



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

JANUARY 6, 2003

Honorable Inez M. Tenenbaum
State Superintendent of Education
South Carolina Department of Education
1006 Rutledge Building
1429 Senate Street
Columbia, SC 29201

Commissioner C. Earl Hunter
South Carolina Department of Health and Environmental Control
Division of Children with Special Health Care Needs
1751 Calhoun Street
Columbia, SC 29201

Dear Superintendent Tenenbaum and Commissioner Hunter:

The U.S. Department of Education's Office of Special Education Programs (OSEP) conducted a review in South Carolina during the week of February 11-15, 2002, for the purpose of assessing compliance in the implementation of the Individuals with Disabilities Education Act (IDEA) and assisting your State in developing strategies to improve results for children with disabilities. The IDEA Amendments of 1997 focus on "access to services" as well as "improving results" for infants, toddlers, children and youth with disabilities. In the same way, OSEP's Continuous Improvement Monitoring Process is designed to focus Federal, State and district resources on improved results for infants, toddlers, youth and children with disabilities and their families through a working partnership among OSEP, the South Carolina Department of Education (SCDE), the South Carolina Department of Health and Environmental Control (SCDHEC), and parents and advocates in South Carolina.

A critical aspect of the Continuous Improvement Monitoring Process is collaboration between OSEP and the representatives from the SCDE and SCDHEC Steering Committees. The Steering Committees assessed the effectiveness of State systems in ensuring improved results for children with disabilities and protection of individual rights. In addition, the Steering Committees will be designing and coordinating implementation of concrete steps for improvement. Please see the Introduction to the Report for a more detailed description of this process in your State, including representation on the Steering Committees.

Enclosed you will find an Executive Summary of the Report, an Introduction including background information, areas that require corrective action because they represent noncompliance with the requirements of the IDEA and an area that needs improvement.

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SCDHEC and SCDE have indicated that this Report will be shared with members of the Steering Committees, the State Interagency Coordinating Council and the State Advisory Panel for IDEA.

As part of the Continuous Improvement Monitoring Process, the State developed an Improvement Plan for Part C and Part B, based on the Self-Assessment that the State submitted to OSEP. The State submitted Part B's Improvement Plan to OSEP in October 2001 and Part C's Improvement Plan in February 2002. For Part B, the State must: (1) review the Improvement Plan; and (2) submit to OSEP, within 60 days of the date of this Report, an amended Improvement Plan that includes any revisions in strategies, benchmarks, timelines, and evidence of change that are necessary to ensure that each of the findings of noncompliance in this Report will be corrected within one year from the date of OSEP's approval of the revised Improvement Plan. It is important that the State work with its Steering Committee in developing improvement strategies that will ensure improved results for children with disabilities and their families, and timely and effective correction of the noncompliance. OSEP will work with SCDHEC, SCDE, and the Steering Committees to support the State's improvement efforts.

Regarding Part C, SCDHEC requested, by letter dated April 19, 2002, that OSEP enter a compliance agreement with the State as a way to resolve Part C noncompliance issues. The procedures for entering a compliance agreement are in the General Education Provisions Act (GEPA), 20 USC 1234f, a copy of which is attached to this letter. In accordance with those provisions, OSEP will schedule a hearing in your State, to which affected families of infants and toddlers with disabilities, and other interested parties, are invited. At the hearing, SCDHEC has the burden of demonstrating to this Department that full compliance is not feasible until a future date, which cannot exceed three years. My staff will be contacting SCDHEC to schedule a convenient location and date for the hearing.

Thank you for the assistance and cooperation provided by your staff during our review. Throughout the course of the review, Ms. Susan DuRant and Mr. David Steele were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to work in partnership with the Steering Committees to better understand the State's systems for implementing the IDEA. OSEP would also like to recognize the efforts that have taken place in South Carolina to improve results for children with disabilities and the strong commitment of State staff to continue these efforts. State staff and the Steering Committees made an extraordinary effort to coordinate the public input process and develop the Self-Assessment Reports. As a result of their efforts, OSEP obtained information from a large number of parents (including underrepresented groups), advocates, service providers, school and agency personnel, agency administrators, and special education administrators.

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

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

Sincerely,

Stephanie S. Lee
Director
Office of Special Education
Programs

Enclosures

cc: Ms. Susan DuRant
Mr. David Steele

EXECUTIVE SUMMARY

South Carolina 2002

The attached report contains the results of three (Public Input, Self-Assessment and Data Collection) of the six phases in the Office of Special Education Program's (OSEP) Continuous Improvement Monitoring Process (CIMP) of the Individuals with Disabilities Education Act (IDEA), Parts B and C. The CIMP process is designed to focus resources on improving results for infants, toddlers, youth and children with disabilities and their families through enhanced partnerships between the State agencies, OSEP, parents, and advocates. During the Self-Assessment phase, the State appointed and worked with the Steering Committees, composed of key stakeholders representing diverse perspectives, to develop and implement the Self-Assessment Report that analyzed how successful the State had been in achieving compliance and improving results for children with disabilities and their families. OSEP determined a level of involvement with the State of South Carolina after reviewing the Part C and Part B Self-Assessment Reports the State submitted to OSEP in June 2001. Based upon the Self-Assessment Reports and further data collection, the State's Steering Committees developed Improvement Plans that addressed both compliance and improving results for children with disabilities, and included timelines, benchmarks, and evidence of change. The Improvement Plan for Part B was received in October 2001, and the Part C Improvement Plan was received in February 2002.

After reviewing the Self-Assessment Reports and Improvement Plans, OSEP determined that data collection for Part B (services for children aged 3 through 21) should focus on two major areas: Free Appropriate Public Education in the Least Restrictive Environment, and General Supervision. For Part C (services for children aged birth through 2) requirements, data collection focused on four major areas: Child Find and Public Awareness, Early Intervention Services in Natural Environments, Early Childhood Transition, and General Supervision. Data Collection was conducted on site in the State of South Carolina during the week of February 11-15, 2002 and included interviews with parents, agency administrators, district programs and school administrators, service providers, regular and special education teachers and service coordinators, and reviews of children's records. Data obtained from the above sources was shared in a meeting attended by the South Carolina Department of Education, the South Carolina Department of Health and Environmental Control, members of the State Interagency Coordinating Council and members of the Part C Steering Committee.

This report includes a detailed description of the process utilized to collect data, strengths, areas of noncompliance with IDEA, and suggestions for improved results for infants, toddlers, children, and youth with disabilities and their families. OSEP recognizes the Self-Assessment Committees' commitment to Part C eligible infants, toddlers and their families, and Part B children and youth with disabilities in the State.

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

Areas of Noncompliance

OSEP observed the following areas of noncompliance:

- SCDHEC has failed to employ proper methods of administering the Part C program, including monitoring agencies, institutions and organizations used by the State to provide Part C services, enforcing obligations and provide training and technical assistance.
- SCDHEC does not ensure that there is a coordinated Child Find system and that public awareness materials are made available to the public.
- SCDHEC does not ensure that all infants and toddlers are evaluated in all five developmental areas in the required time frame.
- SCDHEC does not ensure the availability of a family-directed identification of the needs of each child's family to appropriately assist in the development of the child.
- SCDHEC does not ensure 1) that all Individualized Family Service Plans are developed with required content, and 2) the provision of needed services in a timely manner.
- SCDHEC does not ensure that the local education agency is notified of children who are approaching the age for transition, holding a transition meeting and ensuring that a transition plan is developed and implemented in accordance with the requirements of Part C.

Education of Children and Youth with Disabilities: Part B of IDEA

Areas of Noncompliance

OSEP observed the following areas of noncompliance:

- SCDE does not ensure that psychological counseling is considered as part of a Free Appropriate Public Education and is included when appropriate in the Individualized Education Plan.
- SCDE has not made a free appropriate public education available to children eligible for special education and related services by their third birthday.
- SCDE does not ensure that appropriate personnel determine needed services and settings for children with disabilities who are suspended or expelled.
- SCDE's monitoring system is not effective in identifying and correcting noncompliance with all Part B requirements.
- SCDE does not ensure that all Part B complaints are resolved consistent with Part B requirements.
- SCDE does not ensure that due process hearing and review decisions are conducted in a manner that is consistent with Federal requirements.

SOUTH CAROLINA MONITORING REPORT
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INTRODUCTION

A. Administrative Structures and Children Served

Part C

The South Carolina Department of Health and Environmental Control (SCDHEC) is the lead agency for the implementation of Part C and is responsible for ensuring Part C services are provided through the BabyNet program. There are 13 BabyNet offices across the State. Each BabyNet office is located in one of the 13 SCDHEC Health Districts, each serving a multi-county area.

