



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

Honorable Robert S. Schiller
Superintendent of Public Instruction
Michigan State Department of Education
Post Office Box 30008
608 West Allegan Street
Lansing, Michigan 48909

APR 16 1997

Dear Superintendent Schiller:

During the week of November 11-15, 1996 the Office of Special Education Programs (OSEP), United States Department of Education, conducted a follow-up monitoring review of the Michigan Department of Education's (MDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the follow-up monitoring review was to determine the extent to which MDE implemented selected corrective action plan requirements specified in the final report, issued on March 21, 1995 entitled "Office of Special Education Programs Final Monitoring Report: 1993 Review of Michigan Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act" (Report), as well as to determine the extent to which the corrective actions were effective. OSEP selected issues for this follow-up review that had been identified as problem areas in the Report that would have a direct impact on the provision of special education and related services to students with disabilities within Michigan. The OSEP team reviewed whether due process hearings were conducted in a timely manner, procedures for complaint management, the provision of a free appropriate public education, including the provision of related services consistent with an IEP, the provision of transition services, the timely evaluation and placement of children who may be in need of special education and the implementation of procedures for placement in the least restrictive environment.

Enclosure A to this letter contains a list of the agencies that OSEP visited and the designation used to identify those agencies in the letter. Enclosure B of this letter contains OSEP's observations on the status of MDE's compliance efforts in the areas identified above. In each of the areas we looked at in this review, MDE had initiated programs and activities designed to address the specific compliance problems identified in the 1995 Report. However, in each of these areas, we noted continued problems in implementation. Since many of the training efforts and program modifications MDE undertook as part of its corrective action plan from the 1995 Report had only recently been implemented at the time of our follow-up visit, the full effect of these initiatives might not yet resulted in changes in practice at the local district level. However,

it must be stressed that it is incumbent upon MDE to ensure that corrective actions, including training activities, effectively remediate the areas cited by OSEP in **all** school districts in Michigan. As a part of its general supervisory authority, MDE must continue to evaluate the effectiveness of its corrective actions, and take further steps where necessary to ensure compliance with Part B. We will schedule a comprehensive review during the 1997-98 school year to again assess the effectiveness of MDE's system to provide special education and related services. Should OSEP determine that agencies continue to remain out of compliance with Part B requirements, OSEP will require MDE to take additional steps to address the problem(s).

Dr. Lawrence Wexler, OSEP State Contact for Michigan, collaborated with the staff in MDE's Office for Special Education Services to schedule meetings with appropriate individuals and to identify the public agencies that OSEP would visit. Dr. Wexler, Dr. Kenneth Kienas and Ms. Maral Taylor comprised the onsite team. The five public agencies that OSEP visited are set forth in Enclosure A. OSEP had visited three of these public agencies as part of its 1993 onsite review of MDE.

In four of the public agencies, the team reviewed student records and interviewed special education teachers, regular education teachers and administrators at both the building and district levels, focusing on implementation of the corrective actions in these areas. In the fifth public agency (Agency E), OSEP staff participated in a "shadow monitoring" activity whereby OSEP staff accompanied/observed MDE staff while they conducted an on-site State monitoring review. The purpose of the shadow monitoring was to observe MDE's implementation of its monitoring system to ensure that public agencies were in compliance with State and Federal requirements and that corrective actions, relative to the 1995 OSEP Report, were effective.

While in MDE's central administrative office in Lansing, Dr. Wexler reviewed complaint and due process hearing files and interviewed State officials responsible for: (1) conducting complaint investigations; (2) tracking time lines in due process hearings; (3) implementing monitoring procedures; (4) data management; and (5) providing technical assistance to public agencies statewide. OSEP used this information, along with individual public agency data, to determine the status of the implementation of MDE's corrective action plan, and, ultimately, to assess how MDE is meeting its administrative responsibilities under Part B.

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I hope you will find this information helpful in your continued efforts toward the goal of improving education programs for children with disabilities in Michigan. I would also like to thank you for the assistance and cooperation offered by your staff during our follow-up review and during the course of this past monitoring cycle. Members of OSEP's staff continue to be available to provide technical assistance. Please let me know if we can be of assistance in this regard.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Dr. Richard Baldwin

ENCLOSURE A

Agency Designations

Where appropriate, OSEP has included in this letter data collected from the five agencies it visited to support or clarify OSEP's findings regarding the sufficiency and effectiveness of MDE's systems for ensuring compliance with the requirements of Part B. The agency in which the supporting or clarifying data were collected is indicated by a designation such as "Agency A." The agencies that OSEP visited and the designation used to identify those agencies in the enclosure to this letter are set forth below:

- Agency A: Detroit Public Schools (Wayne County ISD)
- Agency B: Chippewa Valley (Macomb ISD)
- Agency C: Saginaw City Public Schools (Saginaw ISD)
- Agency D: Grand Rapids Public Schools (Kent ISD)
- Agency E: Gratiot-Isabella ISD

OSEP also visited Agencies A, C and D as part of its 1993 review. Agency E was visited in 1996 in conjunction with a "shadow monitoring" activity whereby OSEP staff accompanied/observed MDE staff while they conducted an on-site State monitoring review. The purpose of the shadow monitoring was to observe MDE's implementation of its monitoring system to ensure that public agencies were in compliance with State and Federal requirements and that corrective actions, relative to the 1995 OSEP Report, were effective.

