



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

April 22, 1997

Honorable Henry Marockie  
State Superintendent of Schools  
West Virginia State Department of Education  
1900 Kanawha Boulevard  
Building 6, Room 358  
Charleston, West Virginia 25305

Dear Superintendent Marockie:

During the week of December 2, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the West Virginia Department of Education's (WVDE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether WVDE is meeting its responsibility to ensure that its educational programs for children and youth with disabilities are 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 taken by WVDE; and our findings are in Enclosure C.

WVDE implemented a number of corrective actions to address the findings in OSEP's February 1994 monitoring report and January 1996 follow-up report. As part of our current review, OSEP found no deficiencies in the following areas: monitoring procedures that address all Part B requirements; resolving complaints within required timelines; procedures for the submission and approval of local educational agency applications; the establishment of local district procedural safeguards; parent participation in meetings to develop individual education programs (IEP); annual IEP meetings with all the required participants; and the provision of preplacement and triennial evaluations. It appears, therefore, that WVDE's corrective actions in these areas were effective.

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*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

As addressed in Enclosure B, we also found that WVDE has taken a number of noteworthy initiatives to improve educational services to students with disabilities including establishment of forty-one local Parent/Educator Resource Centers throughout the State, that provide training, information, support services and technical assistance to a wide constituency including parents, educators, and students. Other commendable initiatives include Operation Tadpole, West Virginia's, multi-agency early childhood transition initiative, Senate Bill 1000 which requires inclusion plans from each county district and school, the Office of Institutional Education Programs' oversight of special education programs in correctional facilities, and WVDE's interagency approach to assistive technology. OSEP also would like to recognize WVDE for its development of many outstanding publications for parent and educators. An example of such publications is Hand in Hand, a booklet that describes the special education process in an accessible and informative fashion.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that WVDE has not ensured that Part B requirements were fully met in the following areas: provision of appropriate related services and extended school year services when necessary; placement in the least restrictive environment; and transition services. In addition, OSEP noted that WVDE did not fully ensure that public agencies correct deficiencies identified by WVDE in a timely manner. Finally, OSEP determined that WVDE did not have a method for monitoring alternative education programs to ensure that Part B requirements are met.

Dr. Gregory Corr, the OSEP monitoring team leader, discussed the team's preliminary findings with Dr. Michael Valentine and other staff in WVDE's Office of Special Education at an exit conference held at the conclusion of OSEP's on-site visit. At that time, Dr. Corr invited WVDE to provide any additional information that it wanted OSEP to consider in developing the monitoring report. WVDE did not submit any additional information.

The findings in this Report are final, unless--within 15 days from the date on which WVDE receives this Report--WVDE concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect and requests reconsideration of such finding(s). Any request for reconsideration must specify the finding(s) for which WVDE requests reconsideration, and factual and/or legal basis for the request, and must include documentation to support the request. OSEP will review any WVDE request for consideration and, if appropriate, issue a letter of response informing WVDE of any revision to the findings. 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 that Dr. Valentine and his staff provided during our review. Throughout the monitoring process, they were very responsive in providing information that enabled OSEP staff to acquire an understanding of West Virginia's systems to implement Part B.

Our staff is available to provide technical assistance during any phase of the development and implementation of WVDE's corrective actions. Please let me know if we can be of assistance.

Prior to the enactment of the Individuals with Disabilities Education Act (IDEA) and its predecessor the Education of All Handicapped Children Act, one

million children with disabilities were excluded from school altogether, and another 3.5 million were not receiving appropriate programs within the public schools. The enactment of the IDEA, and the joint actions of schools, school districts, State educational agencies and the Department, have now made it possible for more than 5.4 million children with disabilities to participate in our country's public educational programs. Thank you for your continuing efforts to improve educational services and results for children and youth with disabilities in West Virginia.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures

cc: Dr. Michael Valentine

## ENCLOSURE A

### OSEP's Monitoring Methodology

Pre-site Document Review: As in all States, OSEP used a multifaceted process to review compliance in West Virginia. In addition to on-site visits, this process includes: review and approval of the State's Part B State plan, which includes the State's statutes and regulations, policies and procedures, and interagency agreements that impact the provision of services to students with disabilities; and review of complaints, requests for secretarial review, other correspondence, and telephone calls that OSEP receives regarding the State's compliance. Prior to its visit to West Virginia, OSEP also requested and reviewed additional documentation regarding the State's implementation of compliance with requirements regarding due process hearings, complaint resolution, and monitoring, as well as child count and placement data.

