



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

DECEMBER 21, 1994

Honorable Elizabeth M. Twomey  
Commissioner of Education  
State Department of Education  
101 Pleasant Street  
Concord, New Hampshire 03301

Dear Commissioner Twomey:

During the week of April 11 - 15, 1994, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the New Hampshire State Department of Education's (NHSDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether NHSDE was meeting its responsibility to ensure that the State's public educational agency 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 and your special education staff this report, entitled "Office of Special Education Programs Monitoring Report: 1994 Review of the New Hampshire State Department of Education" (Report).

The Report describes OSEP's findings with respect to the policies and procedures that NHSDE 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 eight areas of responsibility, as shown in the Table of Contents. The actions that NHSDE must take to address OSEP's findings regarding those eight areas of responsibility, and to ensure compliance with the requirements of Part B and EDGAR through the exercise of its system of general supervision, are described in Appendix B of the Report. 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.

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

Page 2 - Honorable Elizabeth M. Twomey

Please let me know if we can be of any assistance. Thank you for your continued efforts toward the goal of improving education programs for children and youth with disabilities in New Hampshire.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: Mr. Robert Kennedy

OFFICE OF SPECIAL EDUCATION PROGRAMS  
FINAL MONITORING REPORT:

1994 REVIEW OF THE NEW HAMPSHIRE STATE DEPARTMENT OF EDUCATION'S  
IMPLEMENTATION OF PART B OF  
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

DECEMBER 1994

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## PREFACE

This Report presents the results of the on-site review of the New Hampshire State Department of Education's (NHSDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B), and Education Department General Administrative Regulations (EDGAR), conducted by the Office of Special Education Programs (OSEP), United States Department of Education, during the week of April 11 -15, 1994. The purpose of this review was to determine whether NHSDE met its responsibility to ensure that the State's educational programs for children with disabilities are administered in a manner consistent with the requirements of Part B, its implementing regulations, and EDGAR. All regulatory citations in this Report refer to sections of Title 34 of the Code of Federal Regulations.

The Report contains an introduction, eight sections, and three appendices. The introduction describes OSEP's review process and summarizes NHSDE's structure for providing special education programs. Each of the sections of the Report contains: (1) a statement of the legal responsibilities which NHSDE is required to fulfill in order to ensure that public agencies meet the requirements of Part B and EDGAR, and (2) OSEP's findings of fact concerning NHSDE's implementation of its responsibilities. Appendix B contains a chart which describes the actions to be carried out by NHSDE in order to ensure correction of findings identified in each of the Sections of the Report, in addition to a corrective action training plan, which summarizes the training activities that NHSDE must undertake as part of the corrective action process. Appendix C contains a summary of NHSDE's response to the draft Report, OSEP's analysis of the response, and a description of any changes to the Report necessitated by information provided by NHSDE.

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

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OSEP will be conducting follow-up visits to certain States monitored during this cycle to verify implementation of the required corrective actions. These visits will occur approximately one year after issuance of the final Report. NHSDE staff will be notified if the State is selected for a follow-up visit.

### INTRODUCTION

In order to be eligible to receive Part B funds, NHSDE 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 assuring that the requirements of this part are carried out and that all educational programs for children with disabilities within the State, including all such programs administered by any other State or local agency, will be under the general supervision of persons responsible for educational programs for children with disabilities in the State educational agency and shall meet the educational standards of the State educational agency. [See §300.600(a).]

In addition to NHSDE's general supervisory responsibility, NHSDE 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 Section 441 of the General Education Provisions Act (GEPA), as amended by the Improving America's Schools Act of 1994 (IASA) [formerly Section 435 of GEPA, 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 NHSDE 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 New Hampshire. However, because NHSDE's systems for ensuring compliance have not been fully effective for the reasons cited in this Report, OSEP requires NHSDE 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 1994, the OSEP team of Charles Laster, Sheila Friedman, Jackie Jackson, Catherine Cooke and Doug Little reviewed the New Hampshire State plan as well as public agencies' policies, procedures, plans, standards, and other relevant documents relating to the implementation of Part B. On January 31 and February 2, 1994, public meetings were conducted in Concord and Plymouth, respectively. These meetings were held in order to solicit comments from parents, teachers, administrators and other concerned citizens regarding NHSDE's compliance with Part B and EDGAR. During the week of April 11 - 15, 1994, the OSEP team made site visits to five school systems. The team 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, OSEP staff interviewed State agency personnel in NHSDE's central administrative office in Concord 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, which was issued on August 25, 1994. NHSDE responded to the accuracy and completeness of the Report on September 26, 1994. OSEP reviewed NHSDE's response, and made revisions as appropriate. A discussion of NHSDE's response and any resulting changes to the Report is contained in Appendix C.

**DESCRIPTION OF NEW HAMPSHIRE'S SPECIAL EDUCATION SYSTEM:**

New Hampshire is a predominantly rural state comprised of 221 towns and 13 cities that are organized into 176 school districts administered by 67 School Administrative Units (SAUs). Twenty-five of the SAUs are single district units. The total pupil enrollment for the 1992-93 school year was 199,198, distributed in both public and nonpublic schools. The total special education enrollment for the 1992-93 school year was 22,158. Although New Hampshire does not mandate public kindergarten, approximately 40% of the towns throughout the State have kindergarten programs. New Hampshire utilizes a "local control" approach to government and to the allocation of resources. There are no State property or income taxes and no general sales tax. The majority of the financial contribution for public school programs in New Hampshire comes from local property taxes.

The central administrative office of the New Hampshire State Department of Education (NHSDE) is located in Concord. This office has recently undergone a major reorganization, in which all special education functions were shifted from a centralized framework and are now administered through the Division of Educational Improvement and divided among four different Bureaus: the Bureaus of Early Learning, Professional Standards Development, Effective Programming and Instructional Practice and Program Quality Assurances. Staff from these Bureaus issue letters of clarification to the field, develop the State plan, propose revisions to State rules and regulations, process and approve applications for entitlement and discretionary programs, investigate and resolve complaints, and conduct technical assistance and training activities for local districts in compliance issues in the areas of LRE, provision of FAPE, IEP, and transition services, among others.

NHSDE contracts with the Southeastern Regional Education Service Center, Inc. (SERESC) to administer the State's monitoring system and the Surrogate Parent system. In addition to the onsite monitoring it conducts for NHSDE, SERESC sponsors technical assistance and training for teachers and administrators and provides evaluation services. SERESC also coordinates the Preschool Technical Assistance Network, designed to provide technical assistance and resources to local agencies and programs in all aspects of preschool service delivery.

The Special Education Information System (SPEDIS) is an interactive information database utilized in the collection, storage and retrieval of data related to students with disabilities in New Hampshire. SPEDIS information can be aggregated across a number of variables - according to classroom, building, district, SAU or county. The types of information maintained on individual students include evaluation data, a description of the specific special education program and placement, and critical dates in the special education process (annual review dates, etc.), discharge data and child find information. Data can be entered in or retrieved from SPEDIS at any time, and for any period of time - from 1982 to the present.

This historical feature allows NHSDE to aggregate data on a longitudinal basis. In addition to being the primary mechanism for monitoring child count requirements, SPEDIS is utilized in locating programs, projecting future program needs and costs statewide, and monitoring other aspects of compliance with State and Federal special education requirements.

The State of New Hampshire administers an equalized weighted funding formula to distribute State aid for education programs. Additional weights are assigned by program, and vary depending on the program classification (district placement in self-contained classroom, residential placement, etc.). When calculating the amount of State aid to which a district is entitled, an equalization formula is applied to the weighted pupil count to reflect three factors: property wealth, personal income wealth, and tax effort of a school district. In addition, the State makes available to districts at least \$1,000,000 in catastrophic aid statewide, for students for whom the cost of their education exceeds 3.5 times the State average expenditure per pupil.

While several conventional written agreements exist between State agencies in New Hampshire (for example, an agreement between the Department of Health and Human Services and NHSDE relative to the provision of services to Developmentally Impaired children and an agreement between the Disability Rights Center and NHSDE concerning dropout prevention) many of the programs and unique service delivery systems that exist in the State have been initiated through informal interagency collaboration. The most successful of these collaborations is the Consortium of State Policy Administrators (CSPA). CSPA is an organization of State agency administrators who meet monthly to determine priorities for the provision of services to individuals with disabilities statewide, develop goals for individual agencies to address these priorities, and initiate cooperative projects which may be jointly funded by two or more agencies. Some of the projects funded or otherwise sponsored through CSPA efforts include those relating to the integration of services offered to and made

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available by these organizations to special education students, including transition services, assistive technology, and dropout prevention.

### 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 NHSDE's systems have not been fully effective in ensuring compliance with those requirements. OSEP would, however, like to commend NHSDE for the following initiatives that demonstrate NHSDE's leadership to ensure quality programs and better results for students with disabilities:

The Task Force for the Improvement of Secondary Special Education in New Hampshire is a committee of 12 individuals from the Department of Education, adult service agencies, local school districts and related organizations, who conduct a competition for discretionary grants funded through the Office of Special Education and Rehabilitative Services and administered by NHSDE. Projects funded for the 1993-94 school year emphasize statewide goals in the areas of transition, drop-out prevention and inclusion for secondary students. Tasks force members encourage submission of proposals from all areas of the State, especially those which have the potential for application across districts, and SAUs.

The Institute on Disability, is located at the University of New Hampshire in Durham, and operates a branch office in Concord. The Institute conducts research, provides technical assistance and disseminates information regarding promising practices and current literature in the areas of severe disabilities, transition, inclusion and drop-out prevention. Begun with funds generated through discretionary grants, the Institute is now self-supporting, and serves as a major resource to the State education office, local districts and SAUs. Research sponsored by the Institute at the time of OSEP's visit included projects related to drop-outs, transition issues and graduation rates of special education students, and a statewide system change project on inclusion.

The North Country Education Foundation is a regional collaboration of the eight most northern SAUs in the State. The Foundation is governed by a Board of Directors comprised of the superintendents of the eight SAUs served. The Foundation assists the districts in these SAUs with issues specific to the needs of these rural populations, including isolation, lack of access to technology and resources, and building partnerships with local businesses and service agencies in the implementation of transition requirements. The Foundation provides specialized

training to parents and special and regular education teachers on inclusion, transition, behavior management, and assessment, among other areas. In addition, the Foundation has established a resource library available to all schools, and has organized an itinerant teacher group, comprised of psychologists, vision and hearing specialists, occupational therapists, and speech diagnosticians, who serve students throughout the region.

The **New Hampshire Educational Services for the Sensory Impaired (NHESSEI)** is an organization created to provide support to local school districts in the education of students with a wide variety of sensory impairments. NHESSEI was established in 1981 with State and Federal funds in response to the need of school districts to provide appropriate educational services to this population of students. NHESSEI is a resource program which provides training to parents, teachers, and other professionals in the creation of curricular modifications and implementation of accommodations for students with sensory impairments in the classroom. In addition to direct training activities, the 12 NHESSEI staff members provide consultative services, assistance with evaluations, program planning, and a wide variety of supports. These additional supports include maintenance of a parent/professional library and a media/materials center for students with sensory impairments, with braille and large print materials, auditory trainers, low-vision aids, computers, software and augmentative communication equipment.

