



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

NOVEMBER 29, 1993

Dr. Joseph E. Lutjeharms
Commissioner of Education
State Department of Education
Post Office Box 94987
301 Centennial Mall, South
Lincoln, Nebraska 68509

Dear Commissioner Lutjeharms:

During the week of March 29 - April 2, 1993, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Nebraska Department of Education's (NDE's) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether NDE is meeting its responsibility to ensure that the State's educational programs for children with disabilities are being administered in a manner consistent with the requirements of (1) Part B and its implementing regulations, and (2) the Education Department General Administrative Regulations (EDGAR).

We are sending you this Report, entitled "Office of Special Education Programs Final Monitoring Report: 1993 Review of Nebraska Department of Education" (Report). A copy of the draft Report will be made available to individuals who request a copy.

I want to thank you for the assistance and cooperation offered by your staff during our review. Throughout the course of the monitoring process, your staff was very responsive to OSEP's requests for information and provided access to necessary documentation which enabled OSEP staff to acquire an understanding of your various State systems to implement Part B.

OSEP would also like to acknowledge the hard work and diligence of NDE staff in the development and implementation of the corrective actions required by NDE's previous monitoring Report from OSEP. In addition, NDE has made extensive revisions to its regulations, monitoring, and all systems for determining compliance with Part B requirements through the review and approval of NDE's 1992-94 State plan. These revisions have resulted in a more effective application of both State and Federal regulations in the schools throughout Nebraska.

400 MARYLAND AVE., S.W. WASHINGTON, D.C.

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

Page 2 - Commissioner Joseph E. Lutjeharms

It is important to recognize, however, that this Report primarily addresses those aspects of Nebraska's special education system that OSEP reviewed and found to be inconsistent with Federal requirements. Although the Report does not discuss the numerous aspects of the State's special education system that were consistent with Federal requirements, several commendations are noted in the introduction to the Report.

The Report describes OSEP's findings with respect to the policies and procedures that NDE has implemented in fulfilling its general supervisory responsibilities, in accordance with the legal requirements established by Part B and EDGAR. The findings are organized into five areas of responsibility, as shown in the table of contents. Appendix A of the Report provides a listing of the public agencies visited by OSEP. Appendix B delineates the actions that NDE must take to address OSEP's findings regarding those five areas of responsibility, and to ensure compliance with the requirements of Part B and EDGAR through the exercise of its systems for general supervision. Appendix C summarizes OSEP's response to additional documentation submitted by NDE subsequent to receipt of the Draft Report. It provides an overview of NDE's response to the Draft Report where NDE disagreed with OSEP findings, and any post-response report modifications.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of the actions delineated in Appendix B. We look forward to working with your staff throughout the development and implementation of the corrective actions included in the Final Report. Please let me know if we can be of assistance.

Thank you for your continued efforts toward the goal of achieving better educational programs for children with disabilities in Nebraska.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Attachment: OSEP Final Report

cc: Mr. Gary Sherman

OFFICE OF SPECIAL EDUCATION PROGRAMS
FINAL MONITORING REPORT:

1993 REVIEW OF THE NEBRASKA DEPARTMENT OF EDUCATION'S
IMPLEMENTATION OF PART B OF
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

NOVEMBER 1993

TABLE OF CONTENTS

PREFACE	iii
INTRODUCTION	v
DESCRIPTION OF SPECIAL EDUCATION SYSTEM	vii
COMMENDATIONS	ix
I. STATE EDUCATIONAL AGENCY MONITORING	1
II. STATE EDUCATIONAL AGENCY REVIEW AND APPROVAL OF LOCAL EDUCATIONAL AGENCY APPLICATIONS	3
III. DUE PROCESS PROCEDURES AND PROCEDURAL SAFEGUARDS.	8
IV. FREE APPROPRIATE PUBLIC EDUCATION	11
V. PROTECTION IN EVALUATION PROCEDURES	14
APPENDIX A: PUBLIC AGENCIES VISITED BY OSEP	16
APPENDIX B: TABLE OF CORRECTIVE ACTIONS	17
APPENDIX C: SUMMARY OF OSEP'S ANALYSIS OF NDE'S RESPONSE TO DRAFT MONITORING REPORT	20

PREFACE

This Report presents the results of the on-site review of the Nebraska Department of Education's (NDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B) and the Education Department General Administrative Regulations (EDGAR), conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education, during the week of March 29 - April 2, 1993. The purpose of this review was to determine whether NDE is meeting its responsibility to ensure that the State's educational programs for children with disabilities are being administered in a manner consistent with the requirements of Part B, its implementing regulations, and the requirements of EDGAR. All regulatory citations in this Report refer to sections of Title 34 of the Code of Federal Regulations, unless otherwise indicated.

In reaching compliance determinations for the purpose of this Report, OSEP applied the standards established by the Part B regulations as they were in effect on July 1, 1991. The Secretary published amended Part B regulations in the September 29, 1992 Federal Register. In some cases, regulatory section numbers were changed in the amended regulations, but neither the wording nor the substantive requirements of previously existing requirements was affected. In this Report, OSEP has begun using the renumbered citations for previously existing requirements. In those cases in which requirements were, prior to publication on September 29, 1992 of the amended regulations, set forth in the Part B statute but not in regulation, OSEP has continued to use the statutory citation. (For example, 20 U.S.C. '1415(d)(4) requires that public agencies make findings and decisions in due process hearings available to the general public after deleting all personally-identifiable information. Although that requirement has now been added to the regulations at 34 CFR '300.508(a)(5)(ii), OSEP has used the citation of 20 USC '1415(d)(4) in this Report.)

The Report contains an introduction, commendations, five sections, and three appendices. The introduction briefly describes OSEP's review process and includes a description of Nebraska's structure for providing special education programs. Each of the five sections of the Report sets forth: (1) a statement of the legal responsibilities which NDE is required to fulfill in order to ensure that public agencies meet the

requirements of Part B and EDGAR; and (2) OSEP's findings concerning NDE's implementation of its responsibilities.

The Table of Corrective Actions at Appendix B delineates the actions to be carried out by NDE in order to ensure correction of areas of noncompliance identified in the Report. The table includes each area of noncompliance and the required corrective action. NDE will have 15 days from receipt of the final Report to request, and justify, the revision of any required activities or timelines in Appendix B.