Involvement of Parents and Advocates: During the week of May 12, 1996, OSEP held public meetings in Clarksburg, Charleston, and Martinsburg. Also during that week, Gregg Corr and Linda Whitsett met with representatives from advocacy groups in two outreach meetings, interviewed a number of WVDE officials, and reviewed numerous WVDE documents. The purpose of the public and outreach meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of WVDE's compliance with Part B. In the letters inviting interested parties to the public meetings, OSEP also invited them to provide written comments and telephone input regarding their perceptions.

During the on-site visit, OSEP conducted a parent focus group meeting in one of the public agencies it visited in order to hear parents' impressions of special and regular education services provided to their children. This meeting provided OSEP staff with parent views of the methods used by the public agency in providing a free appropriate public education to its children, as well as the challenges faced by the public agency in this endeavor.

Selection of Monitoring Issues and Public Agencies to Visit: OSEP focuses its compliance review in all States on those core requirements that are closely related to learner results: States' systems for identifying and ensuring the correction of deficiencies through monitoring; ensuring that all eligible

students with disabilities received a free appropriate public education, as determined through the development and implementation of an IEP; the provision of needed transition services; and ensuring that parents are appropriately included in decision-making regarding the education of their child with a disability. The information that OSEP obtained from its presite public meetings and outreach meetings, interviews with State officials, and review of State and local documentation, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in West Virginia; (2) selecting additional monitoring issues (e.g., the provision of related services) for review while on-site; and (3) selecting the sites to be visited.

On-site Data Collection and Findings The OSEP team included Gregory Corr, the OSEP Team Leader, who interviewed State education agency staff and reviewed relevant WVDE documentation. He also spent one day collecting data in a local school system. Judy Gregorian, Gerrie Hawkins, Debra Sturdivant, and Linda Whitsett visited five elementary schools, one middle school, four high schools, and one special education center in seven public agencies. Where appropriate, OSEP has included in Enclosure C data that it collected from those agencies that support or clarify its findings regarding the sufficiency and effectiveness of WVDE's systems for ensuring compliance with the requirements of Part B.

In order to reinforce that the findings in Enclosure C focus on the effectiveness of WVDE's systems for ensuring compliance rather than compliance in any particular local educational agency, OSEP has not used the name of any local educational agency within Enclosure C. Instead, OSEP has identified local educational agencies in Enclosure C only with designations such as "Agency A." The agencies that OSEP visited and the designation that OSEP has used in Enclosure C to identify each of those agencies are set forth below:

PUBLIC AGENCY	DESIGNATION
Berkley County	AGENCY A
Fayette County	AGENCY B
Kanawha County	AGENCY C
Mineral County	AGENCY D
Monongalia County	AGENCY E
Ohio County	AGENCY F
Raleigh County	AGENCY G

CORRECTIVE ACTION PROCEDURES

In order to support the development of a mutually agreeable corrective action plan that will correct the findings in Enclosure C and improve results for students with disabilities, OSEP proposes that WVDE representatives meet with OSEP staff, or participate in a telephone conference, to discuss the findings and the most effective methods for ensuring compliance and improving programs for children with disabilities in the State, and to agree upon specific corrective actions. We also encourage WVDE to invite a representative from West Virginia's Advisory Council for the Education of Exceptional Children to participate in that discussion. WVDE's corrective action plan must be developed within 45 days of WVDE's receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

Enclosure C outlines the general corrective actions that WVDE must take to begin immediate correction of the findings in the Enclosure, as well as guidelines for the more specific actions that WVDE must take to ensure correction of each of the specific findings in Enclosure C.