The **Institute on Emotional Disabilities**, based on the Keene State College campus in Keene, is in its second full year of operation, and was created with seed money from NHSDE. The Institute operates a campus-based certification program for teachers of students with emotional disturbance (a critical need area identified by NHSDE). The Institute has created a task force to address improved methods to prepare teachers in this area, and also has sponsored eight statewide inservice conferences for teachers and others who deal with this population of students. To date, 30 districts and SAUs have participated in the inservice training sessions.

## I. GENERAL SUPERVISION

**NHSDE must ensure that all individuals with disabilities, birth through 21, including those who are incarcerated, are identified, located and evaluated, and that those ages three to 21, have available to them a free appropriate public education. (§§300.122 and 300.300).**

DESCRIPTION OF STATE SYSTEM: New Hampshire's juvenile justice system is administered by the Division of Children Youth and Families (DCYF) within the Department of Health and Human Services. There are two primary facilities under the jurisdiction of DCYF. The Youth Development Center (YDC), is the facility where adjudicated youth are assigned, and is located in Manchester. At the time of OSEP's visit, there were approximately 100 youth living at YDC, 38 of whom were receiving special education services. The Youth Services Center (YSC) is a 25 bed, short-term facility where students are placed who are awaiting disposition by the courts. DCYF officials informed OSEP that approximately 50 per cent of the students at YSC are identified as students with educational disabilities and receive such services at any given time. Both YDC and YSC are monitored on a regular basis by NHSDE.

The correctional programs which house individuals convicted of felony crimes in the State of New Hampshire are administered by the Department of Corrections (DOC). In addition, there are ten county correctional facilities located throughout the State, which house those individuals who have either been convicted of misdemeanor crimes or are awaiting trial on misdemeanor charges.

These short term facilities, which are operated by the respective county governments, experience a rapid turnover in population. There are approximately 1,000 individuals incarcerated in these facilities statewide. When an inmate enters a county facility, the education coordinator at that facility contacts the school district where the individual last attended school. The district forwards the student's records to the facility, and educational programming can commence. NHSDE estimates that approximately 20 per cent of the individuals incarcerated at the county correctional facilities are identified as students with educational disabilities.

DOC operates two facilities for individuals convicted of felony crimes in New Hampshire, one for men and another for women. There are approximately 1,600 men and 100 women incarcerated in these facilities. OSEP interviewed the DOC administrator responsible for the educational programs in these facilities, who

informed OSEP that there are approximately 60 individuals incarcerated in these facilities between the ages of 18 and 21. Of this number, he estimates that 16 are currently identified as students with educational disabilities, and another 35 are potentially eligible for special education services. These students are currently receiving educational services, but none are receiving special education and related services in accordance with an IEP. The official further stated that in the past, DOC believed that if an individual was identified as a student with a disability, that it was the responsibility of the previous school district to notify DOC, and arrange for the appropriate educational services.

**FINDING: PROVISION OF FAPE TO INDIVIDUALS INCARCERATED IN DOC FACILITIES**

OSEP finds that NHSDE did not exercise its general supervisory responsibility in a manner that ensured that all individuals with disabilities, birth through 21, including those who are incarcerated, are identified, located and evaluated, and that those ages three to 21, have available to them a free appropriate public education.

Both NHSDE and DOC administrative officials informed OSEP that although some individuals receive special education services, neither NHSDE nor DOC has taken any steps to initiate a systematic effort to ensure that all individuals with disabilities incarcerated in the ten county correctional facilities who are in need of special education and related services were identified, located and evaluated. In addition, no specific actions had been undertaken at the time of OSEP's visit to include special education services into the general education programs that already exist at the ten county correctional facilities. There is no systematic method to locate, identify, evaluate and provide services to those individuals incarcerated in DOC's two State facilities (for those convicted of felonies) who require special education; however, DOC is working on the development of a special education system to include assessment, provision of notice, evaluation, and service delivery.<sup>1</sup> While

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<sup>1</sup> At the time of OSEP's visit there were two individuals incarcerated in DOC facilities who were receiving special education services that were approved through NHSDE's Individual Program Approval Process. This process allows a non-approved special education program to provide services to up to five individual students upon application to; and review and approval by NHSDE. These requests are filed annually by individual public

the childfind portion of this process had been initiated at the time of OSEP's visit, the DOC administrator stated that a fully approved program in all DOC facilities will be implemented within two years. (For a program to be "fully approved" by NHSDE and receive funding for its special education programs, it must employ properly certified staff, comply with all State and Federal requirements regarding special education, and participate in NHSDE's compliance review process.)

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agencies, which may include students approved through this process in its annual child count.

## II. STATE EDUCATIONAL AGENCY MONITORING

**NHSDE's Monitoring Process:** NHSDE contracts with the Southeastern Regional Education Service Center, Inc. (SERESC) to administer the State's monitoring system. Under the system that was in operation at the time of OSEP's visit, SERESC monitored each SAU, all State institutions, and all public and non-public programs in operation in the State. SERESC is an organization which was formed by local school districts to plan and implement educational programs for children with disabilities. Each school district in the State is monitored every three to five years, depending upon NHSDE's determination of the district's overall level of compliance with State and Federal requirements related to administration of special education programs. The monitoring of each district is coordinated by a chairperson, who is responsible for training team members, interviewing school administrators and parents, reviewing files for certification, conducting the exit interview, reviewing Local Educational Agency (LEA) application information and other related documents and writing the report. The size and composition of the monitoring team is determined by the size and complexity of the district to be monitored. Generally, teams are composed of between three and 20 monitors, at least one of whom is a NHSDE staff member. Other team members may include teachers, related service personnel, and special education administrators. Teams are provided an hour of training at the beginning of each onsite review. SERESC monitors each SAU as one entity, and conducts onsite visitations in each of the schools in the component districts.

Prior to the onsite review, school districts are required to submit to SERESC the following: 1) the Application for Approval of School District Special Education Program which provides basic information regarding district programs; 2) the Application Materials checklist used by each school district to reference evidence of compliance with each Federal and State regulation; and the School District Special Education Plan, the document that contains the LEA application content requirements. Additional presite information that is collected and analyzed by the team includes: a personnel roster, SPEDIS information, and the previous onsite review, including the corrective action plan. During an onsite review, the team reviews five randomly selected files from each school, interviews teachers, related service personnel and school administrators, analyzes the recommendations and verifies the corrective actions required through NHSDE's prior compliance review.

Monitoring reports present information regarding the status of findings from the previous monitoring report, SAU-wide findings, and findings specific to individual districts. In the introductory letter to each report, the SAU is informed that it must submit a corrective action plan to address each finding included in the report, including the specific tasks and activities designed to address the deficiency, the timelines for completion, and the individuals responsible for each activity. Each LEA may determine the specific tasks and timelines for completion of each activity as part of the corrective action process.

- A. NHSDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs. Section 441 of GEPA, as amended by IASA [formerly Section 435 of GEPA, 20 U.S.C. §1232d(b)(3)(A)]. See also §80.40(a).

**FINDINGS:**

**NO METHOD TO DETERMINE COMPLIANCE**

1. OSEP reviewed NHSDE's monitoring procedures document, Monitoring for Effectiveness of Compliance - Master Guide (Master Guide), the Collaborative Program Review manual, and all other monitoring procedures and materials, and 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:

- §300.304 - Full Educational Opportunity Goal
- §300.344(c) - Transition services participants
- §300.345(b)(2) - Parent notice for transition services
- §300.347 - Agency responsibilities for transition services
- §300.512 - Timeliness and conveniences of hearings and reviews
- §300.513 - Child's status during proceedings
- §300.515 - Notice about attorney's fees
- §300.533(a)(3) - Placement procedures
- §300.564 - Confidentiality - records on more than one child

**INCOMPLETE OR INCORRECT METHODS TO DETERMINE COMPLIANCE**

2. OSEP finds that NHSDE's monitoring materials and procedures do not, in all instances, collect sufficient information to ensure that all public agencies meet the following requirements:

**§300.300 - FAPE - Provision of Services** - Although NHSDE's monitoring procedures contain an element at 11-9.01(f) which directs the monitor to verify that student IEPs contain "a statement of the special education, transportation, if required, and other educationally related services to be provided," there is no procedure which requires that the monitor verify that the services specified on student IEPs are actually provided.

**§300.346(b) - Transition services** - While NHSDE's monitoring procedures do not include a specific method to determine compliance with this requirement, the File Review Sheet, utilized by monitors for review of student files during onsite reviews references this requirement. The document requires the monitor to determine if the IEP contains a "Transition Statement, required for >16 years." The Federal regulation requires that "the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate) must contain a statement of needed transition services..."

**§300.506(a) - Due process hearings** - While NHSDE's monitoring procedures include a method at 1127.02(a) to determine if districts have procedures to ensure that parents and public agencies have the opportunity to initiate due process hearings, there is no procedure to monitor the district's procedures regarding the matters about which a hearing may be initiated, as set forth in this regulation.

**§300.512(a) and (c) - Due process hearing timelines and extensions** - Copies of all hearing decisions and information about the status of hearings are provided to NHSDE from hearing officers appointed by NHSDE. NHSDE administrators responsible for monitoring due process hearing timelines informed OSEP that based upon this information, NHSDE maintains a log that includes the date each hearing request was received, the date of pre-hearing, the date of the hearing, the status of the hearing and the date the status was determined. From OSEP's review of NHSDE's hearing log, the status appears to indicate the resolution for each hearing by noting the term "Withdrawn", "Dismissed", "Settled," "Mediated" or "Decision." Each hearing is entered into the log, and assigned a consecutive file number, when the file is received by the NHSDE central administration office. There is no information in the log pertaining to

extensions of hearing timelines, and therefore, no way to determine whether extensions are granted as required in cases that do not meet the timeline in §300.512(a).

**§300.530(b) - Student evaluation** - NHSDE's monitoring procedures contain the requirement that testing and evaluation materials and procedures used for the evaluation of children with disabilities are selected and administered so as to not to be culturally discriminatory, but do not specify that they must also be selected and administered so as not to be racially discriminatory.

**§300.550(b)(1) - Least restrictive environment** - NHSDE's monitoring documents are inconsistent with regard to this regulation, that requires that "each public agency, to the maximum extent appropriate, educates children with disabilities, including children in public or private institutions or other care facilities..." While NHSDE's Application Materials document (on which the school district is required to indicate compliance with regulation) accurately reflects the requirements set forth in this regulation, Section §1115 of the Teacher Interview Form utilized by monitors to determine compliance with LRE requirements states, "if the district ensures that handicapped students participate with nonhandicapped peers to the maximum extent possible," rather than to the maximum extent appropriate, as required by this regulation.

**§300.551(b)(1) - Continuum of alternative placements** - NHSDE's monitoring procedures contain a method to determine whether districts have available a continuum of alternative placements as required by this regulation. OSEP has determined that this list of the alternative placements is incomplete, as it does not include "instruction in hospitals and institutions."

