



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

SEPTEMBER 29, 1995

Honorable William C. Boshers, Jr.  
Superintendent of Public Instruction  
Virginia Department of Education  
P.O. Box 2120  
Richmond, Virginia 23216-2120

Dear Superintendent Boshers:

The Office of Special Education Programs (OSEP), United States Department of Education, has conducted an on-site review of the Virginia Department of Education's (VADOE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). This review included a visit to VADOE and public meetings during the week of January 30, 1995, a visit to VADOE during the week of April 10, 1995, and a visit to six public agencies in the State during the week of May 1, 1995. The purpose of the review was to determine whether VADOE is meeting its responsibility to ensure that its educational programs for students with disabilities are being administered in a manner consistent with the requirements of Part B. A copy of our report, entitled "Office of Special Education Programs Monitoring Report: 1995 Review of the Virginia Department of Education (Report)," is enclosed.

Our review revealed that actions taken by VADOE since OSEP's 1989 review have been effective in correcting many of the deficiencies set forth in the November 26, 1990 OSEP report. For example, VADOE has effectively revised its procedures for reviewing and approving local educational agency applications for Part B funds. VADOE also created a model explanation of procedural safeguards that includes all required content and disseminated that model to all public agencies. In addition, VADOE has developed a strong and effective system for tracking due process hearing timelines, thus correcting the hearing timeline deficiencies that OSEP identified in the 1989 visit.

However, our review revealed problems in the effectiveness of VADOE's monitoring and complaint management procedures. In addition, we noted problems related to transition services, least restrictive environment and the provision of a free appropriate public education.

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Page 2 - Honorable William C. Boshier, Jr.

As noted in the Initiatives, Transition Services, and Least Restrictive Environment sections of the Report, VADOE has developed high quality technical assistance capabilities (see pages v, 16, and 19). VADOE, however, provides technical assistance only upon the request of public agencies, and agencies we visited that had not requested that assistance continued to have problems in these areas.

As you will recall, the preliminary findings of the monitoring team were discussed in a May 5, 1995 meeting between Larry Ringer and Claudia Brewster of my staff, and you, Dr. Jo Lynne DeMary and Dr. Thomas Elliott, and several members of their staffs. At that time VADOE was invited to provide any additional information it wanted OSEP to consider during the development of findings for the compliance report. No further information was provided. Therefore, the findings presented in this Report are final.

In the interest of developing a mutually agreeable corrective action plan specifically designed to address these findings, OSEP proposes that VADOE representatives discuss with OSEP staff, either in a meeting or telephone conference the areas of noncompliance identified, the most effective methods for bringing about compliance and improving programs for children with disabilities in the State, and specific corrective actions, timelines and resources. We will also invite a representative from Virginia's Special Education Advisory Council to participate in that discussion.

VADOE's corrective action plan must be developed within 45 calendar days of receipt of this Report. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

In the event that VADOE concludes, after consideration of the data in this Report, that evidence of noncompliance is significantly inaccurate and that one or more findings is insupportable, VADOE may request reconsideration of the finding.

In such a case, VADOE must submit reasons for its reconsideration request and any supporting documentation within 15 calendar days of receiving this Report. OSEP will review the request and, where it agrees that the facts contained in the Report are insufficient to support the finding, issue a letter of response informing that State that the finding has been appropriately revised or withdrawn. Requests for reconsideration of a finding will not delay corrective action plan development and implementation timelines for findings not part of the reconsideration request.

Page 3 - Honorable William C. Boshier, Jr.

I want to thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Dr. DeMary, Dr. Elliott, and their staffs 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. Mr. Ringer and Ms. Brewster have also informed me about the strong collegial partnership between our two departments that was reinforced during the course of the compliance review. They were impressed with the knowledge, skills, initiative, and commitment of your special education and compliance staffs.

Ms. Brewster, Mr. Ringer, and other members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of your corrective actions, and we look forward to working with your staff toward continuous improvement in educational opportunities for students with disabilities in Virginia.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: Dr. Jo Lynne DeMary  
Dr. Thomas Elliott  
Mr. Doug Cox

OFFICE OF SPECIAL EDUCATION PROGRAMS  
MONITORING REPORT:

1995 REVIEW OF  
THE VIRGINIA DEPARTMENT OF EDUCATION'S  
IMPLEMENTATION OF PART B OF  
THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEPTEMBER 1995

TABLE OF CONTENTS

INTRODUCTION . . . . . iii

I. GENERAL SUPERVISION . . . . . 1

    A. STATE EDUCATIONAL AGENCY MONITORING . . . . . 2

    B. CORRECTION OF DEFICIENCIES . . . . . 6

    C. COMPLAINT MANAGEMENT . . . . . 14

II. TRANSITION SERVICES . . . . . 15

III. LEAST RESTRICTIVE ENVIRONMENT . . . . . 19

IV. FREE APPROPRIATE PUBLIC EDUCATION . . . . . 24

APPENDIX A: PUBLIC AGENCY KEY . . . . . 27

APPENDIX B: CORRECTIVE ACTION PLAN . . . . . 28

## INTRODUCTION

### OSEP REVIEW PROCESS

During the week of January 30 - February 3, 1995, OSEP team leader Larry Ringer and OSEP's Virginia State contact Claudia Brewster met with VADOE special education and compliance officials, reviewed VADOE program and compliance documents, and conducted public meetings in Norfolk and Roanoke; OSEP conducted a third public meeting the following week in Arlington.<sup>1</sup> During this two week period, OSEP also convened meetings in Richmond and Washington, DC with representatives of advocacy groups for students with disabilities and their families. In addition, OSEP solicited and received numerous letters and telephone calls from parents, advocates, and other interested parties. Through the public meetings, the smaller outreach meetings with advocates, the telephone calls, and the letters, parents and other advocates raised a number of concerns including the following:

Several people expressed concern that a full continuum of placement options was not available for all students with disabilities in some school divisions, and that placement decisions were made on a categorical, rather than individual, basis.

A number of people stated that effective procedures for transition planning were not in place in all school divisions, and that appropriate transition services were not available for all students with disabilities of senior high school age.

Several people alleged that there were lengthy delays in VADOE's resolution of Part B complaints.

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<sup>1</sup> OSEP had scheduled a fourth public meeting in Richmond, but that meeting was cancelled when the meeting site was closed due to inclement weather.

Parents on one public meeting stated that the procedures under the State's Comprehensive Services Act, which provides for a pool of State and local money to fund certain kinds of expensive placements, were being implemented in a manner that resulted in significant delay in the provision of needed services, and in groups other than the IEP team making decisions about what services students with disabilities would receive.

Several individuals also commended some of VADOE's technical assistance initiatives.

During the week of April 10 - 14, 1995, Larry Ringer returned to VADOE to collect further data regarding Virginia's State systems for special education. OSEP used the data collected from all of these sources to select the public agencies that it visited as part of the compliance review and the issues upon which it focused its data collection during the on-site review. OSEP's review specifically addressed all of the issues described above, and its findings regarding those issues are set forth in the appropriate sections of this Report, including the "Initiatives" section of this Introduction.

During the week of May 1 - 5, 1995, the OSEP team of Larry Ringer, Claudia Brewster, Carol Jenzano, and Barbara Route visited six school divisions, where they reviewed student records and interviewed school division staff about their educational programs for students with disabilities. On the evening of April 30, 1995, Barbara Route and Carol Jenzano conducted a "focus meeting" in which they met with parents of senior high school students with disabilities in one of these school divisions to hear their impressions of special education services provided.

Throughout the Report, OSEP makes reference to data obtained through interviews with VADOE staff, and public agency teachers, related service providers, and administrators. In all cases, OSEP has established that the persons providing those data were knowledgeable about and routinely involved in the areas about which they were questioned. Specifically, OSEP interviewed only those special education teachers responsible for providing services to the students whose records were reviewed; the related service providers responsible for providing the related services discussed in the findings; and the administrators responsible for programs in the schools of the students whose records were reviewed.

