



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

Honorable J. Duke Albanese
Commissioner
Maine Department of Education
State House Station 23
Augusta, Maine 04333

JUL 25 1997

Dear Commissioner Albanese:

During the week of September 30, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Maine State Department of Education's (MDOE) implementation of Part B of the Individuals with Disabilities Education Act (Part B), including the Preschool Grants Program under Section 619 of Part B. The purpose of the review was to determine whether MDOE is meeting its responsibility to ensure that its educational programs for children with disabilities are administered in a manner consistent with the requirements of Part B. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives; and our findings and corrective actions are in Enclosure C.

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

MDOE implemented a number of corrective actions to address the findings in OSEP's August 15, 1994 monitoring report. As part of the current review, OSEP found no deficiencies in: MDOE's general supervisory authority for children birth through five years of age residing on Indian reservations, MDOE's development of procedures for ensuring an accurate child count and for review and approval of local educational agency applications, MDOE's issuance of complaint resolutions within 60 days, and MDOE's procedures for ensuring that all public agencies provide parents with a full explanation of procedural safeguards. It appears, therefore, that MDOE's corrective actions in these areas were effective. In addition, MDOE has made a number of improvements in the Child Development Services system, designed by MDOE to provide services to children birth through five. OSEP is working collaboratively with MDOE to address remaining deficiencies,

identified in this Report, regarding the Child Development Services system.

As addressed in Enclosure B, we also found that MDOE had taken a number of noteworthy initiatives to improve educational services to students with disabilities. Among these initiatives is the training provided through Maine's Comprehensive System of Personnel Development, which is designed to provide local districts with training in areas of service in which deficiencies have been identified through State or Federal compliance reviews, and the outstanding support provided to Maine parent training and advocacy groups by MDOE.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that MDOE did not always ensure the provision of: a free appropriate public education to children, aged three through five years; for children and youth aged five and older, the provision of related services, including psychological counseling, that students require to benefit from special education; prior written notice to parents which meets Part B content requirements; and needed transition services for students beginning at age 16, or younger if determined appropriate. We also found that MDOE is not ensuring that all complaints alleging Part B violations are resolved and that parents are informed about the complaint provisions of Part B. In addition, we found that MDOE is not ensuring that eligible youth with disabilities in adult State and local correctional facilities are identified, located and evaluated and provided a free appropriate public education.

OSEP is particularly concerned that MDOE has not implemented procedures to ensure that eligible persons with disabilities incarcerated in the State's adult correctional facilities are provided a free appropriate public education. This issue was cited as an area of noncompliance in OSEP's 1994 monitoring report to MDOE, however at the time of OSEP's 1996 monitoring, MDOE had taken no definitive action in this area. The Individuals with Disabilities Education Act Amendments of 1997, Public Law 105-17 makes a number of revisions in the State's responsibility for youth with disabilities in adult correctional facilities. See page 12 of Enclosure C for more information concerning these revisions. OSEP will be contacting you in a separate letter regarding this concern. OSEP staff remain available to assist MDOE with the development and implementation of any corrective action activities.

Carolyn Smith and Helen Eano discussed the team's preliminary findings with Mr. David Noble Stockford and other staff in MDOE's Division of Special Services at an exit conference held at the conclusion of OSEP's on-site visit. At that time, MDOE was invited to provide any additional information that it wanted OSEP

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to consider in the developing the monitoring report. MDOE did not submit any additional information.

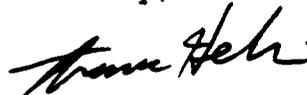
The findings in the Report are final, unless -- within 15 days from the date on which MDOE receives this Report -- MDOE concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect, and requests reconsideration of such finding(s). Any request for reconsideration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

I thank you for the assistance and cooperation that Mr. Stockford and his staff provided during our review. Throughout the course of the monitoring process, they were very responsive in providing information that enabled OSEP staff to acquire an understanding of Maine's various systems to implement Part B.