**INEFFECTIVE METHODS FOR IDENTIFYING DEFICIENCIES**

3. NHSDE conducted compliance reviews in each of the agencies visited by OSEP within the previous three school years. Table II-A sets forth the date that each agency visited by OSEP was last monitored by NHSDE:

Table II-A  
Agencies in New Hampshire Monitored by OSEP and Date Last Monitored by NHSDE

Agency	Date Monitored	Agency	Date Monitored
Agency A	11/93	Agency D	2/93
Agency B	1/92	Agency E	11/91
Agency C	11/91		

OSEP interviewed many of the same staff, and collected data on some of the same requirements that NHSDE did during its most recent monitoring of each agency. OSEP identified several areas of noncompliance in these agencies that were not identified by NHSDE through implementation of its monitoring procedures. The information following in Table II-B sets forth the areas of noncompliance in each agency visited by OSEP which were not identified by NHSDE in their most recent monitoring of the agency, but were so identified by OSEP. Where NHSDE's monitoring procedures contain an incomplete or incorrect method (as indicated in part two of this Section), the table indicates an "I." Where NHSDE's Master Guide contains a method to determine compliance with a particular requirement, but NHSDE was ineffective in identifying the noncompliance, an "X" is indicated on the table. If NHSDE does not have a method to determine compliance with a particular requirement (as stated in part one of this section), and OSEP identified a problem with that requirement in a public agency, an "O" is indicated on the chart.

Table II-B  
 Areas of Noncompliance Identified by OSEP But Not Identified by NHSDE

REGULATION	DESCRIPTION	AGENCIES				
		A	B	C	D	E
§300. 505(a) (1)	Content of Notice: Procedural Safeguards			X	X	X
§300. 501	Establishment of Procedural Safeguards <sup>2</sup>				X	
§300. 300	FAPE: Provision of Services <sup>3</sup>		I			
§300. 344(a) (1)	LEA Representative at IEP meeting			X		X
§300. 346(a) (2)	IEP Content: Annual goals				X	X
§300. 346(a) (5)	Evaluation procedures				X	X
§300. 346(a) (5)	Evaluation Schedules				X	X
§300. 346(b)	Transition services	I				I
§300. 345(b) (2)	Transition Notice	0				0
§300. 344(c) (1)	Transition meeting participants	0				0
KEY: I = Incomplete or incorrect method X = Ineffective method 0 = No method						

<sup>2</sup> See Section IV on page 16 (Due Process Procedures and Procedural Safeguards) for description of this finding. An analysis of NHSDE's model form, Parental Rights in Special Education is located in Appendix A of the Report.

<sup>3</sup> See Section VII on page 27 (FAPE) for a description of this finding.

**B. NHSDE is responsible for the adoption and use of effective methods for the correction of deficiencies in program operations that are identified through monitoring. Section 441 of GEPA, as amended by IASA [formerly Section 435 of GEPA, 20 U.S.C. §1232d(b)(3)(E)]. See §§80.40 and 300.556(b)(2).**

**FINDING: CORRECTION OF IDENTIFIED DEFICIENCIES**

NHSDE's monitoring procedures specify that all corrective actions are completed through a multi-stage process. Subsequent to the issuance of the Onsite Evaluation Report, SAUs are directed to develop a plan of action for correcting each of the areas found to be out of compliance, including the establishment of timelines for completion and personnel responsible for implementation of the activities specified in the plan. Upon receipt of this plan, a conference is held between the SAU and NHSDE officials for the purpose of confirming the course of action specified in the plan. The final step in this process is a follow up onsite visitation to verify that all issues have been corrected pursuant to the plan. A NHSDE administrator stated that the documentation submitted by individual public agencies regarding completion of corrective action plans is verified only through review of the written materials in NHSDE's central administrative office. No onsite follow-up is conducted until the team returns to the public agency during the subsequent onsite monitoring.

OSEP finds that NHSDE did not consistently ensure that public agencies had corrected deficiencies identified by its monitoring system. Table II-C demonstrates instances in which NHSDE had previously identified deficiencies and approved corrective actions in these agencies that did not result in correction of the identified deficiencies, as demonstrated by deficiencies found when OSEP visited these agencies.

**TABLE II-C**

**Deficiencies Identified by NHSDE and Subsequently by OSEP**

Federal Requirement	Agencies		
	A	B	C
§300. 505(a) (1) Content of notice	X	X	
§300. 300 Free appropriate public education: Provision of services <sup>4</sup>	X		X
§300. 344(a) (1) LEA representative at IEP meeting	X		
§300. 346(a) (1) IEP content: Present levels of performance	X		
§300. 346(a) (2) IEP content: Annual Goals	X		
§300. 346(a) (5) IEP content: Evaluation schedules	X		

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<sup>4</sup> Although NHSDE had an incomplete method to monitor for compliance with this requirement, as noted on page 5 of this Report, NHSDE made findings of noncompliance in this area when it monitored Agencies A and C, but failed to ensure that these deficiencies were corrected.

**III. STATE EDUCATIONAL AGENCY REVIEW AND APPROVAL OF LOCAL EDUCATIONAL AGENCY APPLICATIONS**

Federal regulations establish the requirements that must be satisfied as a condition for distributing Part B funds to LEAs. §§300.180-300.240. NHSDE is responsible for developing procedures that applicants must follow when submitting applications for Part B funds and for providing assistance in applying for funds. NHSDE is responsible for approving applications for Part B funds that satisfy applicable Federal statutes and regulations and disapproving applications that do not meet Federal requirements, including the approval and disapproval of amendments. §76.400(b) and (d) and §76.770.

**Description of NHSDE LEA Application Procedures:** NHSDE's LEA application package consists of two parts:

(1) Part I - The Annual Request for Federal Funds is completed on an annual basis. This document consists of program assurances, budget information, revised policies and procedures, as applicable, and other information that must be updated each year. NHSDE reviews Part I using the NHSDE's "Federal Project Review" checklist.

(2) Part II - The LEA Special Education Plan consists of policies and procedures that are developed by each SAU and adopted by the individual local boards of education. These district policies and procedures are intended to meet Federal and State requirements. Revisions to the Special Education Plan must be submitted with the Annual Request for Federal Funds. The policies and procedures from the Special Education Plan are reviewed as part of the Department of Education's program approval [monitoring] process.

NHSDE's Instructions concerning LEA application content requirements such as IEP, LRE, and Confidentiality are generally referenced under the applicable Federal requirements but do not specify the required components under each content area. For example, the Federal LEA applications requirement as set forth in §300.227 [Participation in regular education programs] requires that "each application include procedures to ensure that to the maximum extent practicable and consistent with §300.550 through §300.553, the local educational agency provides special services to enable children with disabilities to participate in regular educational programs." NHSDE does not provide further directions regarding the specific requirements as set forth at

§§300.550-300.553, such as the requirement that public agencies have available a continuum of alternative placements to meet the needs of children with disabilities, that must be included in the content of each Special Education Plan.

**FINDING: APPROVAL OF LEA APPLICATIONS THAT DO NOT MEET FEDERAL REQUIREMENTS**

OSEP analyzed the Special Education Plans from two of the agencies visited to determine whether NHSDE's review and approval procedures have been effective in ensuring that all applications are consistent with Federal LEA application requirements. OSEP found that these applications do not address all Federal LEA application requirements. Table III provides a summary of the results of OSEP's review. All areas in the table that are identified with an "A" indicate that the application does not include the required information. An "I" on the table indicates that the agency submitted inconsistent information. An explanation of each area so indicated follows Table III.

**TABLE III**  
**Requirements Not Included or Found Inconsistent With Part B**

Key: A = Absent, I = Inconsistent

FEDERAL REQUIREMENT		D	E
300.220	CHILD IDENTIFICATION: Procedures		I
300.221	CONFIDENTIALITY: Pol. & Proc.		
.561(a)(1) <sup>5</sup>	Notice to parents	I	A
.562(a)	Access rights	I	A
.562(b)(2)	Copies of records	A	A
.564	More than one child's record	A	
.565	Types/locations of records	A	
.566	Fees	A	
.567	Amendments of records at parent's request	A	
.568	Opportunity for hearing	A	
.569	Result of hearing	A	
.570	Hearing procedures	A	
.571(a)(2)	Parent consent/Part B	A	
.572(b)-(c)	Safeguards	A	
.574	Children's rights	A	
300.223	FEOG: Facilities, personnel, and services	I	I
300.224	CSPD: Procedures	I	I
300.226	Parent involvement: FEOG	I	
300.227(a)	LRE: Procedures		
.550(b)(1)	Educated with children who are not disabled	I	
.550(b)(2)	Removal only when severity		A
.551(b)(1)	Continuum	I	I

<sup>5</sup>While this regulation describes an SEA responsibility and the SEA must remain ultimately responsible for meeting these requirements, a State may choose to delegate some or all of the required notice activities to other public agencies in the State, including LEAs. If an LEA is responsible for implementing some or all of those activities, its application must describe the LEA's responsibility for implementation of §300.561. According to NHSDE's Fiscal Year 1993-95 State plan, each local school district is responsible for implementation of this requirement.

. 552(b)	Alternative placements	A	
300. 229	EXCESS COST: Assurance	A	A
300. 230	NONSUPPLANTING: Assurance	A	
300. 231	COMPARABLE SERVICES: Assurance		A
300. 235	IEP: Procedures		
. 341(a)	Developed & implemented by public agency	A	
. 341(b) 1)	Placed by public agency/implemented ASAP	A	A
. 342	When IEP must be in effect	A	
. 343	Meetings	A	
. 344(a) (1)	Participants in meetings	A	
. 344(c)	Transition services	A	A
. 345(b) (2)	Transition/notice	A	A
. 346	IEP content	A	
. 347	Agency responsible for transition services	A	A
. 348	Private school placements by public agency	A	
. 349	Children in parochial or other private schools	A	
. 350	IEP accountability	A	
300. 237	PROCEDURAL SAFEGUARDS: Assurance	I	I
76. 656 <sup>6</sup>	PRIVATE SCHOOLS: Information	A	
76. 301 <sup>7</sup>	LEA GEN APPLICATION: Assurances		
1232e(b) (1) - (8)	GEPA assurances		
1232e(b) (9)	GEPA assurance - equipment	A	

<sup>6</sup>All regulatory references which begin with "76." refer to specific provisions of 34 CFR Part 76.

<sup>7</sup>34 CFR Section 76.301 incorporates by reference the requirements of Section 436 of the General Education Provisions Act (GEPA) [now Section 442 of GEPA, as amended by IASA], 20 U.S.C. Section 1232e. All references to 1232e are to that Section of GEPA. Under 20 U.S.C. §1232e(c), a general application remains in effect for the duration of the program covered by the application.

**EXPLANATION OF AREAS DETERMINED INCONSISTENT**

**§300.220 - Child Identification** - The Special Education Plan from public agency E does not include procedures for the identification, location, and evaluation of children with disabilities for children from birth through age 6 years.

**CONFIDENTIALITY**

**§300.561(a)(1) - Notice in native languages** - The New Hampshire State plan explains that prior to any major identification or evaluation activity, all LEAs will give notice through public media to inform parents about the policies and procedures which are currently in effect to protect the information which could identify an individual child. The Special Education Plan from public agency D does not include information indicating that this activity will be implemented by this school district.

