local participants together for the purpose of

ensuring progress, (3) universalize sharing of data for planning, and (4) define a continuous process for parent education and preparation.

## ***2. Parent Training in Differences between Part C and Part B System Requirements and Procedures***

During the public input meetings, and Validation Data collection process, parents reported that they did not understand the differences between Part C and Part B systems in general. Parents and providers expressed concerns specific to the lack of services in the summer when a child reached age three in the late spring. Parents reported that information about their expected level of participation in special education services was inadequate. Advocates described families' frustration due to a lack of preparation for the program eligibility requirements of Part B. They stated that if parents were given information in a timely, informed and neutral manner, many of the problems families face would be alleviated.

## **VI. PART B: PARENT INVOLVEMENT**

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

### **Validation Planning and Data Collection**

In the 1995 Massachusetts monitoring report, OSEP found that annual goals and short-term objectives were developed after the IEP meeting and mailed to parents for their signature. This practice was inconsistent with the requirement that the child's IEP is developed in a meeting including one or both of the child's parents. In addition, OSEP found that parents did not receive written prior notice of proposals or refusals to change the educational placement of the child that included required information regarding the range of placement options that were considered, and the reasons each was rejected. Therefore, parents had not received a full explanation in writing when they decided whether to agree or disagree with the agency's proposal or refusal to change the child's placement. In the 1997 Massachusetts follow-up monitoring report, OSEP found that MASSDE's revised monitoring and corrective action procedures addressed the district's understanding of policies, but were not effective in changing practices in these areas.

The Federation For Children With Special Needs, an organization that provides information, support and assistance to parents of children with disabilities in Massachusetts, conducted a survey of parents on the implementation of IEPs under IDEA 1997. The Federation received over 400 individual responses to the survey, representing at least 82 of the 355 local educational agencies. One of the questions asked in the survey, was "Are parents involved in the education of their child with a disability?" Almost 40% of the parents surveyed stated that they have no real input into the IEP process and no clear definition of the services their child will receive. The survey and public input data indicated that: (1) parents are not always included in decisions about their child; (2) parents are not always informed or invited to Team meetings; (3) parents' diverse needs are not always met; and, (4) IEPs are not always developed in the IEP Team meeting. Parents reported that often they are either presented with an IEP to sign at the meeting that was developed without their input, or they are sent the IEP after the meeting that does not reflect the decisions made at the meeting.

One of the focus questions asked during the public input meetings was, "How are parents involved in their child's special education process?" Many parents stated that they had no input into their child's goals and objectives on the IEP. Sometimes the IEP was already written when they arrived at the IEP meeting, or the IEP that was sent to them after the meeting did not represent the discussion and decisions made during the IEP meeting. Several parents expressed a need for training in their procedural safeguards and the special education process. Some parents expressed a concern that materials are sent home in English, which they cannot read, since they

speak a different language such as Spanish or Portuguese in some sites. Parents stated a need for more open communication at the schools between parents and school staff.

At the end of the Validation Planning week, after discussing information obtained through the Self-Assessment and public input process, the Steering Committee requested that OSEP investigate the following issues: (1) parent participation in special education decision-making; (2) explanation and provision of parents' rights; (3) IEP development in meetings with parent participation; (4) parents of children with disabilities must “fight” to get what their children need; and (5) parents of children with disabilities must pay for services for their children.

To investigate the issues identified through the Validation Planning process, OSEP collected data from the review of student records and State and local policies and procedures, and interviewed of State personnel, local program administrators, teachers, and parents during the week of February 22-26, 1999. Analysis of the data collected resulted in identification of the following strengths, areas of noncompliance, and suggestions for improving results for children with disabilities.

## **A. STRENGTH**

### ***MASSDE Linkage with Federation to Improve Parent Involvement***

MASSDE and the Federation for Children with Special Needs have a cooperative contract to enhance parent involvement in State education policy and planning. As part of this contract, additional training for parents will be included as a follow-up to the training activities of the five-year systems change grant for the Massachusetts Transition Initiative.

## **B. AREAS OF NONCOMPLIANCE**

### ***1. Parent Participation in Meetings Regarding Educational Decisions for Their Child***

The 1997 IDEA amendments at 20 U.S.C. 1415(b)(1) require that the parents of a child with disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education to the child. The IDEA 1997 expanded the rights of parents to ensure that they have the opportunity to participate where substantive decisions are made regarding their child's education.

In all of the districts visited, OSEP found that parents were being denied the right to fully participate in the decision-making process involving their children. As documented in student files, OSEP only found parents being invited and attending IEP meetings and asked to sign permission for evaluations. In follow-up interviews, school staff at all levels stated that parental participation in the special education decision-making process is limited, with rare exception, to attendance at the IEP meeting. Parents are not invited to other meeting regarding their child. A principal in one district stated, “School members of teams come up with what is best for the child. Parents can use procedural safeguards if they disagree.” A special education teacher stated that, “placement decisions are made by the staff.” A principal, two special education

administrators, a school counselor and a special education teacher in three other districts stated that parents are not involved in the evaluation process.

In addition, OSEP found that MASSDE did not make attempts to ensure parental participation in IEP meetings, a requirement that was in place prior to IDEA 1997. As set forth at 34 C.F.R. §300.345(a) and (d), each public agency is required to take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or demonstrate its attempts to arrange a mutually agreed on time and place to convene IEP meetings. As shown in 77 student records across the ten agencies OSEP visited, parents did not attend 17 of the most recent IEP meetings and attempts were not made to ensure their participation. A special education teacher, an IEP coordinator and two education programmers in two districts visited where parents did not always attend IEP meetings reported that parents are notified in writing about a team meeting. This notification is sent only once. No other attempts are made to convince parents that they should attend. If the parent does not respond, the meeting is held anyway.

In addition, parents and local school district personnel also have very different understandings of the purpose and use of “draft” or “pre-organized” IEPs that are brought into IEP meetings by school staff. Local school districts perceive the use of a “draft” document as a time saver and a means to provide information to the parent about what the school is thinking, in advance of the IEP meeting, so that the parent is better prepared to participate in the IEP meeting and to express their opinions/concerns about the school’s proposals. Although school staff may bring proposed recommendations regarding IEP content to IEP meetings, some parents who OSEP interviewed stated that it was their belief that the “draft” IEP is a finished product into which they have no input and which does not represent their concerns, ideas and needs for their child.

## **C. SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN WITH DISABILITIES**

### ***1. Partnerships and Cooperation between Parents and Schools***

Many parents stated to OSEP that there is lack of communication and cooperation between themselves and the educational community. According to parents, special education staff often sends a message that “they know best” and parental input is not valued or sought. Parents stated that they feel intimidated in the presence of the professional special education staff. As noted above, OSEP found noncompliance in a lack of parental involvement in meetings and participation in educational decisions regarding their children. The problem also appears to be related to attitudes and a lack of trust between parents and schools. In meetings throughout the State, parents provided OSEP with numerous examples of polarization between parents and the educational community. Massachusetts has a high number of complaints and due process hearings. In 1997, MASSDE received 826 special education complaints and 603 requests for due process hearings. Although there are probably numerous reasons for this phenomenon, certainly one factor appears to be the lack of cooperation and trust between parents and the schools. MASSDE has taken steps through its State Improvement Grant to include parents through the Federation for Children with Special Needs as a organizational partner. It is suggested that MASSDE explore further steps to empower parents as stakeholders in the special education process.