Infants and toddlers in South Carolina are determined eligible if they have a developmental delay in one or more of five developmental areas, including cognition, communication, physical (including vision and hearing and mobility), social or emotional development, and self-help skills (e.g., feeding or dressing) which is at least two standard deviations below the mean on an appropriate standardized test, or the developmental level is 30% below chronological age in at least one area of development. Infants and toddlers are also eligible if they have an established condition, such as a chromosomal syndrome, a severe attachment disorder or low birth weight of 1000 grams or less, that has a high probability of resulting in developmental delay. South Carolina provided early intervention services to 2,576 infant and toddlers during the year 2000, which was 1.44% of the total population

In addition to SCDHEC, there are five State agencies that receive annual appropriations of Federal and State Part C funds to provide Part C services. The SCDHEC has interagency agreements with each of the agencies listed below:

1. South Carolina Department of Disabilities and Special Needs, which provides special instruction and service coordination to BabyNet eligible children;
2. South Carolina School for the Deaf and Blind, which provides special instruction and service coordination to BabyNet eligible children with sensory impairments;
3. South Carolina Department of Social Services, which provides child find for children entering the foster care system, primarily in the city of Columbia in the Palmetto Health District. This department also provides transportation services to BabyNet eligible children;
4. South Carolina Commission for the Blind, which provides special instruction and service coordination to BabyNet eligible children who are blind; and
5. South Carolina Department of Mental Health, which provides infant mental health services to BabyNet eligible children.

BabyNet Coordinators act as lead service coordinators when a referral is received. The Coordinators conduct an initial intake visit with families and remain the service coordinator until the evaluation and assessment process is completed. The BabyNet service coordinator refers children to local Department of Disabilities and Special Needs agencies for special instruction and service coordination based on parental choice. If the parents do not choose this option, the BabyNet lead service coordinator continues to provide service coordination and refers to private

providers for completion of the evaluation and assessment and direct service(s).

Historically, South Carolina has had a low rate of referrals for children from birth to one year; particularly for minority and under-identified populations¹. According to lead agency officials, State law, enacted in July 2001, requires all hospitals in the State to conduct newborn hearing screenings. SCDHEC informed OSEP that 90% of all newborns will be screened during the first three months from the infant's birth. Minority populations are largely under-represented in the Part C program in South Carolina, especially in the Upper Savannah, Trident, Appalachia III and Catawba Health Districts.

Part B

The South Carolina Department of Education (SCDE) is responsible for the implementation of Part B of the IDEA. The State has 86 local school districts with a total of 1,107 public schools. The State's total Part B 1999 child count for children with disabilities aged three through 21 was 20,551 students. Of that total 1,646 were children with disabilities aged three through five and 18,905 children and youth with disabilities aged six through 21. The State Superintendent of Education is responsible for the general supervision of all educational services provided by public agencies, including other State agencies, to school-aged students in South Carolina.

The State Superintendent of Education has delegated responsibility for general supervision of special education and related services to the Division of Curriculum Services and Assessment, Office of Exceptional Children. The Office of Exceptional Children consists of a director, 16 education officials, one general counsel attorney, one paralegal and six support staff positions. The Office of Exceptional Children is responsible for receiving, reviewing, and approving applications for Part B local entitlement funds; monitoring local school districts, private and State-operated education programs for students with disabilities; operating the complaint management and due process system; and providing technical assistance for personnel development.

The State's monitoring system consists of four activities: preliminary monitoring, technical assistance agreements, official monitoring, and corrective action. The on-site-monitoring activities include reviewing student records, identifying areas of noncompliance, and developing and enforcing corrective action agreements.

South Carolina has a two-tier system for due process hearings. Requests for hearings are directed to the local school district and then forwarded to SCDE. A hearing officer selected from a list maintained by each local school district conducts due process hearings. The second tier of the system is an administrative review by the State. A review officer, assigned by SCDE, conducts the administrative review.

The Statewide assessment program provides test results to indicate where each child is advancing at expected levels or may need remediation. The Palmetto Achievement Challenge Tests (PACT)

¹ Source: South Carolina Part C Self-Assessment, June 2001.

comprise the Statewide testing program designed to measure the achievement levels of South Carolina students in grades three through eight. The PACT measures a student's academic performance in the areas of mathematics, reading/language arts, science, and social studies. The testing program is correlated with grade-by-grade standards directly related to the South Carolina curriculum standards. The standards specify what students should know and be able to do as they progress through each grade in school. The results provide teachers with specific feedback on areas of their curriculum that may need strengthening. All students within the tested grade levels are required to take the test. Students who participate in the testing program are permitted to retake parts of the tests until all parts are passed. Students with disabilities whose individualized education program (IEP) indicates that they require an alternate assessment are tested using the PACT-Alternate.

South Carolina expanded the testing program to include tenth graders in the spring of 2001. Public high school students must pass reading, writing, and math sections of the Exit Exam to qualify for a South Carolina diploma. The tests are initially administered in grade 10, and students who do not qualify have three additional opportunities to retake the test in later grades.

B. Self-Assessment Reports and Data Collection

Self-Assessment

As a part of the Continuous Improvement Monitoring Process, SCDHEC and SCDE appointed Steering Committees to examine Part C early intervention services and Part B special education and related services to infants, toddlers, children and youth with disabilities and develop a Self-Assessment Report in partnership with the lead agency and the State education agency. SCDHEC and SCDE submitted to OSEP, in June 2001, copies of the State's Part C and Part B Self-Assessment Reports. The Self-Assessment Reports for Part C and Part B were prepared separately by the State.

The Self-Assessment Steering Committee for Part C included over 30 representatives from the multiple agencies that provide services to infants and young children throughout the State, including members of the State Interagency Coordinating Committee. The Institute for Families in Society at the University of South Carolina was contracted to direct the public input effort for Part C. Public input was obtained from focus groups and key informant interviews, and focused on each of the OSEP five cluster areas: General Supervision, Child Find and Public Awareness, Early Intervention Services in Natural Environments, Family Centered Services, and Transition. The resulting data was collected and analyzed for each of the five cluster areas. The Self-Assessment Committee continues its involvement in the Continuous Improvement Monitoring Process, with a goal toward improvement planning. The Self-Assessment Committee provided an update to OSEP in February 2002, prior to the Data Collection visit, which presented data from the public input process.

The Steering Committee's representation for Part B consisted of parents of children with disabilities, local school district special education directors and coordinators, special and regular education teachers and administrators, higher education faculty, advocacy group representatives,

individuals with disabilities, SCDE staff, and representatives of the general public. Steering Committee members served on one of four Cluster Groups with each group addressing one of the four OSEP cluster areas: Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment, Secondary Transition, and General Supervision. A total of 12 public input meetings were held in Greenville, Laurens, Columbia, Florence, and Beaufort. The State used the questions developed by OSEP for each of the four cluster areas to guide the discussion at the meetings. Staff from SCDE and the Mid-South Regional Resource Center facilitated the public input meetings. Following the public input meetings, the Steering Committee and Cluster Groups met and reviewed the feedback to incorporate new information into the final recommendations of the Self-Assessment Report. The Steering Committee used public input comments to identify concerns that may not have been addressed by the Steering Committee and Cluster Groups as well as validate conclusions in the Self-Assessment Report and provide guidance when the Steering Committee prioritized areas for improvement planning.

Data Collection

Prior to the on-site monitoring visit, OSEP reviewed State information in the areas most closely associated with positive results for children with disabilities. For Part C, those areas were: 1) Child Find and Public Awareness; 2) Early Intervention Services in Natural Environments; 3) Family Centered Services; 4) Early Childhood Transition; and 5) General Supervision and Administration. For Part B, those areas were 1) Parent Involvement; 2) Free Appropriate Public Education in the Least Restrictive Environment; 3) Secondary Transition; and 4) General Supervision and Administration. After OSEP's review of State data (i.e. Self-Assessment Reports, State Improvement Plans, SCDHEC's Part C Application, Annual Performance Report, citizen complaint database, and due process hearing database), IFSPs, and the 1995 OSEP Part B monitoring results for South Carolina, OSEP identified components to examine during the monitoring visit. For Part C, OSEP examined requirements in the areas of Child Find and Public Awareness, Early Intervention Services in Natural Environments, Early Childhood Transition, and General Supervision and Administration. For Part B, OSEP examined requirements in the areas of Free Appropriate Public Education in the Least Restrictive Environment and General Supervision and Administration.