With respect to the identified areas of noncompliance in Appendix B, NDE must take steps to come into immediate compliance with the applicable requirements under Part B and EDGAR, including (1) discontinuing the noncompliant practice; and (2) informing all agencies, if necessary, of the procedures required to comply with Part B. In addition, if State regulations, statutes, or administrative policies are inconsistent with Part B requirements, NDE also must take steps to ensure that the affected documents are appropriately revised within the specified timelines.

Appendix C summarizes OSEP's response to additional documentation submitted by NDE subsequent to receipt of the Draft Report. It provides an overview of NDE's response to the Draft Report where NDE disagreed with OSEP findings, and any post-response report modifications.

INTRODUCTION

In order to be eligible to receive Part B funds, NDE is required to meet the eligibility requirements of Section 612 of Part B (20 USC '1412(6)), which provides:

The State educational agency shall be responsible for ensuring that the requirements of this part are carried out and that each educational program for children with disabilities within the State, including each program administered by any other public agency, is under the general supervision of persons responsible for educational programs for children with disabilities in the State educational agency and meets the educational standards of the State educational agency. [See '300.600(a).]

In addition to NDE's general supervisory responsibility, NDE is required to carry out certain activities in order to ensure that public agencies carry out their specific responsibilities related to the Part B and relevant EDGAR requirements, including those at '300.121 (free appropriate public education), '300.128 (child find), ''300.340-300.350 (individualized education programs (IEP)), ''300.500-300.515 (procedural safeguards), ''300.530-300.543 (protection in evaluation procedures), ''300.550-300.556 (least restrictive environment (LRE)), and ''300.560-300.575 (confidentiality of information). These activities are to:

- (1) include in its annual program plan, a copy of each State statute, policy and standard that ensures the specified requirements are met (See ''300.121-300.154);
- (2) require public agencies to establish and implement procedures that meet specific requirements, including those identified above (See ''300.220, 300.341, 300.501, 300.530, and 300.550);
- (3) monitor to ensure that public agencies implement all necessary requirements, including those identified above (See ''80.40, 300.402, 300.556, and 20 USC '1232d(b)(3)); and
- (4) require that applications for Part B funds include

procedures to ensure that the public agency's procedures are consistent with the requirements of '300.128 (child find), '300.226 (parent involvement), '300.340-300.356 (IEP), ''300.550-300.553 (LRE), ''300.560-300.575 (confidentiality of information) (See ''76.770, 76.400 and 300.220-300.240).

Information gathered by OSEP as part of its monitoring review demonstrates that NDE did not, in all instances, establish and exercise its general supervisory authority in a manner that fully ensures that all public agencies in the State comply with the requirements of Part B and EDGAR. Where findings are based, in part, on data collected from student records and local staff interviews, OSEP does not conclude that the identified instances of noncompliance establish that similar problems are present in all public agencies in Nebraska. However, because NDE's systems for ensuring compliance have not been fully effective for the reasons cited in this Report, OSEP requires NDE to undertake certain corrective actions to improve its systems for ensuring Statewide compliance with EDGAR and Part B.

OSEP REVIEW PROCESS: Beginning in January of 1993, the OSEP team of Ms. Sheila Friedman, Mr. Charles Laster, Mr. Douglas Little, and Dr. Jane Williams reviewed the Nebraska State plan as well as public agencies' policies, procedures, plans, standards, and other relevant documents relating to the implementation of Part B. On February 22, 1993, a public meeting was conducted in Lincoln, and on February 23, a teleconference was conducted to include five sites across the State. These meetings were held in order to solicit comments from parents, teachers, administrators and other concerned citizens regarding NDE's compliance with Part B and EDGAR. During the week of March 29 - April 2, 1993, the OSEP team of Dr. Williams, and Mr. Little made site visits to four school systems, and Mr. Laster and Ms. Friedman visited a State operated facility. The teams reviewed student records, and interviewed public agency personnel, and the State's systems for ensuring public agencies' compliance with Part B and EDGAR were reviewed across all agencies. During the time of the site visits, the Team Leaders, Ms. Friedman and Mr. Laster, remained in the State capital for the remainder of the week, interviewing State agency staff who are involved in the administration and supervision of educational programs for children with disabilities. Upon returning to Washington, D.C., OSEP completed its analysis of the information collected and prepared its draft Report. The draft Report was issued on September 7, 1993. NDE

submitted a response to the draft Report on October 6, 1993. The draft Report has been subsequently revised as appropriate in response to additional documentation submitted by NDE, to comprise this final Report.

DESCRIPTION OF NEBRASKA'S SPECIAL EDUCATION SYSTEM: The NDE's central administrative office, under the direction of Mr. Gary Sherman, is located in Lincoln, and is staffed with 18 professional and five support personnel. There are two regional offices in the State, one located in Omaha, with two NDE staff, and one in Scottsbluff, with one professional staff person.

There are approximately 34,172 children with disabilities from birth through the age of 21 served by 750 public agencies in Nebraska. Due to the predominantly rural nature of the State, NDE has established 17 Educational Service Units (ESUs), that consist of geographic groupings of the public agencies, and are responsible for providing supplementary educational services in all areas of education. The ESUs were established by State statute for the purpose of "more effective utilization of resources to support the public school systems of the State." NDE staff conduct the majority of their technical assistance and compliance efforts through the ESU structure.

NDE has initiated major reforms throughout the State in the last five years, completely restructuring its systems for monitoring (now known as program standards review) and provision of technical assistance. NDE characterizes its relationship with the public agencies and ESUs as a partnership, where all entities work cooperatively to establish programs and services designed to ensure quality educational opportunities for children with disabilities.