## ***2. Participation of Non-English Speaking Parents***

Part B clearly intends that public agencies take whatever action is necessary for parents to understand the proceedings of IEP meetings and the content in prior written notices. (See 34 C.F.R. §§300.345(e) & 300.503(c); 20 U.S.C. 1415(b)(4)).

Parents expressed concern about the use of foreign language interpreters that lack knowledge about special education and parents' rights. Parents stated that interpreters are often staff members who speak the language, but are not necessarily trained interpreters. Parents further stated that interpreters had no knowledge of special education and this resulted in their doing a poor job of interpreting.

Parents also stated that there is a concern that IEP notices and progress reports are generally written in English, which is not always the native language of the parent. The State is not providing parents with information written in their native language. Many parents cannot read or write in English, but receive letters and notices in English. When OSEP questioned a special education director regarding the records of a student whose parent spoke only Portuguese, they were told, "There are no interpreters provided and there is no alternative printed information." Although OSEP was unable to directly validate systemic noncompliance regarding this issue, OSEP has serious concerns because sufficient comment was received by OSEP during Validation Planning to note it as an issue. It is suggested that MASSDE review practices across the State, including in charter schools, to accommodate non-English speaking parents regarding notices and letters and the provision of interpreter services.

## **VII. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT**

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The provision of a free appropriate public education in the least restrictive environment is the foundation of IDEA. The provisions of the statute and regulations (evaluation, IEP, parent and student involvement, transition, participation in large-scale assessment, eligibility and placement decisions, service provision, etc.) exist to achieve this single purpose. It means that children with disabilities receive educational services at no cost to their parents, and that the services provided meet their unique learning needs. These services are provided, to the maximum extent appropriate, with children who do not have disabilities and, unless their IEP requires some other arrangement, in the school they would attend if they did not have a disability. Any removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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

### **Validation Planning and Data Collection**

As documented in the 1995 monitoring report, OSEP found that MASSDE did not meet its responsibility to ensure that: (1) each student with a disability was provided with related services in accordance with his/her IEP; (2) removal from the regular education environment occurred only when the nature and severity of the student's disability was such that education in the regular education environment with the use of supplementary aids and services could not be achieved satisfactorily; (3) educational placement decisions were based on the students' IEP; and (4) students with disabilities were educated with nondisabled peers and participate in nonacademic and extracurricular activities to the maximum extent appropriate. Three of these deficiencies (numbers 2, 3, and 4) were also identified as areas of non-compliance in OSEP's 1991 monitoring report.

The Massachusetts Part B Self-Assessment and discussions held with the Steering Committee reflected the following areas of concern: (1) current funding for placements in residential schools may create a fiscal incentive for separate placements; (2) students who have been

removed from the regular education setting need improved access to the general education curriculum; (3) training for all personnel is needed to enable students to access the general curriculum; (4) appropriate schoolwide services for students with behavioral difficulties provided by qualified staff, as well as funding and support for alternative programs; and (5) State rates of payment that have been set for evaluations may affect the ability to obtain highly qualified evaluators.

One of the focus questions asked during the public input meetings was: “Do students with disabilities receive a free appropriate public education in the least restrictive environment that promotes a high quality education and prepares them for employment and independent living after they exit school?” Responses to this question reflected general agreement that quality varies across Massachusetts and that some systems do well while others do not. Low expectations were seen to play a role in the quality of services provided and, in many cases, low expectations were seen as the norm. A number of examples were given where specific disability needs were not met and concerns were expressed that staff was not knowledgeable about low-incidence disabilities. Commenters cited delay in the provision of needed services, or services not being provided. Participants reported a concern that behavioral issues in schools are not well addressed, that students in behavior classes do not receive academics and that students with behavioral problems were pushed out of school. In all public input sessions, parents expressed their opinion that decisions about IEP services are based solely on what the school is willing to do, rather than what the student needs, and that funding plays a fundamental role.

There was overall agreement on the part of participants that students with disabilities get a “watered down” curriculum. Participants expressed concerns that IEP teams were not considering appropriate supplementary aids and services for students with disabilities to be successful in general education environments. A need for training for general education teachers and for better training and supervision for teacher aides was also expressed. There were multiple comments about collaborative programs not getting equal access to space in public schools, and about the “Resource Room Model” where the students do not have access to the general curriculum. It was generally thought that elementary schools do a much better job with inclusion and that students get “dumped” into substantially separate programs in middle and high schools. Concern was expressed about the lack of extended school year programs and the unwillingness to consider such programs for children who may need them.

The Federation for Children with Special Needs provided a report based on the survey responses of 400 parents representing 82 of the 355 LEAs in the State regarding the implementation of IEPs under the IDEA Amendments of 1997, and assessment results. Data from this report indicated that parents report that: (1) children are not receiving all the services deemed necessary by their IEP team; (2) school systems have unilaterally discontinued services to special education students due to inadequate funding; and (3) eligible children are not receiving services by their third birthdays. In addition, the Federation data indicated that students with disabilities do not have access to the full range of support services and accommodations necessary to participate in regular education classes and non-academic activities with children that do not have special needs.

To investigate the concerns identified during the Validation Planning process, OSEP collected information from the review of children's records and State and local policies and procedures, reviewed monitoring reports and interviewed State personnel, local program administrators, teachers and parents. OSEP analyzed the data and identified the following strengths, areas of noncompliance, areas needing further review by the State, and suggestions for improved results.

#### **A. AREAS OF NONCOMPLIANCE**

##### ***Special Education and Related Services are Provided in Accordance with Identified Needs: IEP Development***

34 CFR §300.343 requires that the public agency initiates and conducts meetings at least annually to develop, review, and, if appropriate, revise IEPs for a child with a disability. The IEP should be implemented as soon as possible following the meeting. The 1997 IDEA amendments at 20 U.S.C 1414(d)(1)(B) require that the IEP team be composed of a group that includes the parents of a child with a disability; at least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment); at least one special education teacher; a representative of the public agency; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child; and whenever appropriate, the child.

In OSEP's 1991 and 1995 monitoring reports, OSEP found that MASSDE did not meet its responsibility under §300.341 to ensure that public agencies initiated and conducted meetings in accordance with §300.343(a) and (d). Specifically, OSEP found in both of these visits that annual goals and short-term objectives were not developed during a meeting with the required participants.

MASSDE's Chapter 766 regulations state at §333.6 that a parent shall be sent two copies of the new or amended IEP within "ten school working" days after the IEP meeting, and at §324.0, that "no later than thirty days after the school committee sends the parents the IEP. . . , the parent shall accept, partially accept or reject the IEP." In practice this means that the parent typically receives a written copy of the IEP up to 10 days after the actual meeting and that the program on the IEP can't be initiated until the agency receives a signed IEP. Staff in all ten sites visited by OSEP confirmed this.

In nine of the ten districts visited OSEP found through interviews with parents, special education teachers, related service providers, school based administrators, and directors of special education that this IEP process results in the failure or delay of the public agency to provide a free appropriate public education to children with disabilities since new or amended IEPs do not always reflect the decisions made by the IEP team, and because IEP services are not provided until the parent signs the IEP. Decisions that change from the IEP meeting to the IEP document regard: 1) the child's agreed upon goals and objectives; 2) the extent to which the child will be involved in and participate in the regular education environment and State and District-wide assessments; and 3) the services needed to support that involvement and participation.