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

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

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Mr. David Noble Stockford

ENCLOSURE A
OSEP's Monitoring Methodology

Pre-site Document Review

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

OSEP also ensured, through interviews and document review, that they were familiar with Maine's unique system of provision of services to children aged birth to five, and how this system is administered by MDOE. For the provision of services to eligible children aged birth through five and their families, Maine law 20-A MRSA c. 307-A establishes and maintains the Child Development Services system, a Statewide coordinated service delivery system. Statewide coverage is established by a network of 16 regional sites to provide the coordination and delivery of services designed to meet the developmental needs of eligible children and their families. These regional sites are governed by Boards of Directors whose responsibilities are prescribed by law. MDOE, through its Child Development Services unit, distributes funding to the 16 regional boards which function as intermediate educational units (IEUs) and submit local education agency (LEA) applications. The regional Child Development Services boards have responsibility for the identification, location, and evaluation for children with disabilities aged birth through five, and the provision of a free appropriate public education to three, four, and five-year old children with disabilities identified under Part B. Administrative responsibility for Child Development Services regional boards is maintained within MDOE, in the Child Development Services unit, and includes responsibility for the review and approval of programs and services to ensure compliance with Part B and EDGAR. Regulations governing the programs provided by Child Development Services are set forth in MDOE's Comprehensive Childfind System and Early Intervention Services, Chapter 180. Under Chapter 180, all children served under the Child Development Services system, age birth through five, have Individual Family Service Plans (IFSPs) rather than individualized education programs (IEPs). Under Chapter 180, the IFSP contains all of the IEP components required under 34 CFR §300.346, and is reviewed every six months to assess progress. An IFSP team meeting must be held to

consider any significant changes in an IFSP. A significant change, under Chapter 180, may include, but may not be limited to, the addition or deletion of a services, or a change in the frequency, intensity, duration or setting of a service. A change in provider is not considered a significant change.

Involvement of Parents and Advocates

During the week of August 19, 1996, OSEP held two public meetings in Bangor and Portland. In addition, a statewide interactive television conference, broadcast from Augusta with live studio participation, and six downlink sites at Gorham, Bangor, Presque Isle, Farmington, Machias, and Fort Kent, was conducted to facilitate participation by interested parties in other areas of the State. Also during that week, Dr. Helen Eano met with representatives from advocacy groups in five outreach meetings, interviewed a number of MDOE officials, and reviewed numerous MDOE documents. The purpose of the public and outreach meetings was to solicit comments from parents, advocacy groups, teachers, related services providers, administrators and other interested citizens regarding their perceptions of MDOE's compliance with Part B. In the letters inviting interested parties to the public meetings, OSEP also invited them to provide written comments and telephone input regarding their perceptions.

During the on-site visit, OSEP conducted a parent focus group meeting in Bangor with parents of students aged three through five in the Child Development Services system, and in Portland with high school parents and students to hear their impressions of special education services provided to their children. These meetings provided OSEP staff with parent and student views of the methods used by the respective agencies in providing a free appropriate public education to their children as well as the challenges faced by the agencies in this endeavor.

Selection of Monitoring Issues and Public Agencies to Visit

OSEP has identified core requirements that are most closely related to learner results, and focuses its compliance review in all states on those core requirements (e.g., transition from school to work and other post-school activities, placement in least restrictive environment, parents' participation in decision making, etc.). OSEP also focuses its review in each State on additional requirements. The information that OSEP obtained from its pre-site public meetings and outreach meetings, interviews with State officials, and review of State and local documentation, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Maine; (2) selecting monitoring issues to be emphasized while on-site; and (3) selecting the sites to be visited.

Onsite Data Collection and Findings

The OSEP team consisted of: Helen Eano, Larry Wexler, Linda Whitsett, and Jane Williams. Carolyn Smith, section chief, coordinated efforts by teleconference from Washington. The team visited five high schools, two middle schools, three elementary schools, and reviewed student records from one additional elementary school and one additional middle school in seven local school systems. In addition, the team visited two Child Development Services regional sites that transitioned students to two of the local systems visited. Where appropriate, OSEP has included in this letter data collected from the seven local systems and two Child Development Services sites to support or clarify OSEP's findings regarding the sufficiency and effectiveness of MDOE's systems for ensuring compliance with the requirements of Part B. At the two Child Development Services sites visited, OSEP selected records of children three through five years of age at the time of the review who were eligible for services under Section 619 of Part B, and reviewed those children's records back to the time of the preplacement evaluation and initial placement, to determine whether the child had been appropriately transitioned from Part H into Part B services and received a free appropriate public education on or before his or her third birthday.