During the 2002 on-site visit, OSEP interviewed State and local personnel involved in the provision of Part C and Part B services. For Part C, OSEP interviewed early intervention service coordinators and providers, interagency collaborators, service providers, program administrators and parents in three Health Districts (Palmetto, Trident, and Lower Savannah) and the State lead agency. For Part B, OSEP interviewed parents and students, special and regular educators, related services personnel, building administrators, special education directors in five school districts (Richland I, Aiken, Saluda, Charlestown, and Horry) and State education personnel. At the end of the week, OSEP shared preliminary impressions with SCDE and SCDHEC.

OSEP will work to assist the State in implementing improvement strategies designed to address the areas of noncompliance.

I. PART C: GENERAL SUPERVISION

The South Carolina Department of Health and Environmental Control (SCDHEC), as the State lead agency for Part C, is responsible for developing and maintaining a Statewide, comprehensive, coordinated, multidisciplinary, interagency, early intervention system. Administration, supervision and monitoring of the early intervention system are essential to ensure that each eligible child and family receives the services needed to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay. Early intervention services are provided by a wide variety of public and private entities. The State is charged with supervising and monitoring all agencies and individuals providing early intervention services to ensure they meet the requirements of IDEA, whether or not they receive funds under Part C.

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

Self-Assessment Report and Data Collection

In the area of general supervision, the Self-Assessment Report identified the following concerns: 1) the State does not have a formal process in place to collect data on complaints and due process; 2) budget constraints keep the SCDHEC from filling a full-time monitoring position designed to monitor programs and providers at the local level; and 3) quarterly monitoring reports are the only method to monitor local contracted programs for the delivery of Part C services through the BabyNet program on behalf of SCDHEC. Therefore, OSEP focused its data collection activities on State monitoring of the Part C system and its impact on the delivery of early intervention services particularly with respect to current waiting lists for services in South Carolina. OSEP reviewed State and local policies and procedures and interviewed State lead agency officials, families, service coordinators and providers, interagency collaborators and managers at the Health District level in order to provide the State with additional data to inform their oversight responsibilities and to assist the State in collecting baseline data for improvement planning.

AREA OF NONCOMPLIANCE

The State Lead Agency has Failed to Employ Proper Methods of Administering the Part C Program, Including Monitoring State Level Agencies, Institutions and Organizations used by the State to Provide Part C Services, Enforcing Obligations, and Providing Training and Technical Assistance

Part C regulations at 34 CFR §303.501 require that each lead agency be responsible for administering and supervising all programs and activities that the State uses in the implementation of a Statewide early intervention system, regardless of whether they receive Part C funds. The State's administration and supervision is to include the monitoring of programs and activities, enforcing obligations imposed under Part C of IDEA, providing technical assistance, if necessary, and correcting deficiencies identified through monitoring.

OSEP finds that the lead agency had not ensured effective general supervision and administration including: 1) monitoring to ensure compliance with Part C requirements; 2) enforcing obligations imposed by Part C; and 3) providing technical assistance and training as needed.

1) Monitoring to Ensure Compliance with Part C

When OSEP asked the lead agency how the SCDHEC ensured compliance with the requirements of Part C, SCDHEC officials stated that SCDHEC holds quarterly meetings for the BabyNet Coordinators. During these meetings, the lead agency discusses procedures and provides training. At the time of OSEP's visit, SCDHEC had not identified any local noncompliance issues as a result of the quarterly meetings. The SCDHEC also reported that at the time of OSEP's visit, the lead agency required quarterly reports from each BabyNet office for the purpose of collecting enrollment and services data on children served by the BabyNet system. After a review of the quarterly reports, OSEP determined that the quarterly meetings and reports do not afford SCDHEC an effective method for identifying and correcting noncompliance with the requirements under Part C.

The lead agency is required to ensure that all programs and activities used by the State to carry out Part C, whether or not they receive Part C funds, are monitored. SCDHEC officials informed OSEP during the on-site visit that they are not currently monitoring the School for Deaf and Blind or the Department of Social Services to ensure compliance with Federal Part C requirements because these agencies conduct their own agency monitoring; nor is the lead agency coordinating with those other agencies to ensure that the agencies' monitoring covers every Part C requirement. OSEP discussed the monitoring procedures in place at the School for the Deaf and Blind and the Department of Social Services with administrators from those programs. The information obtained during the interviews along with a review of these programs' monitoring procedures confirmed that these activities are not sufficient to monitor for most of the requirements of Part C. For example, OSEP found in its review that the monitoring procedures used by the School for the Deaf and Blind addressed only two Part C requirements: ensuring that all five areas of development are assessed and when a need is identified, addressed on the IFSP; and ensuring the confidentiality of client information.

OSEP's findings are consistent with the information in the State's Self-Assessment and Improvement Plan. SCDHEC identified in the Self-Assessment Report that monitoring to ensure general administration and supervision of programs and activities for IDEA requirements under Part C needs to be improved. SCDHEC also identified that it does not have monitoring policies, procedures and staff necessary to ensure compliance with Federal and State laws, regulations,

policies and procedures². As a part of its general supervision enhancement grant awarded by OSEP in September 2001, the SCDHEC plans to develop a focused monitoring system for implementation in September 2002.

2) Enforcing Obligations under Part C

During the on-site visit, OSEP was informed that private providers were not implementing early intervention services consistent with Part C requirements. Examples of services not being implemented in a manner consistent with Part C requirements include: 1) services that are provided to eligible infants and toddlers and their families are not included on the IFSP; 2) services not provided in the setting specified on the IFSP; and 3) providers not “showing up” to provide services. Local administrators also informed OSEP about a lack of supervision related to the provision of early intervention services by private providers.

District II administrators report that private providers (therapists) are unwilling to travel to provide services to children in rural areas, and that providers do not “show up” to provide services in homes. A District II administrator stated, “therapists do not communicate with us and do not let the service coordinator know when they want to increase services to the child.” The District II administrators told OSEP that they do not have the authority to resolve their concerns about private providers not implementing services in an appropriate manner and they are unable to get assistance to resolve the issues. Another District II administrator stated, “therapists tell us they are their own boss and they do not interact with early intervention.” All District II administrators concurred that private providers do not understand the requirements of Part C and their obligation to follow the IFSP. The District II administrators expressed confusion about the appropriate entity to supervise private providers. The administrators stated that the early intervention supervisors of the Department of Disabilities and Special Needs Boards are responsible for compliance with Part C requirements. However, one of the administrators reported making contact recently with the lead agency to arrange for a discussion on these issues.

State Interagency Coordinating Council members reported that services on IFSPs are not always delivered in the settings indicated on the IFSP. In addition, Council members stated that when therapists refuse to go into homes to provide services, a delay or denial of services occurs. Lead agency staff reported that some services, such as those provided by Family Connections, are not included as part of the IFSP.

OSEP was informed by lead agency officials that the State does not use a contractual mechanism or any other method to ensure accountability for Part C with private providers who conduct both evaluation and assessment functions and the delivery of direct services, such as occupational, speech and physical therapy, to eligible children. Thus, SCDHEC, as the lead agency for Part C, has not exercised its general supervisory authority to ensure compliance with the requirements of Part C. SCDHEC’s failure to implement an effective method of supervision for private providers that enables it to identify and correct deficiencies has resulted in noncompliance across the State. Lead agency staff informed OSEP during the visit that preparations were being made to initiate

² Source: South Carolina Self-Assessment and South Carolina Part C Improvement Plan Draft, May 2002.

contracts with local private providers that will assist the State in identifying noncompliance practices and result in children and their families receiving services that they need.

3) Providing technical assistance and training

All State-level interagency collaborators, State lead agency staff and some Interagency Coordinating Council members reported that a need for training and technical assistance exists in the State. District I service providers, service coordinators, interagency collaborators reported that they have not received any training on the responsibilities and requirements under Part C. Service coordinators in District I could not describe any training they had received and District II coordinators reported they have not received any training regarding parent rights. The BabyNet Coordinator in District I reported that after 15 months in the position, (s)he had not received any training around the job responsibilities. Service providers in this district reported a need for a meeting with BabyNet officials to learn about the early intervention system and billing procedures. Service Providers in District II stated that they do not see themselves as part of the early intervention system. The providers described one example of not fully participating in the system by stating that they do not receive a copy of the child's IFSP; a copy is not offered to them by the service coordinator nor do they request one. District I service providers also reported that they have not been given copies of IFSPs and that often they do not always know what the content of the IFSP is for a child and family that they are working with. The District I service coordinators and providers stated a need for standardized rules (i.e., guidelines) for implementing the BabyNet system. Administrators in this same district reported that they do not find BabyNet training effective or relevant. The administrators agreed that they have to "dig their way through and figure things out for themselves." Administrators in District II stated that the lead agency had informed them that they would be in a "state of flux" for a period of time. The administrators also informed OSEP that the lead agency has discontinued training for providers and as a result infants and toddlers are not receiving comprehensive evaluations and assessments within required timelines; families' concerns, priorities and resources are not being addressed; and IFSPs are not identifying or addressing children's' and families' needs (See Section II and Section III of this Report). They further stated that the lead agency has developed a training curriculum that will be implemented in the future. Administrators in District III reported that they provide training to their staff through in-house resources.