OSEP found that in two school districts, IEP teams were unable to commit to needed services for children with disabilities because services are reviewed and approved by a higher authority. In one district, three separate administrators did not know that they could commit resources at the IEP meeting even though they were acting as the LEA representative responsible for this function. They all told OSEP that the decision to provide an aide or an expensive assistive technology device, for example, would not be made by the IEP team without authorization from a higher level. For example, one administrator told OSEP that she would not even think of asking for an aide, even if it was necessary to provide a free appropriate public education in the least restrictive environment, because she knew it would not be approved. Another administrator told OSEP that even if the team agrees on a needed service, the team decision can be overturned at a higher level and the “IEP would be sent back.” Three administrators and a special education teacher reported that since the IEP is not written at the IEP meeting, commitment of resources are only considered points of discussion that can be over-turned by a higher authority.

The director in another district reported that the “principal serves as gatekeeper for services.” The director explained that any child who requires an intensive service, such as a one-to-one aide, must wait to have the request from the team reviewed for approval by a higher authority. A high school principal in this district reported that a one-to-one aide could be recommended but “of course” it would be reviewed by a higher authority because the district has to pay, and since funds may not be available, they would steer IEP teams away from making this recommendation.

OSEP also found IEPs were not being implemented as decided in an IEP meeting if a parent did not sign the IEP, either because the parent disagreed with contents of the IEP or because the school district failed to obtain a signature. Many parents told OSEP staff at public input meetings and focus groups that the IEP process results in IEPs that do not always reflect the services that were determined necessary by the IEP team. For example, in one district two special education teachers reported, and an administrator confirmed, that a child’s progress and plans for a new or revised IEP are discussed at the IEP meeting with the parent and other team members in attendance but, the IEP document is developed/generated after the meeting, and sent to the principal and special education director for approval. The IEP is then sent home to the parents to be signed which may not necessarily reflect decisions made in the IEP meeting.

## ***2. Psychological Counseling Provided When Needed to Benefit From Special Education***

MASSDE is responsible under 34 CFR §300.300 to ensure that a free appropriate public education is provided to all children with disabilities. This right to a free appropriate public education includes the provision of related services, including psychological counseling if needed to benefit from special education.

If the IEP team determines that the service is required to enable the child to benefit from special education, then this service must be included in the student's IEP and provided as a component of a free appropriate public education. As discussed below, OSEP found, based on interviews with administrators and staff as well as file reviews in 10 public agencies, significant limitations in the provision of counseling and mental health services as part of a free appropriate public education for children with disabilities.

In one district, the psychologist, a special education teacher and occupational therapist agreed that psychological counseling is not placed in the IEP even if they need it to benefit from special education because "then they have to do it." A psychologist in another district stated that even though students may receive psychological counseling it is only reflected in an IEP if the parent or an attorney pushes for it.

In two districts, psychological counseling services are provided within specific programs for students with behavioral disabilities. These services are not provided to students with disabilities placed outside of these programs that are exhibiting behaviors that interfere with their learning and the learning of others, even if they need this service to benefit from special education. Parents of these students are referred to private therapists at their own expense.

A special education teacher and the principal from another district gave an example of services not being provided as a part of a free appropriate public education. One student with a disability who needed counseling was without an IEP for two years. This was confirmed through file review. The student was suspended for alcohol use and for assaulting a teacher. He did not receive the counseling he required and eventually required hospitalization for psychiatric treatment.

In a fourth district, parents are typically expected to seek psychological counseling services through private providers at their own expense or through private insurance even if the child needs psychological counseling to benefit from special education. The psychologists, special education teacher, and the occupational therapists in this district stated that if families do not provide the needed counseling then the school district will provide it through group counseling, but not as a service listed in the IEP. In a fifth district, the director and a special education teacher stated that psychological counseling services might be funded through various sources, including private insurance, Medicaid, Department of Social Services and the District but not provided as a service in the IEP, regardless of student needs.

### ***3. Availability of Extended School Year***

MASSDE is responsible under 34 C.F.R. §300.300 for ensuring that all public agencies consider the need for extended school year (ESY) services and make those services available as a component of a free appropriate public education, as necessary to meet the unique needs of an individual child with a disability.

As discussed below, OSEP found that in nine out of ten districts visited, extended school year services were either not available or only considered for a limited number of children with disabilities based upon their type of disability.

OSEP found that in all districts visited, with the exception of one collaborative program, the IEP team does not consider the need for extended school year services, even if necessary to meet a child's needs. Various types of summer programs are available to students, including students with disabilities, in all districts visited, however, these programs are not based on individual student need and are not driven by the IEP process. Staff who were members of IEP teams in some districts visited were unfamiliar with the term or concept of "extended school year."

In four districts, OSEP found that extended school year services were not made available, regardless of need. Several special education teachers and two special education directors reported that extended school year services are not made available because transportation is not available in the summer, and/or there is no extended school year procedure available to qualify children with disabilities for extended school year services. In two other districts special education teachers reported that extended school year services are only available to students with severe disabilities, even if other students need them.

In a seventh district, the children who are served in self-contained programs automatically get a "summer program," but it is not individualized or provided in accordance with an IEP. Students can pay to take academic summer school classes, if they wish.

An administrator from an eighth district stated that even though some students may get a summer program, the IEP teams are discouraged by this director from writing extended school year services into an IEP because the director does not want the "stay put" provision to be applicable. Therefore, the administrator explained, the district is not obligated to provide extended school year services, as per the IEP. Another administrator from this district stated that the district pays for extended school year services for individual students only when a hearing officer has ruled that the school district must do so, even if other students need them.

In an ninth district, the special education teacher, director, and 5 supervisors stated that the IEP team does not consider extended school year services for students with disabilities who may need them. The director reported that extended school year services are only available for preschoolers and more severely disabled students, and that there is summer camp with related services staff available on a sliding scale for other students with disabilities.

#### ***4. Least Restrictive Environment: Lack of Integration Opportunities for Children with Disabilities Placed in Separate Educational Environments***

Each public agency is required to ensure that to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled, and that special classes, separate school or other removal of children with disabilities from the regular educational environment occurs only if 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. (See 34 CFR §300.550(b)).

In OSEP's 1991 monitoring report, OSEP found that MASSDE did not ensure that all public agencies had available and considered placement options to the extent necessary to implement the IEP for each child with a disability consistent with 34 C.F.R. §§300.551(a) and 300.552(b). In its 1995 monitoring report, OSEP found that MASSDE did not 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 34 CFR §300.550(b)(2). OSEP continues to find areas of non-compliance consistent with previous monitoring findings as documented in five of the ten districts visited.

In one district, OSEP found at the middle school and high school, that children with disabilities, especially those receiving services in separate classes, were not educated to the maximum extent appropriate with their nondisabled peers and were not provided the necessary supplementary supports and services to permit their education in the least restrictive environment. Team teaching and "inclusion-level" supports are made available to children receiving services in a resource room setting for less than sixty percent of the school day. However, children in separate classes for more than sixty percent of the day at the middle school are included in general education classes with their peers only for "specials," such as art and music with no individual determination of the portions of the day for which they could be educated with nondisabled children. OSEP was informed by school staff that placement in other regular education classes was not considered. The children at the elementary and high schools with moderate learning disabilities and mild mental retardation are in separate placements and are only "included" into whichever level of special education class is one level less restrictive on the continuum, even though there are no nondisabled peers in these classes. In three out of the seven IEPs OSEP reviewed at the middle school, the explanation of the extent, if any, to which a child with disabilities will participate with non-disabled children was "steps to increase his/her participation in regular education are: achievement to within two years of grade level functioning."