In order to reinforce that the findings in Enclosure C focus on the effectiveness of MDOE's systems for ensuring compliance rather than compliance in any particular local educational agency, OSEP has not used the name of any local educational agency within Enclosure C. Instead, OSEP has identified local educational agencies in Enclosure C only with designations such as "Agency A." The agencies that OSEP visited and the designation that OSEP has used in Enclosure C to identify each of those agencies are set forth below:

AGENCY	DESIGNATION
Waterville School Department	AGENCY A
School Union #113 (East Millinocket)	AGENCY B
Bangor School Department	AGENCY C
Child Development Services/ Penobscot, Bangor	AGENCY D
Brunswick School Department	AGENCY E
Child Development Services/ Search, Brunswick	AGENCY F
Portland School Department	AGENCY G
Old Orchard Beach School Department	AGENCY H
School Union #7 (Saco)	AGENCY I

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

Corrective Action Procedures

In order to support the development of a mutually agreeable corrective action plan that will correct the findings in Enclosure C and improve results for students with disabilities, OSEP proposes that MDOE representatives discuss with OSEP staff, in a meeting or telephone conference, the findings and the most effective methods for ensuring compliance and improving programs for children with disabilities in the State, and to agree upon specific corrective actions. We also invite a representative from Maine's Special Education Advisory Panel to participate in that discussion. MDOE's corrective action plan must be developed within 45 days of receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

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

ENCLOSURE B - COMMENDABLE INITIATIVES

Comprehensive System of Professional Development - MDOE utilizes funds from its Individuals with Disabilities Education Act, Part D grant to provide training in local school districts and public agencies in which deficiencies have been identified through OSEP or MDOE monitoring reviews. MDOE staff members and outside professional experts employed by MDOE provide staff development in the areas of services where the need for improvement has been identified. Subsequent to the training, MDOE schedules a follow-up visit to the district or agency, doing classroom observations, and talking to parents and staff to determine the effectiveness of the training.

Distinguished Educator Program - Each year, a different group of local administrators from special education and regular education, including district special education directors and building principals, are selected by MDOE and detailed by their local districts or agencies to work in MDOE for one year. The special education directors are trained by, and work with, the MDOE school-age compliance monitoring review staff. Their "hands-on" perspective is invaluable in the comprehensive review process, and the improved knowledge the distinguished educators acquire of regulatory requirements and promising practices greatly enhances their ability to function as effective local administrators when they return to their home school.

Parent Training and Advocacy Groups - MDOE provides outstanding support to parent training and advocacy groups. MDOE provides State funding to supplement the Federal and private funds available to these groups. MDOE staff members participate and provide support in parent training activities, and foster collaborative training initiatives involving parent groups with professional educators in the development of curriculum and training initiatives.

Collaboration with Vocational Education - Staff from MDOE's Division of Special Services collaborate with staff members from the Division of Applied Technology on methods of administration reviews of State regional and district vocational centers providing vocational education to secondary students in Maine's public agencies to ensure that students are not discriminated against on the basis of disability, gender, national origin, or race. The Division of Special Services' staff assist in identifying deficiencies in the participation of students with disabilities, and in the use of appropriate procedures utilizing the IEP process for placement and program support. Also, as a part of the Division of Special Services's own compliance monitoring, a sample of records of district students who are being served in regional vocational centers is included in all compliance reviews.

ENCLOSURE C -- FINDINGS AND CORRECTIVE ACTIONS

GENERAL CORRECTIVE ACTIONS

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

1. MDOE must develop a memorandum informing all agencies of OSEP's findings and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's report. The memorandum must further direct these agencies to discontinue any noncompliance practices and implement procedures that are consistent with Part B. MDOE must submit this memorandum to OSEP within 30 days of date of this letter. Within 15 days of OSEP's approval of the memorandum, MDOE must disseminate it to all agencies throughout the State providing special education or related services to children and infants and toddlers with disabilities.

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

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

I. PROVISION OF A FREE APPROPRIATE PUBLIC EDUCATION THAT MEETS THE STANDARDS OF THE SEA AND PART B (§§300.300 AND 300.8)¹

A. CHILD DEVELOPMENT SERVICES

BACKGROUND: OSEP's 1994 monitoring report identified deficiencies regarding MDOE's procedures for ensuring that children receive special education services in the Child Development Services in a timely manner. The State responded to this finding by revising its regulations so that, effective October 31, 1995, the timeline for children, aged three to 20, is 45 school days from parental consent to placement. In addition, MDOE instituted new monitoring procedures to address this requirement, requiring monthly and quarterly reports to keep MDOE staff updated regarding deficiencies in this area. In the 1996 legislative session, MDOE was able to obtain additional funding to provide services in this area.