OSEP finds that SCDHEC has not: implemented a monitoring system that is effective in identifying noncompliance with Part C requirements including the monitoring of agencies, institutions and organizations used by the State to carry out Part C; enforced all the obligations imposed under Part C of IDEA; and adopted and used proper methods of administering each program, including providing technical assistance and training.

II. CHILD FIND AND PUBLIC AWARENESS

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

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

Each State's early intervention system must include Child Find and public awareness activities that are coordinated and collaborated with all other Child Find efforts in the State. Part C recognizes the need for early referral and short timelines for evaluation because development occurs at a more rapid rate during the first three years of life than at any other age. Research in early brain development has demonstrated what early interventionists have known for years: that children begin to learn and develop from the moment of birth. Therefore, the facilitation of early learning and the provision of timely early intervention services to infants and toddlers with disabilities are critical.

Self-Assessment Report and Data Collection

As a strength in the area of Child Find, the Self-Assessment Report identified that newborn hearing screening was conducted on nearly 99% of all infants in the State. The following concerns were identified: 1) low number of referrals for children under age one, and rates of referrals increasing over time for Caucasian children and decreasing for minority children; 2) strong emphasis on a medical model that fosters the identification of infants and toddlers through routine developmental screenings; 3) lack of training to inform referring and collaborating agencies about early intervention services; 4) high service coordinator caseloads; and 5) noncompliance with requirements that address evaluation, assessment, and IFSP development.

AREAS OF NONCOMPLIANCE

1. SCDHEC does not Ensure that there is a Coordinated Child Find System and that Public Awareness Materials are made Available to the Public

Part C regulations require that the lead agency ensure that the Child Find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social services programs relevant to this part. Further, the Child Find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for: 1) evaluation and assessment, in accordance with §§303.322 and 303.323; or 2) as

appropriate, the provision of services, in accordance with §303.342(a) or §303.345. (34 CFR §303.321(c),(d))

SCDHEC staff reported that Child Find activities have not been coordinated for minority and underrepresented populations. State Interagency Coordinating Council members confirmed that the Child Find efforts “focus on process” but there is no Child Find “system”. The Council members stated that the State has problems with identification of minorities and is not reaching the lower socio-economic populations. In District I, an interagency collaborator reported that families with young children who are enrolled in Social Security Insurance programs are not referred to the BabyNet system, demonstrating a lack of coordination between agencies. In District II, the program administrators agreed that community agencies have limited knowledge of Baby Net and that the lack of coordination around Child Find and Public Awareness is an issue. The service coordinators in this District reported that child care centers do not know about Baby Net. The service coordinators also stated that even though Migrant Head Start knows about Baby Net and makes referrals, many migrant workers on John’s Island did not know about services available through the program.

In all sites visited, OSEP heard that public awareness activities, including distributing materials to parents, have not been effective in informing the public about services available through the early intervention system. The State’s technical assistance provider reported a lack of clear expectations regarding public awareness and the need to work on culturally appropriate outreach, especially with the Native American population in the Catawba Nation and the Medicaid population. In District I, the service providers stated that they did not see any brochures or information in the community, especially in rural areas. The service providers and coordinators in this District agreed that low-income families are not being identified and receiving services. A service provider in this District pointed out that Hispanic families are isolated. The District I administrators stated that all local ethnic groups, i.e., African Americans, Hispanics and Caucasians, are underrepresented in the system. Service providers in this District stated that in the rural areas, African Americans and Hispanics are not being identified early. The service coordinators in this District reported that families in rural communities do not want to be referred because of the stigma of mental retardation and “being labeled.” The District I service coordinators stated that Caucasian families believe the program has income qualifications, and the District II service providers indicated that middle class families are not accessing Baby Net services due to a misunderstanding about income eligibility and lack of activities. These service providers also stated that there is no public awareness material in day care centers, pediatric offices or “foremost” developmental centers. District II administrators stated that public awareness materials are not readily available in Spanish and are not adequately distributed.

Through interviews with service providers, service coordinators, parents and administrators across the State, OSEP was told that physician referrals are problematic. In District I and II, service providers pointed out that physicians tell parents to “wait and see” rather than refer for services. A parent in District II told OSEP that she and her mother were concerned about her child’s eye-flickering behavior when her child was three months old. Their physician told them that the child would outgrow the eye-flickering behavior. The grandmother insisted that the child

could not see so the child was taken for to another physician for a second opinion. The second physician confirmed that the child was blind and referred the family to BabyNet for assistance.

A physician in District I and service providers in District II stated that the biggest barrier to physician referral is the prevailing belief that BabyNet is geared toward child health rather than child development. One service coordinator in this District stated that family practitioners in the urban area did not refer for services even though other physicians did.

2. SCDHEC does not Ensure that Infant and Toddlers are Evaluated in all Five Developmental Areas within 45 Days

Part C regulations at 34 CFR §303.322 (a) (1) require that each system include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, and a family-directed identification of the needs of each child's family to appropriately assist in the development of the child. 34 CFR §303.322 (c)(3)(ii) further states that the evaluation and assessment of each child must include an evaluation of the child's level of functioning in each of the following developmental areas: 1) cognitive development; 2) physical development, including vision and hearing; 3) communication development; 4) social or emotional development; and 5) adaptive development.

a) Evaluations and assessments not completed in all five developmental areas

In all three health districts visited, OSEP was informed that children are not consistently being evaluated in all five developmental areas. In Health District III, service coordinators, service providers and parents stated that children are only evaluated and assessed in the developmental area of concern. All groups interviewed confirmed that outcomes on the IFSP are limited to future referrals for further evaluation and assessment. Service providers in Health Districts I and II stated that BabyNet is not ensuring comprehensive evaluations for all children in all five developmental areas. In this Health District, the administrators agreed that children were not evaluated in the areas of vision and hearing. In Health District III, the administrators reported that evaluations and assessments are not comprehensive, and do not include all five developmental areas. Lead agency staff, Interagency Coordinating Council members and program managers confirmed the practice of the service coordinator "starting" the IFSP as an intake form with the parent. They stated that referrals are made at a later date for the completion of evaluations and assessments in the areas of concern. This practice results in fragmented services because evaluations and assessments to determine individual child and family service needs and outcomes are incomplete.

b) Evaluations and assessments not completed within the 45-day timeline

In Health District I, parents, service providers and coordinators reported waiting lists for evaluations resulting in a failure to conduct an evaluation and assessment and develop an IFSP within the 45-day timeline. In a review of 18 early intervention records, OSEP found that seven (40%) did not indicate an evaluation had been completed in all five developmental areas within 45 days. Of the records that did not indicate evaluations in all five developmental areas, four

were records of children who had been referred for a speech/language delay and had been evaluated only in the area of speech. The administrators and interagency collaborators confirmed that waiting lists existed for evaluations and assessments. In Health Districts I and III, parents and providers reported that personnel shortages impact the completion of evaluations and assessments. As an example, they stated that personnel shortages in these Health Districts can extend the completion of an evaluation and assessment in one developmental area of concern to more than 90 days and may take up to 120 days when completing all five developmental areas. In Health District III, the interagency collaborators reported that completion of evaluations and assessments can take up to 120 days.

Lead agency staff informed OSEP that provider shortages prevented evaluations from being completed within 45 days; service provider managers confirmed that completion of evaluations and assessments in some Health Districts can take up to 120 days. Local administrators, service coordinators, and parents in all three Health Districts stated that the BabyNet service coordinator conducts an intake visit, writes an initial IFSP that only contains outcomes to pursue further evaluations and assessments from qualified personnel. The delay in completing evaluations can lead to a delay in the provision of all needed services for the child.

3. SCDHEC does not Ensure that a Family-Directed Identification of the Needs of each Child's Family, to Appropriately Assist in the Development of the Child is Offered

Part C regulations at 34 CFR §303.322(a)(1) require that each system include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, and a *family-directed identification of the needs of each child's family to appropriately assist in the development of the child*. The regulations require that a family assessment under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. Any assessment that is conducted must be voluntary on the part of the family. If an assessment of the family is carried out, the assessment must: 1) be conducted by personnel trained to utilize appropriate methods and procedures; 2) be based on information provided by the family through a personal interview; and 3) incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development. 34 CFR §303.322(e) states that, except as provided in §300.322(e)(2), the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required under §303.321(e).