## ENCLOSURE B

### COMMENDABLE INITIATIVES

OSEP identified the following commendable WVDE initiatives as part of its on-site review:

(1) WVDE has established forty-one local Parent/Educator Resource Centers throughout the State. The centers train parents, students and educators in the skills needed by both parties to create and implement working relationships. The centers provide information and supportive services to parents to enable them to make informed decisions regarding their child's education. Also, the centers provide information and technical assistance to educators to help them work more effectively with families. The leadership and coordination of the project is provided by the State Team, comprised of a parent of a child with a disability and two educators.

(2) The West Virginia Early Childhood Transition Initiative is a multi-agency effort for providing community supports to address the transition of young children (birth to five) and their families from one program or agency to another. Through OPERATION TADPOLE, a comprehensive State-wide training process was developed for each county. This process requires cooperation and collaboration among all agencies and organizations providing services to the 0-5 population. The process also involves the active participation of parents and families. The process asks that participating agencies, along with the families they serve, enter into a partnership to provide coordinated services. Through OPERATION TADPOLE an interagency/community team was trained in each of the State's 55 counties.

(3) Least Restrictive Environment - Senate Bill 1000, passed during the 1994 Legislative session, required that each county district and each school, through its faculty senate, develop inclusion plans. The intent of the legislation is to provide for on-going school-based planning, decision-making and accountability for the appropriate integration of students with disabilities. Data included in the county and school plans will be used by WVDE to identify common staff development needs and to plan multi-school, district, regional and Statewide training activities to meet those needs.

(4) WVDE has developed a number of high-quality publications for parents and educators. Of particular note is a 70 page booklet entitled Hand in Hand, that describes the special education process in a simple, informative fashion.

(5) Assistive Technology - WVDE has taken an interagency approach to assistive technology in collaboration with the University Affiliated Center, the Parent Training and Information Center, the Department of Vocational Rehabilitation, the Part H Early Intervention Program, the Developmental Disabilities Council and others. A training calendar has been developed and training in the use of devices has been made available. Training was provided for speech and language pathologists from throughout the state. Every county now has a person trained to conduct assistive technology assessments. WVDE is currently working to encourage the development of transition agreements so that devices can transfer with children from early intervention to preschool programs and from school age to post-school rehabilitation programs.

The West Virginia School for Deaf and Blind hosted a week long assistive technology camp called "Camp Gizmo." Participants included families, children and their teachers. Topics covered included augmentative communication, assistive technology, parent concerns, and funding of equipment and services.

(6) Correctional Facilities - The Office of Institutional Education Programs, which is responsible for special education in correctional facilities, has undertaken several efforts to ensure that

**COMMENDABLE INITIATIVES**

quality special education programming is provided to youth incarcerated in West Virginia's correctional facilities. The Office has recently employed a full-time special education coordinator to provide program assistance, and review policies and procedures, child count, and other aspects of special education in these facilities. Also, the Office has worked with correctional education staff to develop an "Agenda for High Quality Education in Institutional Programs," which includes a Mission Statement and set of Core Beliefs addressing the improvement of regular and special education services in correctional facilities.



## ENCLOSURE C -- FINDINGS AND CORRECTIVE ACTIONS

### GENERAL CORRECTIVE ACTIONS

In order to begin immediate correction of the findings set forth in the table following, WVDE must take the following general corrective actions:

1. WVDE must develop a memorandum informing all public agencies of OSEP's findings, and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's report. The memorandum must further direct these agencies to discontinue any noncompliant practices and implement procedures that are consistent with Part B. WVDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval of the memorandum, WVDE must disseminate it to all public agencies throughout the State providing special education or related services to students with disabilities.
2. WVDE must also disseminate 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 WVDE that they have implemented revised procedures that correct the deficiencies and comply with Part B requirements. WVDE must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval, WVDE must disseminate the memorandum to those public agencies in which OSEP found deficient practices. WVDE must send to OSEP verification that these public agencies have completed all of these corrective actions.