MDOE's Child Development Services staff conducted file audits and reviews of site self-assessment documents for agencies D and F in July 1996. They found: (1) children's records did not always include documentation that meetings to review and/or revise IFSPs were conducted every six months (as required by State regulations), and that required members participated in those meetings; (2) information contained in IFSPs did not address all of the components required by §300.346 for children aged three through five; and (3) no documentation that parents had received copies of evaluation reports and IFSPs as required by MDOE regulations. In addition, in agency F, MDOE found that timelines for IFSPs were not being met. From quarterly reports required in addition to onsite monitoring and file audits, MDOE's 16 regional service centers reported numbers of children with overdue evaluations or who are on waiting lists to receive services. MDOE required policy letters to staff members, training, plans for improvement based on the sites' self audits, and, for agency F, continued documentation of reasons for timeline delays. At the time of OSEP's visit, the corrective action for agency D was essentially complete. Corrective action for agency F was still in process.

OSEP monitors visited two Child Development Services regional sites, identified as agencies D and F, reviewed 13 records of children aged three through five, and interviewed site administrators, case coordinators, and private providers. Findings in agencies D and F refer only to children who were aged three through five at the time of OSEP's visit. OSEP monitors also interviewed administrators of local school systems to which these children would transfer, and administrative staff in the other local systems visited, in order to determine how local school systems and the regional sites interacted to provide appropriate transitioning for children served by Child Development Services into kindergarten programs. OSEP monitors also interviewed the MDOE staff members responsible for oversight and administration of services to children served in Child Development Services regional sites, and reviewed monitoring documents, data reports, and other material. OSEP monitors reviewed MDOE's monitoring reports for these two sites.

¹ As described in Enclosure A, MDOE has parallel systems for the administration of services to children with disabilities, aged birth through five, and school-aged children with disabilities aged five to 20. Findings in this report headed Child Development Services refer to deficiencies OSEP has identified in the provision of services to children aged three through five years of age and their parents, that are provided through Child Development Services regional sites. Findings headed School-aged Programs refer to programs provided to children five to 20 years of age and their parents by local school districts and other State and local agencies. Children who have reached the age of five by October 15 are served by local school districts for the entire school year; children who reach the age of five after October 15 are the responsibility of Child Development Services until the following school year.

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

FREE APPROPRIATE PUBLIC EDUCATION (CONTINUED):

FINDING: MDOE has not ensured that special education and related services are provided to children in the Child Development Services system within state mandated timelines in accordance with an IFSP. Specifically, OSEP has determined that the unavailability of qualified services providers has resulted in:

- (1) untimely initial evaluations and placement of students in the Child Development Services system;
- (2) goals and objectives for related services developed after the IFSP meeting; and
- (3) delayed or interrupted special education and related services for those children placed in MDOE's Child Development Services.

OSEP found Child Development Services Centers exceeding the State timelines for conducting evaluation by a range of two to six months, delaying IFSP meetings, and the initiation of services until after the child's third birthday (substantiated in two of seven student records of children aged three through five reviewed from Agency D, and in two of six records reviewed in Agency F). The Child Development Services staff in these sites explained to OSEP monitors that the primary reason for these delays was the difficulty in identifying and coordinating available qualified evaluators who were willing to provide the evaluations, especially to children in out-of-the-way locations. Other factors delaying evaluations that were discussed by the staff in agencies D and F were high caseloads of the case managers (as many as 100 cases), delays in making necessary contacts with parents and providers, and in obtaining doctor's prescriptions that are required for Medicaid funded evaluations and services, and making necessary transportation arrangements.

OSEP also found from review of student records and interviews with site-based staff, that goals and objectives for specific special education and related services identified at IFSP meetings are frequently developed by service providers after the meeting because service providers are not available to attend the meetings. In these cases, the practice, as described by site-based staff, is for service providers to independently develop the goals and objectives and distribute them to parents and case coordinators after the IFSP meeting has already taken place. This practice resulted in the provision of a free appropriate public education that was not provided in conformity with an IEP that meets the requirements of §§300.340-300.350.

MDOE and Child Development Services staff informed OSEP that, when an agency delays or interrupts--due to a shortage of staff--the provision of special education or related services in a student's IFSP or IEP, the agency is required only to send the parents a letter, informing them of the delay or interruption, the reason for the service interruption, and the steps the site is taking to obtain a new provider. Under this practice, public agencies are permitted to delay or interrupt services with no IFSP or IEP meeting, based upon staff availability rather than students' needs, and with no provision for compensating for the temporary interruption of a free appropriate public education. However, under Part B, a public agency may revise services set forth in an IEP based only on the student's needs and such revisions must be made in an IFSP or IEP meeting. Administrators and service providers from agencies D and F stated that IFSP meetings are not held to revise the IFSP or to determine an alternative method of service delivery during the period in which services were delayed or interrupted. These staff members further reported that compensatory services are not a consideration when services are restored. In student records reviewed in agency F, OSEP found speech services interrupted for up to seven months and two month delays in the initiation of occupational and physical therapy services. Staff reported that these delays or interruptions occurred when a service provider relocated or where there had been excessive delays in payment. Parents in the agency D OSEP parent focus group reported that when services were interrupted because of delays in payment to providers, parents often voluntarily paid the providers to avoid cessation of services.