**§300.562(a) - Access rights** - The Special Education Plan from public agency D does not specify that parents may inspect any education records relating to their children that are collected, maintained or used by the agency under Part B. Further, the local plan does not include the requirement that the agency shall comply with a request to inspect and review any education records before any meeting regarding an IEP or any hearing relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.

**§300.224 - Comprehensive System of Personnel Development** - The Special Education Plans from Public Agencies D and E do not explain how their personnel development plan will address the needs identified in the State's system of personnel development.

**FEOG**

**300.223 - Facilities, Personnel, and Services: FEOG** - The Special Education Plans from public agencies D and E do not include a description of the kind and number of facilities, personnel, and services necessary to meet the FEOG goal of full services to all children with disabilities, aged birth through 21.

**300.226 - Parent Involvement: FEOG** - The Special Education Plan from public agency D does not explain how parents will be involved in meeting the FEOG goal to provide a full educational opportunity to all children from birth through 21 years.

**LRE**

**§300. 550(b)(1) - Educated with nondisabled** - The Special Education Plan from public agency D states that the district provides, "to the maximum extent possible, programs for educationally handicapped students which enable our students, ...to be educated with non-handicapped students." This language is inconsistent with the requirement that each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled.

**§300.551(b)(1) - Continuum of alternative placements** - The Special Education Plans from public agency D and E do not include instruction in hospitals as a placement option.

**300.237 - Procedural safeguards:** NHSDE's LEA application includes a required assurance that indicates that the agency has established all procedural safeguards required by §§300.500-300.569. OSEP's review of the policies and procedures from Public Agencies D and E indicate that certain of these requirements are either not established, or are established incompletely or incorrectly. (See Appendix A of this Report.)

**IV. DUE PROCESS PROCEDURES AND PROCEDURAL SAFEGUARDS**

- A. NHSDE is responsible for ensuring that public agencies provide written notice to parents pursuant to §300.504(a) which includes a full explanation of procedural safeguards available to parents under Subpart E. §§300.501 and 300.505(a).**

**FINDINGS: CONTENT OF NOTICE: EXPLANATION OF PROCEDURAL SAFEGUARDS**

OSEP finds that NHSDE did not always meet its responsibility under §§300.501 and 300.505(a)(1) to ensure that agencies provided notice to parents pursuant to §300.504(a) that included a full explanation of procedural safeguards available to parents under Subpart E (i.e., §§300.500-300.515, and 300.562-300.569 as incorporated by §300.502).

**a.** NHSDE's monitoring procedures contain an ineffective method to determine compliance with the requirements of §300.505(a)(1). (See Section II on page 4 of this Report.)

**b.** NHSDE provides the agencies in the State with a model parents rights notice, but does not require its use. The five agencies visited by OSEP use the model notice made available by NHSDE but in some instances, included additional information and requirements. OSEP reviewed the model notice prepared by NHSDE and determined that it did not include a full and accurate explanation of the procedural safeguards available to parents under Subpart E of Part B. OSEP's analysis of these documents is set forth in Appendix A of this Report.

- B. Public agencies are responsible for establishing and implementing procedural safeguards which meet the requirements of §300.500-300.515 (§300.501.)**

**FINDINGS: ESTABLISHMENT OF PROCEDURAL SAFEGUARDS**

OSEP finds that NHSDE did not meet its responsibility under §300.501 to ensure that public agencies established procedural safeguards as required by §§300.500-300.515, as demonstrated by the following:

a. NHSDE's monitoring procedures contain an ineffective method to determine compliance with the requirements of §300.501. (See Section II on page 4 of this Report.)

b. OSEP determined that agencies did not establish all of the required procedural safeguards. A public agency may establish a procedural safeguard by including it in its operating policies and procedures, its LEA application, or in the notice to parents required under §300.504(a). OSEP requested that NHSDE provide copies of the policies and procedures from agencies being visited. OSEP analyzed the policies and procedures from agencies D and E. OSEP determined that in both instances, the public agencies utilized the model notice provided by NHSDE in their operating policies and procedures and LEA applications; however, Agency D included additional requirements in the notice, one of which is inconsistent with Part B as described below. The remainder of OSEP's findings with regard to the establishment of procedural safeguards are identical to those findings regarding content of notice concerning the explanation of procedural safeguards analyzed in Appendix A (with the exception of §300.515, which is required for notice but not required for establishment). The following procedural safeguard was insufficiently established in Agency D:

**Procedural Safeguard Found to be Inconsistent with Part B**

**§300.503(b) - Independent educational evaluation** - As stated at §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. OSEP has interpreted this requirement to mean that States may permit local agencies to establish cost limitations on publicly funded IEEs, but these cost limitations must meet the following criteria: (a) cost limitations must be reasonable, (b) the public agency must consider and allow for unusual circumstances, (c) if the cost exceeds limitations, and there is no justification for the excess cost, the public agency must pay up to allowable costs.<sup>3</sup> Agency D included a listing of maximum allowable charges for independent evaluations in its "Parental Safeguards in Special Education," Item 8, Page 5, but did not allow for unusual circumstances, or specify that the public agency must pay up to allowable costs where the cost exceeds the allowance.

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<sup>3</sup> See OSEP policy letter of May 4, 1989 to Commissioner W. N. Kirby from former Acting Assistant Secretary Patricia McGill Smith (213 IDELR 233).

C. NHSDE is responsible for ensuring that a final decision is reached in a hearing and a copy of the decision is mailed to each party not later than 45 days after the receipt of a request for a hearing. A hearing officer may grant specific extensions of time for the hearing at the request of either party. §300.512(a) and (c).

**Description of NHSDE's Due Process Hearing System:** NHSDE has a one-tier due process hearing system, in which the parent or public agency may initiate an administrative due process hearing by providing written notice to the other party. When either party initiates a hearing, the public agency must notify the Commissioner of Education and the local school board in writing of the request. The Commissioner of Education appoints a hearing officer, who must be an attorney, to conduct the hearing. All impartial due process hearings must include a prehearing conference prior to the formal hearing.

The New Hampshire Code of Administrative Rules Part Ed 1128.05(a) Department of Education Administrative Due Process Hearing Responsibilities states: "The Commissioner of Education shall conduct an administrative due process hearing as follows: Immediately upon receipt of the specific written notice requesting an administrative due process hearing required by Ed 1128.03, schedule a prehearing conference and an impartial due process hearing provided that such hearing shall be at a time and place reasonably convenient to the parents and child involved. In no case shall the hearing be scheduled to occur later than 43 days after receipt of the specific written notice by the Local Education Agency."

The New Hampshire Administrative Code includes provisions for waiver of timelines if both parties agree, and specific extensions of time at the request of either party. New Hampshire Code of Administrative Rules Part Ed 1128.09(d) Hearing Procedures, states: "All time lines shall be extended upon mutual written agreement of the parties and the hearing officer, provided there is a written record of such agreement."

**FINDINGS:**

a. NHSDE does not have a complete method to determine compliance with the requirements of §300.512(a) and (c). (See Section II on page 4 of this Report.)

b. OSEP finds that the New Hampshire Code of Administrative Rules at Ed 1128.09(d) provides for a waiver of the timelines in due process hearings by mutual agreement of the parties and the hearing officer. This regulation is inconsistent with the Part B requirement at §300.512(a), which specifies that the public agency shall ensure that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. According to §300.512(c), a hearing officer may grant specific extensions of time at the request of either party. The implementation of this provision in the New Hampshire Administrative Rules results in due process hearings which exceed the Federal 45 timeline requirement without specific extensions of time granted by the hearing officer at the request of either party. NHSDE provided OSEP with the form utilized to document the agreement to waive timelines. The waiver form is to be dated and signed by the parents and the public agency, and states:

The parties to the Due Process Hearing Re: \_\_\_\_\_  
v. \_\_\_\_\_ waive the timelines established in 34 CFR  
300.512 and New Hampshire Code of Administrative Rules  
Part Ed. 1128.05(a) and 1128.10(a) in accordance with  
1128.09(d), 1128.10(b) and 1128.11.<sup>4</sup>

NHSDE maintains a continuous database of hearings, and aggregates the information annually. The data is presented in a document entitled, (YEAR) Impartial Due Process Hearing Requests - Status. NHSDE maintains a file with hearing decisions, requests for

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<sup>4</sup> The regulations referenced in NHSDE's form utilized to document the agreement to waive timelines in due process hearings include:

Ed. 1128.10(a) Decision, states: "The department of education shall ensure that not later than 45 days after receipt of a request for an administrative due process hearing: (1) A final decision is reached in the hearing consistent with RSA 541-A:20 and (2) a copy of the decision is mailed to each of the parties." Ed. 128.10(b) Decision, states: "A hearing officer may grant specific extensions of time beyond the period set out in (a) above at the request of either party."

Ed 1128.11 Requests for Continuances, reads: " A hearing officer shall, upon written motion by either party for good cause shown, grant one continuance of any hearing scheduled under the provisions of Part Ed 1128. No additional contested continuances shall be granted by the hearing officer in such cases except for good cause shown, including but not limited to, illness, accident or death of a family member."

waivers of timelines, and hearing status reports, in addition to transcripts of each hearing conducted.

It is estimated that during calendar year 1993 there were 72 due process hearings held in the State of New Hampshire. Decisions made by the State Hearing Officer are final unless appealed in State or Federal court. OSEP reviewed NHSDE's hearing log entries for 72 due process hearings. These hearings represented 72 consecutive entries in the NHSDE hearing log, and represent hearings that were requested between January 1, 1993 and December 21, 1993. As of January 24, 1994, the status of 20 of the 72 due process hearing requests was "Settled," 19 requests were "Withdrawn," 3 were "Mediated," 14 resulted in due process hearing decisions, one request was "Dismissed," and 15 were listed as "Current."

OSEP reviewed NHSDE's log entries 01 through 50 in order to determine whether NHSDE is in compliance with timeline requirements. One of the cases was entered twice on the log, (the earlier entry resulted in settlement, the latter in a decision); therefore the total number of cases reviewed for compliance with timeline requirements was 49. The amount of time from the date a request for a due process hearing was received, to the withdrawal, settlement, dismissal, or decision of these requests exceeded 45 days in 29 of these 49 entries. Of the 20 requests for a due process hearing that did not exceed timelines, 12 were withdrawn, one was dismissed, six were settled, and one was mediated. None of the due process hearing requests that resulted in a hearing decision were completed within timelines.

Of the 12 due process hearing requests reviewed by OSEP that resulted in a decision, all 12 exceeded the 45 day timelines. The amount of time in excess of 45 days ranged from 1 month, 6 days to 10 months, 28 days. Of these 12 cases, specific extensions to the 45 day timeline requirement were granted in two instances; however, the hearing decision was rendered beyond the extension in both cases.

**V. INDIVIDUALIZED EDUCATION PROGRAM**

NHSDE is required to ensure that each public agency develops and implements an individualized education program for each of its children with disabilities (§300.341). Sections 300.340 through 300.349 set forth requirement for developing, implementing, reviewing, and revising IEPs.

A. NHSDE is required to ensure that each public agency initiates and conducts meetings for the purpose of developing, reviewing, and revising the IEP of a child with a disability as set forth in §300.343(a) and that the meeting include the required participants as set forth in §300.344.

