



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

February 8, 1996

Honorable Douglas Walker
Acting Commissioner of Education
State Department of Education
120 State Street
Montpelier, Vermont 05602-2703

Dear Commissioner Walker:

During the week of September 18, 1995, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Vermont Department of Education's (VDE's) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether VDE 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 Part B. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives; and our findings and corrective actions are in Enclosure C.

Our review revealed that the actions VDE took in response to OSEP's prior monitoring report of September 1993 seem to have been effective in resolving a number of the problems identified in that report. We found no deficiencies in the areas of complaint management, local educational agency applications, and protection in evaluation procedures -- all areas where VDE took corrective action after our 1993 report.

We also saw some noteworthy VDE initiatives for providing special education services to students with disabilities. In Appendix A, OSEP comments favorably on several areas including transition services, inclusion, and programs for students with emotional and behavioral problems.

However, our monitoring revealed that VDE has failed to ensure effective provision of services in the following areas: (1) the availability of a free appropriate public education and the assignment of surrogate parents, when necessary, for youth with disabilities incarcerated in facilities operated

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by the Department of Corrections; (2) the availability of related services students need in order to benefit from special education; and (3) State educational agency monitoring. In addition, OSEP found problems of a more technical nature related to the requirements for individualized education programs.

The preliminary findings of the monitoring team were discussed in a meeting with Dennis Kane, Manager of the Family and Educational Support Team on September 21, 1995. At this time, VDE was invited to provide any additional information it wanted OSEP to consider during the development of findings for the compliance report. During the meeting, Mr. Kane expressed general agreement with OSEP's findings and no further information was provided subsequent to the meeting. Therefore, the findings included in this Report are final.

In the event VDE, after consideration of the data in this letter and its enclosures, concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect, VDE may request reconsideration of the finding. In such a case, VDE must submit reasons for its reconsideration request and any supporting documentation within 15 calendar days of receiving this letter. OSEP will review the request and, where appropriate, will issue a letter of response informing VDE 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.

I thank you for the assistance and cooperation provided during our review. Throughout the course of the monitoring process, Mr. Kane and his staff were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of VDE's various systems to implement Part B.

Members of OSEP's staff are available to provide technical assistance during any phase of the development and implementation of your corrective action plan. Please let me know if we can be of assistance.

Before the enactment of the Individuals with Disabilities Education Act (IDEA), one million children with disabilities were excluded from school altogether, and another 3.5 million did not receive appropriate programs within the public schools. Because of the IDEA and the joint actions of schools, school districts, State educational agencies and the Department, more than 5.4

million children with disabilities are in school. Thank you for your continued efforts toward the goal of improving education programs for children with disabilities in Vermont.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Mr. Dennis Kane

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Preparation OSEP staff began its review of documents related to VDE's special education program in June 1995. The review included, but was not limited to, VDE's State Plan, State regulations, interagency agreements and other materials that must comply with the requirements of Part B, such as the complaint management, due process hearing, and State monitoring systems. OSEP also reviewed VDE's placement data based on the December 1994 child count.

Involvement of Parents and Advocates During the week of June 12, 1995, OSEP held public meetings in Burlington and Rutland. The purpose of these public meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of VDE's compliance with Part B. OSEP met with members of the State Advisory Panel and also participated in an outreach meeting with representatives of advocacy groups in a meeting hosted by the Vermont Parent Information Center. The information obtained from the meetings, as well as from interviews with State officials and a review of State documents assisted OSEP in: (1) identifying the issues raised by consumers and others interested in special education in Vermont; (2) selecting monitoring issues (e.g., the provision of related services) to be emphasized while on-site; and (3) selecting the sites to be visited.

During the on-site visit, OSEP conducted one parent focus group meeting in Agency B, at a special school for students with emotional and behavior problems, in order to hear the parents', guardians', and students' impressions of the special education services provided. This meeting provided OSEP staff with information about the unique challenges posed by students with emotional and behavior problems, and the school system's efforts to effectively address those problems.

On-site Data Collection and Findings The OSEP team included Debra Sturdivant and Gregg Corr, who visited three local educational agencies. Where appropriate, OSEP has included in this letter data collected from those agencies to support or clarify the OSEP findings regarding the sufficiency and

effectiveness of VDE's systems for ensuring compliance with the requirements of Part B. The agency in which the supporting or clarifying data were collected is indicated by a designation such as "Agency A." The agencies that OSEP visited and the designation used to identify those agencies in Enclosure C of this letter are set forth below:

Agency A: Windsor Northwest Supervisory Union
Agency B: Burlington Public Schools
Agency C: Milton Public Schools

Corrective Action Procedures

In the interest of developing a mutually agreeable corrective action plan specifically designed to address these findings, OSEP proposes that VDE 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. We also will invite a representative from Vermont's State Advisory Panel to participate in that discussion. VDE's corrective action plan must be developed within 45 days of receipt of this letter. We will work with your agency in developing this plan. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

In order to begin immediate correction of deficient practices, VDE must undertake the following general corrective actions:

1. VDE must issue a memorandum to all agencies advising them of OSEP's findings of deficiency. The memorandum must direct agencies to review their respective practices in regard to each of the deficiencies identified by OSEP in order to determine if they have proceeded in a manner similar to the agencies in which OSEP found deficiencies. Should these agencies determine that their current practice is inconsistent with the requirements identified in VDE's memorandum, they must discontinue the current practice and implement procedures that are consistent with Part B. This memorandum must be submitted to OSEP within 30 days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to all agencies throughout the State providing special education or related services to

students with disabilities.