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p><b><u>STATE EDUCATIONAL AGENCY MONITORING</u></b></p> <p><b>PUBLIC AGENCY CORRECTION OF DEFICIENCIES IDENTIFIED BY WVDE</b></p> <p><b>BACKGROUND:</b> In its 1994 compliance report to WVDE, OSEP found that WVDE's multifaceted system for ensuring compliance had not been implemented in a coordinated, consistent fashion. As a result, WVDE did not consistently identify deficiencies in special education programs operated by agencies under WVDE's general supervisory authority. Furthermore, OSEP found that for the deficiencies WVDE did identify, it did not have an effective system for ensuring correction of those deficiencies. In a January 1996 follow-up compliance report, OSEP found that although WVDE's monitoring procedures and monitoring reports had improved, compliance with and enforcement of corrective action plans continued to be a problem. WVDE's monitoring procedures now require that WVDE send an enforcement letter to any public agency that does not, within 75 days of the issuance of WVDE's monitoring report to the agency, provide documentation that it has corrected all of the findings in the report.</p> <p><b>FINDING:</b> OSEP conducted a thorough review of WVDE's compliance monitoring system and confirmed that most of the major systemic problems with its previous system had been rectified. Currently, WVDE's monitoring system: (1) addresses all Federal special education requirements; (2) incorporates a review of local administrative policies and procedures, and child records, and interviews with administrative personnel, special educators, related service providers, regular education teachers, parents and students who receive special education and related services; and (3) ensures that every district in West Virginia will be monitored at least once every four years and more often if necessary.</p> <p>WVDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out educational programs for students with disabilities, and for adoption and use of proper methods for the correction of deficiencies identified through monitoring (20 U.S.C. ?1232d(b)(3)(A) and (E). See also 34 CFR ?80.40). WVDE has demonstrated significant progress in ensuring that corrective actions are completed by local districts. However, OSEP noted that in some cases where WVDE was unable to ensure that districts completed corrective actions, it had not, within 75 days of the issuance of WVDE's monitoring report, sent the district an enforcement letter notifying the district of its right to a hearing and of possible enforcement sanctions. For instance, WVDE did not issue an enforcement letter to Agency A until March 1996, although WVDE had identified deficiencies in a 1991 visit and 1993 follow up visit. Similarly, WVDE did not issue an enforcement letter to Agency B until December 1996, for deficiencies identified in a November 1994 visit.</p> <p>WVDE notified Agency E of identified deficiencies in a January 1996 report, and when the local education agency failed to take corrective action in a timely manner, issued an enforcement letter in April 1996. In the local education agency's response to the enforcement letter, it challenged WVDE's findings and requested a hearing. However, through the summer of 1996 no hearing was held, and additional corrective action documentation submitted by the local education agency did not demonstrate that all deficiencies had been resolved. At the time of OSEP's visit, WVDE had just issued a second enforcement letter, dated November 26, 1996, to the local education agency. Three other enforcement letters were issued on December 2, 1996, for two districts that had been monitored during the 1994-95 school year and one visited during the 1995-96 school year.</p> <p>OSEP also finds that there is insufficient emphasis on systemic approaches to corrective action. Although WVDE, in its monitoring reports, reminds districts that they are responsible for providing a free appropriate public education to all students, the corrective action requirements focus on child-specific deficiencies as identified in the sample of student records reviewed. Generally, specific systemic corrective actions are not required. WVDE's procedures were not sufficient to ensure the systemic correction of deficiencies within districts, as demonstrated by the continuing findings of deficiencies OSEP has specified in this Report.</p>	<p>WVDE's compliance monitoring procedures result in the timely identification and correction of all deficiencies, including systemic deficiencies, in local educational agencies that have been monitored.</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>Through its monitoring process WVDE needs to be able to extrapolate from the child records reviewed, its interviews, and other data collected to determine whether identified deficiencies are systemic. Although it is important that these child-specific deficiencies be addressed, WVDE will need to strengthen its corrective action process by requiring corrective actions designed to eliminate any systemic deficiencies that go beyond those specific records sampled and schools reviewed.</p>	
