



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

May 6, 1994

Honorable John A. Bonaiuto
Secretary of Education
Department of Education and Cultural Affairs
700 Governors Drive
Pierre, South Dakota 57501-2291

Dear Dr. Bonaiuto:

During the week of March 21, 1994, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the South Dakota Department of Education and Cultural Affairs' (DECA) implementation of Part B of the Individuals with Disabilities Education Act (Part B) and the Education Department General Administrative Regulations (EDGAR). The purpose of the review was to determine whether DECA is meeting its responsibility to ensure that its educational programs for children with disabilities are being administered in a manner consistent with the requirements of (1) Part B and its implementing regulations, and (2) EDGAR. All regulatory citations that follow refer to sections of Title 34 of the Code of Federal Regulations.

It is OSEP's routine procedure to present its findings of noncompliance in a monitoring report. However, because OSEP found only a limited number of problems in the implementation of Part B in South Dakota, OSEP has chosen instead to notify you of its findings in this letter, rather than in a report.

In order to be eligible to receive Part B funds, DECA is required to meet the eligibility requirements of Section 612 of Part B (20 U.S.C. 1412(6)), which provides:

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

In addition to DECA's general supervisory responsibility, DECA is required to carry out certain activities in order to ensure that

public agencies carry out their specific responsibilities related to the Part B and EDGAR requirements, including those at 300.340-300.350 (individualized education program (IEP)), 300.550-300.556 (least restrictive environment (LRE)), 300.500-300.515 (procedural safeguards), 300.530-300.534 (protection in evaluation procedures), 300.121 (free appropriate public education (FAPE)), 300.128 (child find) and 300.560-300.575 (confidentiality of information). These activities are to:

(1) include in its annual program plan, a copy of each State statute, policy and standard that ensures the specified requirements are met (see 300.121-300.154);

(2) require public agencies to establish and implement procedures that meet specific requirements, including those identified above (see 300.220, 300.341, 300.501, 300.530 and 300.550);

(3) monitor to ensure that public agencies implement all applicable Federal requirements, including those identified above (see 80.40, 300.402, 300.556 and 20 U.S.C. 1232d(b)(3)); and

(4) require that applications for Part B funds include procedures to ensure that the public agency's procedures are consistent with the requirements of 300.340-300.350 (IEP), 300.550-300.553 (LRE), 300.128 (child find), 300.560-300.574 (confidentiality of information) and 300.226 (parent involvement) (see 76.770, 76.400 and 300.220-300.240).

OSEP staff began its review of documents related to DECA's special education program in January 1994. During the week of January 10, 1994, OSEP conducted public meetings in Rapid City, Pierre, and Sioux Falls, met with Ms. Deborah Barnett and her staff to collect preliminary information about South Dakota's special education system and began making arrangements for OSEP's on-site visit.

During the week of March 21, 1994, OSEP conducted an on-site visit to South Dakota for the purpose of collecting data needed to determine whether DECA's systems for ensuring that all education programs for children with disabilities for whom DECA is responsible comply with the requirements of Part B and EDGAR.

The team conducting the review was composed of Gregory Corr, Judy Gregorian, Joan Pine and Debra Sturdivant. OSEP's compliance review team leader spent the week at DECA's office in

Pierre reviewing compliance documents and conducting interviews with DECA staff responsible for administering the special education program. In addition, three members of OSEP's staff visited five special education units.

During the first evening of the site visit, OSEP held a meeting in one public agency with parents of children with disabilities in order to hear their impressions of special education services provided. The information provided by parents at this meeting helped OSEP staff further understand South Dakota's system for providing special education and focus on areas of concern.

OSEP's on-site visits included the review of student records and interviews with local public agency personnel. Data collected from these site visits are used to support or clarify the OSEP findings regarding the sufficiency and effectiveness of DECA's systems.

OSEP investigated and did not find problems in DECA's fulfillment of its general supervisory responsibilities in the following areas: State educational agency monitoring, child count, free appropriate public education, placements in the least restrictive environment, protection in evaluation procedures, local education agency applications, and complaint management. However, OSEP found that DECA's systems for ensuring compliance have not been fully effective in meeting the following requirements:

GENERAL SUPERVISION 300.600(a)(2)(ii) [DECA is responsible for ensuring that each educational program for children with disabilities administered within the State, including each program administered by any other public agency meets the requirements of Part B and the education standards of the SEA. See also 300.2(b)(4).]

INDIVIDUALIZED EDUCATION PROGRAM 300.346(a)(5) [The IEP of each child with a disability contains evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.]

PROCEDURAL SAFEGUARDS 300.505(a)(2) [The notice of a public agency's proposal or refusal to initiate or change a child's educational placement required under 300.504 must include a description of any options the agency considered and the reasons why those options were rejected.]

300.512(a) and (c) [DECA is responsible for ensuring that a final decision is reached in a hearing and a copy of the decision is mailed to each party not later than 45 days after the receipt

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of a request for a hearing, unless a specific extension of time is granted at the request of either party.]

TRANSITION REQUIREMENTS 300.345(b)(2) [If the purpose of the meeting is the consideration of transition services, the notice must indicate the purpose; indicate that the agency will invite the student; and identify any other agency that will be invited to send a representative.]