In conducting this review, OSEP placed a strong emphasis on those requirements most closely associated with positive results for students with disabilities, and on the systems that VADOE uses to meet its general supervision responsibility, including the provision of a free appropriate public education, education in the least restrictive environment, transition services for students with disabilities who are at least sixteen years of age (or younger if determined appropriate), and VADOE's monitoring and complaint management procedures.

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

#### **DESCRIPTION OF VADOE'S SPECIAL EDUCATION SYSTEM**

Virginia is divided into 135 local school divisions, each of which applies for and receives Part B funds. VADOE flows 95% of its Part B funds and 77% of its preschool grant under Section 619 of IDEA to the local school divisions.

The Office of Special Education in VADOE's Division of Instruction has primary responsibility for administering the State's educational programs for students with disabilities. The Division's Director, Dr. Jo Lynne DeMary, is currently acting as the State's Director of Special Education. Two other VADOE divisions also have significant responsibility for administering the Part B program. The Division of Compliance, under the direction of Dr. Thomas Elliott, is responsible for monitoring local school divisions and State-operated programs, for resolving Part B complaints, for managing the system for due process hearings and appeals, and--in conjunction with the Office of Special Education--for the State's comprehensive system of personnel development. The Division of Administration is responsible for administering State-operated programs, including the two State Schools for the Deaf and Blind.

## **INITIATIVES**

The focus of OSEP's compliance monitoring is the determination of the extent to which a State is providing programs to students with disabilities in compliance with the requirements of Part B, and the primary focus of OSEP's review of VADOE and of this Report is the identification of areas in which VADOE's systems have not been fully effective in ensuring compliance with those requirements. An additional focus of the review, however, was the collection and analysis of information regarding strengths in VADOE's leadership in the State regarding educational programs for students with disabilities.

A number of the school divisions that OSEP visited as part of this review expressed their strong reliance on and confidence in technical assistance that they receive from VADOE. VADOE has reorganized its Office of Special Education in order to maximize the effectiveness of its technical assistance support to school divisions. Although each of the eight technical assistance staff in the Office has an area of programmatic expertise (e.g., severe disabilities, specific learning disabilities, and speech and language), each of these individuals is also responsible for one of the State's eight geographical regions. Each of these staff members meets at least once a month with the local directors of special education in his or her region to provide the latest information and guidance on issues which they define. VADOE also funds a number of technical assistance centers to support special education teachers.

The Office of Special Education works with school divisions throughout the State to support the use of Medicaid funds as an additional funding source for related services. The Office has worked cooperatively with the Department of Medical Assistive Services in Virginia, the state's agency that manages and oversees Medicaid funding. VADOE obtained approval for the use of Medicaid funds to pay for speech, occupational, and physical therapy services, and is seeking approval for the use of Medicaid funds to pay for school psychology services. VADOE established pilot programs to demonstrate the use of these funds, to solve problems in these pilot programs, and to develop strategies to avoid future problems. This source of augmentative funding has assisted school divisions in meeting the needs of students with disabilities.

VADOE has made technical assistance regarding the use of assistive technology available for a number of years to teachers of students with severe disabilities and preschool children with disabilities. VADOE recently allocated \$200,000 to begin a technology lending library for use by local school divisions. This loan arrangement will enable school divisions to borrow expensive assistive technology devices on a trial basis so that they may determine whether a specific device will meet the needs of a particular student, before the division actually purchases the device.

## I. GENERAL SUPERVISION

Under Part B's general supervision requirements, VADOE is:

... responsible for ensuring--(1) That the requirements of [Part B] are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other public agency--(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the [State educational agency (SEA)]; and (ii) Meets the education standards of the SEA (including the requirements of [Part B]). [34 CFR §300.600(a).]

To meet these general supervision requirements, VADOE must ensure not only that each public agency establishes policies and procedures that are consistent with VADOE's standards and the requirements of Part B, but also that each public agency implements policies and procedures that are fully consistent with those standards and requirements. VADOE may use a variety of methods to ensure such implementation, including the provision of guidance and technical assistance to public agencies. However, Part B and the General Education Provisions Act set forth certain methods that VADOE must use as part of the methods it uses to ensure compliance.

First, VADOE is responsible for the adoption and use of effective methods to monitor public agencies responsible for carrying out special education programs and to ensure the correction of deficiencies in program operations that are identified through monitoring (20 U.S.C. §1232d(b)(3)), and for keeping records to show its compliance with program requirements, including this monitoring responsibility (§76.731). In addition to the monitoring requirements under GEPA and the Part B general supervision requirements, Part B sets out specific monitoring responsibilities for IDEA's requirements regarding IEPs and placement in the least restrictive environment:

The Part B regulations require, at §300.556, that VADOE "carry out activities to ensure that §300.550 is implemented by each public agency," and "if there is evidence that a public agency makes placements that are inconsistent with §300.550," to "review the public agency's justification for its actions, and assist in planning and implementing any necessary corrective action."

The regulations further require, at §300.130(b)(2), that VADOE's Part B State plan must include "the procedures that the SEA follows in monitoring and evaluating [IEPs]."

VADOE must, in addition to meeting these monitoring requirements, also adopt written procedures for resolving--in accordance with the requirements of §§300.660-300.662--any signed written complaint that includes a statement that a public agency has violated a Part B requirement and the facts upon which the statement is based (§§300.660(a) and 300.662).

**FINDINGS:**

As explained below, VADOE's procedures for monitoring public agencies and for ensuring that deficiencies it identifies through monitoring are corrected have not been fully effective. Further, VADOE has not been effective in ensuring that complaints are resolved within the 60 calendar day timeline set forth at §300.661(a).

**A. VADOE is responsible for the adoption and use of effective methods to monitor public agencies responsible for carrying out special education programs. 20 U.S.C. §1232d(b)(3).**

VADOE has developed 16 data collection forms that it uses to monitor school divisions. These include forms for: reviewing IEPs (FPM 3-4.a) and student records (FPM 3-7 and FPM 3-3); interviewing principals (FPM 3-5), special education teachers and speech therapists (FPM 3-6), other related services personnel (FPM 3-8), members of the local advisory committee (FPM 3-9), the agency's special education administrator (FPM 3-10), and parents (FPM 3-15); and reviewing an agency's procedures for maintaining student records (FPM 3-12 and 3-13). An extensive document provides guidance to the special education team leader (FPM 3-25).

**1. Requirements For Which VADOE Has No Method to Monitor Implementation**

OSEP reviewed VADOE's monitoring instruments and interviewed the VADOE officials who supervise the special education monitoring staff and manage the monitoring process regarding the instruments and the methods that VADOE uses to monitor the compliance of local educational agencies with Part B requirements. OSEP noted that, with the five exceptions noted in Table I-1 below, VADOE's monitoring system included a method to determine whether public agencies were implementing procedures consistent with all Part B requirements.

<b>TABLE I-1 -- NO METHOD TO MONITOR IMPLEMENTATION</b>
<p><b><i>§300.303: Proper functioning of hearing aids</i></b> Each public agency ensures that the hearing aids worn by deaf and hard of hearing children in school are functioning properly.</p>
<p><b><i>§300.347(a): Agency responsibilities for transition services</i></b> If a participating agency fails to provide agreed upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary revising the student's IEP.</p>
<p><b><i>§300.503(d): Independent educational evaluation</i></b> If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation is at public expense.</p>
<p><b><i>§300.504(c): Additional State consent requirements</i></b> In addition to the parental consent requirements [for preplacement evaluation and initial placement in a program providing special education and related services], a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in failure to provide the child with free appropriate public education.</p>
<p><b><i>§300.504(d): Limitation on State consent requirements</i></b> A public agency may not require parental consent as a condition of any benefit to the parent or child except for [preplacement evaluation or initial placement in a program providing special education and related services].</p>

## **2. Requirements For Which VADOE's Monitoring Method is Not Fully Effective**

As explained below, OSEP found that the procedures that VADOE uses to determine compliance with some of the Part B requirements relating to placement in the least restrictive environment, the provision of a free appropriate public education, and transition services had not been fully effective in identifying deficiencies.