In another district, as reported by the director, the perception is that children with disabilities are not part of the general education community. This director stated that "there is very little understanding of regular education's responsibility for special education children; they (general education staff) will say this child really doesn't belong." This director also stated that "the problem is that quite a few don't want or welcome special education and set them [children with disabilities] up for failure. We try to find as many supportive environments as we can." Additionally, the director reported that any child with a problem is considered a special education student and not the responsibility of general educators. A principal at one of the high schools reported to OSEP staff that the reason more children had not been brought back from out-of-district placements in separate centers was because he did not know if there was "a corner to put them in where they could be easily supervised/taught." A parent reported to OSEP staff that "there is no continuum of placements." Additionally, the director reported that high school-aged children with disabilities in this district are being denied access to the general science program due to the fact that "the science coordinator (for the district) won't let special education students come to class unless special education pays for one full time general education science teacher."

In a third district, the students identified with behavioral disabilities or severe disabilities are not included into any activities with their peers in general education without an individualized decision. These decisions are not based on individual needs. When students with behavior disabilities are identified they must attend the segregated program, and are not included with nondisabled peers for any part of their day. School staff informed OSEP that once they are placed in the separate program they remain there and do not return to the general education environment. For example, a special education teacher reported that there were high school students who had been in this program since first grade. The students with severe disabilities have no opportunity for integration in the middle school and the public agency does not make individualized decisions about the maximum extent to which the child can be educated with

nondisabled students; they are housed in a separate wing and go to lunch after all of the other students are finished. The director reported that their location was convenient for the special buses to pick them up and drop them off.

In a fourth district, if students are identified with a behavior disorder they are placed in a separate school that provides no opportunities for integration with their nondisabled peers. In addition, a special education teacher and building administrator in one school OSEP visited reported that students in self-contained programs had no opportunities for integration regardless of individual need.

Public input and survey data from the Federation survey referenced at the beginning of this section regarding the lack of equality in programs for students with disabilities in collaboratives were validated by OSEP in its on-site visit. In the collaborative visited, OSEP found that all of the classes were self-contained in a separate building except for five classrooms that are housed in a regular school. There used to be more classroom space in regular school buildings, but all seven of the collaborative staff members that OSEP interviewed report that they have been slowly squeezed out of classrooms in the local districts, by the local districts. The result is that children with disabilities do not have the opportunity for integration, regardless of individual need.

The 40 local districts that constitute the collaborative no longer lease classroom space to the collaborative because they need the space for nondisabled children. For example, in a written response to a parent inquiry about the space issue, the superintendent of a participating public school stated in a letter that, "I am responsible first for the education of the children who reside in [school district indicated] and who attend the [town indicated] public schools." The parent who received this letter resides in the district, but her child must receive services made available to the collaborative placement. The director of the collaborative program reported to OSEP staff that the local school districts apply for building improvement money through the State building fund and will write in their applications that they are planning to use some of the newly built space for children receiving services in the collaborative program, but when the classrooms are built they do not lease them to the collaborative. Two administrators reported that there is no obligation for the local districts to use the space as they have indicated in their application.

All staff and all seven of the parents at a parent focus group, at the collaborative, agreed that being forced out of regular school buildings is the biggest problem at this collaborative because the impact is that children with disabilities are not able to get any services in an integrated environment. The parents reported that many of the superintendents do not take responsibility for the children with disabilities that they send to the collaborative program. At the parent meeting OSEP conducted in the collaborative program, all seven parents stated that they had only two placement options: 1) self-contained classroom with no opportunity for integration at the collaborative; or 2) the full inclusion program, with no pull-out option in their local school.

### ***5. Opportunity for Children with Disabilities to be Involved and Progress in the General Curriculum***

The 1997 IDEA amendments at 20 U.S.C. 1414(c)(1)(B)(iv) & (d)(1)(A) require that in evaluating a child with a disability, a public agency determine the child's ability to participate in the general curriculum; and that the IEP include a statement of the special education and related services including supplementary aids and services to be provided for the child to be involved and progress in the general curriculum. In order to ensure that a child with a disability receives appropriate special education and related services, the statute makes clear that the child's ability to progress in the general education curriculum is an important consideration in evaluating and formulating an appropriate special education program in the least restrictive environment.

OSEP found through interviews with parents, special education teachers, related service providers, school based administrators, and directors of special education that children with disabilities, especially those in substantially separate placements, did not have access to the general curriculum. OSEP found in eight of the ten districts visited, that removal of children with disabilities from the general education environment impacts children with disabilities by limiting their ability to be involved in and progress in the general curriculum, and potentially to function in a less restrictive setting.

In one district, the principal and special education director stated in an interview with OSEP that students with learning disabilities do not have assistive technology devices and services available to them, regardless of need. For example, computers are not available to students who need them to take notes in order to benefit from special education and related services. In another district a special education teacher stated that students are not allowed to use computers unless there is a medical need. In a third district there is no policy on assistive technology, though the director reported that one is being developed; therefore the IEP teams did not recommend assistive technology because they did not know how to do it. A principal in this district also reported that he would discourage an IEP team from deciding to provide a one-to-one aide, because of cost. Because of the lack of supports in these districts, children with disabilities are limited in their ability to participate in general education classes with their nondisabled peers and progress in the general education curriculum.

In a separate collaborative program, teachers and administrators stated that there is no access to the general curriculum because there are no general education teachers or curriculum materials. The alternative high school for children with behavior needs reports that they follow a curriculum based on the Massachusetts State Framework for all students. However, the director stated that he could not hire teachers with general education content knowledge unless they also have special education certification, since the State requires that all teachers who work with children with disabilities have special education certification. The director reported that he has been unable to find, for example, "a science teacher with dual certification including special education." An impact of not having general education staff is that no general education certified teachers are available to train the special education teachers and others on general education curriculum (methods, materials, etc.). A teacher in the collaborative program reported that when her class was located in a regular elementary school she borrowed materials from the

general education teachers. Now that her class is segregated, she uses the materials that she locates on her own and they are not aligned with the general education curriculum.

In a fifth district, the director, a principal, and a special education teacher reported that children with severe disabilities have no access to general education because their curriculum is separate and unrelated to the general curriculum.

In a sixth district, a general education teacher and a special education teacher reported that there is no effective mechanism to share the IEP goals and objectives with general education staff and that general education teachers are left to determine the accommodations on their own. An example was a computer teacher who was not made aware of a student's vision problem, and it was six months before she noticed that the student was using his peer buddy to read the screen, and began to use large font for the student.

The 1997 IDEA amendments at 20 U.S.C. 1414(d)(3)(C) require that the public agency ensure that the IEP team for each child with a disability who is, or may be in regular education, includes the regular education teacher to the extent appropriate to participate in the development of the IEP for the child. The intent of this provision is to ensure that children with disabilities are educated in the least restrictive environment appropriate and that they are included in general school programs to the extent necessary to meet their needs.

OSEP found in four of the ten districts visited through interviews with parents, special education teachers, related service providers, school-based administrators, and directors of special education that a general education teacher did not consistently participate on the IEP team for children who received at least a portion of their education in the general education classroom within the general education curriculum. General education teachers in three of these districts report lack of understanding, training, and responsibilities of general education staff regarding their participation in IEP meetings.