Twelve of the 18 (66%) IFSPs that OSEP reviewed did not contain information indicating the completion of a family assessment. These IFSPs did not indicate that the parents had declined to participate in the completion of a family assessment.

In Health Districts I and II, service providers and service coordinators told OSEP that family-directed assessments that determine and include the families' description of its resources, priorities, and concerns related to enhancing the child's development, are not conducted. The administrators in these Health Districts stated that an action plan is included on the IFSP to determine family needs. The administrators in Health District II told OSEP that the approach to

conducting family assessments (using a resource checklist only) is not family-directed and the families' resources, priorities and concerns are not determined. The administrators further stated that although the providers are connecting parents to programs such as Women Infants and Children via the resource checklist, the local programs are not comprehensively determining the family's needs that would assist in enhancing the child's developmental outcomes.

III. PART C: EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS

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

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

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

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

Self-Assessment Report and Data Collection

In the area of Early Intervention Services in the Natural Environment, the State's Self-Assessment Report identified the following: 1) high service coordinator caseloads influence the development of the IFSP and the provision of services; 2) training needs to be provided in the delivery of early intervention services in the natural environment; 3) evaluation and assessment

and IFSP development are not in compliance with Part C; and 4) the State's ability to provide services in the natural environment is challenged by the level of funding available and reimbursement rates for the delivery of Part C services and the unavailability of pediatric service providers.

AREAS OF NONCOMPLIANCE

1. IFSPs do not Contain the Required Content

OSEP finds that SCDHEC has not ensured that IFSPs are developed with the following required content: 1) present levels of development; and 2) statement of early intervention services needed.

Part C regulations at §303.344(a) require that present levels of development be written into an Individualized Family Service Plan (IFSP) in all five developmental areas based on professionally acceptable objective criteria. OSEP found that in 12 of the 18 IFSPs reviewed prior to the on-site visit, present levels of functioning are written in some developmental areas, but are frequently omitted for the physical and communication developmental areas.

In addition, Part C regulations at §303.344(b) and (c) require that the IFSP contain, with the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child and a statement of the major outcomes expected to be achieved for the child and *family*. As noted in Section II of this report, 12 of 18 (66%) of the IFSPs that OSEP reviewed did not contain information indicating the completion of a family assessment. These IFSPs did not indicate that the parents had declined to participate in the family assessment process. During the interview phase of the visit, when asked if infants, toddlers and their families had all required services written into their IFSPs, interviewees in all areas visited confirmed that all required services were not written into the IFSPs. When asked what early intervention services were not written into the IFSP, service providers, service coordinators, parents, and administrators in Health District II stated that family supports are not assessed or listed on IFSPs. When asked why family support is not included in the IFSP, service coordinators and administrators state that it is difficult to obtain counseling services, respite care and parenting classes.

2. Needed Services are Delayed or not Provided

OSEP finds that the SCDHEC is unable to ensure the provision of needed IFSP services for all eligible infants and toddlers and their families, as required by Part C regulations. Early intervention services for infants and toddlers and their families are delayed, children and families are placed on waiting lists for both evaluations and services and for some children and families services are not provided at all.

The State's Self-Assessment reported that not all eligible children were receiving all of the services written in the IFSPs as evidenced by waiting lists for services, particularly therapy services. Service providers, service coordinators and administrators in Health District I report waiting lists for therapy services, particularly speech therapy services. Service providers in

Health District II report waiting lists for occupational therapy and speech therapy services. In Health District III, service providers and administrators report waiting lists for occupational, physical and speech therapy services. In addition to waiting lists, Interagency Coordinating Council (ICC) members interviewed confirmed that services written into IFSPs are not consistently provided, especially in rural areas, due to a lack of available providers.

IV. PART C: EARLY CHILDHOOD TRANSITION

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

Self-Assessment Report and Data Collection

In the area of Early Childhood Transition, the State's Self-Assessment identified the following: 1) transition planning needs to occur earlier to meet IDEA Part C requirements; 2) 80 percent of families with children under age two had not discussed planning for transition; and 3) children in isolated and rural areas in the State experience delays in transition. To confirm the issues identified during Self-Assessment, OSEP asked families, providers, care coordinators and administrators about the process of developing transition plans, and the training that is provided to families on transition.

AREA OF NONCOMPLIANCE

SCDHEC is not Meeting its Responsibility for Ensuring that the Local Education Agency is Notified of Children Who are Approaching the Age for Transition and for Holding a Transition Meeting in Accordance with the Requirements of Part C of IDEA. SCDHEC is not Ensuring that Transition Plans are Developed and Implemented in Accordance with the Requirements under Part C of IDEA

Federal regulations at 34 CFR §303.148(b) establish that for a child who may be eligible for Part B preschool services, with permission of the parent, a transition conference must be convened with the local education agency, the lead agency and the family at least 90 days prior to the child's third birthday. The State lead agency must notify the local education agency for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act, as determined in accordance with State law. For toddlers who are not Part B eligible, the lead agency must make reasonable efforts to convene a transition conference.

OSEP held joint interviews with both Part C and Part B representatives in Health Districts II and III who reported that the practice of convening a transition conference is not consistently adhered to, regardless of Part B eligibility. Service providers, service coordinators, and parents in Health District III confirm that the transition meeting does not occur 90 days prior to the third birthday for all children in this Health District, and that steps to prepare a child for a new environment are not found in the IFSP.

Service coordinators and service providers in Health District II informed OSEP that some children wait for placement until the child is “picked up” by the school system. In Health District I, three of the six age-applicable records reviewed did not have evidence of reasonable efforts to assist with transition planning in the absence of a 90-day conference. Record reviews, completed in Health District II, do not demonstrate evidence of any 90-day conferences prior to a child’s third birthday. In Health District III, two out of three IFSPs reviewed for toddlers turning three did not indicate efforts to coordinate transition activities or document any 90-day transition conferences.

Interviewees provided additional information about barriers to transition planning that could be useful as the State develops improvement strategies related to transition: 1) BabyNet makes late referrals to Part B because parents do not want their child to be referred to the public schools to Part B; 2) children that are enrolled in foster care are “lost in the system”; 3) service coordinators need early childhood transition training; 4) transition procedures are different across school districts; 5) need for “down home” collaboration; 6) there are no placement options available for children outside of the school districts, i.e., preschool special education centers; 7) school districts do not accept BabyNet evaluations and cannot complete timely evaluations for placement by the child’s third birthday.

V. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT

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

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

Self-Assessment Report and Data Collection

Steering Committee members proposed improvement planning strategies in the Self-Assessment Report to address the following areas they identified as needing improvement: 1) as a result of personnel vacancies for special education teachers, school psychologists, and speech therapists, special education and related services are based on the availability of special education programs and staff which impact the provision of and the timely delivery of special education and related services to meet the need of students with disabilities; 2) young children with disabilities may not receive appropriate services on their third birthday; 3) children with disabilities may not receive services in the IEP; and 4) there is a lack of functional behavioral assessments and behavioral improvement plans to address the behavioral needs of children with disabilities.³

³ These areas were addressed in South Carolina's Improvement Plan submitted to OSEP on July 2002. Upon finalization, OSEP will be monitoring implementation and impact of improvement plan activities.

In addition, OSEP noted insufficient data in the Self-Assessment Report in order to conclude whether students with disabilities who are placed in separate classes are involved in and progress in the general curriculum, and how the State ensures that appropriate services are provided to address the behavioral needs of children with disabilities. Therefore, OSEP investigated these areas in its on-site-monitoring visit by reviewing children's records, State and local policies and procedures, and interviewing State personnel, local program administrators, teachers, and parents. By analyzing data reviewed, OSEP identified the following areas of noncompliance that impact improved results for children with disabilities.

A. AREAS OF NONCOMPLIANCE

1. Psychological Counseling is not Considered as Part of a Free Appropriate Public Education and is not Included when Appropriate in the IEP

States and local school districts must make a free appropriate public education available to all eligible children with disabilities. A free appropriate public education includes the provision of special education and related services, without charge, which meet the State education standards and IDEA requirements, and are provided in conformity with an IEP. "Related services" is defined, in part, as including "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes psychological services," §300.24(a). Public agencies must provide to students with disabilities any related services, including psychological counseling, that they need to benefit from special education (34 CFR §§300.300 and 300.24). If the participants on the IEP team determine that an eligible child with a disability requires psychological counseling in order to receive a free appropriate public education, the school district must provide that service and the service must be described in the child's IEP. The child's IEP must include a statement of the special education and related services to be provided to the child as well as the anticipated frequency, location and duration of those services. The amount of related services to be provided must be stated in the IEP so that the level of the agency's commitment of resources will be clear to parents and other IEP team members. (§§300.347(a)-(b)). The amount of time to be committed to each of the various services to be provided must be: 1) appropriate to the specific service; and 2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. Any related services provided must assist the child in developing skills needed to benefit from special education or correct conditions which interfere with the child's progress toward the goals and objectives listed in the IEP.