### **Continuum of Placement Options and Placement Based on IEP (§§300.551, 300.552(b), and 300.552(a)(2))**

Although VADOE's monitoring instruments include elements that address all of the Part B requirements regarding placement in the least restrictive environment, OSEP finds that VADOE's monitoring procedures have not been fully effective in determining compliance with all of those requirements. As noted in Section III of this Report, OSEP identified deficiencies in Agencies A, E, and F regarding placement in the least restrictive environment that VADOE did not identify when it conducted its most recent monitoring review of those agencies.<sup>2</sup> Despite the evidence that OSEP found of serious systemic violations of the continuum requirements at §§300.551 and 300.552(b) when it visited Agency A (see page 20) and Agency E (see page 21) in May 1995, VADOE had made no continuum finding when VADOE monitored Agency A in May 1994 or Agency E in April 1994.<sup>3</sup> Indeed, the only finding regarding placement in the least restrictive environment that VADOE made in Agency A was based on the VADOE standard requiring that "All children with disabilities are served in a program with age-appropriate peers," and VADOE made no findings regarding placement in the least restrictive environment in Agency E.

### **Availability of Psychological Counseling as a Related Service (§§300.300 & 300.16(a))**

As defined at §300.16, the term "related services" specifically includes "planning and managing a program of psychological services, including psychological counseling for children and parents," if that service is needed to assist an individual

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<sup>2</sup> VADOE did make findings regarding categorical placement of students with severe disabilities in a separate school and the lack of a continuum for those students when it monitored Agency F in October 1991. (See page 13 for an analysis of the effectiveness of the steps that VADOE has taken to ensure correction of those deficiencies.) VADOE did not, however, identify any deficiencies regarding the requirement that each student's educational placement be based upon his or her IEP.

<sup>3</sup> In reviewing monitoring VADOE's monitoring reports for the 1993-1994 and 1994-1995 school years, OSEP noted that VADOE made no continuum findings in any of the 47 agencies that it visited during those two school years.

student to benefit from special education. (See §300.16(b)(8)(iv).) Therefore, an IEP team must include psychological counseling in a student's IEP and provide that service, if psychological counseling for the student and/or family is needed to assist the student to benefit from special education.

VADOE's "IEP Observation" form, and its interview guides for principals, special education teachers, and support personnel all direct monitors to ask whether all children with disabilities are receiving services in accordance with their IEP. The interview guides for special education teachers, support personnel, and the agency special education administrator all direct monitors to ask whether "... related services [are] provided on an individualized basis which includes differing amounts of service depending on the needs of each child?" Thus, VADOE's monitoring procedures include inquiries that could detect deficiencies where (1) a public agency has included a related service in a student's IEP but has not provided that service to the student, or (2) no individualized determination is made as to the amount of a related service that each student needs. VADOE's monitoring procedures do not, however, include a method to determine whether a public agency makes all of the related services included in the Part B definition at 300.16 available, if--as determined by the team developing the student's IEP--the student needs that service to benefit from special education. Although VADOE did not identify any deficiencies regarding the availability or provision of related services when it monitored Agency E in April 1994 and Agency F in October 1991, OSEP found when it visited these agencies in May 1995 that they did not make psychological services available as a related services to students with disabilities, regardless of an individual student's need for such services to benefit from special education (see page 25).

**Extended School Year Services as a Component of a Free  
Appropriate Public Education (§300.300)**

Public agencies must--based upon a determination of the unique needs of each student with a disability through the development of an IEP--determine the special education and related services that will be included in the IEP and provided to the student. A public agency must provide special education and related services beyond the traditional 180 day school year, if such services are necessary to ensure that the student receives free appropriate public education. Thus, extended school year services must be available to the extent necessary to ensure that each student with a disability receives free appropriate public education.

Although VADOE's monitoring instruments include elements that address the requirement that public agencies provide extended school year services to individual students with disabilities if those services are needed by those individuals as a component of free appropriate public education, those procedures have not been fully effective in determining compliance with this requirement.

Although VADOE did not identify deficiencies regarding extended school year services when it monitored Agency A in May 1994, Agency E in April 1994, and Agency F in October 1991, OSEP found when it visited these agencies in May 1995 that they did not make extended school year services available to students who needed those services as a component of a free appropriate public education (see page 25).

**Content of IEP Meeting Notice if a Purpose is Consideration of Transition Services (§300.345(b)(2)(i) and (ii))**

If the purpose of an IEP meeting is the consideration of transition services for a student, notice to the parents of this meeting must indicate this purpose, indicate that the agency will invite the student, and identify any other agency that will be invited to send a representative. VADOE's interview guides for principals and special education teachers direct monitors to ask whether notice provided to parents includes this information. Its IEP Review Checklist directs monitors to determine, by reviewing a student's IEP, whether the school division has met "Parent Participation" requirements. None of VADOE's monitoring instruments direct monitors to review the notices provided to parents, or any other documentation of the content of notice, to determine whether the information required by §300.345(b)(2) is included in those notices. Although VADOE did not identify these deficiencies when it monitored Agency A in 1994 and Agency D in 1992, OSEP found deficiencies regarding these requirements in both agencies when it visited them in May 1995 (see page 19).

**B. VADOE is responsible for the adoption and use of proper methods for the correction of deficiencies in program operations that are identified through monitoring. 20 U.S.C. §1232d(b)(3).**

A State may adopt and use a broad range of methods and strategies to ensure that the deficiencies it identifies through its monitoring procedures are corrected in a timely manner. These may include working with public agencies to determine appropriate corrective actions, the provision of technical assistance, on- and off-site follow-up reviews to determine the status of corrective actions, and--if necessary to ensure compliance--the imposition of appropriate sanctions.

VADOE began, during the 1993-1994 school year to conduct follow-up visits to the agencies monitored during the 1992-1993 school year; previous to that school year, VADOE did not implement systematic procedures to ensure that public agencies corrected all deficiencies identified through monitoring.

OSEP reviewed the effectiveness of VADOE's procedures in ensuring that deficiencies identified in the six school divisions were corrected. OSEP finds, as explained below, that VADOE's current procedures have not been effective in ensuring timely correction in Agencies A, E, and F.

**AGENCY A**

VADOE conducted its most recent monitoring review of Agency A in May 1994, and identified several significant deficiencies in its May 19, 1994 report. When VADOE conducted its April 20, 1995 follow-up visit to Agency A, it found that the agency had not implemented agreed-upon corrective actions regarding two findings:

**Statement of Needed Transition Services**

When VADOE reviewed Agency A in May 1994, it found that: "There were not appropriate transition plans for any students' IEPs reviewed who were 16 years of age or younger where appropriate."

Notwithstanding the magnitude of this finding, VADOE recommended the following corrective action:

Arrange for staff from DOE and/or Project Unite [a VADOE-funded technical assistance project on transition] to provide inservice for all secondary special education staff regarding the proper way to develop appropriate transition plans.

In July 1994, Agency A submitted and VADOE approved a corrective action report with a single corrective action for all nine of the findings related to IEP and transition requirements in the May 1994 report:

[Agency A] has arranged for staff from [VADOE] to provide inservice [during the week of August 19-23, 1994] for all special education staff and principals regarding the proper way to develop IEPs and what should be contained in an IEP.

As part of its April 20, 1995 follow-up visit to the agency, VADOE conducted an exit briefing with the agency's special education administrator, in which it advised the agency of VADOE's findings. The staff member who conducted the follow-up visit also summarized those findings in an internal memorandum, dated May 5, 1995, stating that:

Although most IEPs of appropriate age students contain statements of needed transition services the division has not adhered to the stated corrective action plan. Other than a general inservice on the development of IEPs no specific inservice on the proper development of transition planning and its additional legal requirements has been done in [Agency A]. There is evidence that staff has communicated with Project Unite but has been unable to arrange on-site inservice. Discussions with staff do not reveal consistent, accurate information regarding transition services for children with disabilities. It must be noted that the accepted Federal Program Monitoring Corrective Action Report did not contain a timeline for this activity.