In one district, the general education teachers, who serve children with disabilities, did not have access to the locked special education files that contained the IEPs. As a result, they did not know the goals and objectives of students with disabilities included into their class or what modifications and accommodations to provide. In another district, services were not being implemented as stated in IEPs because the general education teachers reported that they do not have access to IEPs or contents of the IEP relative to the general education environment. The director confirmed that there is no formalized policy on participation of general education teachers to ensure that IEPs are being implemented. Thirteen of eighteen files reviewed in this district demonstrated no participation of general education teachers.

In a third district, a high school general education teacher, who serves children with disabilities, reports that she gives no input into the IEP and was unaware that she could. She also reported that no one shares any information from the IEPs with her. The director reported that at the high school, the only one in this district, that general education teachers never attend IEP meetings. Six of six files reviewed by OSEP staff did not indicate any participation by the general education teacher.

In a collaborative, general education staff from the school district of residence did not participate in IEP meetings for children with disabilities in the student records OSEP reviewed. Collaborative staff informed OSEP that participation of general education staff was never considered, because it is already assumed that the child would not be participating in the general education environment.

***6. Lack of opportunity for involvement of children with disabilities in regular vocational education programs with appropriate supports as determined by the IEP team***

Each public agency must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency including art, music, industrial arts, consumer and homemaking education, and vocational education. (See 34 CFR §300.305.)

The IEP must include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be educated and participate with other children with disabilities and nondisabled children. (See 20 U.S.C. 1414(d)(A)(iii)).

In five of the districts visited, interviews with staff from special education, regular education, and vocational education provided information that certain students with disabilities either did not have access to the same vocational education options available to nondisabled students, or received vocational education services that were not based upon deliberations of the IEP team. Most vocational programs provided by these districts were located in regional vocational technical centers. Limited regular vocational offerings were available to students in those regions at any other locations except the regional center. Students who were in need of vocational education and who were denied admission to these centers were essentially denied the opportunity for vocational programming appropriate to their interests and preferences. Determination of placement in these programs was most frequently made while the student was in the eighth grade, as most vocational offerings were four-year programs, although students could be accepted through the eleventh grade. The IEP team was not involved in the determination of services and supports that could enable a student with disabilities to access and progress in these programs. Vocational directors and other staff members explained that a point system was used for entrance requirements, and that this system was supported by MASSDE. The system included the following elements: (1) grades, (2) attendance, (3) behavior, and (4) suspension/detention records. The middle school counselor and the principal recommended students. Schools participating in the regional centers each had a quota of students that could be admitted. Students were prioritized for available slots by adding up the points. Teachers and administrators reported that the point system, which emphasized academic achievement and good behavior, in combination with the quota system with a predetermined number of student slots for each school in the region, often resulted in limited admission opportunities for students whose disabilities resulted in behavior problems or below average academic skills. In none of these districts did the IEP team consider services and supports that would have enabled these students to participate and progress in regular vocational programs, a part of the process for considering admission to regular vocational education programs.

In two of the districts visited by OSEP, middle school special education staff members told OSEP that they were unaware of the supports available to students with disabilities in the vocational centers. In one district, the vocational director reported that special education supports were provided at the vocational center, however middle school special education staff reported to OSEP that they believed that students who needed academic support would not be admitted, and were unlikely to encourage these students to apply. In two districts served by another regional vocational center, teachers and administrators informed OSEP that special education students, especially those with academic and behavioral needs, stood a low chance of admittance. In one of the districts, administrators and teachers reported to OSEP that parents sometimes removed their children from special education, believing that the special education designation would limit their children's opportunity for access to the vocational center. However, the director of the regional vocational center reported that a higher percentage of the population with disabilities, largely students with learning disabilities, was admitted than the percentage of nondisabled students, and that some behavioral support was provided at the vocational center.

In a third district, an administrator reported to OSEP that the vocational school that was part of the high school received Federal Carl Perkins vocational education funding, but did not have anything to do with special education students. In a fourth district, the special education director told OSEP that there were no aides in the shops, and, therefore, only students who could function independently were included. The director reported that the only other alternative for vocational programming for these students was to access the segregated special education vocational programming at the collaborative; and that setting did not include the array of programs that was available in the vocational center.

In a fifth district, students with disabilities are generally excluded from fifteen of the seventeen vocational programs available. The only programs that children with disabilities have access to are food services, grounds keeping, and maintenance. There is an application process for the other fifteen programs, but students lose points if they have a behavior disorder. OSEP staff found through an interview with the special education teacher that one deaf student, whose file was reviewed, was denied access to a workshop program because the district did not provide interpreting accommodations to enable him to participate.

MASSDE officials interviewed by OSEP reported that behavior was the biggest barrier to getting in and staying in vocational programs in the State. They reported that safety factors are a major concern, in part because aides for students in vocational classes are not appropriately trained to address this issue. MASSDE officials did not provide an explanation of how they were addressing these concerns in order to provide appropriate opportunities for students with disabilities, especially those students with behavioral disabilities, to participate and progress in vocational programs, and how to ensure that the special education, related and supplementary aids and services, program modifications and supports were provided to enable students to be involved and progress in the general vocational education curriculum.

**B. SUGGESTION FOR IMPROVED RESULTS FOR CHILDREN WITH DISABILITIES*****Lack of Continuity for Children with Disabilities***

In two “school choice” districts that OSEP visited, parents, teachers and administrators reported that children with disabilities may attend five or six different schools by the time they get to high school. Children with disabilities attend the school that contains the program placement for which they have been found eligible. If a child with a disability needs to change to a more or less restrictive setting, or if their program is moved, then the child is transferred to a new school. These multiple transitions result in a lack of continuity for families and children and emotional disruption for the children. Multiple transitions may adversely affect the teaching and learning of students with disabilities. Since the frequency of these movements is greater than those experienced by nondisabled children, this pattern suggests movement is based on administrative convenience rather than the needs of the child. This constitutes a possible violation of Section 504 of the Rehabilitation Act. OSEP is referring this issue to the Office for Civil Rights for further investigation of whether discrimination against children with disabilities is occurring due to failure to insure that their education is not unduly disrupted through frequent changes in program locale.

## VIII. PART B: SECONDARY TRANSITION

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Youth in today's advanced, technologically oriented society face substantial challenges in choosing and preparing for a career. The challenge for youth with disabilities is even greater. According to the National Longitudinal Transition Study, young people with disabilities drop out of high school at twice the rate of their nondisabled peers. The National Organization on Disability has found that two-thirds of Americans with disabilities between the age of 16 and 64 are not working. The National Longitudinal Transition Study identified several factors associated with the likelihood of obtaining employment and earning higher wages. Two of these factors were completing high school and completing vocational education courses. The employment rates for students with disabilities who take vocational education courses, particularly those courses with companion work experience components, have been found to be higher than for students who did not take vocational education courses. Effective transition programs result in greater attendance in post-secondary schools, greater employment rates, and less turnover in employment by youth with disabilities.

The IDEA recognized the importance of transition programs for youth with disabilities and required that the individualized education programs of eligible youth age 16 and above contain a statement of needed transition services. In addition, the IDEA required that a representative of any agency, other than the local educational agency, that is likely to be responsible for providing or paying for transition services are invited to the IEP meeting. If the outside agency fails to provide the transition services described in the student's IEP, the local educational agency must reconvene the IEP team to identify alternative strategies to meet the student's transition needs. The IDEA Amendments of 1997 strengthened the transition provisions by requiring that individualized education programs of youth with disabilities beginning at age 14 include a statement of transition needs that focuses on the youth's courses of study to ensure access to college preparation courses and vocational classes in high school. In any IEP meeting for which transition planning is a purpose, the student is to be a participant in the meeting.