ENCLOSURE B

OSEP's Observations on the Status of MDE's Compliance Efforts

Federal Requirement: Procedural Safeguards §300.512(a) and © [Final Decision in a Hearing Reached Within 45 Days]

Background: In the March 1995 Report, OSEP found that MDE did not maintain adequate data to determine if hearings were resolved within the 45 day time line requirement. As part of OSEP's pre-site documents request, MDE provided a log of local hearings for 1990 through 1992. While the log included the local hearing date and the date the decisions were received, OSEP could not determine from this log when the request for a due process hearing was filed in order to determine if hearings had been conducted within the established 45-day time line.

Staff responsible for MDE's due process system reported that MDE/OSE maintains records of all correspondence relative to hearings for which some action had been taken by the hearing officer, including mediation, dismissal, settlement, and appeals. The official further indicated that the State receives a copy of the local hearing officer's decisions that have been completed, at which time the MDE/OSE updates its tracking system. The official indicated that the State had no established procedure for requiring that the ISD/LEA report the number of requests for hearings received, the status of due process hearings, waivers or extensions of the 45-day time line, or for otherwise obtaining information to enable it to determine compliance with the requirements of §300.512(a) and (c).

As part of the corrective action plan that was included in the Report, MDE completed the following activities. In March 1996 MDE issued *Clarification 18: Procedures to Ensure that Decisions in Due Process Hearings are Reached and Mailed within 45 Days From Receipt of Request for a Hearing*. This letter of clarification included: (1) MDE internal procedures; (2) a tracking log for hearings; (3) a tracking system for the appointment of hearing officers; (4) a memorandum to ISDs regarding the 45 day time line requirement; and (5) a memorandum to hearing officers regarding hearing decision time lines and the limitations on their authority to extend time lines. MDE was also required to provide training to OSE staff and hearing officers relative to the tracking system and the limitations on hearing officers' authority to extend time lines.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP verified that MDE had provided training to hearing officers and ISD administrators relative to the requirement that findings and decisions in a due process hearing be reached and mailed within 45 days after the receipt of the request for a hearing, unless the hearing officer grants a specific extension of this time line at the request of either party. However, MDOE has not, as specified by the Corrective Action Plan, implemented procedures to ensure that findings and decisions in a due process hearing be reached and mailed within 45 days after the receipt of the request for a hearing, unless the hearing officer grants a specific extension of this time line at the request of either party.

OSEP again found that MDE did not maintain adequate data to determine if hearings were resolved within the 45 day time line requirement since the tracking system that MDE submitted to OSEP as documentation that corrective actions had been undertaken had not been implemented. MDE also provided OSEP with a template that had been distributed to hearing officers as a model for their hearing decisions. OSEP had not previously reviewed or approved the template. Included in the template was a process tracking form. This form included a notation for time line extensions but did not require the hearing officer to note the party who requested the extension. As a result, the use of this model precluded MDE from being able to verify that time lines were only extended by the hearing officer at the request of either party. OSEP continues to receive numerous complaints from parents and advocacy groups that the local hearing process regularly exceeds the 45 day time line as well as extended time lines.

OSEP finds that MDE has failed to implement a system to ensure that findings and decisions in due process hearings are reached and mailed within 45 days after the receipt of the request for a hearing, unless the hearing officer grants a specific extension of this time line at the request of either party.

REQUIRED CORRECTIVE ACTIONS: OSEP requires that MDE, consistent with the Corrective Action Plan that was approved by OSEP, immediately implement the hearing time line tracking system submitted to OSEP as part of *Clarification 18*. OSEP also suggests that MDE revise its "Hearing Decision Template" to include information that verifies that extensions of hearing time lines are only granted at the request of either party to the hearing. Within 60 days of the receipt of this letter MDE must submit to OSEP: (1) a copy of the hearing time line log completed back to July, 1996; (2) a monthly report indicating the status of meeting the hearing time line requirement; and (3) actions MDE will undertake to ensure that local hearings adhere to the 45 day time line and that time lines are extended only at the request of a party.