MDOE must demonstrate that: (1) the provision of a free appropriate public education to children aged three through five is not denied or delayed because of delays in preplacement evaluations; and (2) special education and related services are provided, without delay or interruption, in accordance with an IFSP or IEP, all components of which are developed in an IEP meeting.

The steps that MDOE takes to correct these deficiencies must include: (1) revising its monitoring procedures to ensure that all deficiencies are both identified and corrected; and (2) ensuring an adequate supply of qualified personnel is available to provide timely evaluations and services.

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

FREE APPROPRIATE PUBLIC EDUCATION (CONTINUED):

B. SCHOOL-AGED PROGRAMS

BACKGROUND: MDOE performs on-site compliance reviews of public agencies serving children aged five and older on a five-year cycle. In its 1994 monitoring report, OSEP cited MDOE for monitoring procedures that did not always result in the identification of deficiencies regarding the provision of related services. The specific related services addressed in this finding were psychological counseling and testing services. MDOE was required to revise its monitoring procedures, and take other action to ensure the provision of related services, including psychological services, needed by the child in order to benefit from special education. However, MDOE did not make findings regarding the availability and provision of psychological counseling in any of the monitoring reports for agencies A, B, and G, the agencies in which OSEP identified deficiencies in the 1996 monitoring visit. Agency A was monitored by MDOE in 1994, prior to the issuance of OSEP's monitoring report, and the subsequent revisions to the monitoring procedures. Agencies B and G were monitored in 1995 and 1996, after the revision of the monitoring documents to address availability and provision of needed special education and related services.

Psychological Services and Other Related Services.

FINDING: OSEP finds that MDOE has not fully insured that, consistent with §§300.346(a)(3), 300.16, and 300.8, public agencies provide related services based on a student's unique needs, as specified by an IEP, and without cost to the parent.

MDOE has monitoring procedures to determine whether public agencies are delaying or interrupting the provision of related services (such as speech, occupational, and physical therapy) to students with disabilities due to personnel shortages. However, MDOE's procedures for ensuring correction of such noncompliant practices and its guidance to public agencies as to what they must do when such interruptions or delays occur, are not consistent with Part B requirements. Under Part B, public agencies must ensure that students receive all related services as specified in their IEPs, and, if personnel shortages occur, must take such action as is necessary to ensure the continuing provision of a free appropriate public education, including, if necessary: (a) hiring or contracting with additional personnel; and (b) taking such additional steps, including the provision of compensatory services, to ensure that no student with a disability is denied a free appropriate public education due to a delay or interruption of related services, as specified in the student's IEP. During the 1996 monitoring visit, MDOE monitoring staff explained to OSEP monitors that when a district was found to be out of compliance in the provision of a related service because there was not an available provider, the district was required to write the parents of the child to explain the service interruption and actively seek a replacement, documenting efforts. There was no requirement for compensatory services or other arrangements to make up the missed services when a provider had been obtained. Administrators in each of the public agencies that OSEP visited, including the Child Development Services sites, confirmed that, if they did not have personnel to continue providing all related services specified in IEPs, they informed parents of the situation and documented their efforts to seek additional personnel, but that they did not take any additional steps, including the provision of compensatory services, to ensure that no student with a disability is denied a free appropriate public education due to a delay or interruption of the related services specified in the student's IEP.

Administrators, teachers and service providers in agencies A, B, and G reported that psychological counseling services are not determined based on the student's individual needs nor provided based on an IEP. Personnel in these agencies stated that if an IEP team determines that a student, in order to benefit from special education, requires more comprehensive counseling than is available through school-based or district staff, the parent and student are referred to community mental health agencies for psychological services. The administrators and teachers reported that psychological counseling was not provided to all students who required that related service to benefit from special education. Administrators, teachers and service providers interviewed in agencies A and G reported that parents are referred to community agencies when psychological counseling services are needed to enable the child to benefit from special education, and that parents pay a sliding fee or partial costs for these services, and that the educational agency does not take steps to ensure that the child is receiving the counseling. Administrators, teachers, and service providers in Agency B reported that although a few students received counseling from school staff as specified in their IEPs, those requiring more comprehensive services were referred to community mental health services, and the school district split any costs incurred with the family.