**FINDINGS: LEA REPRESENTATIVE AT IEP MEETINGS**

OSEP finds that NHSDE did not meet its responsibility under §300.344 to ensure that public agencies conducted IEP meetings in accordance with the participant requirements.

a. NHSDE's monitoring procedures contain an ineffective method to determine compliance with the requirements of §300.344(a)(1). (See Section II on page 4 of this Report.)

b. The most recent IEPs for nine students in Agency A were not developed in meetings that included an agency representative, as required by §300.344(a)(1). The Special Education Director confirmed that he signs every IEP form in a space at the bottom of the signature page designated, "L.E.A. Representative Signature," after the meeting has been concluded, but he does not attend the meetings.

c. In Agency C, the most recent IEPs for three students were not developed in meetings that included an agency representative. In interviews, both the teacher and the LEA director confirmed that an LEA Representative was not present for the three students in question and that an LEA representative does not normally attend IEP meetings at this facility.

d. In Agency E, the most recent IEPs for nine students were not developed in meetings that included an agency representative. In this agency, the chairperson of the special education department serves as the LEA Representative. Due to teaching responsibilities, the chairperson does not attend all of the IEP meetings. Of the nine student files in question, the chairperson signed the IEP in the appropriate space for the LEA

Representative after the IEP meeting. Both of the teachers interviewed and the department chairperson confirmed that it is a practice in this agency to document within the minutes of the meeting those persons who participated in the meeting. OSEP reviewed the meeting minutes and determined that the chairperson was not listed in the minutes of the nine files in question as a participant.

- B. NHSDE is responsible for ensuring that the IEP of each child with a disability contains all the information set forth at §300.346(a).**

FINDINGS:

OSEP finds that NHSDE did not always meet its responsibility under §300.341 to ensure that public agencies developed IEPs in accordance with the content requirements of §300.346(a), as demonstrated by the following:

**a.** NHSDE's monitoring procedures contain an ineffective method to determine compliance with the requirements of §300.346(a). (See Section II on page 4 of this Report.)

**b.** OSEP's review of IEPs in student records in the agencies it visited indicated that the requirements of §300.346(a) were either not addressed, or were incompletely or incorrectly addressed, as indicated by the following:

**1. Present Levels of Educational Performance §300.346(a)(1)**

In agencies A, D and E, for 17 of 34 student records reviewed by OSEP, present levels of educational performance (PLPs) did not clearly identify performance levels as required by §300.346(a)(1) for certain areas of special education and/or related services.

(a) In Agency A, the PLPs for eight of nine records reviewed by OSEP were listed only in percentages or percentiles.

Example:

"MATH: Application - 1%, Computation - 1%, lower extreme  
READING: Decoding - 3%, Comprehension - 2%, lower extreme  
LANGUAGE: Spelling - 1%, lower extreme"

(b) In Agency D, PLPs in three of nine records reviewed did not identify or communicate performance levels. The following examples illustrate: "with use of a calculator can do math problems," and "Enjoys looking at books, magazines."

(c) In Agency E, PLPs in IEPs in six of 16 records reviewed, did not fully meet the requirements of §300.346(a)(1). Three IEPs did not identify or communicate performance levels; Example, "[Student] is passing all courses at the present time." In addition, PLPs in two files were based on evaluation data that were more than two years old.

## **2. Statement of Annual Goals §300.346(a)(2)**

In agencies A, D and E, for 15 of the 34 records reviewed by OSEP, one or more of the annual goals from each IEP did not describe what the student with a disability could reasonably be expected to accomplish within a twelve-month period.<sup>5</sup>

The following example is representative of this deficiency as identified in all three agencies.

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<sup>5</sup>To reach its determination that an annual goal did not meet Federal requirements, OSEP reviewed both the annual goal and its corresponding short-term objective(s) to determine if there was a description of what the student could reasonably be expected to accomplish within a twelve-month period in the student's special education program.

PLP	Goal	Objectives	Progress Notes
[student] is presently passing all of his freshman classes.	[student] will graduate from [school] in June of 1996.	[student] will pass the following: Phys ED 1/2 Eng II 1 cr. math 1 cr. Science & You 1/2 Physical Sci 1/2 Pol. Sys 1/2 Home Maintenance 1/2 Leather crafts 1/2	End of each marking period.

**3. Appropriate Objective Criteria §300.346(a)(5).**

In agencies A, D and E, 12 of the 34 records reviewed by OSEP, did not include any objective criteria.

**4. Evaluation Procedures §300.346(a)(5).**

In agencies D and E, five of the 25 records reviewed by OSEP, did not include evaluation procedures.

**5. Evaluation Schedules §300.346(a)(5).**

In agencies A, D and E, 25 of the 34 records reviewed by OSEP, did not include evaluation schedules.

Table V following sets forth the instances of noncompliance with Part B requirements regarding development, review and revision of IEPs which were identified by OSEP in its review of documents and interviews with agency personnel.

**TABLE V**

**AREAS OF NONCOMPLIANCE REGARDING IEPs**

IEP REQUIREMENT	PUBLIC AGENCY					TOTAL
	A	B	C	D	E	41
§300.344(a)(1) Agency Rep At IEP Meeting	$\frac{9}{9}$	$\frac{0}{4}$	$\frac{3}{3}$	$\frac{0}{9}$	$\frac{9}{16}$	$\frac{21}{41}$
§300.346(a)(1) Present Levels of Performance	$\frac{8}{9}$	$\frac{0}{4}$	$\frac{0}{3}$	$\frac{3}{9}$	$\frac{6}{16}$	$\frac{17}{41}$
§300.346(a)(2) Annual Goals	$\frac{6}{9}$	$\frac{0}{4}$	$\frac{0}{3}$	$\frac{1}{9}$	$\frac{8}{16}$	$\frac{15}{41}$
§300.346(a)(5) Objective Criteria	$\frac{6}{9}$	$\frac{0}{4}$	$\frac{0}{3}$	$\frac{2}{9}$	$\frac{4}{16}$	$\frac{12}{41}$
§300.346(a)(5) Evaluation Procedures	$\frac{0}{9}$	$\frac{0}{4}$	$\frac{0}{3}$	$\frac{2}{9}$	$\frac{3}{16}$	$\frac{5}{41}$
§300.346(a)(5) Evaluation Schedules	$\frac{9}{9}$	$\frac{0}{4}$	$\frac{0}{3}$	$\frac{9}{9}$	$\frac{7}{16}$	$\frac{25}{41}$

## VI. TRANSITION SERVICES

NHSDE is required to ensure that all public agencies develop an IEP for each student with disabilities, who is age 16 (or for a younger student, if appropriate), that contains a statement of needed transition services, developed in accordance with the requirements specified in §§300.18, 300.344, 300.345, 300.346, and 300.347.

### FINDING: PROVISION OF TRANSITION SERVICES

OSEP interviewed NHSDE officials responsible for the administration of special education programs statewide. In addition, OSEP reviewed materials pertaining to monitoring of special education programs and review and approval of LEA applications and other documents to assess NHSDE's efforts in the statewide implementation of the transition requirements at §§300.344 through 300.347. Through information gathered from these interviews and document review, OSEP determined that despite the existence of a technical assistance program focused on implementation of transition requirements, NHSDE has not taken sufficient steps, such as the provision of written guidance, systemic technical assistance or inservice training to ensure that public agencies in New Hampshire implement these requirements.<sup>6</sup> Further, OSEP determined that NHSDE's monitoring procedures do not contain any method to determine compliance with the requirements of §§300.344(c), 300.345(b)(2), and 300.347, and contain an incorrect method to monitor compliance with the transition requirements of §300.346(b). (See Section II on page 4 of this Report.) In addition, NHSDE has approved LEA applications that did not include policies and procedures that meet the transition requirements of §§300.344(c), 300.345(b)(2), 300.346(b), and 300.347. (See Section III on page 11 of this Report.)

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<sup>6</sup> OSEP notes that in 1991, prior to the final Federal regulations, a memorandum was issued by NHSDE to public agencies in the State to convey the content of the Part B transition requirements. In addition, the Office of Special Education and Rehabilitative Services has provided funding for the New Hampshire Transition Initiative, a five-year technical assistance program, operated by the Institute on Disability. OSEP was informed that workshops and other technical assistance and training activities are available to educational personnel upon request.

OSEP reviewed the files of students age 16 years old or older, and interviewed teachers and administrators in two public agencies regarding provision of transition services. A special education administrator from public agency E stated that there were no district procedures for transition requirements, and that implementation of these requirements varied from school to school, "some are doing it, and some are not." A special education administrator from public agency A informed OSEP that while there is a job coordinator at the high school, there is "no community involvement...IEPs are shaped by what is available in this building. There are not enough personnel and resources." OSEP's review of student files confirmed that in the majority of instances, provision of transition services had not been contemplated by the IEP teams for students ages 16 years old or older, in accordance with the requirements of §§300.345(b)(2), 300.344(c)(1)(i), and 300.346, as demonstrated by the following:

**a.** In public agencies A and E, in 14 of 17 records reviewed by OSEP for students 16 years or older, the notice to the parents did not include the information on transition services as required by §300.345(b)(2):

If a purpose of the meeting is the consideration of transition services for a student, the notice must also-

(i) Indicate this purpose;

(ii) Indicate that the agency will invite the student;  
and

(iii) Identify any other agency that will be invited to send a representative.

**b.** In public agencies A and E, in 14 of 17 records reviewed by OSEP for students 16 years or older, the student was not invited to the IEP meeting, as required by §300.344(c)(1)(i).

**c.** In public agencies A and E, in 16 of 17 records reviewed by OSEP for students 16 years or older, student IEPs did not include a statement of needed transition services or any information related to the provision of transition services, as required by §300.346.

**VII. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)**

NHSDE 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 conformity with an IEP (§§300.8(d) and 300.350). 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..." (§300.16(a)).

**FINDINGS: PROVISION OF RELATED SERVICES**

OSEP finds that NHSDE did not always meet its responsibility to ensure that all public agencies consider the need for related services on an individual basis and make those services available based upon the student's individual needs rather than based upon the availability of the service provider.<sup>7</sup>

**a.** NHSDE's monitoring procedures contain an incomplete method to determine compliance with the requirements of §300.300, that related services are provided in accordance with an IEP, as part of a free, appropriate public education. (See Section II on page 4 of this Report.)

**b.** A school administrator in Agency A informed OSEP that counseling is not based on individual student needs but is based upon the availability of the service provider. The district-wide administrator informed OSEP the program "desperately needed a full-time counselor to provide related services. IEPs are shaped by what is available in the building. There are not enough personnel/resources." A teacher who provides service to special education students informed OSEP that "Our kids can't get the individual or group counseling that they need because there are not enough staff. We don't put it on the IEP because we can't fulfill that promise."

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<sup>7</sup> In all instances, OSEP interviewed teachers of students with disabilities who participated in the IEP and placement process for individual students. The special education administrators interviewed were those responsible for the implementation of policies and procedures and supervision of staff and programs relating to provision of special education and related services to students with disabilities in their agencies.