300.346(b)(2) [If the IEP team determines that services are not needed in one or more of the areas specified in 300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination is made.] Enclosed is a table specifying the findings documented by OSEP in DECA and in the five local public agencies it visited. Also included are the corrective actions required by OSEP.

DECA has 30 days from receipt of this letter of findings to respond to its accuracy and completeness including activities and timelines in the corrective actions. OSEP will review DECA's response and, where appropriate, make amendments that will be reflected in a revised letter of findings.

I want to thank you for the assistance and cooperation provided during our review. I appreciate your willingness to meet with Dr. Gregory Corr, of my staff, to discuss special education programs in your State. Also, throughout the course of the monitoring process, Ms. Deborah Barnett and her staff were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of your various systems to implement Part B and EDGAR.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of your corrective actions. Please let me know if we can be of assistance. Thank you for your continued efforts toward the goal of improving education programs for children with disabilities in South Dakota.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Ms. Deborah Barnett

TABLE OF FINDINGS

| FEDERAL REQUIREMENT | FINDING | CORRECTIVE ACTION REQUIRED | SUBMISSION TIMELINE |
|--|---|--|--|
| <p>GENERAL SUPERVISION</p> <p>300.600(a)(2)(ii) [DECA is responsible for ensuring that each educational program for children with disabilities administered within the State, including each program administered by any other public agency meets the requirements of Part B and the education standards of the SEA. See also 300.2(b)(4).]</p> | <p>OSEP interviewed DECA administrators and found that DECA has no system for identifying and, if determined eligible, providing special education and related services to inmates 21 years of age or younger at adult correctional facilities in the State.</p> | <p>1. DECA must send OSEP an interagency agreement or other document that clearly sets out the responsibilities of DECA and the Department of Correction with regard to the identification, evaluation and provision of special education and related services to inmates 21 years of age or younger incarcerated in adult correctional facilities.</p> <p>2. DECA must send OSEP documentation verifying that a system for providing FAPE to inmates in adult correctional facilities has been implemented. This documentation must include the procedures used as well as the following data: the total number of students 21 years or younger incarcerated in adult facilities, the number evaluated and the number determined eligible for special education and related services. DECA must also provide verification that all required special education and related services are being provided.</p> | <p>Submit interagency agreement or other document by: <u>9/30/94</u>.</p> <p>Send documentation by: <u>12/31/94</u>.</p> |
| <p>INDIVIDUALIZED EDUCATION PROGRAM</p> <p>300.346(a)(5) [The IEP of each child with a disability contains evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.]</p> | <p>Of the 48 files reviewed by OSEP, 38 files did not include evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.</p> <p>Agency A - 8/9 Agency B - 8/9 Agency C - 10/11 Agency D - 9/10 Agency E - 3/9</p> | <p>1. DECA must issue a memorandum to all public agencies advising them of OSEP's finding that IEPs did not include evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. The memorandum must direct public agencies to review their respective policies and procedures with regard to IEP content to determine if they have proceeded in a manner similar to those public agencies for which OSEP found deficiencies. Should the public agencies determine that their current practice is inconsistent with the requirements identified in DECA's memo, they must immediately discontinue the current practice and implement the correct procedure. Specifically, this memo must inform public agencies of their obligation to ensure that IEPs include evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.</p> | <p>Submit memo to OSEP: <u>30 days after receipt of the letter of findings</u>.</p> <p>Issue memo: <u>15 days after OSEP's approval of the memo</u>.</p> |

¹ In South Dakota, a student with a disability who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year (ARSD 24:05:22:05).

² See Public Agency Key at bottom of this table.

| FEDERAL REQUIREMENT | FINDING | CORRECTIVE ACTION REQUIRED | SUBMISSION TIMELINE |
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| | | <p>2. DECA must issue a memo to those agencies in which OSEP found that IEPs did not include evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. DECA must require those public agencies to immediately discontinue the deficient practice and submit documentation to DECA that the changes necessary to comply with Part B requirements have been implemented. DECA must send to OSEP verification that all corrective actions have been completed by these public agencies. Specifically, this memo must inform public agencies of their obligation to ensure that IEPs include evaluation schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.</p> | <p>Submit memo to OSEP: <u>30 days from receipt of the letter of finding.</u></p> <p>Issue memo: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>Submit verification: <u>60 days from the date the memo is issued.</u></p> |
| | | <p>3. Develop training materials to inform and train teachers and administrators in their responsibilities in the area cited in this Section.</p> | <p>Submit training materials: <u>60 days from receipt of the letter of finding.</u></p> |
| | | <p>4. Provide training, as described above.</p> | <p>Submit verification: <u>60 days from receipt of OSEP approval of training materials.</u></p> |
| <p>PROCEDURAL SAFEGUARDS</p> <p>300.505(a)(2) [The notice of a public agency's proposal or refusal to initiate or change a child's educational placement required under 300.504 must include a description of any options the agency considered and the reasons why those options were rejected.]</p> | <p>OSEP found that in the five agencies visited by OSEP the IEP serves as the placement notice. However, in 22 of 48 IEPs reviewed by OSEP, the IEP did not describe any options the agency considered and the reasons why those options were rejected.</p> <p>Agency A - 5/9 Agency B - 3/9 Agency C - 7/11 Agency D - 4/10 Agency E - 3/9</p> | <p>1. DECA must issue a memorandum to all public agencies advising them of OSEP's findings of deficiency regarding the placement notice. The memorandum must direct public agencies to review their respective policies and procedures with regard to the requirements of the placement notice in order to determine if they have proceeded in a manner similar to those public agencies for which OSEP found deficiencies. Should the public agencies determine that their current practice is inconsistent with the requirements identified in DECA's memo, they must immediately discontinue the current practice and implement the correct procedure. Specifically, this memo must inform public agencies of their obligation to ensure that the placement notice includes a description of any options the agency considered and the reasons why those options were rejected.</p> | <p>Submit memo to OSEP: <u>30 days after receipt of the letter of findings.</u></p> <p>Issue memo: <u>15 days after OSEP's approval of the memo.</u></p> |