NDE's program standards review is an ongoing five year process for monitoring each public agency for compliance with Part B requirements.¹ This multi-stage process begins in the first year of the cycle (step one) with the identification of areas to be reviewed statewide (the program review standards) that have been determined by the Special Education Advisory Council to be of "significant importance for statewide review." These standards will be reviewed across all public agencies during the course of the five year cycle. During step two, the policies, procedures and forms from the public agencies to be monitored are reviewed to determine how and when they are implemented and who is responsible for implementation. If this information cannot be

¹ OSEP notes that 1992-93 is the first year of full implementation of the revised program standards review process.

determined from a review of the information provided by the public agency, an interview for clarification is scheduled with representatives from the public agency during step three. Also during this step, a review of findings from complaints, due process hearings, and previous program standards reviews is conducted. During step four, NDE works cooperatively with the public agency to develop a memorandum of understanding (MOU) regarding the upcoming onsite review. The MOU specifies the date of the review, the specific standards to be reviewed, the participants in the review, and the sampling rate to be used. The method of selection of the individual standards to be monitored during step four is called the focus standards selection process. This process occurs throughout steps one through four. The standards that comprise the review for an individual public agency are identified through the policies and procedures analysis, interviews, previous letters of findings, complaints, appeals and other reports submitted to NDE, in addition to those standards specified by the Special Education Advisory Committee. Subsequent to the development of the MOU, the onsite review is conducted, and a report is issued to the public agency. The public agency must respond within 45 days with a plan for resolution, which must include the specific actions that the public agency will take and a timeline to correct the deficiencies. Step five encompasses the entire process for correction of all identified deficiencies, including NDE's procedures for assessment of penalties for public agencies which do not adhere to the timelines set forth in the plan.

NDE's utilizes a one-tier system for due process hearings, in which a written request for a hearing must be filed with NDE. Hearings are assigned by the Legal Counsel's Office to a hearing officer from a list of hearing officers maintained by NDE. Assignments are based on geography, availability, and requirements for impartiality. Either party to a hearing may then appeal the decision of the hearing officer by filing a civil action in a State or Federal court.

COMMENDATIONS

The focus of OSEP's compliance monitoring is the determination of the extent to which a State is providing programs to children with disabilities in compliance with the requirements of Part B and EDGAR, and the focus of this Report is the specification of areas in which NDE's systems have not been fully effective in ensuring compliance with those requirements. OSEP would, however, like to commend NDE for the following initiatives that demonstrate NDE's leadership to ensure quality programs and successful outcomes for students with disabilities:

1. The Nebraska Diagnostic Resource Center (NDRC), located in Cozad, is administered through the Special Education Office of NDE. NDRC provides assistance and support to public agencies in the areas of assessment, materials/resources and inservice training. The evaluation services available to individual public agencies include provision of a full interdisciplinary educational evaluation, including an onsite intake, exit staffing, and follow-ups as appropriate. NDRC also provides specialized consultation services to public agencies in the areas of education of students with head injuries, vocational special needs, community living, early childhood, and children with behavioral and emotional problems.

2. The Nebraska Special Education Teacher Support System's Teacher Support Cadre (Cadre) serves as a valuable resource for teachers of children with disabilities in Nebraska. Cadre personnel provide instructional support and assistance primarily to teachers of children with sensory impairments and other low incidence populations throughout the State. This unique approach to technical assistance provides direct support to the many rural areas in the State with low-incidence populations. Public agencies may request individuals from the Cadre to provide onsite consultation in the selection of instructional strategies, modification of curriculum materials, development of behavior management programs, and provision of training for teachers, paraeducators and parents. At the time of OSEP's visit, NDE projected that the Cadre would provide consultation and inservice training to 58 public agencies with 1,042 educators during the 1992-93 school year.

3. The State of Nebraska was awarded a Federal Systems Change

Grant in 1991 to assist public agencies in facilitating the transition from school to adult life for youth with disabilities. The major component of the grant is to provide subgrants to individual public agencies to employ rehabilitation counselors. NDE funded nine sites in 1991 and will fund an additional nine sites in 1993. The counselors provide direct consultative services to individual students, and train and consult with teachers and other service providers in public agencies throughout the ESUs. A Special Services Endorsement Program for school rehabilitative counselors has been developed in cooperation with the University of Nebraska at Omaha. The courses are attended by teachers, parents and administrators throughout the State through a satellite broadcast system. In addition, a **Transition Advisory Committee** was formulated, consisting of parents, teachers, administrators, employers, and representatives from other agencies, such as the Department of Labor, Department of Health, Social Security, and the Department of Social Services. The Committee coordinates the efforts of these organizations in providing transition services to students with disabilities in Nebraska, gathers materials, sets priorities, and assists public agencies in developing linkages and cooperative agreements in the communities.

4. **Parents Encouraging Parents** is an annual conference, begun in 1985, for parents and foster parents of children with disabilities, and is attended by approximately 100 individuals. Participants are informed of their due process rights, and State and Federal legislation which impacts on special education, and are instructed in effective methods of participation in the IEP process. The conference provides parents of children with disabilities with an opportunity to share ideas and information on parenting and educating a child with a disability.

5. Information on assistive technology devices and services is available to consumers through the **Nebraska Assistive Technology Project**. The geography of Nebraska that includes both expansive rural areas as well as urban settings was a major consideration in developing the goals and objectives of this project. The project utilizes a toll-free number to provide information on the availability of assistive technology, the costs and possible sources of funding. A peer support network of volunteers was established to put individuals with disabilities and their family members in touch with each other. Individuals can benefit from their experience in purchasing, using, customizing, maintaining

and repairing technology devices by talking with other technology users. Workshops and training sessions that teach participants about assistive technology are among the project activities conducted throughout the State.

I. STATE EDUCATIONAL AGENCY MONITORING

NDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs. 20 USC '1232d(b)(3)(A).

FINDINGS:

1. OSEP finds that, in some cases, NDE did not adopt and utilize effective methods to identify areas of noncompliance of public agencies providing services to children with disabilities, as demonstrated by the following:

OSEP finds that the procedures that were in effect at the time of OSEP's visit did not include a method to determine compliance regarding the following requirements:²

**TABLE I
NO METHOD TO DETERMINE COMPLIANCE**

Federal Requirement	Description
' 300.303	Functioning of hearing aids
' 300.305	Program options
' 300.307	Physical education
' 300.348(c)	Private school placements (responsibility for compliance with Part B)
' 300.503	Independent evaluations
' 300.504(c)	Procedures when parents refuse consent
' 300.504(d)	Consent not required as condition of benefit
' 300.531	Preplacement evaluation
' 300.533(b)	Placement procedures
' 300.541	Criteria for determining existence of SLD
' 300.550(a)	Least restrictive environment - General
' 300.562(c)	Parents presumed authority
' 300.567(a)	Amendment of records at parents request
' ' 76.652 - 76.662	Participation of children enrolled in private schools
' 76.683	Health or safety standards

² At the time of OSEP's visit to the SEA, NDE staff was in the process of revising its program review standards to include the individual content items included in the table in this section of the Report. In its response to the draft Report, NDE submitted revised indicators to be included in its program standards review procedures that address each of these requirements.