**Federal Requirement: Free Appropriate Public Education §300.300
[Delay in Provision of Services]**

Background: In the March 1995 Report, OSEP found that MDE did not fully meet its responsibility under §300.300 to ensure that public agencies did not deny or delay a child's right to a Free Appropriate Public Education by failing to provide an initial evaluation within a reasonable period of time. Although Part B does not set forth a specific time line standard for conducting initial evaluations, each State must establish and implement standards to ensure that the rights of each child with a disability are not denied or delayed because the responsible public agency does not conduct an initial evaluation within a reasonable period of time. MDE has mandated: (1) that the public agency notify the parent and request written consent to evaluate within ten calendar days of receipt of referral, and prior to any formal evaluation designed to determine eligibility for special education programs and services; and (2) that within thirty school days from receipt of parental consent, an evaluation is completed and either an individualized education program is developed or a determination of ineligibility is made [R 340.1721© *Revised Administrative Rules for Special Education*]. The time line begins upon

receipt of the signed parental consent by the public agency requesting it and may be extended if agreed to by the parent and public agency.

As part of the corrective action plan that was included in the Report, MDE completed the following activities. In March 1996, MDE issued a memorandum to those public agencies in which OSEP identified deficient practices, requiring those agencies to discontinue the deficient practices. Public agencies submitted documentation to MDE that verified that appropriate administrators and other agency personnel had been instructed to discontinue their existing practices, and to implement the State's 30 school day evaluation standard and that any changes that had to be made to comply with the 30 school day evaluation standard had been implemented. In addition, MDE issued guidance to all other public agencies relative to the 30 school day evaluation standard. MDE also developed training materials and provided training to: (1) all MDE staff who participate in monitoring visits; (2) special education teachers; and (3) special education administrators, to ensure that all districts adhered to the 30 school day evaluation standard. MDE also revised its State data collection system (RMS) to include data fields that would facilitate ongoing monitoring by MDE of the districts' adherence to the 30 school day evaluation standard.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP verified that MDE had taken appropriate corrective actions to address this deficiency. In its on-site follow-up visit in Agencies B, C, D and E OSEP verified, through a file review and data provided by each district, that Agencies B, C, D and E were currently adhering to the 30 day evaluation standard. Data provided by the Agency A Director of Psychological Services and verified by the Director of the Office of Specialized Student Services (Special Education) indicated that during the 1995-96 school year 3,934 students were initially evaluated. Of this number "only 10% were completed within mandated time lines." From August 28-October 31, 1996 1,796 initial evaluations were completed. Of this number "6% were completed within the mandated time lines." The Directors were unable to provide OSEP information regarding how far beyond the time line the evaluations extended. The Director of the Office of Specialized Student Services also indicated that the primary problem in meeting the 30 school day evaluation standard was Agency A's inability to obtain and maintain an adequate number of psychologists to conduct the evaluations. When queried further, the Director indicated that MDE had not provided any assistance to Agency A to obtain adequate psychological staff. OSEP finds that the number of students in Agency A who do not receive their initial evaluation within the MDE 30 school day standard continues to be significant.

REQUIRED CORRECTIVE ACTIONS: OSEP requires that MDE submit to this Office status reports every sixty days from the time of receipt of this letter to verify that Agency A, and any other agency identified within the state that is failing to adhere to the 30 school day evaluation time line standard, is progressing towards meeting the 30 school day evaluation time line standard. In addition, MDE must submit a timetable for full correction of this deficiency by Agency A. In reviewing the effectiveness of its corrections in this area, MDE must also develop

a plan to assist Agency A and any other identified agency to address the personnel shortages that are driving the problem.

**Federal Requirement: Free Appropriate Public Education §§300.300 and 300.8
[Special Education and Related Services Not Provided as Specified by the Student's IEP]**

Background: In the March 1995 Report, OSEP found that MDE did not fully meet its responsibility under §§300.300, 300.8, and 300.2 to ensure that public agencies provide all of the special education and related services to meet the needs of students with disabilities, as specified by the IEP. OSEP found that shortages of related services personnel resulted in students not receiving services specified in their IEPs or services that were unilaterally revised (e.g., individual therapy changed to group therapy) to accommodate a shortage of related services providers. OSEP also found that MDE/OSE, through its monitoring system, had determined special education and related services to be appropriately documented when the frequency of the special education and related service is indicated in the IEP by a range of time (e.g., speech, 2-4 times a month for 20-40 minute sessions). OSEP documented that in many cases the upper bound (e.g., four times a month) of the range was what the student required to benefit from his/her special education program but that the lower bound (e.g., two times a month) of the range was provided in response to staff shortages.