In sum, when VADOE first contacted Agency A (i.e., during the April 20, 1995 follow-up visit) concerning that agency's progress on its corrective action relating to the transition findings, it found that corrective action regarding those findings had not occurred and that compliance problems remained.<sup>4</sup> When OSEP visited Agency A in May 1995, none of the IEPs that it reviewed met the Part B requirements for a statement of needed transition services (see page 17).

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<sup>4</sup> On September 21, 1995, VADOE advised OSEP that it has made a number of subsequent contacts with the agency regarding the need to correct VADOE's April 20, 1995 findings, but that VADOE is awaiting receipt of this OSEP report before it develops a comprehensive plan of action to work with the agency or issues a written report to the agency of VADOE's follow-up findings.

### **Least Restrictive Environment**

VADOE's May 19, 1994 monitoring report found that "There are 4 children that are high school age served in an elementary school," and recommended the following corrective action: "Move these children to an age appropriate site by September 1994 and provide an implementation plan as to how this will be done." The July 1, 1994 Corrective Action Report submitted by Agency A and approved by VADOE stated that "Two of these [four] students graduated and the other two will be moved to [X] Sr. High" by September 1994. Although the senior high school to which the agency promised to move these students was and is inaccessible and the students to be moved required an accessible building, VADOE approved the corrective action report although it did not include an "implementation plan" or any explanation as to how the agency would implement the corrective action notwithstanding the architectural barriers.

In May 1994, VADOE found that "There are 4 children that are high school age served in an elementary school." As part of its April 20, 1995 follow-up visit to the agency, VADOE conducted an exit briefing with the agency's special education administrator, in which it advised the agency of VADOE's findings. The staff member who conducted the follow-up visit also summarized those findings in an internal memorandum, dated May 5, 1995. As documented in that internal memorandum, VADOE found that, nearly eight months after the approved corrective action was to be completed,

The program for students with more severe disabilities at [X] Elementary School continues to serve students who are of high school age. The division cites parental opposition in addition to difficulties with accessibility at [X] High School as reasons the standard has not been met.

In sum, when VADOE first contacted Agency A (i.e., during the April 20, 1995 follow-up visit) concerning that agency's progress on its corrective action relating to the least restrictive environment finding, it found that corrective action regarding that finding had not occurred and that compliance problems remained. (See footnote 4, above, regarding VADOE's subsequent actions.) When OSEP visited the agency on May 1, 1995, the agency's special education administrator acknowledged that: (1) there were still four high school age students with severe disabilities at the elementary school (although two students had graduated at the end of the 1993-1994 school year, two students of high school age had been added to the class in the elementary

school); (2) no action had been taken since May 1994 to correct the identified deficiency; (3) there was still no plan as to how the deficiency would be corrected; (4) until VADOE's April 20, 1995 follow-up visit, VADOE had made no inquiry as to the status of the corrective action; (5) while the high school aged students with severe disabilities who were placed in the elementary school had some opportunities for interaction with nondisabled students in activities such as recess, there were no opportunities for them to participate with their chronological age nondisabled peers in classes or extracurricular and nonacademic services and activities; and (6) but for the accessibility barriers and parent opposition, these students could also be appropriately placed in a high school where there would be more opportunities for integration.

#### **AGENCY E**

VADOE conducted its most recent monitoring review of Agency E on April 18-21, 1994, and identified several serious deficiencies in its May 3, 1994 report. VADOE did not take any steps to determine the status of the agency's corrective actions, until its May 15, 1995 follow-up visit to the agency. As explained below, when OSEP visited the agency on May 4 and 5, 1995, it found that the agency had not corrected deficiencies regarding delays in preplacement evaluations (with resulting delays in the provision of a free appropriate public education) and in reevaluations, and transition services. Similarly, when VADOE conducted its May 15, 1995 follow-up visit to the agency, it found that seven of the 13 special education deficiencies that VADOE had identified in April 1994 had not yet been corrected. VADOE reviewed these findings of continued non-compliance with the agency's acting superintendent and special education administrator as part of the follow-up visit, and advised them that VADOE would conduct a further follow-up visit in November 1995.

### **Delays in Preplacement Evaluations**

Virginia's special education regulations require that the initial evaluation of a student be completed and the eligibility determination made, within 65 administrative working days of the day on which the referral for evaluation has been made to the special education administrator. When VADOE monitored Agency E in April 1994, VADOE found that in five of the 15 files reviewed eligibility was not determined within the 65 day timeline. As part of its May 3, 1994 monitoring report, VADOE recommended the following corrective action:

Provide assurance that eligibility will be completed within the 65-day timeline, including documentation of notification of appropriate [local educational agency (LEA)] personnel through memo or inservice and the method which will be used to monitor compliance with the timeline.

On June 13, 1994, Agency E submitted a corrective action report (approved by VADOE--"subject to verification"--on July 25, 1995) providing that:

Assurance is hereby given that the LEA personnel will be inserviced [on September 11, 1994] as to the Special Education Process as it relates to timelines.

The approved corrective action did not include a "method which will be used to monitor compliance with the timeline," as recommended in VADOE's monitoring report, or specify a date by which all initial evaluations would be completed within the 65-day timeline.

When OSEP visited Agency E in May 1995, the agency's school psychologist informed OSEP that there remained a significant delay in completing initial evaluations. The Agency's special education director confirmed that 99% of initial evaluations were delayed by months beyond the 65 day timeline. Currently, the agency has one staff school psychologist and two part-time contracted psychologists; the director explained that--despite the Agency's efforts to recruit school psychologists--the Agency had not been able to hire additional psychologists. The director further confirmed that, in the intervening year between VADOE's April 1994 visit and OSEP's May 1995 review, VADOE did not: (1) inquire as to the status of the Agency's correction of the deficiency; (2) provide any assistance in acquiring additional psychologists; or (3) assist in the development of other strategies to correct the deficiency and eliminate this serious

delay in the provision of a free appropriate public education.

VADOE conducted a follow-up visit to Agency E on May 15, 1995, and found that: "2/2 files reviewed indicate that meeting the 65 day timeline is still a problem. Additional action is necessary for compliance. Utilize a tracking system to avert delays."

### **Delays in Triennial Reevaluations**

When VADOE monitored Agency E in April 1994, it found that "In 11 of 16 files that were reviewed, triennials were not completed within the three year timeline." As part of its May 3, 1994 monitoring report, VADOE recommended the following corrective action:

Provide assurance that triennials will be completed within the three year timeline, including documentation of notification of appropriate LEA personnel through memo or inservice and the method which will be used to monitor compliance with the timeline.

On June 13, 1995, Agency E submitted a corrective action report (approved by VADOE--"subject to verification"--on July 25, 1995) providing that:

Assurance is hereby given that the LEA personnel will be inserviced [on September 11, 1994] as to the Special Education Process as it relates to timelines.

The approved corrective action did not include a "method which will be used to monitor compliance with the timeline," as recommended in VADOE's monitoring report, or specify a date by which all initial evaluations would be completed within the three year timeline. Prior to VADOE's May 1995 follow-up visit to the agency (described below), VADOE did not: (1) inquire as to the status of the agency's correction of the deficiency; (2) provide any assistance in acquiring additional psychologists; or (3) assist in the development of other strategies to correct the deficiency.

When OSEP visited the agency in May 1995, the agency special education administrator stated that there had been "significant improvement in reevaluation timelines, but acknowledged that there were still serious delays in the completion of reevaluations; the administrator explained that these delays were due to the shortage of school psychologists discussed above. In response to OSEP's inquiry regarding the magnitude and length of these delays, the administrator provided a computer-generated

list, setting forth the date of the most recent eligibility determination for each student with a disability in the agency. (The agency uses this date to measure compliance with the Part B and State law requirement that each student with a disability be evaluated at least once every three years.) As summarized below in Table I-2, the reevaluations for 95 students were (as of May 4, 1995, when the list was generated) delayed by more than a month beyond the three year timeline; the reevaluations for ten students were delayed less than one month beyond the timeline, and the reevaluations for 561 students were not overdue as of that date.