Federal Requirement	Description
'76.731	Records related to compliance

2. OSEP reviewed NDE's monitoring materials and procedures and determined that NDE's system does not, in all instances, collect sufficient information to ensure that all public agencies are meeting the following requirement: **'300.501 - Establishment and implementation of procedural safeguards** - NDE's monitoring standard at 004.08A requires each public agency to develop and adopt policies and procedures for all special education programs governing the following areas: identification, evaluation and verification, individualized education programs, placement in the least restrictive environment, confidentiality, procedural safeguards, comprehensive system of personnel development, transportation and surrogate parents. The standard and concomitant indicators for determining compliance are not specific enough to ensure compliance with each of the procedural safeguards at ''300.500 - 300.514 and 20 USC '1415(e)(4)(B). As a result, public agencies in the State did not establish all of the procedural safeguards at ''300.500-300.514 and 20 USC '1415(e)(4)(B). (See Section III on page 8 of this Report.)

3. OSEP has determined that NDE has not implemented a method to ensure that youth with disabilities who are incarcerated receive a free appropriate public education (FAPE) in accordance with an IEP. OSEP reviewed the Policies and Procedures Manual, Individuals with Disabilities Education Act, the document governing the administration of special education programs in the Department of Corrections (DOC) facilities. This document indicated that DOC is the agency in Nebraska responsible for the identification, evaluation, placement and the provision of special education and related services to youth with disabilities incarcerated in DOC facilities. OSEP also interviewed the DOC administrator responsible for all educational programs in DOC facilities, including special education programs. The DOC administrator informed OSEP that although there were approximately 240 school-aged youth between the ages of 16 and 22 incarcerated in the five adult correctional facilities operated by the DOC in Nebraska at the time of OSEP's visit, only one individual received any special education services.

OSEP also interviewed an NDE administrator responsible for

ensuring that all educational programs for children and youth with disabilities, including individuals with disabilities under the age of 22 who are committed to DOC facilities, are under NDE's general supervision. While NDE acknowledges its responsibility to ensure compliance regarding special education programs in DOC facilities, it informed OSEP that monitoring procedures for special education programs in DOC facilities have been developed but not implemented.

II. STATE EDUCATIONAL AGENCY REVIEW AND APPROVAL OF LOCAL EDUCATIONAL AGENCY APPLICATIONS

- A. Federal regulations establish the requirements that must be satisfied as a condition for distributing Part B funds to LEAs. ''300.180-300.240. NDE is responsible for developing procedures that applicants must follow when submitting applications for Part B funds, for providing assistance in applying for funds, and for approving applications that meet Federal requirements and for disapproving applications that do not meet Federal requirements. ''76.770, 76.400(b) and (d) and 76.401.**

Description of NDE's LEA Application process: NDE requires applicants for Part B funds to submit an Individuals with Disabilities Education Act Part B Application (Special Education Plan and Budget) annually. This information consists of child count data, assurances, and budgetary information. Prior to this school year, public agencies signed a Statement of Assurance indicating that Part B policies and procedures were being implemented. In October of 1992, NDE implemented a new process requiring each public agency to submit current policies and procedures for review and approval by NDE. At a minimum, these policies and procedures were to include the information identified in the NDE's Policies/Procedures Technical Assistance Document. All public agencies' special education policies and procedures were reviewed by NDE Special Education Office staff using NDE's Policies and Procedures Checklist. In succeeding years, public agencies will submit an assurance with the Part B application indicating that its most current policies, procedures, and forms are on file at NDE. Public agencies will

furnish copies of policies and procedures with the application only if different from the previous year.

FINDINGS:

1. OSEP has determined that NDE has approved LEA applications that do not meet all Federal requirements. OSEP reviewed assurances, policies and procedures, and other information from each of the public agencies that were visited to determine whether these documents were consistent with all Part B and EDGAR requirements. Federal requirements not addressed, incompletely addressed, or incorrectly addressed in these LEA applications are described in Table II³. Areas in the chart that are identified with an "A" indicate that the public agency did not include this requirement in the LEA application. An "I" on the chart indicates that the information provided was either incomplete or incorrect. An explanation is provided for each area so identified.

TABLE II: LEA APPLICATION: CONTENT OF PUBLIC AGENCY APPLICATIONS⁴

³Public agency E is funded under the Chapter 1 State Operated or State Supported Programs for Handicapped Children program. This agency is required to submit an application based on the requirements set forth in Chapter 1 (See Part 302.31 - Chapter 1 State Operated or Supported Programs for Handicapped Children program). Public agency E is therefore not required to submit a Part B application. OSEP reviewed the Chapter 1 application submitted by Public agency E and determined that the content included in this document is fully consistent with the Chapter 1 requirements.

⁴ During the 1992-93 school year, NDE identified certain required Part B policies and procedures that were either not addressed or were incompletely addressed in the LEA applications from public agencies A and C. Because NDE has already identified those policies and procedures from public agencies A and C that were inconsistent with Federal requirements, OSEP's analysis of the policies and procedures from these two agencies do not include those requirements that were already identified by NDE as deficient.