### **Validation Planning and Data Collection**

OSEP's 1995 monitoring report noted findings of noncompliance related to transition. Specifically, OSEP identified MASSDE's failure to ensure that: (1) students, ages 16 and older, were invited to the IEP meetings when one of the purposes of the meeting was the consideration of transition services, and if the student did not attend the meeting, to take other steps to ensure the student's needs and preferences are considered; (2) public agencies had a method to ensure that a representative of any other agency that is likely to be responsible for providing or paying for transition services is invited, and if an agency is unable to attend, other steps are taken to obtain the participation of the required agency in the planning of transition services; (3) the notice of the IEP meeting indicates that a purpose of the meeting is consideration of transition services and that the student is invited, and identifies any other agency invited to send a representative; and (4) statements of needed transition services in the IEPs contained the components identified in 34 CFR §§300.18 and 300.346(b).

The State's Self-Assessment states that MASSDE continues to address the need for training through contracts with the educational collaboratives and the Federation for Children with

Special Needs. However, this large training investment has not produced the desired outcomes. Although schools are aware of the requirements, discussions at the IEP meeting and the planned transition activities are narrowly focused and limited. Transition is viewed as an add-on to the IEP process. Another major problem identified was the lack of commitment on the part of other agencies that might be providing or paying for transition services.

During the Validation Planning visit, information was gathered from parent and stakeholder focus groups, meeting with the Steering Committee, and interviews with MASSDE staff. One of the focus questions asked during the public input meetings was: “Do students with disabilities, ages 14 and older, receive instruction and coordinated services that facilitate successful transition from school to work or from school to post-secondary education?” OSEP also reviewed data from a Statewide survey conducted by a parent advocacy group, and from MASSDE and OSEP records of concerns raised by parents and other interested parties through correspondence, complaint records, and telephone records. The following areas of concern were identified:

- Parent awareness of the transition planning process;
- Appropriate human service agencies that may be providing or paying for services attending IEP meetings;
- Adequacy of transition services; and
- Limited options in training/vocational programming leading to low paying jobs.

To investigate the concerns identified during the Validation Planning process, OSEP collected information from the review of student’s records and State and local policies and procedures, and interviews of State personnel, local program administrators, teachers and parents. OSEP reviewed and analyzed the data and identified the following and areas of noncompliance. Further, As noted above on page 31, OSEP found problems in the availability of vocational programs for children with disabilities. The denial of this service may have a significant impact on students' transition from school to work.

## **A. AREAS OF NONCOMPLIANCE**

### ***1. Outcome oriented statements of transition services that include the required components***

The 1997 IDEA amendments at 20 U.S.C. 1401(30) define transition services as a coordinated set of activities for a student with a disability that is designed within an outcome oriented process which promotes movement from school to post-school activities, and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

OSEP continues to find areas of noncompliance consistent with previous monitoring findings regarding the inclusion of a statement of transition services in the IEPs of students with disabilities, indicating that students aged 16 or older are not receiving appropriate transition planning.

In 32 of 32 files reviewed of students aged 16 or older, IEPs did not include a statement of needed transition services that include outcome-based, coordinated activities designed to provide movement to post-school activities. Goals, when they were included, were general – such as “Johnny will graduate” or “Sally will go to high school,” and IEPs did not include activities to achieve these goals so that the student realistically could be expected to move to the desired post-school activities. Teachers and administrative staff in three of the 10 districts visited explained that transition plans were done as an afterthought to achieve compliance, not as a coordinated set of activities designed to move the student to a realistic post-school activity.

***2. Method for ensuring that outside agencies likely to be providing or paying for post-school activities are invited to the IEP meeting and that there is a method for obtaining their input if they do not attend***

To facilitate the student’s movement to post-school activities, a representative of any agency that is likely to be providing or paying for any of the transition services the student will need upon completion of high school is to be invited to the meeting and participate in the planning of transition services, and if the representative does not attend, other steps shall be taken to obtain the participation of the agency in the transition planning process. (See 34 CFR §300.344(c), now §300.344(b)).

OSEP continues to find areas of noncompliance consistent with previous monitoring findings regarding the inclusion of outside agencies in the planning of transition services for students with disabilities.

In 23 of the 32 files reviewed, there was no evidence that a participating agency had been invited, attended, or was involved in any way with the development of the transition plan. Teachers and administrators explained to OSEP that linkages with outside agencies, and transition planning in general is understood in the State to be a process for students with more severe disabilities. For children with milder disabilities, there was little or no understanding of linkages to post-secondary education, and that representatives from community colleges and other institutions of higher learning that may be invited to participate in planning of transition services. Further, in two districts, OSEP was told by teachers and administrators serving students with more severe disabilities that transition planning and agency participation did not begin until close to age 22.

***3. Students invited to meetings if transition planning is a purpose of the meeting***

If a purpose of the meeting is transition planning, the agency shall invite the student, and if the student does not attend, the public agency shall take other steps to ensure the student’s interests and preferences are considered. (See 34 CFR 300.344(c), now §300.344(b)).

OSEP continues to find areas of noncompliance consistent with previous monitoring findings regarding the invitation of students with disabilities, 14 or older, in planning of transition services for themselves through the IEP meeting. In 25 of the 49 files reviewed of students 14 and older, the student was not present at the meeting, and had been invited been invited to attend the meeting.

#### ***4. Statement of Transition Service Course of Study Beginning at age 14.***

The IDEA 1997 Amendments require that the IEP of each student beginning at age 14, and updated annually, includes a statement of the transition service needs of the child under the applicable components of the IEP that focuses on the child's course of study. (See 20 U.S.C. 1414(d)(1)(A)(vii)(I).)

In the ten public agencies visited, OSEP found through file reviews and interview data that public agency staff were not clear about this requirement. In 22 files reviewed of students between the ages of 14 and 16, 15 files did not include statements of transition services needs focused on the course of study. (Each of these IEPs was developed after July 1, 1998). In interviews in seven of the 10 districts, special education teachers and a building administrator stated that they were either unaware of this requirement, or had not received clear guidance on how it should be implemented. They expressed confusion or lack of awareness regarding the key role of student's interests and preferences, what constituted a course of study, and that the services should be developed and initiated by the IEP committee by the student's 14<sup>th</sup> birthday.

## IV. PART B: GENERAL SUPERVISION

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Under the IDEA, States have a general supervision responsibility for ensuring that all public agencies comply with the requirements of Part B of the IDEA. (See 34 CFR §300.600). As early as 1975, Congress recognized the need for a central point of responsibility and accountability. The Senate Report on PL 94-142 stated that the general supervision provision would "... assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, the State educational agency shall be the responsible agency." The importance of this provision continues to be recognized by Congress and was strengthened by the 1997 Amendments to the IDEA. The language in the IDEA, as well as relevant court decisions, plainly demonstrates that the State's responsibility goes beyond the mere writing of regulations and procedures. The court held in *Cordero v. Pennsylvania Department of Education*, 795 F. Supp. 1352 (M.D. PA 1992): "The State's role amounts to more than creating and publishing some procedures and then waiting for the phone to ring. The IDEA imposes on the State an overarching responsibility to ensure that the rights created by the statute are protected regardless of the actions of local school districts."