**c.** A district-wide administrator informed OSEP that there was a shortage of speech and language therapists in Agency B. This administrator further informed OSEP that, "If a child requires two units of speech per week, we either provide consultation or cut the time in half so that they get some services." A teacher who provides services to these students informed OSEP that "We don't get it [speech] as much as we should, for example, last January to June we didn't have a speech therapist at all. Kids don't get what they need for related services on their IEPs. Evaluations are always done, but that means time is taken away from direct services."

**d.** A district-wide administrator from Agency C informed OSEP that there is a shortage of speech and language therapists in the agency that is problematic. A school-wide administrator further informed OSEP that not every child receives speech and language services as indicated on student IEPs in the agency. A teacher who provides services to students with disabilities says that "a speech and language program does not exist at this school." This teacher further stated that the students with disabilities in her program do not receive the frequency and amount of services that are indicated on the IEP.

**VIII. COMPLAINT MANAGEMENT PROCEDURES**

NHSDE is responsible for developing written procedures for resolving any complaint that a public agency has violated a requirement of Part B. §300.660(a). NHSDE's complaint procedures must ensure that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless NHSDE has extended the time limit because exceptional circumstances exist with respect to a particular complaint. §300.661(a) and (b).

**Description of NHSDE's Complaint Management System:** All written complaints, filed by an individual or organization are received in the NHSDE central administrative office. The information contained in the complaint is reviewed by NHSDE, and a determination is made if the complaint correspondence is sufficient to initiate an inquiry. If such is the case, the complainant is sent an acknowledgement letter, which summarizes the procedures for investigation of the complaint, and timeline requirements. If NHSDE determines that the initial inquiry contained insufficient information to proceed with an investigation, the initial complainant letter will include a request for additional information. Following receipt of a complaint or a potential complaint, a SPEDIS check is made to verify that the student involved is receiving special education services. NHSDE then contacts both the complainant and the district to obtain additional information and arrange for an onsite visit to the district, if necessary. When sufficient information is obtained, a report is developed which addresses the allegations in the complaint and any findings and corrective actions, as appropriate. Both parties to the complaint are then advised of the right of either party to appeal the findings and/or corrective actions contained in the report to NHSDE and/or the Secretary of the U.S. Department of Education.

**FINDING 1: EXTENSIONS OF TIMELINES IN RESOLUTION OF COMPLAINTS**

OSEP finds that the New Hampshire Code of Administrative Rules at Ed 1127.03(a) (Resolution of Complaints) include a procedure in which extensions of the 60 day timeline in the resolution of complaints are granted upon request by a public agency. This regulation states:

(a) All complaints shall be resolved within 60 days of receipt of a complaint. The 60 day time limit may be extended up to 90 days by the commissioner of education when a written request from the local superintendent of schools, director of the public agency, or the director of the private organization documents exceptional circumstances that necessitate such an extension.

The Federal regulations at §300.661(b) permit an extension of the 60 day time limit for the resolution of complaints only if exceptional circumstances exist with respect to a particular complaint. It is inconsistent with Federal requirements to limit the availability of extensions based on exceptional circumstances only to situations when it is requested and documented by the school, public agency or private organization.<sup>8</sup>

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<sup>8</sup> As set forth in Appendix A of this Report, NHSDE's model notice, Parental Rights in Special Education includes a provision which states, "you have the right to resolution of your complaint written within 60 days with extension to 90 days only for exceptional circumstances." OSEP notes that regardless of who requests an extension in a complaint, the requirements at 34 CFR 300.661(b) specify that it can only occur if exceptional circumstances exist with respect to a particular complaint.

**FINDING 2: APPEAL OF COMPLAINT FINDINGS**

OSEP finds that the New Hampshire Code of Administrative Rules at Ed 1127.03 (b) (Resolution of Complaints) includes a process which permits individuals to appeal findings and corrective actions required through compliant investigation and resolution outside of the 60 day timeline required by §300.661(a). This Rule states, in part:

**(b) Any party to a complaint may request a meeting with the commissioner of education or his/her designee if the agency or individual has decided that the orders of compliance are inaccurate, invalid and/or not based on fact. If any party is still aggrieved after meeting with the commissioner of education, then that party shall have the right to appeal the commissioner's orders to the State board of education.**

When interviewed regarding implementation of these complaint procedures, NHSDE officials confirmed that this procedure would allow a complainant to appeal the decision after the 60 day time limit, and could delay implementation of the final decision.

Implementation of this procedure would allow for final resolution of complaints far beyond the 60 day timeline requirement of §300.661(a), and does not qualify as "exceptional circumstances" which would justify extensions of the timeline, as required by §300.661(b).<sup>9</sup>

In addition, OSEP's finds that NHSDE's Code of Administrative Rules at Ed 1127.04 includes procedures which would also result in a delay in the implementation of final decisions in complaints beyond the 60 day timeline requirement of §300.661(a). The regulation provides for an appeal of any NHSDE decision regarding the provision of FAPE (these procedures do not pertain to decisions rendered in due process hearings) including decisions in resolution of complaints, in a multi-stage process which consists of the following steps:

- 1) An aggrieved party files a written grievance with the commissioner of education within 10 days of the receipt of the decision.

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<sup>9</sup> NHSDE administrative officials informed OSEP that to date, only one appeal of a complaint had been initiated through this procedure.

2) Commissioner reviews request, determines if more information is needed. If so, the additional information must be returned to the Commissioner's office within 10 days.

3) A written decision will be issued by the Commissioner's office within 30 days.

4) An aggrieved party may appeal the Commissioner's decision to the State Board of Education within 30 days of receipt of the Commissioner's decision. There is no timeline within which the decision of the State Board must be issued.

**FINDING 3: TIMELINES IN RESOLUTION OF COMPLAINTS**

OSEP reviewed NHSDE's log of complaints to determine if any were resolved beyond the 60 day timeline required by §300.661(a). OSEP's initial review indicated that of 100 total complaints filed in New Hampshire between July of 1991 and February of 1994, 20 were not resolved within 60 days from receipt of the complaint. During follow-up interviews with NHSDE administrative personnel, OSEP inquired as to whether an extension of the timeline was granted in any of the complaints due to exceptional circumstances. NHSDE officials informed OSEP that of the 20 complaints that exceeded the 60 day timeline requirement, seven were involved in due process hearings, were withdrawn as complaints and the issues were resolved through the hearing process. In these cases, the due process hearing was requested subsequent to the initiation of the complaint investigation. The remaining 13 complaints were resolved beyond the 60 day timeline requirement without an extension of the timeline. The amount of time that these 13 complaints were resolved beyond the 60 day timeline ranged from ten to 92 days.

**AGENCIES VISITED BY OSEP**

OSEP visited five local educational agencies as part of its compliance review of NHSDE. 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 NHSDE'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 this Report are set forth below:

AGENCY A = Rochester (SAU #54)

AGENCY B = Winchester (SAU #38)

AGENCY C = Weare (SAU #24)

AGENCY D = Goffstown (SAU #19)

AGENCY E = Manchester (SAU #37)

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

APPENDIX A  
 Review of NHSDE's Notice, Parental Rights in Special Education

EXPLANATION OF PROCEDURAL SAFEGUARDS - ONE-TIER (AS REQUIRED BY 34 CFR §300.501)<sup>10</sup>

Section	Description	Present, absent, incomplete	Explanation for "Incompl
§300.504(c)	In addition to the parental consent requirements described in paragraph (b) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE	Absent	
§300.505(a)(1)	Notice includes full explanation of procedural safeguards	Absent	

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<sup>10</sup> NHSDE's notice, "Parental Rights in Special Education," contains a footnote that incompletely defines the term, "children with disabilities." The Regulations at 34 CFR §300.7 includes the categories of autism and traumatic brain injury, both of which were omitted in NHSDE's definition.

NHSDE's Notice also contains an inaccurate interpretation of extensions to time limits in State Complaint Procedures. The Notice states: "You have the right to resolution of your complaint written within 60 days with extension to 90 days only for exceptional circumstances." The requirement at 34 CFR 300.661 (b) states: An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

§300. 505(c)	If the parent's native language or communication mode not a written language, agency takes steps to ensure that notice is translated orally or by other means to parent in his/her native language or other mode of communication, that parent understands notice content, and that there is written evidence that those requirements have been met	Absent	
§300. 506(c)	Agency informs parent regarding free/low cost legal and other relevant services if parent requests information or hearing initiated	Incomplete	Notice states that the public agency shall inform the parent of any free or low-cost or other relevant services available in the area, but omits the times this information is required; if the parent requests the information; or the parent or the agency initiates a hearing under this section.
§300. 508(a) (1)	Parties have right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities	Incomplete	Notice omits reference to rights of parties; refers only to parents.
§300. 508(a) (2)	Parties have right to present evidence, cross-examine, and compel attendance of witnesses	Incomplete	Notice omits reference to rights of parties; refers only to parents.
§300. 508(a) (3)	Parties have right to prohibit evidence not disclosed at least 5 days before hearing	Incomplete	Notice omits reference to rights of parties; refers only to parents.
§300. 508(a) (4)	Parties have right to obtain written or electronic verbatim record of hearing [Note: must be provided to parents free of charge.]	Incomplete	Notice omits reference to rights of parties; refers only to parents.

<p>§300.508(a)(5) and 20 USC 1415(d)(4)</p>	<p>Parties have right to written findings and decision (after deleting personally identifiable information, copies provided to State advisory panel and made available to public)</p>	<p>Incomplete</p>	<p>NHSDE Notice omits reference to rights of parties; refers only to parents. Notice also omits that after deleting personally identifiable information, copies are provided to State advisory panel and made available to the public.</p>
<p>§300.511, and 20 USC 1415(e)(2)</p>	<p>Aggrieved party may bring civil action in State or Federal court</p>	<p>Incomplete</p>	<p>Notice does not make it clear that parents may appeal to a State or Federal court. Notice states: "You have the right to appeal a decision from the Hearing Office to a court of competent jurisdiction." 20 USC 1415(e)(2) states: "...action may be brought in any State court of competent jurisdiction or a district court of the United States."</p>
<p>§300.512(a)</p>	<p>Hearing decision reached and mailed to parties w/in 45 days of receipt of request for hearing</p>	<p>Incomplete</p>	<p>NHSDE Notice omits reference to rights of parties; refers only to parents.</p>
<p>§300.512(c)</p>	<p>Hearing officer may grant specific extensions of time at request of either party</p>	<p>Incomplete</p>	<p>Notice states: Either party may request that the hearing officer grant an extension of this time frame. §300.512(d) states that "A hearing officer... may grant specific extensions of time ..." NHSDE notice does not make clear that more than one extension may be granted, or that the extensions must be for specific periods of time.</p>