As part of the corrective action plan that was included in the Report, MDE completed the following activities. In March 1996 MDE issued a memorandum to those public agencies in which OSEP identified deficient practices, requiring those agencies to discontinue the deficient practices. In September 1996 MDE issued a memorandum to all public agencies requiring the revision of ISD Local Plans (Local Plans are synonymous with Local Educational Agency Applications) to address the staff shortages in cases where staff shortages impacted on the provision of a Free Appropriate Public Education. In addition, MDE developed training materials and provided statewide training to ensure that public agencies provided all of the special education and related services to meet the individually determined needs of students with disabilities, as specified by their IEPs and that IEPs reflected specific statements of related services rather than services stated as ranges.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP verified that in Agencies A, B, C, D and E all students were receiving the services specified in their IEPs. However, in Agencies A and B related services were stated as ranges despite MDE having provided documentation to OSEP that training had been provided to ISD and District staff which clarified that specifying services in the form of ranges was an unacceptable practice. The Directors of Agencies D and E confirmed that the MDE training had been provided and that subsequent to the training all District staff was directed to cease specifying services in the form of ranges. OSEP reviewed MDE's monitoring procedures and confirmed through the shadow monitoring activity that MDE's revised monitoring system does **not** address related services stated as ranges; OSEP confirmed with the MDE monitors on this visit that they do not address the issue of related services stated as ranges. The data gathered in Agencies A and B, as

specified below, indicated that related services were stated as ranges because of related services personnel shortages.

Agency A:

In all of the student files reviewed by OSEP in which related services were stated, they were stated as ranges. A speech/language pathologist indicated that related services are routinely stated in the form of ranges in order to accommodate therapists' schedules. The speech/language pathologist also indicated that there was a shortage of speech/language pathologists in the district and as a result her supervisor "sets" the amount of time she can spend in each building, regardless of student needs, which impacts on the amount of service (e.g., upper or lower bound of the range) that students receive. A Special Education Department Chairman and Central Administrator indicated that the use of ranges provides the flexibility for the therapist to provide more services without convening an IEP, thus providing latitude to adjust schedules and still be consistent with the IEP. The Agency A administrator, responsible for the provision of special education, stated that he had received no guidance from MDE relative to discontinuing the use of ranges. He further indicated that the use of ranges was common practice in the District but that there was no reason not to put down the exact amount of service required by the student.

Agency B:

In all of the student files reviewed by OSEP in which related services were stated, they were stated as ranges. A speech/language pathologist indicated that it is District practice to state related services in the form of ranges. She further indicated that when a speech/language pathologist in a neighboring high school resigned, she absorbed the resigned speech/language pathologist's case load. This doubled her case load to approximately 120 students. She accommodated this amount of students by only providing the lower bound of the range of service. The speech/language pathologist indicated that her resulting case load precluded her from providing adequate services, even though the services reflected the lower bound of the range, to some of her students. A district social worker also stated that it was general practice in Agency B for services to be stated as ranges. The Agency B administrator responsible for the provision of special education stated that ranges are a general practice in the District and asserted that the practice was condoned by the ISD and MDE despite documentation from MDE that all Districts were directed to discontinue the practice. The Agency B administrator further stated that the "range" allowed for the flexibility to increase services if necessary.

OSEP finds that the number of students in Agencies A and B whose IEPs state related services in the form of ranges continues to be significant and that the stating of the services in the form of ranges in Agencies A and B is based on personnel shortages. MDE has failed to ensure that Agencies A and B comply with the requirement that related services be provided in conformity with an IEP that is based on the individual needs of students.

REQUIRED CORRECTIVE ACTIONS: MDE must revise its monitoring system to include procedures to verify that related services are provided in conformity with an IEP that is based on the individual needs of students rather than availability of related services personnel. In addition,

MDE must also review the effectiveness of its corrections in this area and take whatever additional steps it determines necessary, including utilizing its Comprehensive System of Personnel Development (CSPD) to assist Local Educational Agencies in addressing personnel shortages, to ensure that all agencies within the state comply with this requirement. MDE must also send a memorandum to inform all agencies that the monitoring procedures have been revised to include procedures to verify that related services are provided in conformity with an IEP that is based on the individual needs of students rather than availability of related services personnel.

**Federal Requirement: Transition Services §§300.346(b) and 300.18
[Statement of Needed Transition Services]**

Background: In the March 1995 Report, OSEP found that MDE did not fully meet its responsibility under §300.346(b) regarding transition services as defined in §300.18 to ensure that public agencies develop a statement of needed transition services for each student with a disability at age 16 and older, or at a younger age if appropriate. OSEP found that MDE's Comprehensive Plan required of public agencies as part of the local application and monitoring processes did not contain complete policies and procedures to ensure that the IEP for each student with a disability at age 16 and older, or at a younger age when appropriate, included a statement of needed transition services. In addition, MDE had not established monitoring procedures to ensure compliance with this requirement.

OSEP also found that 60% of the IEPs reviewed of students who were 16 years old or older did not include a statement of needed transition services. In addition, OSEP found that MDE did not always meet its responsibility under §300.344© to ensure that: (1) when the meeting involved consideration of transition services, the student and any outside agency that is likely to be responsible for providing or paying for transition services were invited to attend; and (2) when the student did not attend, the public agency considered the student's preference and interests, and when any outside agency that was or was likely to be responsible for providing or paying for transition services did not attend, the Local Educational Agency took the necessary steps to obtain participation of the outside agency in planning transition services for the student.