The IDEA contains several mechanisms for State education agencies to use in fulfilling their general supervisory responsibilities. A strong State monitoring process to ensure effective implementation of the IDEA is crucial to improving educational results for children with disabilities. A basic component of State eligibility has long been that the State education agency exercises general supervisory responsibility over all educational programs for children with disabilities in the State, including ensuring that those programs meet the requirements of IDEA. This responsibility includes not just monitoring, and enforcement when noncompliance is not corrected, but also effective technical assistance that focuses on best practice designed to improve the substantive content and results of special education. A key priority of OSEP's monitoring is the State's compliance regarding its supervisory role in the implementation of IDEA.

### **Validation Planning and Data Collection**

OSEP found in its previous monitoring of MASSDE in October 1994, that MASSDE did not exercise its general supervisory responsibility in a manner to ensure children with disabilities were provided programs which met the requirements of Part B. MASSDE did not: 1) implement effective monitoring procedures with sufficient frequency to ensure compliance; 2) correct deficiencies found in public agencies through an effective corrective action process; 3) implement procedures that ensured complaints and due process hearings were resolved in a timely manner; and 4) adequately inform parents and other interested individuals about complaint procedures. During OSEP's follow-up monitoring review in May 1997, OSEP found improvement in the areas cited out of compliance in 1994. However, OSEP also found that MASSDE needed to improve its monitoring process through the consistent application of its monitoring procedures and to shift its focus from process requirements to improved results for children with disabilities.

To obtain data on MASSDE's oversight of educational programs for children with disabilities across Massachusetts, OSEP used information from the review of citizen complaints, MASSDE's

self-assessment, information from public input meetings, and information provided by the Steering Committee. MASSDE's self-assessment has a statement that the Program Review (monitoring) system is "seen by the public schools and parents as comprehensive and accessible. "Increased appropriations by the State have made it possible to move to a 5-year monitoring cycle. In addition, MASSDE reported that an increased focus on accountability has resulted in the development of a unit for Accountability and Technical Assistance which links technical assistance with the findings from program reviews. MASSDE also reported that with the exception of certain individual circumstances, corrective actions, complaint investigations, and due process hearings are "functioning effectively."

Information obtained from the public input process tended to provide a very different perspective. In a survey of parents conducted by the Federation for Special Needs, 34% of the parents who filed a complaint reported that they had not received a decision within the 60 day timeline and 28% reported that MASSDE had not followed up to ensure that corrective actions were implemented. One of the questions asked during the public input meetings, November 30-December 2, 1998, was "Are there any administrative barriers to providing appropriate services to students with disabilities?" Responses to this question indicated that problems were perceived with monitoring of school districts, enforcement of corrective actions, due process hearing decision timelines, State funding for special education, and a State presence and accountability at the local school level. An overriding theme was inconsistencies in services between school districts within Massachusetts. Many speakers attributed this problem to MASSDE's lack of identification and enforcement of special education requirements.

To investigate the issues identified through the Validation Planning process, OSEP collected data from local school districts across Massachusetts, interviewed parent groups, and obtained information at the State educational agency relative to the MASSDE's responsibility to ensure that all education programs for children with disabilities meet Part B requirements and State education standards. Analysis of the data collected resulted in identification of the following areas requiring improvement.

## **A. AREAS OF NONCOMPLIANCE**

### ***1. Effective methods for identifying and correcting deficiencies in programs providing services to children with disabilities***

As required at 20 U.S.C. §1412 (a)(11), MASSDE is responsible for ensuring the requirements of Part B are met, that all programs for children with disabilities in the State are under MASSDE's general supervisory authority, and that these programs meet the educational standards of MASSDE. One method of ensuring that MASSDE meets this requirement is through its State monitoring system of local educational agencies.

MASSDE has demonstrated improvement in exercising its general supervisory authority through its monitoring system. During the 1998-1999 school year MASSDE conducted 60 coordinated program reviews of school districts (about a 7-year monitoring cycle). It has increased staff positions for conducting monitoring and investigating complaints by four and added two

supervisory positions. MASSDE also has provided a program review schedule that anticipates placing districts on a 5 year monitoring cycle starting with the 1999-2000 school year.

MASSDE provided OSEP documentation of seven recent enforcement actions that it has taken in agencies in order to ensure compliance with State and Federal special education requirements. OSEP visited two of these agencies. In both instances, OSEP still noted serious noncompliance in the districts albeit fewer compliance issues as compared to the deficiencies identified by MASSDE during its monitoring visits in 1997. In both agencies, MASSDE has continued follow-up visits and corrective actions to ensure compliance. However, the follow-up corrective actions have not been entirely effective because compliance has not been achieved.

In spite of these improvements, OSEP finds that MASSDE has not yet implemented a monitoring system that is effective in identifying and correcting Part B requirements. One of the repeated comments OSEP received in public input meetings was the inconsistency in programs between districts and, in some instances, a lack of compliance with special education requirements. Commentors attributed this to a lack of MASSDE oversight and enforcement.

MASSDE has a backlog of school districts that have not been monitored since it implemented its coordinated program review system. There remain many districts that MASSDE has not monitored in over 10 years. For example, in two districts where OSEP visited and had findings, MASSDE had not monitored since 1981.

In addition, OSEP made substantial findings regarding Part B requirements for educating children with disabilities in the least restrictive environment in both its 1991 and 1995 monitoring reports. As noted above in Part B: Free Appropriate Public Education in the Least Restrictive Environment on page 28 of this Report, OSEP found in five out of ten agencies it visited, that these agencies were not educating children with disabilities with nondisabled children to the maximum extent appropriate, especially for children placed in separate educational environments. A continuing deficiency identified by MASSDE staff through their monitoring process was compliance with the transition requirements. As noted above in Part B: Secondary Transition on page 35 of this Report, OSEP found violations in transition planning across all ten districts visited. These same problems were identified by OSEP as violations of Part B requirements during OSEP's 1995 monitoring visit.

OSEP acknowledges that MASSDE has reorganized its corrective action procedures in order to ensure more effective correction and accountability. These procedures result in more timely approval of corrective action plans when violations in districts are discovered and the review of corrective actions remaining with MASSDE's Program Quality Assurance Services, which conducts the on-site monitoring, rather than through a different cluster within MASSDE. However, OSEP finds that MASSDE has not yet implemented a system that is effective in correcting violations of Part B requirements when they have been identified.

OSEP also finds that MASSDE's monitoring procedures are not effective in identifying all Part B requirements. As noted above in Part B: Free Appropriate Public Education in the Least Restrictive Environment on page 24 of this Report, OSEP found that in six of the public agencies visited that were monitored over the past 3 years MASSDE failed to identify the lack of

provision of psychological counseling and ESY services to children who may need these services to benefit from special education.

The IDEA amendments were enacted on July 1, 1997. Amendments to IDEA changed any number of requirements and require several new procedures with respect to implementation of educational programs for children with disabilities. OSEP made findings in this Report on the implementation of new requirements regarding the participation of parents in making educational decisions with respect to the identification, evaluation, educational placement and provision of a free appropriate public education of their child, the opportunity for children with disabilities to be involved and progress in the general curriculum, and transition planning for children with disabilities 14 and older. OSEP reviewed 3 monitoring reports of agencies that were monitored by MASSDE after the enactment of IDEA 1997. OSEP found that MASSDE did not have procedures to identify these IDEA 1997 requirements.