2. VDE must issue a memorandum to those agencies in which OSEP found deficient practices, as identified in Enclosure C of this letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to VDE that the changes necessary to comply with Part B requirements have been implemented. This memorandum must be submitted to OSEP with 30 days of the issuance of this letter. Within 15 days of OSEP's approval of the memorandum, it must be issued to those public agencies in which OSEP found deficient practices. VDE must send to OSEP verification that all corrective actions have been completed by these public agencies.

ENCLOSURE B

COMMENDABLE INITIATIVES

1. During the presite visit, parents, advocates and State and local special education staff described difficulties presented by the increasing numbers of students with emotional and behavioral disorders (EBD) in Vermont. As one way to address these issues, VDE has instituted the Building Effective Supports for Teacher (BEST) program. BEST is targeted at increasing schools' ability to support students with emotional and behavioral challenges. This effort focuses on increasing educational options and resources, the training of school staff, collaboration with families and other agencies and building regional capacity. VDE has trained a BEST coordinator in each of the State's 60 supervisory unions. In addition, Vermont has a statute that requires State and local agencies to collaborate around issues concerning students with emotional and behavioral problems. A State-level team, consisting of managers from a variety of agencies, agency staff and parent representatives, meets twice a month to plan and problem-solve both individual cases and systemic issues.

Vermont attempts to serve the majority of its students with EBD in the regular classroom setting. However, OSEP wants to recognize one local effort to serve students with EBD in a separate school setting. Public agency B has established a small separate school for students who, because of emotional and behavioral problems, were not successful in regular school programs. The goal of agency B's program is to build these students' self-esteem and help them turn around negative self-defeating behaviors so that they can be successful in school, on the job and in the community. This program utilizes a low student-teacher ratio, strong parent, school, social service and community collaboration and involvement, and intensive individualization around academic and behavioral issues. The program director estimates that over fifty percent of the students who attend this program -- students who had been high-risk candidates for dropping out of school -- ultimately graduate from high school. Many students have been successfully placed in jobs. The program has also resulted in the successful return of many of these student to regular high schools.

2. Vermont continues to lead the nation in the percentage of students with disabilities educated in the regular classroom. During the 1992-93 school year, VDE reported that 88.6 percent of its students with disabilities, aged 6 through 21, were served in the regular classroom. Through the use of instructional aids, classroom supports and accommodations, most students with disabilities are included in regular classrooms.

3. Vermont is in the fourth year of its Transition Systems Change Project, co-directed by VDE and the Division of Vocational Rehabilitation, within the Department of Social and Rehabilitative Services. Through the project, Vermont has established a network of technical assistance to help local schools and adult service agencies increase their capacity to provide transition services. Transition family support specialists have been hired in each of the four regions of the State to work with individual families, with local technical assistance staff, and to provide informational workshops. The Anticipated Post School Needs Survey was conducted to identify the transition needs of students graduating during the next five years. In addition, a Post School Indicators Project was initiated to collect data from former special education students on issues such as satisfaction with school services, post-school employment, friendship networks and other quality

of life indicators. To improve interagency collaboration within each region, regional policy boards have been formed to review the results of the anticipated needs survey, identify existing services, and work towards a system of comprehensive transition support services. Also through the Project, a "Life After High School" transition planning brochure was developed to assist students, parents and IEP team members to consider interests and goals in the areas of employment, post-secondary education and training, living arrangements and community participation.

OSEP noted high-quality transition planning activities when it visited public agency C, an agency that receives technical assistance through the State's Transition Systems Change Project. Curricular and transition activities were closely coordinated to promote successful transitions from high school. The public agency had hired an employment specialist to develop supported and competitive employment opportunities for students and to closely monitor their performance on jobs. According to teachers and the special education administrator, many of the students, including students with multihandicapped had been placed in supported or competitive job slots.