OSEP found, in the five districts visited, that psychological counseling services are not provided as a related service except as a result of due process hearings. OSEP also found that psychological counseling services are only provided to students who are determined eligible for Part B services in the category of emotional disabilities⁴. SCDE officials explained that psychological counseling services are considered mental health services in the State and are provided through mental health agencies across the State. Mental health services are provided in

⁴ This category is equivalent to the emotional disturbance category in the Federal regulations.

groups, individually, or on an as needed basis, as determined by school personnel, and are not provided through the IEP process as a related service.

Although the provision of required services through an agency outside the school district is not inconsistent with the statutory and regulatory requirements of the IDEA, the IEP team must first determine what services are required to enable the child to benefit from special education, then include those services in the student's IEP and provide them as a component of a free appropriate public education. In all districts visited, psychological counseling services were rarely listed in the IEP. Only two of 42 files that OSEP reviewed of students whose category of disability was "emotional disabilities," had psychological counseling listed in the IEP as a related service. The psychological counseling services listed in the IEPs for these two students were the result of due process hearing decisions. Nineteen staff members that included school psychologists, special education teachers, special education directors, and school counselors, provided the following reasons why psychological counseling services are not identified in the IEP: psychological counseling services are not available; the psychologist does not have the time to provide these services due to large caseloads; it is assumed that counseling services are part of the students' special education program; school staff has been instructed to exclude counseling services in the IEP because the district will not pay for the services; mental health provider agencies have requested that counseling services not be placed in the IEP; and it is impossible to include counseling in the IEPs because the school does not directly provide the service.

OSEP also found that psychological counseling services were only provided to students who were determined eligible for Part B services in the category of emotional disabilities, regardless of students' need for psychological counseling services to benefit from special education and related services. In one district, two special education teachers, a building administrator and special education director reported to OSEP that students with emotional disabilities are the only students with disabilities receiving counseling services and that they are receiving them through a contract with a mental health agency. The building administrator further reported that there is not enough staff to expand the general education counseling program to service students with disabilities who may be in need of counseling services to benefit from special education. The special education director told OSEP that the rationale for only serving students with emotional disabilities was due to a lack of funding.

According to a third special education teacher in this district, psychological counseling services are only available to students with emotional disabilities on a crisis basis. The special education teacher also stated that there is inadequate support to meet the counseling needs of her classroom of 20 students with emotional disabilities. Two special education teachers for students with "educable mental disabilities⁵" reported that they have students who need psychological counseling services to benefit from special education but they cannot consider these services at an IEP meeting because they are not available for students with educable mental disabilities. They explained that psychological counseling services are only available for the students with emotional disabilities. The two special educators further explained that their caseloads prevented

⁵ This category is the equivalent of mental retardation in the Federal regulations.

them from addressing the behavioral issues of their students and that if the students could receive psychological counseling services, their behavioral needs would be addressed.

In a second district, a building administrator and two special education teachers told OSEP that there are “no psychological counseling services except the counseling that all students receive through the guidance counselors.” A school psychologist informed OSEP that mental health counseling services are provided to the students with emotional disabilities only when the parents pursue those services at the school’s suggestion.

According to a special education teacher in a third district, when a student with emotional disabilities has a need for psychological counseling services, the school encourages the parents to get these services through the mental health center. Another special educator told OSEP that the mental health counselor would come to the school to provide counseling services to students with disabilities on an emergency or as-needed basis. These services are usually discussed between the mental health counselor, parent and student and are not the result of related services identified through the IEP process.

2. SCDE has not Made a Free Appropriate Public Education Available to Children Eligible for Special Education and Related Services by Their Third Birthday

Under Part B, the local education agency is required to ensure that: 1) a free appropriate public education is available to all children with disabilities beginning at age three; and 2) an IEP or IFSP, if appropriate, is in effect on the child's third birthday (See §§300.300(a), 300.121(c), §300.125(c) and 300.132 (b)). If the child’s third birthday occurs during the summer, the child’s IEP team must determine the date when services under the IEP or IFSP will begin, based on the individual needs of the child. Under §300.125(c), if the State educational agency and Part C lead agency are, as in South Carolina, different agencies, the State educational agency remains responsible for ensuring that its child find responsibilities under Part B are met, even if the agencies, through an interagency agreement, delegate to the lead agency the primary role in child find for the birth through two population.

OSEP reviewed 10 files, in four districts, of preschoolers who received early intervention services. Seven of the 10 files, including IEPs, showed that children who received early intervention services and turned three during the school year, did not receive special education and related services by their third birthday. Special educators, building administrators and pre-school coordinators interviewed, explained that services were delayed because evaluations to determine Part B eligibility were not conducted prior to the child’s third birthday. In addition, through interviews with special educators, building administrators, preschool coordinators, and State personnel, OSEP found that SCDE has not ensured that, for children with disabilities who turn age three close to or during the summer months, the child’s IEP team determines the date for starting services based upon the needs of the child rather than the availability of resources.

Although South Carolina’s 1996 “Interagency Agreement for the Development and Implementation of a Statewide System of Services for Children with Disabilities, Birth through Two Years and Their Families,” provides that SCDE and SCDHEC will have joint child find

responsibilities for children under the age of three, under §300.125(c), SCDE remains primarily responsible for ensuring that its child find responsibilities under Part B are met. This provision is intended, in part, to ensure that interagency disputes do not result in a free appropriate public education not being available to all children with disabilities beginning at age three.

According to an SCDE official, in keeping with the 1996 interagency agreement, when developing the local educational agency memorandum of agreement, the local educational agency must agree to accept clinical evaluations from early intervention programs. "Screenings and evaluations from early intervention programs are to be used within a 12 month period for any area of disability." The SCDE official further explained that although local educational agencies have the authority to accept these clinical evaluations, some local educational agencies are not accepting the evaluation results that could be used to determine a youngster's eligibility for special education and related services by the child's third birthday.

A child find coordinator, a special educator, preschool coordinator, and a SCDE official told OSEP that the required assessments to determine eligibility for preschoolers who received early intervention services, are not always completed before the child's third birthday. The preschool coordinator told OSEP, "Preschoolers, who are almost three years of age, are placed on a list that may identify, through assessment, youngsters who may be eligible for special education and related services. Youngsters identified from this list will be tested when they reach their third birthday." Due to this delay in assessment, children in need of special education and related services do not receive them by their third birthday.

As noted above, the IEP team must decide the beginning date for services for children with disabilities whose third birthday occurs during the summer. 34 CFR §300.121(c)(2). Moreover, the IEP or IFSP, if appropriate, must be in effect by the child's third birthday even if the date for initiating services is not until the start of the school year. 34 CFR §300.121(c)(1)(ii). OSEP found that IEP team decisions regarding the provision of special education and related services to eligible children who reach their third birthday during the summer months are based on administrative factors and not on the individual needs of the child.

Three districts reported that, regardless of need, the provision of special education and related services were not always considered for Part B eligible children who reach their third birthday during the summer months. Due to personnel shortages during the summer months, these children do not receive services until the beginning of the next school year.

A special education teacher in one district told OSEP, "We have never had a preschool child receive services during the summer." According to this special educator, although the IEP team meets in May to look at the provision of services to preschoolers with disabilities, the reasons to begin special education and related services before the next school year are always dismissed. In this same district, a preschool coordinator reported, "the district has never had a child receive preschool summer services because there is no place to put them until school starts in the fall." A building administrator in the same district confirmed this practice. According to the special education director in this district, "We do not provide services during the summer to children turning three years of age. It is assumed that they will start in August." The administrator further

reported that preschoolers with disabilities whose birthdays occur at the end of the school year might not be receiving special education and related services during the summer months due to a shortage of personnel in all special education positions. The special education director in a second district stated that the district does not provide special education and related services to Part B eligible children transitioning from Part C early intervention services who reach their third birthday during the summer, regardless of need. A preschool coordinator in a third district told OSEP that since there are no staff available during the summer, preschoolers who reach three years of age during the summer do not receive special education and related services by their third birthday regardless of need. The provision of services is delayed until the fall. The State education administrator told OSEP, "This is especially true for services to preschoolers with disabilities who reside in rural areas. In the rural areas, the schools close down for the summer due to a shortage of personnel."