<b>TABLE I-2 -- AGENCY E DELAYS IN REEVALUATION ONE YEAR AFTER VADOE IDENTIFICATION OF DEFICIENCY</b>	
<b>TIME BEYOND 3 YEARS</b>	<b>NUMBER OF STUDENTS</b>
More than 24 months	3
More than 12 months	10
More than 6 months	39
More than 3 months	16
More than 2 months	9
More than 1 month	18

When VADOE conducted its May 15, 1995 follow-up visit to the agency, it found that: "2/2 files reviewed indicate that timeliness of triennials continues to be a problem. Additional action is necessary for compliance. Look more closely at components needed, eliminating those not necessary."

**Statement of Needed Transition Services**

When VADOE conducted its April 1994 review of Agency E, it found that "Three (3) of 6 IEPs for students 16 and over which were reviewed did not contain transition plans." As part of its May 3, 1994 monitoring report, VADOE recommended the following corrective action:

Provide inservice by June 1, 1994 to appropriate LEA personnel to ensure that IEPs are completed in conformance with state and federal regulations. Submit implementation plan.

On June 13, 1995, Agency E submitted a corrective action report (approved by VADOE--"subject to verification"--on July 25, 1995) providing that:

Inservice Training sessions have been scheduled for the Special Education staff and teachers in the Assessment, Writing and Implementation of Transition Planning for [Agency E]."

When OSEP visited Agency E in May 1995, it found that while each of the five IEPs OSEP reviewed for students who were at least 16 included at least some information relating to transition, none of them met the content requirements at §§300.346(b) and 300.18 (see page 18).

VADOE conducted a follow-up visit to the agency on May 15, 1995.

Although this follow-up visit occurred after OSEP's end-of-visit briefing of VADOE in which OSEP informed VADOE of its preliminary finding that Agency E had not corrected the deficiency regarding statements of needed transition services, VADOE determined that the deficiency had been corrected based upon its review of only one IEP. VADOE's written follow-up report (the contents of which were shared verbally with the agency's acting superintendent and special education administrator as part of the follow-up visit) states: "1/1 IEPs reviewed for the transition plan had a minimally adequate plan. Additional attention recommended to facilitate better plans."

**AGENCY F**

VADOE's April 3, 1987 monitoring report for Agency F identified the following deficiency: "All identified autistic, [trainably mentally disabled, severely/profoundly disabled, and multidisabled] students are receiving services at [a separate special education school], resulting in categorical placements for these students." As noted in OSEP's November 26, 1990 Virginia Final Monitoring Report, when OSEP visited the agency in October 1989 it found that only one placement option was available for students identified as "trainably mentally disabled" or "severely/profoundly disabled" and the agency was continuing to place all students categorically.

VADOE conducted its most recent monitoring visit to Agency F on October 22-24, 1991. As set forth in VADOE's October 25, 1991 monitoring report, it found that a continuum of alternative placements was still not available to meet the needs of "severely/profoundly disabled" students.

As explained on page 22, when OSEP visited Agency F in May 1995, it found that, although the separate school cited above had been closed, the agency continued to make only a single placement option (i.e., self-contained placement) available for students identified as "trainably mentally disabled" or "educably mentally disabled." Although VADOE found many significant deficiencies when it monitored Agency F in 1991, VADOE had not, as of the time of OSEP's May 1995 visit to the agency, carried out any follow-up activities to determine the status of the agency's correction of the identified deficiencies.

- C. VADOE is required to establish and implement a 60 calendar day timeline--which may be extended only if exceptional circumstances exist with respect to a particular complaint--from the date on which a complaint alleging that a public agency has violated a requirement of Part B is filed to resolve the complaint. §§300.661(a) and (b).**

**OSEP's Previous Findings**

In its November 26, 1990 Virginia Final Monitoring Report, OSEP found that VADOE had not adopted procedures which ensured that complaints were resolved within 60 calendar days unless the timeline was extended because exceptional circumstances existed with respect to a particular complaint. OSEP required VADOE to adopt and submit a corrective action plan that included "how VADOE will amend its complaint management procedures to ensure that all complaints are resolved within 60 calendar days unless

that timeline is extended because exceptional circumstances exist with respect to a particular complaint ..."

**FINDINGS:**

As OSEP prepared for its May 1995 monitoring visit to Virginia, it received a significant number of comments from parents and advocates expressing concern that VADOE was not resolving many complaints until several months beyond the required 60 day timeline. OSEP requested and received from VADOE several logs that documented the date on which complaints were received, the date on which they were resolved, and any extensions of the 60 calendar day timeline because exceptional circumstances existed with respect to a particular complaint.<sup>5</sup> VADOE staff acknowledged that the logs evidenced very serious violations of the timeline requirement. They explained that, despite concerted efforts to maximize the efficiency of the complaint resolution process, there were not enough staff available to resolve complaints within the required timelines.

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<sup>5</sup> OSEP finds that VADOE's system for tracking complaint resolution timelines is detailed, accurate, current, and highly effective in keeping VADOE informed regarding the status of complaints; however, it has not resulted in compliance with Part B timeline requirements for complaint resolution.

VADOE's complaint log, current as of May 5, 1995 for all complaints open as of April 1994 and all complaints filed between July 1, 1994 and May 5, 1995 provides clear documentation of the delays. As summarized in Table I-3, VADOE did not resolve 79 of those 116 complaints within 60 calendar days or extend the timeline due to exceptional circumstances.<sup>6</sup>

<b>TABLE I-3: COMPLAINTS RESOLVED BEYOND 60 CALENDAR DAY TIMELINE</b>	
<b>NUMBER OF COMPLAINTS</b>	<b>TIME FROM RECEIPT OF COMPLAINT TO RESOLUTION</b>
13	67-90 days
21	3-4 Months
21	4-5 Months
9	5-6 Months
4	6-7 Months
3	7-8 Months
1	8-9 Months
1	9-10 Months
3	10-11 Months
2	11-12 Months
1	More than 22 Months

<sup>6</sup> On September 11, 1995, VADOE submitted data showing that it had issued decisions in 54 of the 65 Part B complaints open as of July 5, 1995, and that it had extended timelines for the remaining 11 complaints due to documented exceptional circumstances. VADOE explained that--following OSEP's May 1995 visit--it temporarily assigned additional staff and executed contracts with two non-employees in order to eliminate the backlog.

## II. TRANSITION SERVICES

VADOE is required to ensure that all public agencies develop and implement an IEP for each student with disabilities, beginning no later than age 16 (and at a younger age, if appropriate) that contains a statement of needed transition services, developed in accordance with the requirements specified in §§300.18, 300.344, 300.345, 300.346 and 300.347.

### TRANSITION SERVICES AND POSTSCHOOL SUCCESS

Planning for transition from school to post-school activities as part of the IEP process has been shown to be positively related to the achievement of postschool outcomes such as employment, postsecondary education and training and independent living. For example, the National Longitudinal Transition Study of Special Education Students (NLTS) has shown that postschool success was associated with youth who had a transition plan in high school that specified an outcome, such as employment, as a goal.

OSEP visited a senior high school in Agencies A, B, D, E, and F.

OSEP reviewed the IEPs and other records of 31 students who were 16 years of age or older at the time of OSEP's visit. OSEP also interviewed teachers who participated in the development of IEPs for these students and building and special education administrators; in Agencies E and F, OSEP also interviewed the agencies' transition coordinators.

#### *VADOE's Technical Assistance Efforts*

VADOE has developed extensive technical assistance materials and training curricula in the area of transition from secondary to post-secondary settings. Training modules, technical assistance centers, and the innovative use of audio-visual technologies have been used to encourage positive and effective transition practices in agencies that choose to access VADOE's assistance. For example, Agency F's transition coordinator informed OSEP that he has received excellent and extensive support from the VADOE-funded transition technical assistance center at Virginia Technical Institute and from the Office of Special Education's regional technical assistance representative (who is, coincidentally, the VADOE's expert on transition). OSEP found comprehensive transition procedures and forms in Agency F that met all of the Part B requirements.