ENCLOSURE C

FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED/TIMELINES

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
<p>I. GENERAL SUPERVISION</p> <p>A. VDE is responsible for ensuring that the requirements of Part B are carried out and 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 education standards of the SEA. ?300.600(a)(1) and (a)(2)(ii). See also ?300.2.</p> <p>B. VDE is responsible for ensuring that a surrogate parent is appointed for each child when no parent can be identified, or the public agency cannot locate the whereabouts of the parent, or the child is a ward of the State. ?300.514.</p>	<p>A. Based on interviews with VDE and Department of Corrections staff, OSEP finds that VDE did not ensure that special education and related services were available to youth with disabilities incarcerated in facilities operated by Department of Corrections. This deficiency was first identified by OSEP in its 1993 report to VDE; however, VDE had not completed its corrective actions at the time of OSEP's return visit in 1995. OSEP notes that VDE has made progress in this area: VDE has worked with Department of Corrections to develop a policy and procedures manual and has provided training to Department of Corrections staff; and Department of Corrections has hired a special education director.</p> <p>Currently Department of Corrections employs four "special services tutors," who work with students who have special needs, including students with disabilities. However, these tutors do not have special education teaching certificates and therefore, cannot provide special education.</p> <p>B. In addition, OSEP was told by VDE and Department of Corrections staff that surrogate parents have not been assigned to youth in correctional facilities who are in need of surrogate parents. At the time of OSEP's review, there were five students under the age of 18 who required, but did not have assigned, surrogate parents.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that incarcerated youth with disabilities are identified and provided special education and related services beginning with the 1995-96 school year. The procedures must address the need to: (A) hire sufficient numbers of properly certified special education staff to meet the needs of youth with disabilities within the Department of Corrections population, and (B) appoint surrogate parents for students determined to be in need of surrogate parents. By August 1, 1996, VDE must submit verification to OSEP that it has completed all corrective actions to address the identified deficiencies.</p>

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
<p>II. SEA Monitoring</p> <p>VDE 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)(E).</p>	<p>Based on a review of VDE's monitoring documents and a follow-up interview with VDE staff responsible for monitoring, OSEP finds VDE had not closed out six of the seven corrective action plans for local districts it had monitored during the 1991-92 school year. VDE staff indicated that in order to maintain its current monitoring schedule, it had not been able to follow up with all local districts to ensure that every correction had been completed.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that all identified deficiencies are corrected in a timely manner. This must include a method to verify that public agencies have completed all corrective actions within the timelines specified by VDE and that corrective action plans are closed by VDE.</p>
<p>III. Individualized Education Programs (including transition requirements)</p> <p>A. If a purpose of the IEP meeting is the consideration of transition services, the notice 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. ?300.345(a)(2).</p>	<p>Based on a review of student records, OSEP finds that 14 of the 15 notices inviting parents to participate in the development of IEPs for students age 16 and older did not include the consideration of transition services as a purpose of the meeting. This data was collected across all three public agencies OSEP visited.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that IEP notices indicate transition as a purpose of meetings to develop IEPs for students 16 or older. The procedures must include a method to verify that public agencies have completed the corrective actions required for this finding.</p>

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
<p>B. The IEP for each child must include appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved. ?300.346(a)(5).</p>	<p>In two of the three agencies OSEP visited, IEPs did not consistently include the elements required by ?300.346(a)(5). In public agency A, 5 of 8 IEPs lacked criteria, 5 of 8 lacked procedures and 2 of 8 lacked schedules. In public agency C, 5 of 8 IEPs lacked procedures.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that all IEPs include criteria, procedures and schedules for determining whether short term objectives are being achieved. The procedures must include a method to verify that public agencies have completed the corrective actions required for this finding.</p>
<p>IV. Free Appropriate Public Education</p> <p>Each public agency is responsible for ensuring that a free appropriate public education is available to all children with disabilities within the State. ?300.300.</p>	<p>Special education directors and teachers in public agencies A and B told OSEP that students from those agencies who were sent out of district to vocational centers were not provided with all of the services specified in their IEPs. At public agency A, students whose IEPs include speech therapy, counseling and tutorial services did not have those services provided to them at the vocational center where they attended. Although public agency A has tried to provide these services before or after the students travel to the vocational center, this arrangement was not successful. The special education director of public agency B stated that one of the two vocational centers where it sends students will not implement students IEPs, including the provision of necessary accommodations.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that students who are sent to vocational centers receive all of the services specified in their IEPs. The procedures must include a method to verify that public agencies have completed the corrective actions required for this finding.</p>

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
IV. FAPE (continued)	<p>The special education directors in public agencies A and C told OSEP that, due to staff shortages, some services specified by IEPs were not provided to students. In public agency A, the special education director explained that during the 1994-95 school year, the 8 students who needed occupational therapy received this service only until December, after which time no service provider was available. For the remainder of the school year, the public agency was unsuccessful in hiring a replacement occupational therapist or contracting for services. For the current school year, it is anticipated that no occupational therapy services will be available from October, when the therapist goes on maternity leave, until sometime in January, when she is expected to return. Although students' IEPs call for the provision of direct occupational therapy services, the services will be provided by instructional aids during this period. At public agency C, the special education director explained that students whose IEPs specified speech services did not receive those services for the first 3 weeks of this school year, due to the public agencies' inability to locate a therapist.</p>	<p>VDE must demonstrate that it has in place and has implemented procedures to ensure that students receive all of the related services specified in their IEPs. The procedures must include a method to verify that public agencies have completed the corrective actions required for this finding.</p>

The public agency was able to make special arrangements to have one student served during this time period. At the time of OSEP's visit, the public agency had just hired two speech language therapists.