3. Appropriate Personnel Do Not Determine Needed Services and Settings for Children With Disabilities Suspended or Expelled

Under 34 CFR 300.121(d)(3)(ii), where the IEP team determines that the behavior that led to a child's removal was not a manifestation of the child's disability, the IEP team must determine the extent to which services are necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP. If a student with disabilities carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency, school personnel may order a change in placement to an interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days.

34 CFR §§300.520. The interim alternative educational setting for a student thus removed must be determined by the IEP team so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP. The setting must also enable the child to meet the goals set out in that IEP and must include services and modifications to address the behavior that caused the removal and that are designed to prevent the behavior from recurring. 34 CFR §300.522.

OSEP found that the IEP team did not, in all cases, determine the interim alternative educational setting or the extent to which services are necessary, where a child is expelled for behavior related to weapons or drugs that were not a manifestation of the child's disability.

The State's January 22, 2002 memorandum regarding *Alternative School Issues* informed coordinators of programs for students with disabilities in South Carolina that IEP teams must determine the extent of services to be provided to students with disabilities in interim alternative educational settings. According to the memorandum, each student's IEP team must determine the appropriate amount of special education and related services that the student must receive and determine how the services will be delivered. The memorandum further states that this cannot be

a unilateral decision made by school district personnel at either the student's regular school or the alternative school.

In four districts, a school psychologist, a homebound coordinator and two special education directors told OSEP that for a student who is expelled for weapons and/or drugs offenses, the IEP team meets to determine if the behavior is a manifestation of the student's disability. OSEP was told that after the IEP team determines that the behavior is not a manifestation of the child's disability, the case is referred to a local board that has the authority to expel the student. The decision to provide services by placing students with disabilities into interim alternative educational settings is not an IEP team decision as required under IDEA. A special education director in one district told OSEP that after the IEP team meets to make a manifestation determination, the discipline board would make the placement decision for the interim alternative educational setting. According to a regular education teacher, after the IEP team determines that the infraction is not based on the disability, a discipline council makes the determination to provide services to the students with disabilities either in the alternative school or at home.

OSEP was also told that, in the majority of cases, services that were received by students with disabilities while in an interim alternative educational setting were determined by a discipline council or district office personnel. In two districts two special education directors and a building administrator told OSEP that if the student is expelled, the hearing officer decides the interim alternative educational setting and the district office personnel determines the services. In two other districts, school staff interviewed reported that the discipline board determines services.

OSEP also found in four districts visited that the criteria for selecting the appropriate interim alternative educational setting were not applied when students were placed at home. Students removed for disciplinary reasons and placed at home were provided the minimum amount of services, one period per day, regardless of whether more instructional time was needed to enable the child to continue to progress in the general education curriculum and continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. (See 34 CFR §300.522.) A homebound coordinator from one district and building administrators, special education directors and special education teachers in three districts, told OSEP that students placed at home received one period of service per school day, regardless of need. District personnel in the fourth district reported that some schools automatically provide just one period a day of instruction for students placed at home, while others determine the interim alternative educational setting according to appropriate selection criteria.

SCDE officials explained that the practice of providing only one period of instructional time per day for students removed for disciplinary reasons to an interim alternative educational setting at home, was the result of school personnel applying an incorrect standard contained in South Carolina's 1995 *State Board of Regulation for Homebound Instruction*. Education officials further explained that there is no limit to the amount of instruction that may be provided, and that the regulation was being revised.

B. AREAS OF CONCERN

1. Qualifications and Impartiality of Hearing Officers for Discipline Matters

Under 34 CFR §300.507, a parent may initiate a hearing before an impartial hearing officer whenever a public agency proposes to initiate or change the identification, evaluation, or educational placement of, or the provision of a free appropriate public education to, a child with disabilities. 34 CFR §300.525 further provides that, if the student's parents disagree with a determination of whether the student's misconduct was a manifestation of his or her disability or disagree with a decision regarding placement under the discipline procedures set forth in §§300.520 through 300.528, they may request and are entitled to an expedited hearing. Where a student's misconduct is such that maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or to others, a hearing officer may order a change in the placement of the child to an appropriate interim alternative educational setting for not more than 45 days. 34 CFR §300.521.

There is no distinction in Part B of the IDEA between hearing officers in expedited due process hearings regarding discipline under §§300.520 through 300.528 and those under 34 CFR §300.507. Hearing officers for discipline hearings must meet the same standards of impartiality and knowledge as other hearing officers under the Act. See, *Analysis of Comments and Changes to Final Rules*, 64 Fed. Reg. 12621 (March 12, 1999). The hearing officer requirements are set out at 34 CFR §300.508, and require that the hearing officer not be an employee of the State agency or the LEA that is involved in the education or care of the child have a personal or professional interest that would conflict with his or her objectivity in the hearing. However, a person who otherwise qualifies as a hearing officer is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. These standards are important because, in fashioning appropriate relief, hearing officers will exercise their judgment in the context of all the factors involved in an individual case.

An SCDE official reported to OSEP that, in some instances, the hearing officers who review the interim alternative educational setting placement decisions under §§300.521 and 300.522 do not meet the requirements for impartial hearing officers. This official reported that due to the costs of an impartial hearing officer, many districts use local administrative hearing officers who do not meet the requirements of §300.508. If accurate, this practice would constitute a violation of Part B of IDEA. Because this information was provided late during OSEP's visit, staff did not have the opportunity for on-site follow-up with individual districts. The State needs to investigate this issue and determine whether the hearing officers conducting expedited disciplinary hearings meet the requirements of §300.508, and if not, ensure immediate correction.

2. Provision of Supplementary Aids and Services for Children with Disabilities to be Successful in the Regular Education Classroom

Section 618(a)(1)(A)(iii) of the Act (20 USC 1418(a)(1)(A)(iii)) requires that each State provide data on the number of children with disabilities, by race, ethnicity, and disability category, who are participating in regular education. OSEP noted in its review of the 618 data submitted by

SCDE for 1999-2000 that South Carolina ranks 45th among the 58 Part B eligible States and entities for students with disabilities, ages 6-21, served outside the regular class for 21-60% of the day and 43rd for students with disabilities, in this same age range, are served outside the regular classroom for more than 61% of the day.⁶

IDEA requires the IEP team to determine, and the public agency to provide, the accommodations, modifications, supports and supplementary aids and services, needed by each child with a disability to be successfully involved and progress in the general curriculum, and be educated together with their nondisabled peers. 34 CFR §300.347(a)(3). OSEP found that there is a lack of support and services for general education teachers to ensure that students with disabilities are successful in the general curriculum and to educated in the regular education classroom.

An education official told OSEP that “the attitudes of the regular educator regarding the provision of special education and related services to students with disabilities in the regular classroom are the hardest to change and as a result it is hard to move a student with disabilities from the self-contained to resource placement.” The education official also identified the following barriers to the provision of services to students with disabilities in the least restrictive environment: identification of appropriate IEP accommodations and modifications; training of general education staff on working with children with disabilities; using behavioral intervention plans in a reactive way instead of using them in a proactive manner; and, providing effective training for district personnel on the use of behavioral tools.

Two special educators and an administrator in one district reported that general education teachers are unwilling to work with students with disabilities who have discipline problems due to a lack of supports and services for the regular education teacher. A third special educator told OSEP that she felt there would be fewer students with disabilities who drop out of school if there were more teacher supports for students with disabilities.

In another district, a special education teacher told OSEP that students with disabilities who have limited attention spans would be kept from going into the regular education classroom, since supports and services were unavailable. A second special education teacher reported that because the population in the school had increased, the regular class sizes were enormous. She noted that if there was space in the regular class, two students with disabilities in her self-contained class could attend a regular education health class. In another self-contained placement, eight of 15 students with disabilities attended regular classes for a portion of the day. The special education teacher for this class informed OSEP that if there were more class offerings, he would be able to place the remaining seven students in regular education health classes.

⁶ Information for OSEP’s review was obtained from the December 1, 1999 child count report that provided data on the number and percentage of children ages 6-21 served in different educational environments under IDEA, Part B during the 1999-2000 school year.

VI. PART B: GENERAL SUPERVISION

IDEA assigns responsibility to State education agencies for ensuring that its requirements are met and that all educational programs for children with disabilities, including all such programs administered by any other State or local agency, are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities and that these programs meet the educational standards of the State educational agency. State support and involvement at the local level are critical to the successful implementation of the provisions of IDEA. To carry out their responsibilities, States provide dispute resolution mechanisms (mediation, complaint resolution and due process), monitor the implementation of State and Federal statutes and regulations, establish standards for personnel development -and certification as well as educational programs, and provide technical assistance and training across the State. Effective general supervision promotes positive student outcomes by promoting appropriate educational services to children with disabilities, ensuring the successful and timely correction of identified deficiencies, and providing personnel who work with children with disabilities the knowledge, skills and abilities necessary to carry out their assigned responsibilities.