As part of the corrective action plan that was included in the Report, MDE completed the following activities. MDE revised the document *Criteria for Review of Special Education Plans*, which specifies the content of Local Education Agency Applications, to address the transition requirements. Review checklists were developed to ensure that the MDE analysis of Local Education Agency Applications addressed the transition requirements contained in the revised *Criteria for Review of Special Education Plans*. MDE also directed all ISDs to include the appropriate transition requirements in their ISD plans and to ensure implementation of these requirements in their constituent Districts. In addition, MDE revised its *IEP Manual*, which specifies the content of IEPs, to address the transition requirements. Specifically, the *IEP Manual* was revised to include procedures relative to the development of a statement of needed transition services as well as a model IEP form that addressed the transition requirements. State

monitoring procedures and checklists, reviewed by OSEP, also were amended to address some of the transition requirements. MDE also provided statewide training to ISD and District administrative staff to ensure that appropriate transition policies and procedures were included in ISD Local Plans and that the policies and procedures are implemented at the District level. Although MDE revised state transition requirements and monitoring procedures, the revisions did not completely address all of the transition requirements.

OBSERVATIONS/STATUS OF COMPLIANCE: As part of the pre-site activities, OSEP reviewed MDE's state standards and monitoring procedures relative to transition requirements. In its follow-up visit, OSEP verified that, although MDE monitored to ensure that public agencies develop a statement of needed transition services for each student with a disability at age 16 and older, or at a younger age if appropriate, MDE's transition monitoring standards were "in draft" and did not completely address all of the transition requirements. Specifically, the monitoring standards were inconsistent with Federal requirements in terms of: (1) transition notice requirements (not informing the parent the student would be invited, stating the purpose of the meeting was the consideration of transition services, identifying any other agency to be invited; (2) description of each participating agency's responsibility and or linkages, if appropriate; and (3) identifying alternative strategies if a participating agency failed to provide services. In addition, when MDE identified deficiencies using the "draft" transition standards, MDE was not using its enforcement authority to ensure that identified deficiencies would be corrected. MDE's explanation for this practice of not using its enforcement authority was that the draft standards were being field tested and therefore could not be used to support a monitoring finding.

Another concern regarding MDE's transition monitoring procedures is that MDE only reviews transition requirements for those students who are sixteen or older **when the IEP is developed**. MDE has no method to determine if transition planning has occurred by the student's sixteenth birthday (e.g., MDE's monitoring process does not account for reviewing transition statements for those students who are fifteen when the IEP is developed, but turn sixteen during the year when the IEP is in effect). This practice results in some students' IEPs not including statements of transition services by their sixteenth birthday. This practice, of not reviewing if the statement of transition services is included in students' IEPs by their sixteenth birthday, as required by MDE and Federal requirements, was confirmed during the shadow monitoring of Agency E and through interviews with MDE staff.

OSEP verified through file reviews, of students who were at least 16 when the IEP was developed in Agencies A, C, D and E, that statements of needed transition services were developed. This was a significant improvement from the 1993 monitoring visit. However, although all of the agencies had developed statements of needed transition services, in Agencies A, B, and C there were flaws in the process followed and the content of the statements of transition services as discussed below.

Agency A:

In all of the student (16 or older) files reviewed by OSEP in Agency A, the statement of transition services contained in the IEP did not specify other agency involvement or linkages. Special education teachers and the administrator responsible for special education in Agency A indicated there was no process to determine the need for involvement by other agencies. The transition statements did not address instruction in employment, daily living or community living skills or document that the team determined services were not needed in one or more of the areas. Agency A also did not provide notice that met the notice requirements (indicate the agency will invite the student, identify any other agency that will be invited to send a representative) for IEP meetings in which transition services will be discussed.

It should be emphasized that Agency A has developed a plan for ensuring that the transition requirements are met. Agency A has hired four transition specialists who will be responsible for serving as building level transition resources to teachers and for providing district wide training relative to the transition requirements.

Agency B:

Although Agency B develops transition plans, a statement of transition services was not included in any of the IEPs, of students 16 or older, reviewed by OSEP. Agency B practice is for the district transition specialist to meet with the parent to conduct a "Transition Life-Planning" meeting for each student. While the meeting and resultant plan address many of the transition requirements, the meeting is not considered by Agency B to be part of the IEP process nor is the "Transition Life-Plan integrated into the IEP. In addition, the "Transition Life-Planning" meeting does not have the required attendees such as the student's teacher and an agency representative. The administrator responsible for the provision of special education in Agency B confirmed that the "Transition Life-Planning" meeting is separate from the IEP process but that the District is moving in the right direction and expects to combine the transition process with the IEP process. Agency B also did not provide notice that met the notice requirements (indicate that transition will be discussed, indicate the agency will invite the student, identify any other agency that will be invited to send a representative) for IEP meetings in which transition services will be discussed.