A. VADOE must ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), includes "a statement of the needed transition services as defined in §300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting (§300.346(b)(1)).

The term "transition services" means:

... a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. [§300.18(a).]

This coordinated set of activities must: (1) "be based on the individual student's needs, taking into account the student's preferences and interests" (§300.18(b)(1)); and (2) include "instruction," "community experiences," and "the development of employment and other post-school adult living objectives," or if the IEP team determines that services are not needed in one or more of these three areas, the IEP must include a statement to that effect and the basis upon which the determination was made (§300.18(b)(2)(i)-(iii)). In addition, the coordinated set of activities described in §300.18(a) must, if determined appropriate for a particular student by the IEP team, include the acquisition of daily living skills and functional vocational evaluation.

**FINDINGS:**

As explained below, OSEP found that the most current IEPs for 19 students in Agencies A, D, and E, all of whom were at least 16 years old at the time of OSEP's visit, did not meet the content requirements set forth at §§300.346(b) and 300.18 and described above.

**AGENCY A**

OSEP reviewed the files of eight students in Agency A. The most current IEPs for three of these students included no statement of needed transition services or any other information related to transition. While the IEPs for four other students included some content related to the requirements of §§300.346(b) and 300.18, none of them included all of the required content. The transition-related content of the IEPs for two of these four students did not include instruction, community experiences, or the development of employment and other post-school adult living objectives, or documentation that the IEP team had determined that services were not needed in one or more of these three areas and the basis upon which that determination was made. The IEPs for the two other students stated that community experiences were not needed at this time, but did not state the basis upon which that determination was made.

**AGENCY D**

OSEP reviewed the files of six students in Agency D who were 16 at the time of OSEP's visit. The most current IEP for one of these six students included no content related to transition. The IEPs for the other five students included a "Plan for Transition Services" form which provided a space to record: the student's "Transition Goal," and the "Type of Services Needed," "Service Provider," and "Time Frame" for each of eight transition-related areas<sup>7</sup>. As completed by the IEP team for each of these students, this transition form included only statements of the student's long-range post-school aspirations (e.g., for "Employment/Vocational Placement Options" the form stated "to be self-sufficient"); the completed transition forms did not address transition services or activities to be provided during the duration of the IEP in the areas of "instruction," "community experiences," or "the development of employment and other post-school adult living objectives." The IEPs for two of these students included no additional transition-related information. The IEPs for the other three students provided for transition-related instruction, but none of these three IEPs included transition services or activities to be provided during the duration of the IEP in the areas of "community experiences" or "the development of employment and other post-school adult living objectives." None of the six IEPs reviewed by OSEP included a statement that the IEP team had determined that services were not needed in one or more of the areas required by §300.18(b)(2)(i) - (iii), or the basis upon which such a determination was made.

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<sup>7</sup> Those areas were: "Continuing Education/Post Secondary Education," "Employment/Vocational Placement Options," "Living Arrangements," "Income Options," "Personal Management," "Transportation

**AGENCY E**

OSEP reviewed the files of five students in Agency E who were at least 16 at the time of OSEP's 1995 visit. The most current IEP for one of those students did not include instruction, community experiences, or the development of employment and other post-school living activities as part of a statement of needed transition services, or documentation that the IEP team had determined that services were not needed in one or more of these three areas and the basis upon which that determination was made.

The most current IEP for another student did not include instruction as part of a statement of needed transition services; the IEP stated that the student did not need transition services in the areas of community experiences and the development of employment and other post-school living activities, but did not state the basis upon which that determination was made. The most current IEP for each of the three other students stated that transition services or planning were not needed in all three of the areas, but did not state the basis upon which that determination was made.

- B. VADOE must ensure that, if the purpose of an IEP meeting is the consideration of transition services for a student, the public agency provides notice of the meeting to the parents that--in addition to including the information required by §300.345(b)(1) for notice of all IEP meetings--indicates this purpose; indicates that the agency will invite the student; and identifies any other agency that will be invited to send a representative (§300.345(b)(2)).**

OSEP reviewed the notices provided to parents of eight students in Agency A and six students in Agency E, all of whom were at least 16 years old, and found that none of them stated that a purpose of the IEP meeting would be the consideration of transition services or that the student would be invited.

### III. PLACEMENT IN LEAST RESTRICTIVE ENVIRONMENT

VADOE must ensure that public agencies establish and implement procedures, that meet the requirements of §§300.550-300.553, regarding the placement of students with disabilities in the least restrictive environment. §300.550(a). To this end, VADOE must carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the requirements regarding placement in the least restrictive environment, and are provided with technical assistance and training necessary to assist them in this effort. §300.555. Further, if there is evidence that a public agency makes placements that are inconsistent with §300.550, VADOE must: (1) Review the public agency's justification for its actions; and (2) Assist in planning and implementing any necessary corrective action. §300.556.

#### *OSEP's Previous Findings*

In its November 26, 1990 Virginia Final Monitoring Report, OSEP found that VADOE had not been successful in ensuring compliance with the requirements of §§300.550(b)(2), 300.552(a)(2), 300.551, 300.552(b), 300.553, and 300.552(a)(1).

#### *VADOE's Technical Assistance Efforts*

VADOE has developed and disseminated its ACCEPT materials to support systems change in the area of inclusion. These materials use a bottom-up approach to school reform, and provide direction for local leadership, and materials to assist with local information dissemination efforts. In addition, VADOE has devoted a significant amount of time to providing in-service to school divisions who request such assistance. VADOE is currently developing a series of forums for local teams on the topic of aggressive and challenging behaviors; these are intended to increase the capacity of local staffs to work effectively to prevent and to intervene with these behaviors which are often used as a reason for excluding some students with disabilities from general education environments. VADOE is also developing a training package for school principals; the training sessions will address State and federal requirements for placement decisions and IEP development, and the development of a menu of supports and adaptations which might be used to assist with the successful inclusion of students with disabilities in general education settings.

**FINDINGS:**

OSEP finds that VADOE has not met its responsibility to ensure that: (1) A full continuum of alternative placements is available to meet the needs of students with disabilities for special education and related services and to implement their IEPs (§§300.551 and 300.552(b)); and (2) the educational placement of each student with a disability is based on his or her IEP (§300.552(a)(2)).

**AGENCY A**

**Continuum of Placement Options (§§300.551 and 300.552(b))**

A full continuum of placement options is not available in determining the placement of each student with a disability in Agency A, as required by §§300.551 and 300.552(b). Two agency special education administrators informed OSEP that the option of receiving special education instruction without removal from the regular education environment was available only to students of elementary school age who are identified as "specific learning disabled," and to students identified as speech/language impaired, visually impaired, hearing impaired, or other health impaired. This was confirmed by the placement data that Agency A provided to OSEP. Those data show that no students identified as "educable mentally disabled," "trainable mentally disabled", or "seriously emotionally disturbed" are in a regular class placement, and that only 13 of 349 students identified as having specific learning disabilities are in such a placement.<sup>8</sup> (The administrators explained that nine students with specific learning disabilities of elementary school age are, in fact, receiving special education instruction without removal from the regular education classroom; the four high school aged SLD students indicated in the placement data as being in regular class placements are receiving only special education "monitoring" in the regular education classroom.) A special education teacher also reported that in the teacher's experience the use of supplementary aids and services is never discussed in IEP meetings or in making the placement decision for students with disabilities.

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<sup>8</sup> Similarly, the data that VADOE obtained from Agency A as part of its "pre-review" data collection in 1994 showed that all 140 students identified as "educably mentally retarded" and all 13 students identified as "trainably mentally retarded" were in self-contained class placements, and all 322 students identified as having specific learning disabilities were in resource class placements.