Key: A = ABSENT I = INCOMPLETE or INCONSISTENT				
Agencies				
Requirement	A	B	C	D
'300.221 Confidentiality				
300.562(c) Parent presumed authority	A			
300.565 Types & location of records	A			
300.566(a) Fees	I			
300.566(b) Fee/Search & retrieval	A			
300.571(c) Parent refuses consent	I	I	I	I
'300.224 CSPD: Procedures: Implementation & Use of State system	I	I	I	I
'300.227(a) LRE: Procedures				
300.550(b)(1) Educated with nondisabled		I		
300.551(b)(1) Alternative placement	I			
300.551(b)(2) Supplementary aids/services	I		I	I
300.552(a)(1) Placement determined annually	A			
300.552(a)(2) Placement based on IEP	A			
300.552(a)(3) Placement close to home	I		I	I
300.552(b) Placements available for IEP	A			
300.552(c) In school normally attend	I		I	I
'300.235 IEP: Procedures				
300.348(c) Public agency responsible	A			
300.350 IEP accountability	A			
'300.237 Procedural Safeguards: Assurance	I	I	I	I
'300.240 Other requirements				
300.530 Protection in Evaluation Procedures ⁵				

⁵ Although not required by Federal regulations, NDE requires the public agencies in the State to submit policies and procedures with their LEA applications which address the

Key: A = ABSENT I = INCOMPLETE or INCONSISTENT				
Agencies				
Requirement	A	B	C	D
300.531 Preplacement Evaluation	A	A	A	A
300.532(e) Evaluation by MDT or group	A			
300.533(a)(3) Placement decision by group	I		A	A
300.533(a)(4) Placement decisions/LRE	A			A
300.534(b) Reevaluation/every 3 years or more	I		I	A

'300.221 [Confidentiality]

'300.566(a) [Fees] - The LEA application from public agency A states that the public agency reserves the right to charge for copies. The application does not explain that the public agency may charge a fee only if the fee does not effectively prevent parents from exercising their right to inspect and review records.

'300.571(c) [Procedures when no consent] - Public agencies A, B, C, and D neither described the local procedures for implementation of this requirement, nor explained that the public agency has implemented the State's Procedures. This regulation states that the SEA shall include policies and procedures in its State plan that are used in the event that a parent refuses to provide consent to disclose personally identifiable information to anyone other than officials of participating agencies collecting or using this information. While the SEA is responsible for establishing such policies and procedures and including the policies and procedures in its State plan, public agencies are responsible for implementing those procedures. While NDE's State plan explains that matters related to refusal

protection in evaluation requirements at '300.530 - 300.534. OSEP's review of these procedures indicated that certain of these requirements were set forth incompletely, incorrectly, or were absent from the policies and procedures submitted with these Part B applications.

of consent may be resolved through a hearing, OSEP found that the LEA applications from these public agencies did not contain any information to address this requirement.

'300.224 [Comprehensive System of Personnel Development (CSPD)]

The LEA applications from public agencies A, B, C and D contain general assurances regarding the CSPD. This information does not include specific procedures developed by each public agency for the implementation and use of CSPD established by the SEA, as required by this regulation. OSEP found that the standard for CSPD contained in NDE's Policies and Procedures Checklist (the document used by NDE to review policies and procedures) requires LEAs to provide an assurance and does not require public agencies to develop procedures as set forth at '300.224. NDE's checklist states only that the public agency will implement and use the CSPD as established under 92 NAC 51-010.06, NDE's State rule.

'300.227 [Least Restrictive Environment]

'300.550(b)(1) [Educated with nondisabled] - The policies and procedures from public agency B state, "to the maximum extent possible children with disabilities are educated with children who are nondisabled." Part B requires that, to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled.

'300.551(b)(1) [Alternative placements]

The policies and procedures from public agency A set forth a continuum of placement options that does not include the option of "instruction in regular classes," which is one of the alternative placements required by this Federal regulation.

'300.551(b)(2) [Supplementary aids/services]; '300.552(a)(2) [Placement based on IEP] '300.552(a)(3) [Placement close to home]; and '300.552(c) [School normally attend] - The policies and procedures from public agencies A, C and D state, "unless a student is moderate, severely/profoundly disabled, the student should be served in the building special resource room with the use of supplementary aides and services before considering placement in a special education program in another attendance area or outside the school district." This procedure excludes students with moderate and severe/profound disabilities from having access to the full range of continuum options specifically, regular class placement. The procedure does not

delineate which of the alternative placement options are available for consideration for this population.

'300.237 [Procedural Safeguards] - NDE's Statement of Assurances for a Free Appropriate Public Education includes an assurance statement that indicates that all procedural safeguards, policies, and programs administered within the public agency are in accordance with NDE Special Education Rules. OSEP has determined that although they have submitted this assurance to NDE, public agencies A, B, C and D have not met the requirement of '300.237 because these agencies have not completely established all of the procedural safeguards of ''300.500-300.514 and 20 USC '1415(e)(4)(B) as presented on page 9 in Section III of this Report.

'300.240 [Other Requirements] -

'300.530 [Protection in Evaluation Procedures]

'300.533(a)(3) [Placement by a group] - The policies and procedures in public agency A state that "the director of special education may amend or reject proposals if, in the director's opinion they are contrary to law or are otherwise inappropriate." This procedure is inconsistent with the Federal regulation, which requires that the placement decision is made by "a group of persons, including those knowledgeable about the child, the meaning of the evaluation data, and the placement options."

'300.534(b) [Reevaluation]

The policies and procedures from public agencies A and C state that a reevaluation will be conducted "if the child's parent or teacher requests an evaluation." The Federal regulation specifies that an evaluation is conducted "every three years, or more frequently if conditions warrant, or, if the child's parent or teacher requests an evaluation."

2. NDE's LEA application system permitted approval of applications even though NDE recognized that LEA applications did not meet all LEA application requirements. NDE notified public agencies A and C by memorandum dated March 1993 that the LEA applications from these agencies had been approved and that the agencies should submit revised policies and procedures to meet minimum standards on or before June 1, 1993. However, NDE did not have procedures to ensure that applications are amended to ensure compliance by the effective date of the application.

- B. NDE is responsible for following hearing procedures before it disapproves an application. These procedures must meet the requirements as set forth in '76.401.**

FINDING:

OSEP has determined that NDE has not established hearing procedures for disapproval of LEA applications that are consistent with the timelines set forth at '76.401.

NDE submitted Rule 61 - Regulations for Practice and Procedures Before the State Board of Education in Contested cases and For Declaratory Rulings in response to OSEP's request for documentation of NDE's process for hearing procedures. As a result of interviews with two NDE administrators responsible for ensuring that NDE's LEA application system is fully consistent with Federal regulations, OSEP found that this document governs contested case hearings and appeal procedures before the Nebraska State Board of Education and does not apply to hearings for disapproval of LEA applications. Consequently, it does not contain the specific requirements as set forth in '76.401 - "Disapproval of an Application - Opportunity For a Hearing," with regard to hearing procedures and established timelines.