Agency C:

In all of the student (16 or older) files reviewed by OSEP the statement of transition services contained in the IEP did not specify other agency involvement nor was there a process to determine the need for involvement by other agencies. In addition, the transition statements did not address or include goals in the areas of instruction, employment, daily living or community living skills. Instead of goals, a general status (e.g., "...requires instruction in all core classes", "... needs to improve work adjustment skills") was provided. Agency C also did not provide notice that met the notice requirements (indicate that transition will be discussed, indicate the agency will invite the student, identify any other agency that will be invited to send a representative) for IEP meetings in which transition services will be discussed.

OSEP finds that the process MDE has in place to ensure that public agencies in Michigan develop a statement of needed transition services for each student with a disability at age 16 and older, or at a younger age if appropriate, is not adequate to ensure compliance with State and Federal requirements and therefore continues to be a significant problem. MDE has failed to ensure that: (1) the statements of transition services contain the required content; (2) required processes are followed (e.g., transition notice requirements) by public agencies; and (3) the IEP for each student, beginning no later than age 16 includes, a statement of transition services that, if appropriate, includes a statement of each public agency's and each participating agency's responsibility or linkages or both.

REQUIRED CORRECTIVE ACTIONS: OSEP requires MDE to: (1) immediately provide guidance to all public agencies that a statement of transition services be included in all students' IEPs by their sixteenth birthday, or younger, if appropriate (if an IEP developed before a child's sixteenth birthday does not include a statement of needed transition services, the public agency must convene an IEP meeting prior to the child's sixteenth birthday to revise the IEP to include such a statement); (2) finalize the "draft" transition monitoring standards and submit to OSEP for approval within sixty (60) days of the receipt of this letter; (3) implement the approved transition monitoring standards within thirty (30) days of OSEP approval; (4) develop a plan within sixty (60) days of the receipt of this letter to ensure that local district program and instructional staff receive training relative to the process and content of the transition requirements; and (5) submit a status report relative to these required activities one hundred and twenty (120) days after the receipt of this letter. In OSEP's next comprehensive monitoring visit during the 1997-98 school year, MDE's efforts in this area will be reviewed.

Federal Requirement: Least Restrictive Environment §§300.550(b)(1), 300.550(b)(2), 300.551(a), 300.553 and 300.505(a)(2)

[Children with Disabilities Educated with Nondisabled, Removal from Regular Educational Environment, Continuum of Alternative Placements, Nonacademic Settings]

Background: In the March 1995 Report, OSEP found that MDE did not fully meet its responsibility under §300.550(a) to ensure that public agencies establish and implement procedures that meet the requirements of §§300.550-300.553 to ensure that students with disabilities are provided special education and related services in the least restrictive environment to the maximum extent appropriate to the needs of the child. In addition, OSEP found that MDE's monitoring system had no method to determine compliance relative to agencies providing proper notice of actions proposed or refused (§300.505(a)(2)).

OSEP determined that a continuum of alternative placements was not available to meet the needs of children with disabilities and that the decision to remove children with disabilities from the regular educational environment was not an individual determination. OSEP also determined that MDE did not ensure that children with disabilities participated with nondisabled children in nonacademic or extracurricular services, to the maximum extent appropriate.

As part of the corrective action plan that was included in the Report, MDE completed the following activities. MDE revised its monitoring manual to reflect that the monitoring process will determine that least restrictive environment forms are appropriately completed and that students are actually placed in the least restrictive environment rather than the previous monitoring process which limited to a "checkoff" that the least restrictive environment forms were completed. MDE directed all public agencies to discontinue deficient practices and to implement the correct procedures. Public agencies are currently (January 1, 1997 deadline) submitting documentation (ISD Local Plans) to verify that policy and procedural changes necessary to comply with Part B least restrictive environment requirements have been implemented. MDE developed training materials and provided training to ISD and District administrators and to all individuals who participate in monitoring visits, to inform them of their responsibilities relative to the least restrictive environment requirements. Teachers are expected to receive training from District staff.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP verified that MDE had provided training to ISD and District administrators and all individuals who participate in monitoring visits, to inform them of their responsibilities relative to the least restrictive environment requirements. OSEP also verified that ISD policy and procedural changes necessary to comply with Part B least restrictive environment requirements were being implemented. In addition, OSEP determined that MDE revised its procedural monitoring manual and implemented the revised monitoring process (enhanced interviews and file review) to determine that least restrictive environment forms are appropriately completed and that students are actually placed in the least restrictive environment. OSEP also noted significant improvement in opportunities for Agency D secondary-aged students to remain placed in regular education buildings. The previously identified District practice was to remove all Trainable Mentally Impaired students from regular education high schools, regardless of need, and place them in a separate facility the school year following their eighteenth birthday. This practice has been discontinued.

Agency B:

OSEP reviewed twelve (12) student files in Agency B. Each of the twelve IEPs reviewed contained a pre-determined statement in the IEP section labeled "Other considerations" that read:

In determining the least restrictive environment, consideration is given to accessibility of facilities; participation in nonacademic and extracurricular activities; environments; harmful effects and quality of services for the student.