Previous Monitoring Findings, Self-Assessment Report and Data Collection

OSEP's 1995 on-site review report of SCDE's implementation of Part B of the Individuals with Disabilities Education Act (Part B) identified that SCDE did not consistently meet its responsibility to ensure that SCDE exercised its general supervisory authority over programs providing special education and related services to children with disabilities. Specifically, SCDE's monitoring system failed to include methods to monitor for implementation of Part B requirements related to the placement of children with disabilities in the least restrictive environment, and provision of a free appropriate public education.

OSEP gathered information from the Self-Assessment Report, the Part B State Steering Committee, and information from the State regarding SCDE's responsibility to ensure that all education programs for children with disabilities meet Part B requirements and State education standards. To investigate the concerns identified in the Self-Assessment Report, OSEP staff reviewed children's records and State and local policies and procedures, and interviewed State personnel, local program administrators, teachers, and parents. OSEP reviewed and analyzed this data and identified the following areas of noncompliance that impact improved results for children with disabilities.

AREA OF NONCOMPLIANCE

SCDE is Ineffective in Exercising its General Supervisory Authority over Local Educational Agencies

34 CFR §300.600(a)(2) requires States to ensure that each educational program for children with disabilities administered within the State is under the general supervision of the persons responsible for educational programs for children with disabilities. OSEP finds that SDCE has not exercised its general supervisory authority through its monitoring, complaint, and due process

systems in a manner necessary to ensure that children with disabilities receive the special education and related services to which they are entitled under Part B.

1) SCDE's Monitoring System is Ineffective at Identifying and Correcting Deficiencies in Local Educational Agencies.

Prior to OSEP's visit, SCDE monitored the same five sites that OSEP selected for data collection and SCDE issued a monitoring report with corrective actions to each local school district. One of the local agencies had been monitored during the school year 1998-1999.⁷ During school years 2000-2001 and 2001-2002, SCDE monitored the other four agencies, using SCDE's current monitoring procedures and process. OSEP also reviewed SCDE's corrective action requirements for the five sites visited. At the time of OSEP's visit, corrective actions had been completed in four of the five local school districts SCDE had monitored. As explained below, OSEP found that SCDE's monitoring procedures are not effective in identifying and correcting all areas of noncompliance.

As set out in Section V of this Report, all five districts OSEP visited were not providing psychological services as a related service, except as the result of a due process hearing. OSEP found that psychological counseling services were only provided to students who are determined eligible for Part B services in the category of emotional disabilities or as ordered through a due process hearing. In four of five districts, SCDE did not identify the lack of psychological counseling as noncompliant. In the fifth district, SCDE found that the agency did not consistently document the eligibility and consideration of counseling as a related service for students with emotional disabilities and stated in its finding that "the IEP team should always consider counseling as a related service." However, as a corrective action, SCDE required the district to document, in a sample of student files, the appropriate eligibility and evaluation components and include two psycho-educational evaluations or other supporting documentation. At the time of OSEP's visit, this district had completed the corrective action. As a result, OSEP concludes that SCDE's monitoring system fails to identify and correct deficiencies in local school districts for children with disabilities who may need psychological counseling as a related service.

As indicated in Section V of this Report, four districts, where OSEP reviewed the files of preschool children, did not provide special education and related services to children with disabilities by their third birthday, though the birthday occurred during the school year. In some instances, special education services were delayed because evaluations to determine eligibility were not conducted prior to the child's third birthday. In other instances, OSEP found that services were not provided for children with disabilities who turn age three close to or during the summer months regardless of the needs of the child. SCDE's monitoring system found that one

⁷ Although SCDE monitored this district prior to the March 12, 1999 final regulations promulgated under Part B of the IDEA, SCDE was required to ensure that local educational agencies complied with the statutory provisions in effect under IDEA 1997. The provisions regarding psychological counseling, as a related service, and FAPE at age three were not substantively revised by the IDEA 1997 Amendments.

of these districts did not consistently have IEPs⁸ ready to implement on the child's third birthday. In two other districts, SCDE found that the local school districts failed to consistently attend Part C to Part B transition meetings 90 days prior to a child's third birthday so that services could be initiated. However, the corrective actions that resulted from these findings by SCDE were not effective because OSEP found the same or similar findings during its monitoring.

In fact, in reviewing South Carolina's monitoring manual, OSEP found that SCDE is using an incorrect standard for monitoring the provision of a free appropriate public education at age three for students whose birthday occurs during the summer months. Page eight of South Carolina's "*Monitoring Manual for Determining Compliance Under IDEA, 2001-2002*" addresses the compliance standard for IEPs being in effect by the child's third birthday as follows: "In cases where the child turns age three between the ending date of one school year and the beginning date of the subsequent school year, the IEP is in effect on the beginning date of the subsequent school year." As noted in Section V of this Report, although the child's IEP team determines the date when services under the IEP or IFSP will begin, an IEP or IFSP, if appropriate, must be in effect by the child's third birthday.

As described in Section V of this Report, OSEP found, in four of five districts visited, that decisions regarding placement and services for students with disabilities that are suspended or expelled are not determined through the IEP process by appropriate personnel. In SCDE's monitoring, SCDE failed to identify this as an area of noncompliance in three of these four districts. In the fifth district where OSEP did not make a finding, but SCDE found that disciplinary procedures were not documented, SCDE required the district to provide an assurance that all policies and procedures will be followed when implementing disciplinary actions. Therefore, OSEP concludes that SCDE's monitoring system is ineffective in identifying and correcting deficiencies in disciplinary procedures for students with disabilities.

2) SCDE does not ensure that all Part B Complaints are Resolved Consistent with Part B requirements

As set forth at §300.661(a) and (b)(1), SCDE is responsible for ensuring that a complaint is resolved and a final decision is issued within 60 days of filing, unless there is an extension of time. According to the booklet *System for Investigation of Complaints Received from Constituents Relative to a Free Appropriate Public Education*, a formal complaint by a parent or an organization is to be filed with the State. SCDE staff informed OSEP that one district requires parents to file complaints with the local district first. In this case, SCDE personnel told OSEP that if a complaint is filed with the district, the State does not see the complaint and is not able to log the complaint to ensure it is resolved within the required timelines. OSEP's review of SCDE's complaint log showed that from 1999-2001 the State received 73 complaints. Twenty-four of the complaints were resolved within the required timelines. Further analysis of the logs showed that resolutions for 49 of the complaints exceeded the 60-day time line in the following manner: 25 complaints were overdue by 61-100 days; 19 were over due by 101-150 days; four

⁸ Under Part B, an IFSP that contains the material described in 636 of the Act and that is developed in accordance with Part B IEP requirements may serve as the IEP of the child. However, using that plan as the IEP is not consistent with South Carolina's policy.

by 151-300 days; and one by more than 301 days. There was no documentation of exceptional circumstances for these overdue complaints. In addition, at the time of OSEP's visit, SCDE tracked complaint timelines from the date the complaint is received in the State office to the date of the decision, instead of to the date the letter of findings is mailed to the complainant.

3) SCDE does not ensure that Due Process Hearing and Review Decisions are Conducted in a manner that is Consistent with Federal Requirements

In accordance with §300.507(a), a parent or a public agency may initiate a due process hearing on any of the matters described in §300.503(a) related to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education for the child. Sections 300.511(a) and (b) require 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. Section 300.511 requires that the State education agency ensure that not later than 30 days after the receipt of a request for review, a final decision is reached in the review. Under §300.511 a hearing or review officer may, at the request of a party, grant a specific extension of time beyond the 45-day period for a due process hearing decision or the 30-day period for a review decision.

Based on interviews with SCDE personnel and the review of due process hearing logs, OSEP found that the State does not have an adequate system in place to track and ensure that decisions for due process hearings are reached and a copy of the decision is mailed to each party within 45 days, unless extended at the request of either party. SCDE has a two-tier system for due process hearings. SCDE officials explained that local school districts do not notify the State when due process hearings have been filed. OSEP's review of SCDE's due process logs showed that for 33 due process hearings filed between 1999 and 2001, the State did not track timelines from the date the request was filed with the local educational agency to the date of the decision. According to the logs for State level appeals, all six appeals filed between 1999-2001 exceeded the 30-day timeline. The logs did not indicate whether the second tier Hearing Officer granted extensions. Appeal decisions were issued 51 to 112 days after the date of filing. SCDE personnel told OSEP that appeals extended beyond the 30-day timeline because clerk reporters do not file the reports on the date they were received; therefore, the State had no method of tracking timeline extensions.