These administrators also cited NDE's State Plan that references NDE's Rules at 92 NAC 51-004.09F and 92 NAC 51-012.01C8 as additional documentation describing NDE's process for hearing procedures. These Rules, however, do not contain the timelines specified at '76.401.

III. DUE PROCESS PROCEDURES AND PROCEDURAL SAFEGUARDS

NDE is required to exercise its general supervisory responsibility to ensure that due process procedures and other procedural safeguards are available to parents and children with disabilities ('300.501). Sections 300.500 through 300.514 and 20 USC '1415(e)(4)(B) delineate the due process and procedural safeguard requirements that each public agency must meet. In addition to NDE's general responsibilities under '300.501, NDE is required to fulfill specific responsibilities in order to ensure that public agencies comply with ''300.500-300.514 and 20 USC '1415(e)(4)(B).

- A. Public agencies are responsible for establishing and implementing procedural safeguards which meet the requirements of ''300.500-300.514 and 20 USC '1415(e)(4)(B). ('300.501.)

FINDING:

OSEP finds that NDE did not fully meet its responsibility under '300.501 to ensure that public agencies establish and implement procedural safeguards as required by '300.501.

NDE requires each public agency in the State to adopt policies and procedures that address the procedural safeguards requirements of ''300.500-300.514 and 20 USC '1415(e)(4)(B). OSEP's review of NDE's monitoring procedures indicated that NDE's procedure for ensuring the establishment and implementation of the procedural safeguards that meet the requirements of ''300.500-300.514 and 20 USC '1415(e)(4)(B) was incomplete. (See Section I on page 2 of this Report.) Further, OSEP's review of the policies and procedures from these public agencies indicated that these public agencies did not correctly establish certain procedural safeguards. Procedural safeguards which OSEP determined had been incorrectly established are indicated in Table III. An explanation is provided for each area so designated.

TABLE III
ANALYSIS OF DOCUMENTS USED BY PUBLIC AGENCIES TO ESTABLISH
PROCEDURAL SAFEGUARDS

REQUIREMENT	ESTABLISHED POLICIES AND PROCEDURES
<p>300.503(a) - The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child.</p>	<p>The policies and procedures from agency A included a procedure which established a timeline for requesting an independent assessment to be no more than six months from the date of the public agency's assessment. Under Part B, a six month time limit during which a parent may request an IEE is not permissible.</p>
	<p>The policies and procedures from agencies B, C and D state that the children must be currently receiving special education services in order to qualify for an IEE. The Federal regulations do not restrict the ability of parents to request an IEE to those parents whose children are currently receiving special education services.</p>
<p>300.503(b) - A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under '300.506 to show that its evaluation is appropriate.</p>	<p>The policies and procedures from public agencies C and D state that the public agency is relieved of any financial responsibility regarding an IEE if the parents obtained an IEE without prior notice to the public agency. These policies and procedures are inconsistent with '300.503(b), which does not permit a public agency to condition public payment for an IEE on the receipt of prior notice from the parent.</p>

REQUIREMENT	ESTABLISHED POLICIES AND PROCEDURES
<p>300.504(a) - Written notice that meets the requirements of '300.505 must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p>	<p>The policies and procedures from agencies A, B, C, and D only address the provision of notice when the public agency proposes an evaluation. The Federal regulation requires that <u>each time</u> the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p>

- B. Pursuant to '300.504(a), prior written notice, which meets the content requirements at '300.505, must be given to parents a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education.**

FINDINGS:

OSEP finds that NDE did not fully meet its responsibility under '300.504(a) to ensure that public agencies provide notice of procedural safeguards at the required times. OSEP interviewed administrators responsible for special education programs in each of the public agencies it visited. The administrators were asked if notice was provided to parents of children with disabilities for each of the specific instances as required by '300.504(a).

1. During the 1989-90 school year, when public agencies A, C and E were monitored, NDE conducted focused monitoring activities, designed to collect data and make compliance determinations in one specific area. Since NDE monitored for compliance only in the area of IEP requirements, NDE did not make any findings

regarding the provision of notice required by '300.504(a) in public agencies A, C and E, although OSEP found such deficiencies in those agencies.

2. Special education administrators from public agencies A and E stated that parents are not given prior written notice when the public agency proposes a change in the IEP, a change in placement, a reevaluation, or for refusal of these actions. In addition, the administrator from public agency A stated that parents are not given prior written notice in instances when the agency or the parent refuses the initial placement.

3. An administrator from public agency C stated parents are not given a full explanation of procedural safeguards when the public agency proposes a reevaluation or when the public agency refuses preplacement evaluation, initial placement, a change in an IEP, a change of placement or a reevaluation. The administrator from public agency E stated that parents are given a full explanation of procedural safeguards only on initial placement, and not for the proposal or refusal of any other special education action.

IV. FREE APPROPRIATE PUBLIC EDUCATION

NDE is responsible for ensuring that a free appropriate public education is available to all children with disabilities within the State. '300.300 In part, "free appropriate public education" means special education and related services which are provided in conformance with an IEP. ''300.8(d) and 300.350. "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities. '300.17(a)(1). "Related services" means "transportation and such developmental, corrective, or supportive services as are required to assist a child [with disabilities] to benefit from special education." Related services include speech pathology and audiology, psychological services, and physical and occupational therapy. '300.16(a).

FINDING:

1. OSEP finds that NDE did not fully meet its responsibility under '300.300 to ensure that all public agencies consider the

need for extended school year (ESY) services and make those services available as a component of FAPE, as necessary to ensure that a child with a disability receives FAPE.

During the 1989-90 and 1990-91 school years, NDE conducted focused monitoring activities, designed to collect data and make compliance determinations in specific areas. During the 1989-90 school year, when public agency C was monitored, NDE only monitored for compliance with IEP requirements. During the 1990-91 school year, when NDE monitored public agency D, NDE only monitored for compliance with the composition of, and the procedures required for, multidisciplinary teams. Consequently, NDE did not make any findings regarding the availability of ESY services in public agencies C and D, although OSEP found such deficiencies in those agencies.