| FEDERAL REQUIREMENT | FINDING | CORRECTIVE ACTION REQUIRED | SUBMISSION TIMELINE |
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| | | <p>2. DECA must issue a memo to those agencies in which OSEP found deficient practices regarding the placement notice, requiring those public agencies to immediately discontinue the deficient practice and submit documentation to DECA that the changes necessary to comply with Part B requirements have been implemented. DECA must send to OSEP verification that all corrective actions have been completed by these public agencies. Specifically, this memo must inform public agencies of their obligation to ensure that the placement notice includes a description of any options the agency considered and the reasons why those options were rejected.</p> | <p>Submit memo to OSEP: <u>30 days from receipt of the letter of finding.</u></p> <p>Issue memo: <u>15 days from receipt of OSEP approval of memo.</u></p> <p>Submit verification: <u>60 days from the date the memo is issued.</u></p> |
| | | <p>3. Develop training materials to inform and train teachers and administrators in their responsibilities in the area cited in this Section.</p> | <p>Submit training materials: <u>60 days from receipt of the letter of finding.</u></p> |
| | | <p>4. Provide training, as described above.</p> | <p>Submit verification: <u>60 days from receipt of OSEP approval of training materials.</u></p> |
| <p>300.512(a) and (c) [DECA is responsible for ensuring that a final decision is reached in a hearing and a copy of the decision is mailed to each party not later than 45 days after the receipt of a request for a hearing, unless a specific extension of time is granted at the request of either party.]</p> | <p>OSEP reviewed seven hearing files where decisions were issued during the 1992-1993 school year. In every case the 45 day timeline for issuing the decision had been exceeded, however, none of the hearing files included documentation that an extension of time had been granted at the request of either party.</p> | <p>1. Train hearing officers.</p> <p>2. DECA must submit documentation indicating that findings and decisions in all due process hearings are reached and mailed to each party within 45 days of the receipt of the hearing request, unless a specific extension of time is granted at the request of either party.</p> | <p>Provide OSEP with <u>verification of training by: 9/30/94.</u></p> <p>Submit examples by: <u>12/31/94.</u></p> |
| <p>TRANSITION REQUIREMENTS</p> <p>300.345(b)(2) [If the purpose of the meeting is the consideration of transition services, the notice must indicate the purpose; indicate that</p> | <p>OSEP reviewed three files of students in agency E who were receiving transition services as indicated in their IEPs. There were no notices to the parents in those three files indicating that the purpose of the meeting was to discuss transition services, that the student will be invited, and</p> | <p>DECA must issue a memo to agency E, requiring that (1) if the purpose of the meeting is the consideration of transition services, the notice must indicate the purpose; indicate that the agency will invite the student; and identify any other agency that will be invited to send a representative; and (2) if the IEP team determines that services are not needed in one or more of the areas specified in 300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination is made. Agency E must submit documentation to DECA that the</p> | <p>Submit verification: <u>60 days from receipt of the letter of finding.</u></p> |

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| <p>the agency will invite the student; and identify any other agency that will be invited to send a representative.]</p> <p>300.346(b)(2) [If the IEP team determines that services are not needed in one or more of the areas specified in 300.18(b)(2)(i) through (b)(2)(iii), the IEP must include a statement to that effect and the basis upon which the determination is made.]</p> | <p>that any other agency would be invited to send a representative. The teacher and administrator confirmed that no special meeting notice regarding the discussion of transition services is sent, nor is this information included in the notice inviting the parent to the IEP meeting.</p> <p>In the three files reviewed by OSEP in agency E services were not provided in each of the areas specified in 300.18(b)(2)(i) through (b)(2)(iii) however, there were no statements indicating the basis upon which the determination was made that services were not needed in one or more of the areas.</p> | <p>changes necessary to comply with these Part B transition requirements have been implemented. DECA must send to OSEP verification that these deficiencies have been corrected.</p> | |
| <p>Public Agency Key: A - Hot Springs, B - Rapid City, C - Spearfish, D - Sioux Falls and E - West Central</p> | | | |