## ***2. Effective system for resolving complaints regarding violations of Part B***

As set forth at 34 C.F.R. §§300.660 -300.662, MASSDE is required have procedures that insure that any complaint alleging a violation of Part B is resolved within 60 calendar days unless an extension time is necessary based on exceptional circumstances exist with respect to the particular complaint.

MASSDE receives a large number of complaints. Last year, for example, MASSDE received formal intakes on 826 special education related complaints. The management of this volume of complaints is problematic according to MASSDE administrators. MASSDE has implemented a computerized system for tracking and monitoring complaints that should improve the efficiency of the system.

In its 1994 monitoring visit, OSEP found MASSDE out of compliance in informing parents and other interested individuals about complaint procedures and resolving complaints within the 60-day timeline, unless a specific extension of time was granted due to exceptional circumstances. At that time, a significant number of complaints were not resolved within timelines. During its 1997 follow-up monitoring review, OSEP found that 29% of complaints were not resolved within timelines. MASSDE has shown continued improvement with 14% of complaints at the time of OSEP's on-site review not being resolved within 60 days.

As noted above, comments from public input sessions describe a complaint system that is perceived by parents as ineffective in correcting violations in public agencies. OSEP acknowledges MASSDE's improvements in this area, however, OSEP finds that MASSDE has not yet met Part B requirements for an effective complaint management system.

## ***3. Ensuring that all eligible children with disabilities, including those receiving services through charter schools, receive a free appropriate public education.***

MASSDE has an obligation to ensure that all eligible children residing in the State with disabilities have available to them a free appropriate public education no later than the child's third birthday. This provision applies to all public agencies within the State. (See 34 CFR

§300.121) OSEP found that MASSDE did not ensure children with disabilities were receiving a free appropriate public education in the least restrictive environment because some children with disabilities receiving services in charter schools were not receiving the special education and related services necessary to meet the unique needs of that child.

The Massachusetts Education Act of 1993, among its many provisions, created the option of independently operated public schools, i.e., charter schools. During the 1998-99 school year there were 34 charter schools open, enrolling more than 10,000 students from over 180 districts. Each year MASSDE receives more applications for new charter schools. Each proposed charter school must submit an application to MASSDE for approval. If the application is approved, the school is "chartered" for 5 years. The charters can be renewed by MASSDE after 5 years if the school has been faithful to the terms of its charter and has complied with State and Federal laws.

Massachusetts's law requires that charter schools be open to all students (See MLG Chapter 71, §89). Charter schools are not permitted to discriminate based on disability. If applications for enrollment exceed the number of spaces, then the charter school is required to hold a lottery; thus, children with disabilities have an equal opportunity to attend the charter school. However, public input collected by OSEP during validation planning indicated that children with disabilities were either "counseled" to not enroll in the charter school because the child did not fit into the charter school's program or because the child with a disability was not provided the services necessary for success in the charter school program.

One public school administrator told OSEP that her experience with the charter school was that "one size fits all" and that the charter school tended to provide services based on their model. A public school administrator from a different school district stated, "Many kids are bounced back from charter schools because they can't provide the services. Children with behavioral problems are difficult for charter schools to manage."

In the charter school that OSEP visited during its on-site monitoring, the school's charter application regarding special needs students states, "Any child for whom a mainstream inclusion approach would be an appropriate educational program will be eligible for admission to The School." One finding regarding this school from MASSDE's monitoring in 1997 was that children with disabilities were not receiving the level of special education service specified in their IEPs. An administrator for the charter school acknowledged to OSEP that there was only 1 child out of approximately 75 in the school who was pulled out of the general education program for individual help and that there was a need for different types of services for children with more serious academic needs.

OSEP reviewed the records of seven children with disabilities in this charter school and interviewed their teachers. All of these children, even those with academic delays of three or four years below their current grade level, received services through the "inclusion program," meaning the general education teacher was an integral part of their special education program. Two of the children did not have the participation of a general education teacher in the development of the IEP, three of children had no accommodations or modifications on their IEPs, and one child had no IEP. A general education and a special education teacher in interviews with OSEP stated that general education did not see the IEPs of children with

disabilities, and therefore were unaware of the special education services required to meet the needs of children with disabilities.

OSEP also reviewed the files of several children with disabilities who were "transferred" back to the public school from the charter school. One child, for example, started his school year in a 9<sup>th</sup> grade general education program. He started to experience some emotional problems that affected his concentration and ability to complete homework assignments. He was evaluated for special education and was immediately placed into a self-contained program and transferred to the resident public school district. The justification on his IEP for removal was "(student) is being treated for emotional difficulties." Another student who was experiencing behavioral problems in the charter school was identified as disabled and placed in a segregated setting by the charter school and transferred back to the resident public school. The public school placed the student back into the general education classroom where she reportedly is doing well without any special education support.

Two public school administrators stated to OSEP in an interview that a significant number of charter school students were returned to the public school district from the charter schools. OSEP visited a charter school within the boundaries of this district. A comparison of the placement rates in special education indicated that 21.1% of the students were identified for special education, while only 10.9% of the charter school population were identified for special education. The district provided OSEP with data that demonstrated that of children who returned to the district from 1995, 19% were special education students. This is twice the rate one would expect. In addition, the rate of special education students returning to the resident district schools shows a steady increase with five returning during 1995-96, nine returning during 1996-97, and 28 returning during 1997-98. Seven of the 28 special education students returning from the charter school during the 1997-98 school year entered the charter school in regular education but returned in a "substantially separate" placement in the resident district school.

## **B. SUGGESTION FOR IMPROVED RESULTS FOR CHILDREN WITH DISABILITIES**

### ***Children with disabilities not experiencing success in passing the State-wide assessment***

Including students with disabilities in statewide assessments is important in promoting educational accountability for all students, not just students in general education programs. The participation rate for students with disabilities on the MCAS was 92.8%. This compares to a participation rate of 96.6% of all students. It is clear from OSEP interviews that school personnel received the message that students with disabilities are entitled to participate in the MCAS.

However, it should also be noted that 93 to 96% of the students with disabilities in the 10<sup>th</sup> grade who took the MCAS failed to meet a "proficient" level of performance on at least one section of the test. This compares to 56% to 74% of regular education students who failed to meet a "proficient" level of performance on at least one section of the test. OSEP also heard from parents, students, and teachers a high degree of concern and frustration over the high stakes

nature of the test, which could result in not receiving a diploma and the failure level of students with disabilities.

OSEP also reviewed the guidance (The Massachusetts Comprehensive Assessment System: Requirements for the Participation of Students with Disabilities – March 1998) provided by MASSDE to educators and parents. Because the high failure rate on the MCAS may be the result of inappropriate or inadequate accommodations for children with disabilities, OSEP is concerned that the guidance may have been interpreted by some people to limit the availability of the accommodations provided to children with disabilities. The guidance provides a list of MASSDE approved accommodations that the guidance says is not an exhaustive list. Schools are instructed to call MASSDE to review the appropriateness of accommodations if they depart from the accommodations on this list. However, the result may have been to discourage IEP teams from choosing accommodations not on the list rather than seeking additional review. OSEP suggests that MASSDE reexamine whether students with disabilities are sufficiently included in the general curriculum so that they have the knowledge to pass the MCAS and whether students with disabilities are provided adequate accommodations and modifications in order successfully perform on the MCAS. In addressing this apparently high failure rate for children with disabilities, it will be important for MASSDE to ensure that students with disabilities are receiving the instruction and supports that they need so that they can progress in the general curriculum, and the accommodations and modifications they need so that they can demonstrate their knowledge on Statewide assessments.