This standard statement, which in many cases was affixed to the IEP on a pre-printed label, served as the justification for removal from the regular educational environment. A classroom teacher stated that the teachers were directed by the district to put the statement on all IEPs because of a State audit. The administrator responsible for the provision of special education stated that the district was directed by an ISD audit to include this statement on all IEPs. The

administrator provided OSEP with a copy of an ISD memorandum dated 5-10-95 which is a memo explaining the results of MDE monitoring in the district. Corrective action number four states, " a statement in the "other considerations" area (of the IEP) should indicate that consideration was given." An example is provided which is identical to the statement that Agency B has inserted into every IEP. The administrator responsible for the provision of special education stated that the options discussed and rejected are evident if you read through the progression of the least restrictive environment section of the IEP. However, OSEP was unable to determine from reviewing the IEPs which options were considered and why they were rejected or the basis for the determination to remove students from the regular educational environment.

OSEP finds that MDE has not ensured that in Agency B, special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. OSEP finds that MDE is not enforcing its own standard for ensuring that placement determinations be made based on the individual needs of students.

REQUIRED CORRECTIVE ACTIONS: OSEP requires MDE to monitor Agency B within three months of the receipt of this letter to ensure that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily and that the determination to remove a child from the regular education environment is based on an individual determination. MDE must send a copy of the monitoring findings to OSEP, including required corrective actions.

Federal Requirement: State Complaint Procedures §300.660

[Adoption of State Complaint Procedures: Filing Complaints with the SEA]

Background: In the March 1995 Report, OSEP found that MDE's written procedures did not fully inform parents and other interested individuals about the complaint provisions established at §§300.660 - 300.662. OSEP determined from a review of the state guidelines and regulations, and the parents' rights notices for agencies visited, that parents were not informed that complaints may be filed directly with the State agency, as specified at §300.660(a)(1). The requirement of §300.660(a)(1) was not addressed in MDE's guidelines or State regulation and MDE's parents rights statement only directed the parent to contact the Intermediate School District (ISD) director of special education, or the superintendent's designee if the parent suspects a violation of a Part B requirement. In practice, parents who contacted the SEA were referred back to the ISD which is inconsistent with the right of a parent under §300.660(a)(1) to file a complaint with MDE .

As part of the corrective action plan that was included in the Report, MDE completed the following activities. In July of 1996, MDE submitted to OSEP for approval a model Parent

Rights statement, revised to inform parents and other interested parties that complaints can be filed with the State, as well as public agencies. Subsequent to OSEP approval (August 1996), MDE issued a memorandum to its public agencies informing them of the revised complaint procedures, and directed the public agencies to revise their parent rights notices. Public agencies were then required by MDE to submit documentation that the parent rights notice had been appropriately revised. The documentation (revised parent rights statement) was included as a component of each public agency's Local Educational Agency application. In addition, MDE included the revised model *Procedural Safeguards Available to Parents of Children with Disabilities* in its State Newsletter that was distributed throughout the State to over 6,000 individuals and agencies.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP noted that with the exception of Agency A, all of the public agencies visited had taken appropriate corrective actions. In Agencies B, C, D and E the parent rights statement, which MDE has directed public agencies to use as the vehicle for informing parents about the Part B complaint procedures, had been revised to include that complaints can be filed with the State, as well as public agencies. A review of the parent rights statement used by Agency A revealed that Agency A was using the same statement of rights that had been previously cited by OSEP as being incomplete/inaccurate. OSEP finds that Agency A has failed to revise its parent rights statement or adopt another procedure to inform parents that complaints can be filed directly with the State.

REQUIRED CORRECTIVE ACTIONS: OSEP requires that MDE immediately direct Agency A to revise its parent rights statement to include the appropriate information and send to OSEP verification (e.g., a copy of the revised Agency A parent rights statement) that the revisions have been completed and an assurance by Agency A that only the revised parent rights statement will be distributed.

**Federal Requirement: State Complaint Procedures §300.660
[Adoption of State Complaint Procedures: Investigate All Complaints]**

Background: In the March 1995 Report, OSEP found that MDE's written procedures did not fully inform parents and other interested individuals about the complaint provisions established at §§300.660 - 300.662. Based upon interviews with MDE officials with responsibility for complaint management, and a review of MDE/OSE's complaint management guidelines, State rules, and the model parents' rights notice, OSEP found that MDE/OSE's procedures were not sufficient to ensure that any complaint meeting the requirements of §300.662 is investigated and resolved within 60 calendar days after the complaint is filed. Interviews with MDE/OSE officials responsible for MDE's complaint management system confirmed that it was the practice of both OSE and ISDs to dismiss complaints of allegations that occurred more than 6 months prior to the request for complaint investigation. In these instances, the complainant was notified of the reason for the dismissal and of the right to appeal to a court of competent jurisdiction or the U.S. Secretary of Education. OSEP found that MDE/OSE's complaint management guidelines and state Rules prohibited the investigation of complaints of allegations that had

occurred more than six months before the receipt of the complaint and allowed for the dismissal of complaints found to be "untimely or unmerited." [R 340.1853 *General responsibilities of all agencies for processing complaints and investigation* (Rule 153.(4)).