MDOE must demonstrate that:

- (1) the provision of related services specified in students' IEPs is not delayed or interrupted, and that if such delays or interruptions occur, the public agency must take additional steps, including the provision of compensatory services, to ensure that no student with a disability is denied a free appropriate public education due to such delay or interruption; and
- (2) psychological counseling services are provided, in accordance with an IEP and at no cost to parents, to students who require those services to benefit from special education.

The steps that MDOE takes must include: (1) informing all public agencies of the steps that they must take when personnel shortages occur that impact the provision of a free appropriate public education; and (2) revising its monitoring procedures to ensure the identification and correction of any noncompliant practices.

OSEP FINDINGS

**EXPECTED RESULTS/
ACTION REQUIRED**

III. PROCEDURAL SAFEGUARDS (§§300.504-300.505)

BACKGROUND: In OSEP's 1994 Monitoring Report of MDOE's programs, deficiencies were identified in the content of the full explanation of procedural safeguards provided to parents. MDOE's corrective action was effective in addressing these deficiencies. However, on the 1996 monitoring visit, OSEP found that although written prior notice was provided to parents when the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child, this notice did not include the content required at §300.505(a)(2).

When MDOE Child Development Services staff monitored agencies D and F, they found that parents were not always presented with a full explanation of procedural safeguards at the time of the initial referral, and that prior written notice that included the options considered and rejected and the reasons these options were rejected was not provided to parents a reasonable time before the agency proposed or refused to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child. Agencies D and F were monitored in July 1996; the corrective action for agency D was completed just prior to OSEP's arrival. Agency F had not completed all of the required training to complete their corrective action plan.

OSEP reviewed reports of MDOE's school-aged monitoring staff's most recent monitoring of agencies A, B, C, E, G, H, and I. MDOE identified deficiencies regarding this requirement in agencies A, B, C, G, and I. Corrective action for agencies C and G was still in progress at the time of OSEP's visit. Both agencies were monitored during the 1995-96 school year, however, MDOE's practice for monitoring school-aged populations is to close corrective action through a follow-up visit during the following school year.

FINDING: MDOE has not ensured that public agencies provide appropriate prior written notice to a parent before an agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child, or provision of a free appropriate public education. Such notice must meet the requirements of §300.505, which include a description of any options the agency considered and the reason why these options were rejected.

Site-based Child Development Services case coordinators in agencies D and F indicated that the IFSP meeting minutes were generally used to provide prior written notice to parents, and that options considered and the reason(s) for rejecting those options were not included as part of notice to parents. Some records reviewed by OSEP included special forms recently developed to provide prior notice to parents. None of those IFSPs or notices included a description of the options considered and rejected and why these options were rejected.

Staff members responsible for development of the IEP in agencies A, B, and I explained to OSEP monitors that IEP meeting minutes are used to provide prior written notice to parents. Agencies C, E, and G had special forms to be used for this purpose. Records reviewed in agencies A, B, and I did not include notice that set forth the options considered and rejected and the reasons that these options were rejected in the IEP. In agency G, student records included separate prior notice forms, which administrators and teachers told OSEP had been recently added as a part of the corrective action resulting from MDOE's recent monitoring visit. The forms in the files reviewed by OSEP were marked "none" or "NA" beside the section requiring a description of options the agency considered and the reasons why these options were rejected.

MDOE must demonstrate that: Child Development Services (for children aged three through five), and public agencies (for children aged five and older), provide parents with prior written notice that informs the parents of options considered and the reasons those options were corrected.

The steps that MDOE takes to correct this deficiency must include: (1) ensuring that all public agencies, including Child Development Services, understand their responsibilities under these requirements; and (2) revising its monitoring procedures to ensure that all deficiencies are identified and corrected.

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

TRANSITION SERVICES §§300.346(b), 300.344(c), 300.345(b)(2), and 300.18(a)

BACKGROUND - OSEP did not make findings regarding transition services in the 1994 MDOE Monitoring Report. In the 1996 monitoring visit, OSEP reviewed MDOE monitoring procedures for determining the compliance of public agencies with the transition requirements. MDOE's procedures only determined the presence or absence of a transition statement in student IEPs. OSEP reviewed MDOE's monitoring reports for agencies A, B, C, E, G, H, and I. MDOE identified a deficiency in agency G, where it found that the development of a statement of needed transition services was not done in an IEP meeting, and that statements of needed transition services were missing entirely from some student records. MDOE also recommended staff development for transition planning in agency B, although it did not identify specific deficiencies in transition plans because it only monitors for the presence or absence of the transitioning statement in student records.