<p>§300. 513(a)</p>	<p>Child remains in present educational placement during pendency of any administrative or judicial proceeding unless agency and parents agree otherwise</p>	<p>Incomplete</p>	<p>NHSDE Notice states: "you have the right to have your child remain in his or her present educational placement until the Hearing is completed and you receive the Hearing Officer's written decision, unless you and the school district agree otherwise." Notice does not include that the child must be allowed to remain in his or her present educational placement during pendency of <u>any</u> administrative or judicial proceeding unless agency and parents agree otherwise.</p>
<p>§300. 513(b)</p>	<p>If proceedings involve application for initial admission to public school, child must (with parent consent) be placed in public school program until completion of all proceedings</p>	<p>Absent</p>	
<p>§300. 514(a) and (b)</p>	<p>Public agency must ensure that surrogate parent is appointed when no parent can be identified, public agency cannot, after reasonable efforts, discover parent's whereabouts, or child is ward of the State. Agency must have method for determining whether child needs surrogate parent, and for assigning surrogate parent to child</p>	<p>Absent</p>	
<p>§300. 514(c)</p>	<p>Agency may select surrogate parent in any way permitted under State law, but must ensure that person selected as surrogate has no interest that conflicts with interest of child, and has knowledge and skills that ensure adequate representation</p>	<p>Absent</p>	

§300. 514(d)	Person assigned as surrogate may not be employee of public agency involved in education or care of child person who otherwise qualifies to be surrogate parent not employee of agency solely because paid by agency to serve as surrogate parent	Absent	
§300. 514(e)	Surrogate parent may represent child in all matters relating to identification, evaluation, and educational placement, and provision of FAPE	Absent	
§300. 562(a)	Parents may inspect and review any education records relating to their child; agency must comply with parent request without unnecessary delay and before any meeting regarding an IEP or hearing, and in no case more than 45 days after request	Incomplete	NHSDE Notice states: "You have the right to inspect and review your child's records within 45 days of making a request." Notice does not make clear that parents have a right to inspect any educational records relating to their children, and that the agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to FAPE.
§300. 563	Agency must keep record of parties obtaining access to records, including name, access date, purpose for access	Absent	
§300. 566(b)	Agency may not charge fee to search for/ retrieve information	Absent	

<p>§300. 567(a)</p>	<p>Parent may request amendment if he/she believes information in record is inaccurate, misleading or violates the privacy or other rights of the child</p>	<p>Incomplete</p>	<p>NHSDE Notice states: "You have the right to ask for an amendment of any specific item in your child's records on the grounds you believe it is inaccurate, misleading, or violates privacy rights." The Notice does not include the right to the amendment request if the parent believes the information in the record is in violation of other rights of the child.</p>
<p>§300. 569(a)</p>	<p>If decided in hearing information inaccurate, misleading, or violates rights, agency must so inform parent and amend the record</p>	<p>Absent</p>	
<p>§300. 569(c) (2)</p>	<p>If record or contested portion disclosed, parent explanation also disclosed</p>	<p>Absent</p>	

APPENDIX B

CORRECTIVE ACTION PLAN

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>NHSDE must issue a memorandum to all agencies advising them of OSEP's findings of deficiency. The memorandum must advise agencies of their responsibility to review their respective policies and procedures in regard to each of the deficiencies identified by OSEP regarding content of local educational agency (LEA) applications, procedural safeguards, individual educational programs (IEPs) and the provision of a free appropriate public education. Should the agencies determine that their practice is inconsistent with the requirements in NHSDE's memorandum, they must discontinue the current practice and implement the correct procedure. This memorandum must be submitted to OSEP within thirty days following NHSDE's receipt of the final Report. Within 15 days of OSEP's approval of the memorandum, NHSDE must disseminate the memorandum to all agencies throughout the State.</p>		
<p>I. General Supervision §300.600(a)(1) and (a)(2)(ii) (NHSDE must ensure that all public agencies meet the requirements of Part B and standards of the State.)</p>	<ol style="list-style-type: none"> <li>1. NHSDE must develop and submit to OSEP the procedures necessary to ensure that programs for all individuals with disabilities who are committed to facilities operated by the Department of Corrections (DOC) and those committed to the ten county correctional facilities are under the general supervision of NHSDE. Procedures must include a method for: (1) ensuring that all eligible individuals with disabilities are identified, located and evaluated; (2) ensuring that FAPE is provided for all eligible individuals pursuant to an IEP; (3) determining for each facility the staff needs, the basis for that determination, and projected dates for hiring of necessary staff; (4) monitoring DOC facilities in order for NHSDE to make compliance determinations and, where necessary, require and ensure corrective action; and (5) providing for documented evidence of implementation that describes the steps undertaken to ensure that the plan has been implemented in each of the correctional facilities in the State, and the results.</li> <li>2. NHSDE must submit documentation verifying that all DOC sites where individuals with disabilities are incarcerated make FAPE available to all eligible individuals.</li> <li>3. NHSDE must submit to OSEP copies of monitoring reports and related corrective action documents, verifying that these procedures have been implemented.</li> </ol>	<ol style="list-style-type: none"> <li>1. Submit procedures: <u>60 days from receipt of final Report.</u></li> <li>2. Submit verification that procedures have been implemented: <u>1 year from receipt of the final Report.</u></li> <li>3. Submit monitoring reports and related corrective action documents: <u>1 year from receipt of the final report.</u></li> </ol>

<p>II. SEA Monitoring</p> <p>A. Section 44 of GEPA, as amended by IASA, [formerly Section 435 of GEPA, 20 U.S.C. §1232d(b)(3)(A)] (Methods for identifying deficiencies)</p>	<p>1. NHSDE must revise its monitoring procedures for all agencies to effectively identify deficiencies regarding requirements cited in this Section and in Sections IV, V, VI and VII of this Report.</p>	<p>1. Submit revised procedures: <u>60 days from receipt of final Report.</u></p>
<p>B. Section 441 of GEPA, as amended by IASA, [formerly Section 435 of GEPA, 20 U.S.C. §1232d(B)(3)(E)] (Methods for ensuring that public agencies correct identified deficiencies.)</p>	<p>1. NHSDE must revise its monitoring procedures to ensure that all deficiencies identified through SERESC's onsite monitoring review process will be corrected, including deficiencies regarding requirements cited in Sections IV, V, and VII of this Report.</p>	<p>1. Submit revised procedures: <u>60 days from receipt of the final Report.</u></p>
	<p>2. NHSDE must provide verification from agencies monitored that it has ensured correction of all deficiencies identified through its revised monitoring procedures. The documentation must include all reports, working papers and correspondence resulting from all follow-up and verification visits conducted subsequent to the monitoring event.</p>	<p>2. Submit reports, working papers and other documentation: <u>One year from OSEP approval of NHSDE's revised monitoring procedures.</u></p>
	<p>2. Submit reports and working papers from two agencies that NHSDE has monitored utilizing revised procedures (agencies to be determined by OSEP).</p>	<p>2. Submit monitoring reports: <u>6 months from OSEP approval of NHSDE's revised monitoring procedures.</u></p>

<p>III. Review and Approval of LEA Applications</p> <p>§76.400(b) and (d) (Procedures for approving LEA applications)</p>	<p>1. NHSDE must develop and implement procedures to ensure that all applicants for Part B funds submit LEA applications that are fully consistent with Federal requirements. This will require revisions to NHSDE's review and approval procedures, to correct deficiencies discussed in this section of the Report.</p>	<p>1. Submit revised procedures by: <u>60 days of receipt of final Report.</u></p>
	<p>2. NHSDE must submit copies of 2 LEA applications (from agencies to be determined by OSEP) that have been reviewed and approved by NHSDE utilizing the revised LEA application procedures described above.</p>	<p>2. Submit LEA applications: <u>within 30 days from the request by OSEP.</u></p>
<p>IV. Procedural Safeguards</p> <p>A. §§300.501 &amp; 300.505(a)(1) (NHSDE must ensure that public agencies provide written notice to parents which contains the content required at §300.505(a))</p> <p>B. §300.501 (NHSDE must ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§300.500-300.515.)</p>	<p>1. NHSDE may either revise its model notice and require its use, or allow agencies to develop their own notice that NHSDE reviews and approves. If NHSDE chooses to revise its model rights statement, NHSDE must submit the revised notice to OSEP for review and approval.</p> <p>2. NHSDE must develop and issue a memorandum to those agencies in which OSEP identified deficiencies in the establishment, content, and implementation of procedural safeguards, informing them that they must discontinue their deficient practices as described in this Section. The agencies must immediately develop and implement procedural safeguards that meet the requirements of §§300.500-300.515 (as required by §300.501). The agencies must submit documentation to NHSDE that the changes necessary to comply with the Part B requirements at §300.501 have been implemented. NHSDE must submit to OSEP verification that it has determined that each of these agencies has established and implemented these requirements.</p>	<p>1. a. Submit revised model parents' rights notice: <u>90 days from receipt of the Final Report.</u></p> <p>1. b. Submit notice documents from 2 agencies selected by OSEP: <u>within 30 days from the notification and request by OSEP.</u></p> <p>2. a. Submit memorandum: <u>120 days from receipt of the Final Report.</u></p> <p>2. b. Issue memorandum: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>2. c. Submit verification: <u>60 days from date the memorandum is issued.</u></p>

<p>C. §300.512(a) &amp; (c) (Decisions in due process hearings are reached and mailed to parties within 45 days after the receipt of request, unless an extension is granted at the request of either party.)</p>	<p>1. NHSDE must revise its Code of Administrative Rules at Ed 1128.09(d) to eliminate the provision for waivers of timelines in due process hearings.</p> <p>2. NHSDE must develop a memorandum to inform hearing officers and public agencies that the procedure for waivers of timelines in due process hearings is inconsistent with Part B and is no longer in effect.</p> <p>3. NHSDE must develop procedures to ensure that decisions in due process hearings are reached and mailed within 45 days from receipt of a request for a hearing, and that extensions of time, if any, are granted for <u>specific</u> periods of time.</p>	<p>1. Submit revised Code of Administrative Rules by: <u>June 1996.</u></p> <p>2. a. Submit memorandum by: <u>30 days from receipt of the final Report.</u></p> <p>2. b. Issue memorandum by: <u>15 days from receipt of OSEP approval.</u></p> <p>3. Submit revised procedures by: <u>60 days from receipt of the Final Report.</u></p>
<p>V. IEP A. §300.34 4 (IEPs developed in a meeting that includes required participants) B. §300.34 6 (IEPs must contain objective criteria, annual goals, present levels of educational performance, program evaluation procedures and evaluation schedules.)</p>	<p>1. NHSDE must develop a plan for ensuring that agencies correct the identified deficiencies which includes needed personnel and any other resources necessary to ensure that all such deficiencies are corrected in a timely manner.</p> <p>2. Issue a memorandum to those agencies in which OSEP identified deficient practices, requiring those agencies to discontinue their deficient practices. The agencies must submit documentation to NHSDE that the changes necessary to comply with Part B requirements have been implemented. NHSDE must send to OSEP verification that all corrective actions have been completed by the agencies.</p>	<p>1. a. Submit plan for correcting deficient areas: <u>30 days from receipt of final Report.</u></p> <p>1. b. Implement plan: <u>15 days from receipt of OSEP approval of plan.</u></p> <p>2. a. Submit memorandum: <u>30 days from receipt of final Report.</u></p> <p>2. b. Issue memorandum by: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>2. c. Submit verification by: <u>60 days from issuance of memo.</u></p>