As part of the corrective action plan that was included in the Report, MDE completed the following activities. MDE committed to revising R 340.1853 *General responsibilities of all agencies for processing complaints and investigation* (Rule 153.(4) to eliminate temporal limitations on when a complaint may be filed. Pending the revision of the Rule, on July 27, 1996 a memo of clarification was issued to all ISDs directing them to revise their complaint management process to ensure that all complaints are investigated, regardless of when the alleged violation occurred. In addition, the ISDs were directed to delete from their parent rights notices any stated limitation relative to when a complaint could be filed. On August 30, 1996 OSEP approved MDE's revised model *Procedural Safeguards Available to Parents of Children with Disabilities* that reflected that all complaints are investigated, regardless of when the alleged violation occurred. This model was then distributed to all ISDs. ISDs that did not verify that they were adopting the State model *Procedural Safeguards Available to Parents of Children with Disabilities* were required to submit an ISD parent rights statement that included the required revisions. In addition, MDE included the revised model Procedural Safeguards Available to Parents of Children with Disabilities in its State Newsletter that was distributed throughout the state to over 6,000 individuals and agencies.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP noted that with the exception of Agency A, all of the public agencies visited had taken appropriate corrective actions. In Agencies B, C, D and E the parent rights statement had been appropriately revised. Specifically, the statement that "the complaint must be filed within six months of the alleged violation or within six months of the time when you become aware of the violation" was deleted from the parent rights statements. However, the statement regarding a six month limitation on filing complaints was not deleted from the Agency A parent rights statement.

REQUIRED CORRECTIVE ACTIONS: OSEP requires that MDE immediately direct Agency A to revise its parent rights statement to include the appropriate information and send to OSEP verification (e.g., a copy of the revised Agency A parent rights statement) that the revisions have been completed and an assurance by Agency A that only the revised parent rights statement will be distributed. In addition, MDE must continue to pursue the Rules revision process to revise R 340.1853 *General responsibilities of all agencies for processing complaints and investigation* (Rule 153.(4)) to reflect no temporal limitations on when a complaint may be filed. OSEP requires that a status report, relative to the revision of R 340.1853, be submitted by MDE every sixty days. In OSEP's next monitoring visit, MDE's efforts in this area will be reviewed, including a review of MDE's Local Educational Agency Application process to ensure that MDE is only approving Local Educational Agency Applications that provide an assurance satisfactory to the State Educational Agency that the Local Education Agency has a parents rights notice that indicates that all complaints be investigated, as provided by MDE procedures.

**Federal Requirement: State Complaint Procedures §300.661
[Adoption of State Complaint Procedures: Time lines]**

Background: In the March 1995 Report, OSEP found that MDE did not fully ensure that complaints were resolved within 60 calendar days after the complaint was filed unless extended due to exceptional circumstances. As part of OSEP's pre-site documentation request, MDE was asked to submit the complaint tracking log maintained by the SEA. OSEP was unable to determine from this log when the original complaint was received, nor could OSEP determine whether the time had been extended and as a result, could not determine the number of complaints that had exceeded 60 calendar days. OSEP determined that procedures were not sufficient to ensure that complaints were resolved within 60 days of the agency's receipt of a request for an investigation or within extended time lines.

As part of the corrective action plan that was included in the Report, MDE completed the following activities. MDE revised its complaint tracking system to ensure that ISDs immediately notify MDE when a complaint is filed. The tracking system was also revised to include necessary components (e.g., when the complaint was filed by the parent) to accurately determine if the ISDs and SEA was adhering to the required sixty day time line.

OBSERVATIONS/STATUS OF COMPLIANCE: In its follow-up visit, OSEP noted that MDE had revised its tracking system so that it could accurately determine if the ISDs and SEA were adhering to the required 60 day time line or within extended time lines. A review of the complaint log indicated that in 12% of the cases MDE was not adhering to the 60 day time line or appropriately extended time line. While this reflects a significant improvement in MDE's resolution of complaints within the required time line, OSEP finds that MDE's failure to complete complaint investigations within the 60 day time line or within extended time lines remains a serious problem.

REQUIRED CORRECTIVE ACTIONS: OSEP requires that a copy of MDE's complaint tracking log be submitted to OSEP every sixty days to verify that complaints are being resolved within the sixty day time line or within extended time lines. In OSEP's next monitoring visit, MDE's efforts in this area will be reviewed, including a review of local and State data relative to MDE's compliance with the 60 day time line.