The administrators further informed OSEP that the only placement options available for students identified as "educably mentally disabled" were a resource class program or self-contained program<sup>9</sup>; the only placement option available for students identified as "trainably mentally disabled" was a self-contained program. The Agency's placement data show that 41 of 97 students identified as "educably mentally disabled" are in resource class programs and the remaining 56 are in self-contained programs. Those data also show that all nine students identified as "trainably mentally disabled" are in self-contained programs.<sup>10</sup>

#### **AGENCY E**

##### **Continuum of placement options (§§300.551 and 300.552(b)), Placement Based on IEP (§300.552(a)(2))**

A full continuum of placement options is not available in determining the placement of each student with a disability in Agency E, as required by §§300.551 and 300.552(b). The agency's special education administrator and building administrators in both schools that OSEP visited informed OSEP that the only placement option for students identified as "educable mentally retarded," "trainable mentally retarded," "severely disabled," or "autistic" is a self-contained program. Placement data that Agency E provided to OSEP in fact show that all 122 students identified as "educably mentally retarded," all 38 students identified as "trainable mentally retarded," all 18 students identified as "severely disabled" or "multi-disabled," and all 11 students identified as "autistic," are in self-contained placements.

These special education and building administrators also informed OSEP that the placement option of providing special instruction in a regular education class without removal to a special education environment is available only for students identified as having a speech disability, hearing impairment, or a specific learning disability; for students identified as having a learning disability, this option is available only in grades kindergarten through six. Thus, the only options available for students identified as "seriously emotionally disturbed" are private

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<sup>9</sup> As used in this Report and as clarified in all of the interviews discussed in this section, the term "resource class program" means a placement in which a student is removed from the regular education environment for a part, but less than 50%, of the school day; the term "self-contained program" means a placement within a regular school building in which the student is removed from the regular education environment for at least 50% of the school day.

<sup>10</sup> Similarly, the data that VADOE obtained from Agency E as part of its "pre-review" data collection in 1994 showed that all 109 students identified as "educably mentally retarded" or "trainably mentally retarded" were in self-contained class placements.

special education school, self-contained placement, or resource placement. The agency's placement data show that all 68 of the agency's students identified as "seriously emotionally disturbed" are in one of these placement options (19 in resource, 32 in self-contained, and 17 in private day placements). The only options available for students with specific learning disabilities in grades seven through twelve, are self-contained placement or resource placement; the agency's placement data show that all 46 middle school students and all 55 senior high school students identified as having a specific learning disability were placed in resource or self-contained placements.

Although the agency's special education administrator stated that goals and objectives are determined before the determination of a student's placement, a building administrator and three special education teachers in one of the schools that OSEP visited informed OSEP that the IEP team determines a student's placement before determining annual goals and short-term instructional objectives for the student's IEP.

**Agency F**

**Placement Based on IEP (§300.552(a)(2)),  
Continuum of Placement Options (§§300.551 and 300.552(b))**

Three building administrators and three special education teachers in the two schools that OSEP visited in Agency F, and a psychologist serving four schools including the two schools that OSEP visited, informed OSEP that before a student is initially placed in a program providing special education services, the eligibility committee meets to: (1) determine whether the student has a disability; and (2) identify the disability category (e.g., specific learning disability, "educably mentally handicapped," etc.); and (3) determine whether the student will be placed in "self-contained" special education program, or a "resource" special education program. Each of these individuals stated that the eligibility committee's determination as to whether the student will be placed in a self-contained or resource placement is binding upon the subsequently convened IEP team. These individuals also explained that when an IEP team is convened following the eligibility committee's meeting, the IEP team--before determining appropriate annual goals and short-term instructional objectives for the student--determines, within the limitations of the eligibility committee's designation of a program, the specific parts of the day for which the student will be removed from the regular education environment. Thus, for example, if the eligibility committee has determined that a student is to be placed in a self-contained program, the IEP team will--within the confines of the eligibility committee's placement determination--decide what, if any, part of the school day the student will be educated in the regular education environment. Having completed the placement determination, the IEP team will then determine appropriate goals and objectives for the student.

The agency-level special education administrators told OSEP that it "did not surprise them" that staff in some schools followed the practice of permitting the eligibility committee to determine placement. They explained, however, that the IEP team, not the eligibility committee, "should" determine whether a student will be placed in a self-contained or a resource placement. One of these two administrators stated that the IEP team determines a student's placement, and then, based upon the determination of

the team with regard to the extent to which the student will be removed from the regular education environment, determines appropriate goals and objectives for the student. The second administrator stated that the goals and objectives are determined first, and then the placement decision is made.

These two administrators also explained that, when a student with a disability needs placement in a private day or residential school, the agency will request funding under the Comprehensive Services Act. The Comprehensive Services Act provides for a pool of shared fiscal resources of State and local agency funds to provide specified services, primarily in private day or residential schools. Although VADOE has specifically informed public agencies that funding procedures under the Comprehensive Services Act may not impact or delay educational program and placement decisions for students with disabilities, these administrators reported that sometimes they will refer a student's case to inter-agency team constituted under the Comprehensive Services Act, before the IEP team may write the needed private day or residential school services into the student's IEP.

Placement data that Agency F provided to OSEP show that all 76 students identified as "educably mentally disabled," and all 37 students identified as "trainable mentally disabled" are in self-contained placements. The two agency administrators confirmed that a self-contained program is the only placement option available to students identified as "educably mentally disabled."

They further explained that while a self-contained program is the only placement option available to students identified as "trainable mentally disabled," some students previously identified as "trainable mentally disabled" had been "reclassified" to "multidisabled" to make further resources available from the "regional program" so that they could be educated with support in the regular education environment.<sup>11</sup>

The agency's placement data show that of 55 students identified as "multidisabled," 35 are in a regular class program and 5 are in a resource program (the other 15 are in a self-contained program).

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<sup>11</sup> The "regional program" is a funding mechanism whereby several neighboring school divisions have pooled fiscal resources to help support the high costs of educating students with the most severe disabilities.

#### IV. FREE APPROPRIATE PUBLIC EDUCATION

VADOE is responsible for ensuring that a free appropriate public education is available to all students with disabilities within the State (§300.300). In part, a free appropriate public education means special education and related services which must be provided in conformity with an IEP (§§300.8(d) and 300.350).

"Special education" means "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability," and includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability (§300.17).

"Related services" means "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 speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training." §300.16(a).

In its November 26, 1990 Virginia Final Monitoring Report, OSEP found that VADOE had not been successful in ensuring that all public agencies provided special education and related services as set forth in their IEPs.<sup>12</sup> In the November 1990 Report, OSEP also found that VADOE had not met its responsibility to ensure that all public agencies made extended school year services available as a component of a free appropriate public education, if necessary to meet the unique needs of an individual student with a disability.<sup>13</sup>

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<sup>12</sup> OSEP visited Agency F as part of its 1989 monitoring review, and this finding was based in part on OSEP's finding that a number of students in Agency F were not receiving related services as specified in their IEPs.

<sup>13</sup> "Extended school year services" are special education and related services provided in conformity with an IEP beyond the 180 day school year to ensure that a child with a disability receives FAPE.

- A. VADOE is required to ensure that each student with a disability receives the related services that are required to assist the student to benefit from special education. §§300.300 and 300.16(a).**

OSEP finds that Agencies E and F did not make psychological counseling available as a related service. As defined at §300.16, the term "related services" specifically includes "planning and managing a program of psychological services, including psychological counseling for children and parents," if that service is needed to assist an individual student to benefit from special education (see §300.16(b)(8)(iv)). As explained on page 4, OSEP finds that VADOE's monitoring procedures do not include an effective method to ensure compliance with this requirement, and VADOE did not identify deficiencies regarding this requirement when it monitored Agencies E and F.

Agency special education administrators, building administrators, and psychologists in Agencies E and F informed OSEP that psychological counseling is not available as a related service that may be included in a student's IEP and provided as a component of a free appropriate public education, even if the student needs that related service to assist him or her to benefit from special education.

- B. VADOE is required to ensure that extended school year services are provided to students with disabilities who requires those services as a component of a free appropriate public education.**

Public agencies must--based upon a determination of the unique needs of each student with a disability through the development of an IEP--determine the special education and related services that will be included in the IEP and provided to the student. A public agency must provide special education and related services beyond the 180 day school year, if such services are necessary to ensure that the student receives a free appropriate public education. Thus, extended school year services must be available to the extent necessary to ensure that each student with a disability receives a free appropriate public education.