FINDING : MDOE has not ensured that: (1) the IEPs of students beginning no later than age 16, include a statement of needed transition services, designed within an outcome-oriented process that promotes movement from school to post-school activities; (2) the student, and the representative of any other agency that is likely to be responsible for providing or paying for services is invited, and if the student does not attend, that other steps are taken to ensure that student's preferences and interests are considered; and (3) notification of IEP meetings at which needed transition services will be considered indicates that a purpose of the meeting is the consideration of transition services, that the student is invited to the meeting, and any other agency that was invited to participate is identified in the notice.

None of the IEPs for students 16 and older that OSEP reviewed in agency G included a statement of needed transition services. Staff members explained that transition "plans" are developed by the transition coordinator and the student, separately from the IEP meeting, and without all of the required participants for the IEP development process. This is similar to the finding by MDOE, and it is important to note that corrective action for the MDOE monitoring is still in progress at agency G. Student records in agencies A and C included statements of needed transition services that were not based on outcome oriented goals that would promote movement from school to post-school activities. Administrators and teachers involved in the process at agencies A and C explained that rather than identifying outcomes for the student, to promote movement from school to post-school activities and then determine services designed to lead to those outcomes, they begin with available services and choose from those.

Administrators in agency C reported that students are invited to IEP meetings, but refuse to attend, and that the invitation to the student is not documented. Administrators in agency B stated that linkage to other agencies is undertaken, but not included in the IEP transition planning process.

The notices of the IEP meeting in records of students 16 and older reviewed by OSEP in agencies A, C, G, H, and I did not include all of the following required components: (1) a purpose of the meeting is transition planning; (2) the student is invited; and (3) if another agency is invited, it is identified. Some notices omitted all three components, others included one or two, but not all three. None of the records reviewed included all three components. Although the meeting notices used by some of the agencies included transition planning on the menu of purposes that staff could mark, agencies A, C, G, H, and I did not consistently indicate in IEP meeting notices when the consideration of needed transition services was a purpose of the meeting. No particular mechanism for specifying the student invitation or identifying the outside agency was present on any of the meeting notice forms. Special formatting is not required if agencies can utilize existing formats to include this information. However, although on some of the meeting notices, the student and/or other agency representative were appropriately identified in the list of individuals invited to attend the meeting, on the majority of the notices in records reviewed in each of the districts noted, this information was missing.

MDOE must demonstrate that: (1) that the IEP for each student with a disability beginning at age 16 (or younger if determined appropriate) includes a statement of needed transition services designed within an outcome oriented process to promote movement student from school to post-school activities; and (2) if a purpose of an IEP is the consideration of needed transition services, (a) the student, and the representative of any other agency that is likely to be responsible for providing or paying for services is invited, and if the student does not attend, that other steps are taken to ensure that student's preferences and interests are considered; and (b) parent notification of the IEP meeting indicates that a purpose of the meeting is the consideration of transition services, indicates that the student is invited to the meeting, and lists any other agency that was invited to participate.

The steps that MDOE takes to correct this deficiency must include revising its monitoring procedures to ensure that all deficiencies are identified and corrected.

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

GENERAL SUPERVISION (§§300.600, 300.2, 300.300, 300.8, 300.660-300.662)

MDOE has not exercised its general supervisory authority, to fully correct all of the deficiencies identified by OSEP in the 1994 Monitoring Report. Specifically, although OSEP found these same deficiencies in the 1994 report, OSEP again found the following deficiencies:

- (1) Eligible individuals incarcerated in Maine State and local adult correctional facilities have not been located, identified, evaluated and provided with a free appropriate public education;
- (2) Complaint management procedures do not ensure that any complaint that a public agency has violated a requirement of Part B is resolved, including violations that are more than 180 days old, and child-specific violations.
- (3) As noted on pages 9 and 10, MDOE has not ensured that the provision of a free appropriate public education is not delayed, interrupted, or denied to children in the Child Development Services system and in school districts.

Incarcerated students in State and local adult correctional facilities.