<p>VI. Transition Services</p> <p>§§300.344, 300.345, 300.346 and 300.347 (Transition requirements.)</p>	<p>1. NHSDE must develop a plan for ensuring that agencies correct the identified deficiencies which includes needed personnel and any other resources necessary to ensure that all such deficiencies are corrected in a timely manner.</p>	<p>1. a. Submit plan for correcting deficient areas: <u>30 days from receipt of final Report.</u></p> <p>1. b. Implement plan: <u>15 days from receipt of OSEP approval of plan.</u></p>
	<p>2. Issue a memorandum to those agencies in which OSEP identified deficient practices, requiring those agencies to discontinue their deficient practices. The agencies must submit documentation to NHSDE that the changes necessary to comply with Part B requirements have been implemented. NHSDE must send to OSEP verification that all corrective actions have been completed by the agencies.</p>	<p>2. a. Submit memorandum: <u>30 days from receipt of final Report.</u></p> <p>2. b. Issue memorandum by: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>2. c. Submit verification by: <u>60 days from issuance of memo.</u></p>
<p>VII. Free Appropriate Public Education</p> <p>A. §300.300 (Provision of Services)</p>	<p>1. NHSDE must develop a plan for ensuring that agencies correct the identified deficiencies which includes needed personnel and any other resources necessary to ensure that all such deficiencies are corrected in a timely manner.</p>	<p>1. a. Submit plan for correcting deficient areas: <u>30 days from receipt of final Report.</u></p> <p>1. b. Implement plan: <u>15 days from receipt of OSEP approval of plan.</u></p>
	<p>2. NHSDE must issue a memorandum to those agencies in which OSEP identified deficient practices, requiring those agencies to correct their deficient practices and procedures. The agencies must submit documentation to NHSDE that changes necessary to comply with Part B requirements §300.300 (FAPE), have been implemented. NHSDE must submit to OSEP verification that it has determined that each of these agencies has corrected its practices and procedures.</p>	<p>2. a. Submit memoranda: <u>30 days from approval of plan.</u></p> <p>2. b. Issue memoranda by: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>2. c. Submit verification by: <u>60 days from issuance of memo.</u></p>

<p>VIII. Complaint Management</p> <p>§§300.660(a), 300.661(a) &amp; (b). (Written procedures for resolving any complaint that a public agency has violated a requirement of Part B.)</p>	<p>1. NHSDE must revise the New Hampshire Code of Administrative Rules at Ed 1127.03(a) and (b) and 1127.04 to ensure that: 1) any complaint that an agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, and that extensions for exceptional circumstances with respect to a particular complaint are not limited to circumstances documented by agencies, and 2) any appeal procedures pertaining to "any NHSDE decision regarding the provision of FAPE" will conform to the Federal requirements including the 60 day time limit for resolving complaints.</p> <p>2. NHSDE must revise its complaint management procedures to ensure that any complaint that an agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, and a written decision is issued to the complainant and that extensions to the time limit occur only because exceptional circumstances exist with respect to a particular complaint, regardless of who requests the extension.</p> <p>3. NHSDE must issue a memorandum to each public agency which describes the amended complaint management procedures.</p>	<p>1. Submit revised Administrative Rules by: <u>June, 1996.</u></p> <p>2. a. Submit revised procedures: <u>30 days from receipt of the final Report.</u></p> <p>2. b. Submit copy of complaint log 6 months from approval of revised procedures, including, for any complaint resolution exceeding more than the 60 calendar days timeline, submit documentation of reasons for the extensions.</p> <p>3. a. Submit memo to OSEP by: <u>30 days from receipt of OSEP's final Report.</u></p> <p>3. b. Submit verification of dissemination by: <u>30 days from receipt of OSEP approval of memorandum.</u></p>
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CORRECTIVE ACTION TRAINING PLAN

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>I. General Supervision</p> <p>II. SEA Monitoring Section 441 of §1232d(b) (3) (A) and (E) ] (Methods for identifying deficiencies and for ensuring that public agencies correct identified deficiencies.)</p>	<p>NHSDE must ensure that training is provided to all personnel conducting monitoring activities in the use of the revised procedures for identifying and correcting deficiencies, including any revised procedures utilized in the monitoring of DOC and county correctional facilities.</p>	<p>Submit training materials: <u>60 days from receipt of the final Report.</u></p> <p>Submit verification of training: <u>60 days from receipt of OSEP approval of procedures.</u></p>
<p>III. Review and Approval of LEA Applications</p> <p>§76.400(b) and (d) (Procedures for approving LEA applications)</p>	<p>NHSDE must ensure that training is provided to staff who will be reviewing and approving LEA applications in the use of the revised procedures and LEA application materials.</p>	<p>Submit training materials: <u>60 days from OSEP approval of NHSDE's revised procedures.</u></p>

<p>IV. Procedural Safeguards</p> <p>A. §300. 501 (NHSDE must ensure that public agencies provide written notice to parents which contains the content required at §300. 505(a))</p> <p>B. §300. 501 (NHSDE must ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§300. 500-300. 515.)</p>	<p>1. NHSDE must develop training materials to inform and train teachers and administrators in their responsibilities in the areas cited in A and B in this Section.</p> <p>2. Disseminate training materials that address each of the areas cited in Sections A and B in this Section to all agencies and selected advocacy groups.</p> <p>3. Identify target groups for training that have administrative, supervisory and/or staff development responsibilities in the agencies or those who are in a position to share the training they receive with parents, teachers, and other appropriate parties. Develop a training schedule and ensure that training is provided in the areas cited above to the targeted groups and submit verification of training.</p>	<p>1. a. Submit training materials by: <u>180 days from receipt of the Final Report.</u></p> <p>2. Provide verification of dissemination, including a list of the recipients by: <u>60 days from receipt of OSEP approval of materials.</u></p> <p>3. Provide documentation of training, including training schedules, agendas for the training sessions, and the composition of the groups that are trained, by: <u>90 days from receipt of OSEP approval of materials.</u></p>
<p>C. §300. 512(a) &amp; (c)</p> <p>Decisions in due process hearings are reached and mailed to parties within 45 days after the receipt of request, unless an extension is granted at the request of either party.)</p>	<p>NHSDE must develop materials and ensure that technical assistance training for hearing and review officers, agency administrators and NHSDE staff is provided regarding revised procedures.</p>	<p>a. Submit materials to be used in technical assistance training by: <u>60 days from receipt of OSEP approval of revised procedures.</u></p> <p>b. Submit verification, including dates of training, training agendas and recipients of training, <u>90 days from receipt of OSEP approval of training materials.</u></p>

<p>V. IEP</p> <p>A. §300. 344 (IEP developed in a meeting that includes required participants)</p> <p>B. §300. 346 (IEPs must contain required content.)</p>	<p>1. NHSDE must develop materials to conduct technical assistance training for teachers and administrators in their responsibilities in the provision of related services.</p>	<p>1. Submit training materials by: <u>60 days from receipt of final Report for OSEP's approval.</u></p>
	<p>2. Identify target groups for training that have administrative, supervisory and/or staff development responsibilities in the agencies or those who are in a position to share the training they receive with parents, teachers, and other appropriate parties.</p>	<p>2. Submit training materials by: <u>60 days from receipt of OSEP approval of procedures.</u></p>
	<p>3. Develop a training schedule and ensure that training is provided as indicated above.</p>	<p>3. Submit verification of training by: <u>30 days from OSEP approval of materials.</u></p>
<p>VI. Transition Services</p> <p>§§300. 344, 300. 345 300. 346 and 300. 347. (Transition requirements.)</p>	<p>1. NHSDE must develop materials to conduct technical assistance training for teachers and administrators in their responsibilities in the provision of transition services.</p>	<p>1. Submit training materials by: <u>60 days from receipt of final Report for OSEP's approval.</u></p>
	<p>2. Identify target groups for training that have administrative, supervisory and/or staff development responsibilities in the agencies and those who are in a position to share the training they receive with parents, teachers, and other appropriate parties.</p>	<p>2. Provide documentation of training including agendas for the training sessions and the composition of the groups that are trained by: <u>90 days from receipt of OSEP approval of materials.</u></p>
	<p>3. Develop a training schedule and ensure that training is provided as indicated above.</p>	<p>3. Submit verification of training by: <u>30 days from OSEP approval of materials.</u></p>

<p>VII. Free Appropriate Public Education (FAPE)</p> <p>§300.300 (Provision of related services.)</p>	<p>1. NHSDE must develop materials to conduct technical assistance training for teachers and administrators in their responsibilities in the provision of related services.</p> <p>2. Identify target groups for training that have administrative, supervisory and/or staff development responsibilities in the agencies and those who are in a position to share the training they receive with parents, teachers, and other appropriate parties.</p> <p>3. Develop a training schedule and ensure that training is provided as indicated above.</p>	<p>1. Submit training materials by: <u>60 days from receipt of final Report for OSEP's approval.</u></p> <p>2. Provide documentation of training including agendas for the training sessions and the composition of the groups that are trained by: <u>90 days from receipt of OSEP approval of materials.</u></p> <p>3. Submit verification of training by: <u>30 days from OSEP approval of materials.</u></p>
<p>VIII. Complaint Management 300.661(b). (Written procedures for resolving any complaint that a public agency has violated a requirement of Part B.)</p>	<p>NHSDE must ensure that training is provided in the revised procedures described in the CAP section of this Report.</p>	<p>Submit verification of training by: <u>30 days from receipt of OSEP approval of revised procedures.</u></p>

**APPENDIX C**

This section of the Report contains a discussion of NHSDE's response to the accuracy and completeness of OSEP's draft Report. The appendix presents the Federal requirement under Part B, followed by NHSDE's specific response, and OSEP's analysis of the information. Where NHSDE's response resulted in a change to the Report, the reason is noted and the concomitant change made in the body of the Report. Please note that in instances where technical changes were made to the Report to correct inaccuracies in number or descriptions of programs or clarification of a procedures, those changes are not included in this Appendix.

## II. SEA Monitoring

**NHSDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs.**

**NHSDE Response:** No Method to Determine Compliance - The draft Report states that NHSDE's monitoring procedures and materials do not include a method to determine compliance for the requirement set forth at §300.307(b)-(d) - Physical education. NHSDE explained that their method to determine compliance for the provision of physical education is contained in the "New Hampshire Special Education On-Site Evaluation Teacher Interview Form," page 2, and the "New Hampshire Special Education Onsite Evaluation File Review Sheet."

**OSEP Analysis:** OSEP determined that the information provided by NHSDE indicates that NHSDE does have a method that is sufficient to determine compliance in the area of physical education. This finding was removed from the Report.

### Corrective Action Plan in Appendix B

**NHSDE's Response:** NHSDE requests modification of the one year timeline for completion of the corrective action plan (with respect to amendments to the New Hampshire Code of Administrative Rules (Rules) as specified on pages 36 through 44 of the draft Report, in view of the fact that the New Hampshire State plan is due for resubmission in April 1995. Because revisions of the State plan and the New Hampshire Rules involve complicated rulemaking procedures, NHSDE is requesting extensions of the timelines for the specific corrective actions that require a change in NHSDE's Rules.

**OSEP's Analysis:** OSEP acknowledges NHSDE's process for effecting changes in the Rules. In view of these extensive procedures, OSEP agrees to NHSDE's request for modification of the timelines only for completion of corrective actions involving Rule amendment. All corrective actions which require a change in NHSDE's Rules must be submitted as final by June of 1996.