Two special education teachers and a building administrator in Agency A, all of whom participate regularly in IEP meetings, informed OSEP that extended school year services were not available, regardless of a student's individual needs. The agency's special education administrator stated that all teachers had been advised "at least once" that extended school year services should be available, but the administrator acknowledged that it was quite possible that teachers at the senior high school level did not understand that extended school year services must be provided if necessary to ensure that a student receives a free appropriate public education.

The special education administrator in Agency E informed OSEP that although "summer school" was made available to all students (with and without disabilities) last summer who were preparing to take the State's Literacy Proficiency Test, extended school year services were not available to students with disabilities, regardless of individual need for such services as a component of a free appropriate public education. In one of the schools that OSEP visited, two administrators stated that extended school year services were not available; an experienced special education teacher stated that she did not know whether extended school year services were available. In the other school that OSEP visited, a building administrator and a special education teacher at the other school stated that to date extended school year services have been provided only to students who needed credits to graduate; they stated that if a parent requested extended school year services under other circumstances the team could consider the request, but that to date this has never occurred. Another teacher in the school stated that extended school year services were not available.

Two agency special education administrators in Agency F informed OSEP that summer school services might be written into the IEP of a student who needs to attend the agency's regular summer school program to earn one credit to complete graduation requirements but cannot afford summer school tuition; otherwise, extended school year services are not available. Two building administrators also informed OSEP that extended school year services were not available.

**APPENDIX A**

**Public Agency Reference Key**

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

KEY TO PUBLIC AGENCY REFERENCES	
SCHOOL DIVISION	DESIGNATION IN REPORT
BUCHANAN COUNTY	AGENCY A
CHESTERFIELD COUNTY	AGENCY B
FAIRFAX COUNTY	AGENCY C
LOUDOUN COUNTY	AGENCY D
PETERSBURG CITY	AGENCY E
ROANOKE COUNTY	AGENCY F

APPENDIX B--CORRECTIVE ACTION PLAN

CORRECTIVE ACTION REQUIRED

1. VADOE must issue a memorandum to all public agencies advising them of OSEP's findings of deficiency, and of the procedures that Part B requires in each of the areas of deficiency. The memorandum must direct public agencies to review their respective policies, procedures, and practices with regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to those public agencies for which OSEP found deficiencies. The memorandum must further advise public agencies that-- should they determine that their current practice is inconsistent with the requirements identified in the VADOE memorandum, they must immediately revise their practice to make it consistent with the requirements of Part B. VADOE must: (a) submit this memorandum to OSEP within thirty days of the issuance of the this Report; and (2) within 15 days of OSEP's approval of the memorandum, issue it to all public agencies for which VADOE is responsible.

2. VADOE must also issue a memorandum to those agencies in which OSEP found deficient practices, as identified in this Report, requiring those public agencies to immediately discontinue the deficient practices and submit documentation to VADOE that the changes necessary to comply with Part B requirements have been implemented. VADOE must send to OSEP verification that all corrective actions have been completed by these public agencies. VADOE must: (a) submit this memorandum to OSEP within thirty days of the issuance of this Report; and (2) within 15 days of OSEP's approval of the memorandum, issue it to each of the agencies in which OSEP found deficient practices.

FEDERAL REQUIREMENT	EXPECTED RESULTS/ACTION REQUIRED	ACTIVITIES TO ACHIEVE RESULTS	RESOURCES	TIMELINES
<p>I. General Supervision</p> <p>A. Effective Methods for Monitoring</p> <p>VADOE is responsible for the adoption and use of effective methods to monitor public agencies responsible for carrying out educational programs for students with disabilities.</p> <p>20 USC §1232d(b)(3)(A)</p>	<p>VADOE will demonstrate that it has adopted and uses effective methods to monitor for compliance with all Part B requirements.</p>			
<p>B. Effective Methods for Ensuring Correction</p> <p>VADOE is responsible for the adoption and use of effective methods to ensure that public agencies correct deficiencies identified through monitoring.</p> <p>20 USC §1232d(b)(3)(A)</p>	<p>VADOE will demonstrate that it has adopted and uses effective methods to ensure timely correction of all deficiencies that it identifies through monitoring.</p>	<p>VADOE must establish and implement procedures that ensure that all deficiencies identified through its monitoring procedures are corrected within the timelines specified by VADOE.</p>		<p>Within 90 days of receiving this Report, submit procedures, including timelines for implementation.</p> <p>Within 120 days of receiving this Report, submit schedule of activities to ensure correction of deficiencies in agencies monitored by VADOE during the 1994-1995 school year.</p>
<p>C. Timely Resolution of Complaints</p> <p>VADOE must resolve complaints within 60 calendar days, unless this timeline is extended because exceptional circumstance exist with respect to a particular complaint.</p> <p>§300.661(a)</p>	<p>VADOE will demonstrate that it resolves complaints within 60 calendar days of the date on which they are filed, unless this timeline is extended because exceptional circumstance exist with respect to a particular complaint.</p>	<p>VADOE must establish and implement procedures that ensure that all complaints are resolved within 60 calendar days of the date on which they are filed, unless this timeline is extended because exceptional circumstance exist with respect to a particular complaint. This must include demonstrating that VADOE has allocated adequate staff to the resolution of complaints.</p>		<p>Within 90 days of receiving this Report, submit procedures, including timelines for implementation.</p> <p>Beginning October 1, 1995, submit quarterly reports showing the status of VADOE's resolution of all complaints that are open as of the first date of the preceding quarter.</p>

<p>II. Transition Services</p> <p>A. Statement of Needed Transition Services</p> <p>VADOE must ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), includes a statement of the needed transition services.</p> <p>§§300.346(b) and 300.18</p>	<p>The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), will include a statement of the needed transition services as defined in §300.18.</p>			
<p>B. Content of IEP Meeting Notice if Transition to be Considered</p> <p>VADOE must ensure that, if the purpose of an IEP meeting is the consideration of transition services for a student, the public agency provides notice of the meeting to the parents that indicates this purpose and that the agency will invite the student.</p> <p>§300.345(b)(2)</p>	<p>The notice that each public agency provides to parents of an IEP meeting for which a purpose will be the consideration of transition services for a student, will indicate this purpose and that the agency will invite the student.</p>			

<p>III. Placement in the Least Restrictive Environment</p> <p>A. VADOE must ensure that public agencies make the various alternative placements included at §300.551 available to meet the needs of children with disabilities for special education and related services, and that they make them available to the extent necessary to implement each child's IEP.</p> <p>§§300.551 and 300.552(b)</p>	<p>Public agencies will make a full continuum of placement options available to meet the needs and implement the IEP of all students with disabilities, and students will not be limited to specific placement options based solely upon the disability category to which they have been assigned.</p>			
<p>B. VADOE must ensure that public agencies base the educational placement of each child with a disability on his or her IEP.</p> <p>§300.552(a)(2)</p>	<p>Public agencies will base the placement determination of each students with a disability on each student's needs as identified through the development of an IEP.</p>			

<p>IV. Free Appropriate Public Education</p> <p>A. VADOE must ensure that public agencies provide-- in conformity with an IEP-- the related services that each student needs to benefit from special education, including psychological counseling services.</p> <p>§§300.300, 300.17(b)(8)(i), 300.350</p>	<p>Public agencies will include psychological counseling in a student's IEP and provide that related service, if it is needed to enable that student to benefit from special education.</p> <p>Public agencies will provide related services as set forth in each student's IEP.</p>			
<p>B. Extended School Year Services</p> <p>VADOE must ensure that public agencies provide extended school year services to students with disabilities, if necessary to ensure that those students receive a free appropriate public education.</p> <p>§300.300</p>	<p>Public agencies will provide extended school year services to students with disabilities, if necessary to ensure that those students receive a free appropriate public education.</p>			