MDOE officials explained to OSEP that although they had visited a State adult correctional facility, they had not done formal monitoring, or documented the existence of a viable system to locate, identify, evaluate, and provide free appropriate public education to Part B eligible individuals incarcerated in State adult correctional facilities. MDOE officials further explained to OSEP monitors that MDOE had not developed procedures to ensure that Part B eligible individuals in adult jails operated in Maine localities were located, identified, evaluated and provided with a free appropriate public education, and has not yet determined who is responsible under State law for providing such services. An official of the Maine Department of Corrections reported to OSEP that, although the needs of students with disabilities in the juvenile facilities of the Maine Department of Corrections are addressed, no procedures are in place to locate, identify, evaluate, and provide a free appropriate public education to Part B eligible individuals in the State adult correctional facilities. OSEP also interviewed the special education directors of the local education agencies visited by OSEP, to determine whether adult jails were located in their localities and, if so, if they were identifying and serving individuals with disabilities in those facilities, or were aware that some other entity was providing those services, or had received direction from the State on how Part B individuals were to be served. The local directors all reported that they had not received direction from the State that they were responsible for identifying and serving individuals with disabilities in local jails, and were not aware that any other agency was identifying and serving this population.

MDOE must demonstrate that a free appropriate public education is made available to all eligible youth with disabilities incarcerated in the State's adult correctional facilities.

Due to the history of noncompliance in this area, OSEP will be forwarding a separate letter to further address final resolution of this issue.

The Individuals with Disabilities Education Act Amendments of 1997, Public Law 105-17 makes a number of revisions in the State's responsibility for youth with disabilities in adult correctional facilities. Probably the two most important changes in the IDEA Amendments of 1997 are 1) that States may choose not to make a free appropriate public education available to those children age 18 through 21 in adult correctional facilities who, in the educational placement prior to their incarceration, were not identified as being a child with a disability or did not have an IEP under Part B, [Section 612(a)(1)(B)(ii)]; and 2) that the governor or (another individual pursuant to State law), consistent with State Law, may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B are met with respect to such eligible children who are convicted as adults under state law and are incarcerated in adult prisons. [Section 612(a)(1)(C).]

The IDEA Amendments of 1997 also provide that children with disabilities who are convicted as adults under State law and are incarcerated in adult prisons 1) may be excluded from participation in general State and district-wide assessments as otherwise required by Part B; 2) need not be provided transition planning and services, if their eligibility under Part B will end, because of their age, before they are released from prison; and 3) may have their IEP or placement modified by the IEP team, if the State demonstrates a bona fide security or compelling penological interest that cannot otherwise be accommodated. [Section 614(d)(6).] In addition, the procedural protections under the 1997 Amendments, for the first time, allow States to transfer parental rights to children with disabilities who reach the age of majority under certain conditions, including when they are incarcerated in adult or juvenile federal, State, or local correctional facilities. [Section 615(m).]

OSEP FINDINGS

EXPECTED RESULTS/
ACTION REQUIRED

Complaint Management.

As noted in the 1994 monitoring report, OSEP found that State regulations provided that complaints regarding alleged violations that had occurred more than 180 days prior to the filing of the complaint, including Part B complaints, would not be resolved. Although MDOE changed its Part B complaint procedures to clarify that any signed written complaint alleging a Part B violation must be resolved, MDOE has not ensured that parents and other interested individuals are informed that complaints of violations that are more than 180 days old will be resolved, as required at §300.660(b). In the public meetings and outreach meetings that OSEP conducted prior to the 1996 on-site review, a number of parents and advocates told OSEP that they continue not to file complaints alleging violations that are more than 180 days old because they have not been informed that this provision has been changed. OSEP noted that MDOE requires public agencies to include information regarding the complaint process in their explanation of procedural safeguards, but that the elimination of the 180-day limit is not addressed in this information; OSEP found no evidence of other steps that MDOE had taken to ensure that parents and other interested individuals have been effectively informed about the change in procedures.

In addition, the person who supervises MDOE's complaint management process and the attorney who advises MDOE informed OSEP that it is their understanding that the State is not required to resolve complaints that allege child-specific IEP-related violations, and that, therefore, parents filing such complaints are often redirected to the State's due process hearing procedures. Parents and advocates have similarly informed OSEP through the pre-site meeting and telephone conversations that such complaint are often rejected by MDOE and the complainants advised to request a due process hearing in lieu of the complaint.

MDOE must demonstrate that, as required by §300.660:
(1) parents, other interested individuals, and relevant MDOE and school district staff are informed that complaints will not be refused because they allege violations that are more than 180 days old; and (2) MDOE resolves all complaints that meet the requirements in §300.662 (including complaints alleging violations regarding the IEP and/or provision of a free appropriate public education to an individual child).