In interviews with public agency personnel, OSEP explained that ESY services are those services available to students with disabilities during the summer in conformance with the student's IEP as part of FAPE, and that ESY services are not the services available to all students as part of summer school or on a tuition-paying basis. As discussed below, administrators responsible for the provision of special education and teachers from public agencies C and D, who were involved in the IEP development and placement determinations, informed OSEP that these public agencies did not consider the need for ESY services and/or make those services available to meet the unique needs of an individual child with a disability as a component of FAPE. Administrators in both public agencies informed OSEP that regular summer school on a tuition basis or a summer camp were the only services available to students regardless of educational need.

a. In public agency C, one administrator, who is responsible for the provision of special education services in the public agency, informed OSEP that the ESY program available for students with disabilities consisted only of occupational therapy and speech therapy, regardless of individual student need. Another administrator in public agency C, who was responsible for the administration of special education programs, told OSEP that ESY services for students with disabilities consisted of a "summer school" only for preschool-aged students. According to this administrator, the need for ESY services is neither considered by the IEP committee, nor documented on a student's IEP. One of the two teachers who participated in the development of IEPs, when asked to describe the ESY services available to students with

disabilities in public agency C, corroborated the administrator's information, stating that "there is an IEP-based preschool program." The other teacher interviewed in public agency C, when asked about the availability of ESY services, told OSEP that "there is no summer program" available in the public agency for students with disabilities.

b. In public agency D, one administrator who was responsible for the administration of special education programs told OSEP that students with disabilities may attend a six week camp in a neighboring town during the summer, but the administrator told OSEP that the public agency has not utilized the program. The administrator indicated that the camp is the only program available during the summer for students with disabilities. A teacher who participated in the development of IEPs and placement determinations, interviewed by OSEP stated that the camp is the "only program available" to students during the summer.

V. PROTECTION IN EVALUATION PROCEDURES

NDE is responsible for ensuring that public agencies conduct an evaluation that meets the requirements of '300.532 for each child with a disability, every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation. '300.534(b).

FINDING:

OSEP finds that NDE did not fully meet its responsibility to ensure that public agencies conduct an evaluation that meets the requirements of '300.532 for each child with disability, every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation. '300.534(b).

During the 1989-90 school year, when public agencies A and C were monitored, NDE conducted focused monitoring activities, designed to collect data and make compliance determinations in one specific area. Since NDE monitored for compliance only in the area of IEP requirements, NDE did not make any findings regarding the protection in evaluation procedures in public agencies A and C, although OSEP found such deficiencies in those agencies.

OSEP requested, via telephone prior to the site visit, that the agency-wide special education administrator for each public agency scheduled to be visited provide a list of the names and the dates of the most recent evaluation for all students with disabilities in the public agency. OSEP reviewed each list and found that there are 94 students in public agency A and 6 students in public agency C whose three year reevaluations were overdue at the time of the OSEP visit in March, 1993.⁶

Table V provides a summary of the amount of time reevaluations were overdue for students with disabilities in public agencies A and C.

⁶ According to information provided by Public Agencies A and C, the numbers of students receiving special education at the time of the visit were 4,068 and 240, respectively. Although OSEP recognizes that the percentage of compliance with '300.534(b) in Public Agencies A and C is relatively high, these data represent findings of noncompliance with this requirement.

TABLE V

TIME BEYOND DATE FOR THREE YEAR REEVALUATION	NUMBER OF STUDENTS	
	PUBLIC AGENCY A	PUBLIC AGENCY C
LESS THAN 1 MONTH	31	2
1 - 6 MONTHS	46	0
6 MONTHS - 1 YEAR	4	4
1 - 2 YEARS	6	0
2 - 3 YEARS	4	0
3 OR MORE YEARS	3	0
TOTAL	94	6

- END OF TEXT OF REPORT -
 APPENDICES A, B AND C THAT FOLLOW
 ARE INCLUDED BY REFERENCE IN THIS REPORT

APPENDIX A

PUBLIC AGENCIES VISITED BY OSEP

OSEP visited four local educational agencies and one State-operated facility as part of its compliance review of NDE. Where appropriate, OSEP has included in this Report data collected from those five agencies to support or clarify the OSEP findings regarding the sufficiency and effectiveness of NDE'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 "public agency A." The agencies that OSEP visited and the designation used to identify those agencies in this Report are set forth below:

PUBLIC AGENCY A = Lincoln Public Schools

PUBLIC AGENCY B = Kearney Public Schools

PUBLIC AGENCY C = Gering Public Schools

PUBLIC AGENCY D = Mitchell Public Schools

PUBLIC AGENCY E = Morton School

APPENDIX B

CORRECTIVE ACTIONS

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>I. SEA Monitoring 20 USC 1232d(b)(3)(A) (Proper methods for identifying all areas of noncompliance)</p>	<p>1. NDE must revise its monitoring procedures to include an effective method to identify all areas of noncompliance regarding requirements cited in Sections I, II, III, IV, and V of this Report, including a method for ensuring the provision of FAPE for individuals incarcerated in DOC facilities;</p> <p>2. NDE must issue a memorandum which informs all public agencies of the revised monitoring procedures.</p> <p>3. NDE must develop training materials for NDE monitoring personnel in the use of revised monitoring procedures.</p> <p>4. NDE must provide training using materials developed in #3 above.</p>	<p>1a. Submit revised procedures by: <u>60 days from receipt of the final Report.</u></p> <p>1b. Submit verification of implementation: <u>180 days from receipt of OSEP approval of procedures.</u></p> <p>2a. Submit memorandum to OSEP: <u>30 days from receipt of OSEP approval of procedures.</u></p> <p>2b. Issue memorandum to public agencies: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>3. Submit training materials: <u>60 days from receipt of OSEP approval of procedures.</u></p> <p>4. Submit verification of training: <u>30 days from OSEP approval of training materials.</u></p>
<p>II. Review and approval of LEA Applications 76.400(b) & (d) 76.700 (Procedures for submission and approval of LEA applications) 76.401 (Hearing procedures)</p>	<p>1. NDE must adopt or revise procedures to ensure that it approves applications that meet all Federal requirements.</p> <p>2. NDE must revise its hearing procedures for disapproval of an application to meet the required Federal procedures and timelines.</p> <p>3. NDE must provide training to NDE staff who implement LEA application procedures in the use of the revised materials and procedures to ensure that approved applications meet all Federal requirements.</p>	<p>1. Submit revised materials and procedures by: <u>60 days from receipt of final Report.</u></p> <p>2. Submit revised hearing procedures by: <u>60 days from receipt of final Report.</u></p> <p>3. Submit training materials: <u>60 days from OSEP approval of materials and procedures.</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>III. Due Process and Procedural Safeguards</p> <p>A. ' 300.501 (Public agencies must establish and implement procedural safeguards which meet the requirements of ' 300.500-300.514, 20 USC ' 1415(e)(4)(B), 20 USC ' 1415(d)(4) and ' 300.562-300.569.)</p>	<ol style="list-style-type: none"> 1. NDE must submit documentation that those agencies in which OSEP identified deficient practices have established and implemented procedural safeguards that meet the requirements of ' 300.500-300.514, 20 USC ' 1415(e)(4)(B), 20 USC ' 1415(d)(4), and ' 300.562-300.569. 2. NDE must develop materials to inform and train teachers and administrators in their responsibilities in the areas cited in Section III of the Report. 3. NDE must provide training as outlined above. 	<ol style="list-style-type: none"> 1. Submit documentation: <u>60 days from receipt of the Final Report.</u> 2. Submit revised procedures by: <u>60 days from receipt of the Final Report.</u> 3. Submit documentation by: <u>60 days from OSEP approval of materials.</u>
<p>III. Due Process and Procedural Safeguards</p> <p>B. ' 300.504(a) (Public agencies must provide written notice to parents as required by ' 300.504(a), which contains the content required at ' 300.505(a)(1).)</p>	<ol style="list-style-type: none"> 1. NDE must develop and issue a memorandum to all public agencies, informing them that: (a) they must immediately begin to provide prior written notice to parents each time that they propose or refuse to initiate or change the identification, evaluation, or educational placement of a child, or the provision of FAPE to the child. The notice must include the content required by ' 300.505(a), including a full explanation of procedural safeguards. 2. NDE must develop procedures to ensure that public agencies provide notice to parents that includes a complete explanation of the procedural safeguards available to parents under ' 300.505(a)(1) each time that they propose or refuse to initiate or change the identification, evaluation, or educational placement of a child, or the provision of FAPE to the child. NDE must submit to OSEP verification that it has determined that all public agencies have established and implemented procedures consistent with the requirements of ' 300.504(a) and 300.505(a)(1). 	<ol style="list-style-type: none"> 1a. Submit memorandum: <u>30 days from receipt of final Report.</u> 1b. Issue memorandum by: <u>15 days from receipt of OSEP approval of memo.</u> 2a. Submit procedures by: <u>60 days from receipt of final Report.</u> 2b. Submit verification that public agencies have established and implemented procedures: <u>60 days from receipt of OSEP approval of procedures.</u>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>IV. FAPE</p> <p>• • 300.300 (FAPE is available to all children within the State; consideration of extended school year services)</p>	<p>1. NDE must issue a memorandum to those public agencies in which OSEP identified areas of noncompliance requiring those agencies to correct their practices and procedures. The public agencies must submit documentation to NDE that changes necessary to comply with Part B requirements • • 300.300 have been implemented. NDE must submit to OSEP verification that it has determined that each of these public agencies has corrected its practices and procedures.</p> <p>2. NDE must develop materials to inform and train teachers and administrators in their responsibilities in the areas cited in Section IV of the Report.</p> <p>3. NDE must provide training as outlined above.</p>	<p>1a. Submit memorandum: <u>30 days from receipt of final Report.</u></p> <p>1b. Issue memorandum by: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>1c. Submit verification of corrected procedures by: <u>90 days from receipt of Final Report.</u></p> <p>2. Submit materials by: <u>30 days from OSEP approval of procedures.</u></p> <p>3. Submit verification by: <u>60 days from OSEP approval of materials.</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>V. Protection in Evaluation Procedures</p> <p>· 300.534(b) (Reevaluations)</p>	<p>1. NDE must issue a memorandum to public agencies A and C, requiring those agencies to complete the overdue reevaluations. The public agencies must submit documentation to NDE that changes necessary to comply with Part B requirement ' 300.534(b) have been implemented. NDE must submit to OSEP verification that it has determined that these public agencies have conducted the overdue reevaluations.</p> <p>2. NDE must develop materials and conduct training for teachers and administrators in their responsibilities in the areas cited in Section V of the Report.</p>	<p>1.a. Submit memorandum: <u>30 days from receipt of final Report.</u></p> <p>1.b. Issue memorandum by: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>1.c. Submit verification by: <u>180 days from issuance of memo.</u></p> <p>2.a. Submit materials by: <u>30 days from OSEP approval of procedures.</u></p> <p>2.b. Submit verification by: <u>30 days from OSEP approval of materials.</u></p>

APPENDIX C

SUMMARY OF OSEP'S ANALYSIS OF NDE'S RESPONSE
TO DRAFT MONITORING REPORT

Requirement: NDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs. 20 USC '1232d(b)(3)(A). OSEP's review of NDE's monitoring procedures (program review standards) indicated that NDE did not have a method to determine compliance regarding the following requirements:

Federal Requirement	Description
'300.303	Functioning of hearing aids
'300.305	Program options
'300.307	Physical education
'300.348(c)	Private school placements (responsibility for compliance with Part B)
'300.503	Independent evaluations
'300.504(c)	Procedures when parents refuse consent
'300.504(d)	Consent not required as condition of benefit
'300.531	Preplacement evaluation
'300.533(b)	Placement procedures
'300.541	Criteria for determining existence of SLD
'300.550(a)	Least restrictive environment - General
'300.562(c)	Parents presumed authority
'300.567(a)	Amendment of records at parents request
'76.652 - 76.662	Participation of children enrolled in private schools

Federal Requirement	Description
'76.683	Health or safety standards
'76.731	Records related to compliance

NDE's response to Draft Report: NDE responded to the draft Report with copies of indicators that were developed for use in Nebraska's Program Standards Review System to determine whether school districts are in compliance with the Federal requirements listed in this section of the Report.

OSEP Analysis of Response: After review of the materials submitted by NDE, OSEP has determined that NDE has developed procedures to address each of the areas of the Federal regulations cited in this section of the Report. OSEP noted this fact in a footnote to finding 1 on page 1 of the Report.