<p><b>MONITORING OF SPECIAL EDUCATION PROGRAMS IN ALTERNATIVE EDUCATION PROGRAMS</b></p> <p><b>BACKGROUND:</b> During the 1996 session, the West Virginia Legislature established a provision for local districts to create alternative education programs for disruptive students who are at risk of not succeeding in the traditional school structure. At the time OSEP conducted its on-site review, WVDE staff told OSEP that 36 of the State's 55 county districts had established alternative education programs and that WVDE did not monitor programs for students with disabilities in the alternative schools. Oversight for administration of these programs is the responsibility of the Office of Institutional Education Programs.</p> <p><b>FINDING:</b> WVDE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out educational programs for students with disabilities, and for adoption and use of proper methods for the correction of deficiencies identified through monitoring (20 U.S.C. §1232d(b)(3)(A) and (E). See also 34 CFR §80.40). In an interview with the Director of the Office of Institutional Education Programs and the Director of the Office of Special Education Programs and Assurances, OSEP was told that WVDE did not monitor programs for children with disabilities in alternative schools.</p> <p>As counties establish their alternative programs, WVDE needs to determine how the special education component of those programs will be monitored to ensure identification and correction of deficiencies. This will be especially important during development of these programs to ensure that placement of students with disabilities is appropriate and that those programs meet State and Federal standards.</p>	<p>WVDE has established and implemented procedures for identifying and correcting deficiencies with special education requirements for alternative education programs.</p>
<p><b><u>LEAST RESTRICTIVE ENVIRONMENT</u></b></p> <p><b>BACKGROUND:</b> During the last two cyclical compliance reviews of WVDE, OSEP made extensive findings in the area of least restrictive environment. In its February 7, 1994 monitoring report, OSEP found that WVDE's monitoring procedures did not consistently identify deficiencies in public agencies with regard to the least restrictive environment requirements. Specifically, OSEP found that students with disabilities were removed from the regular education environment without a determination of whether their education could be achieved satisfactorily in regular classes with the use of supplementary aids and services; that a full continuum of alternative placement options for all students with disabilities was not available and that the various alternative placements were not available to implement the IEP for each student; that placements were not determined annually and based on the IEP; and that individual determinations were not made regarding the extent to which it was appropriate for students with disabilities to participate with nondisabled students in nonacademic and extracurricular services and activities. As a result of these findings, WVDE was required to initiate a number of corrective actions to address the least restrictive environment findings included in the 1994 Monitoring Report. These actions included revising and implementing WVDE's monitoring system, issuing a memorandum to all agencies across the State regarding the requirements for least restrictive environment, and conducting Statewide training regarding the implementation of the least restrictive environment requirements for students with disabilities.</p> <p>During its May 1995 follow-up review, OSEP found that WVDE had greatly improved the effectiveness of its monitoring system. OSEP collected data</p>	

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>related to the placement of students in the least restrictive environment, and verified the reliability of WVDE's revised monitoring procedures as they pertain to the least restrictive environment findings in the 1994 Monitoring Report.</p> <p>As part of our current monitoring process, OSEP reviewed the most recent monitoring reports issued by WVDE to each of the seven public agencies visited by OSEP. The reports indicated that WVDE had made findings of non-compliance with regard to the placement of students with disabilities in the least restrictive environment in six of the public agencies visited. In some cases, WVDE did not ensure that the corrective actions taken to address these deficiencies effectively addressed systemic issues. Therefore, when OSEP visited programs in December 1996, it found continuing deficiencies with regard to the least restrictive environment requirements.</p>	
<p><b>FINDINGS:</b> OSEP finds that WVDE did not ensure, in all cases, that public agencies implemented policies and procedures which complied with the least restrictive environment requirements of Part B at 34 CFR ??300.550(b)(1), 300.551, 300.552(a)(2) and 300.553.</p> <p>While onsite, OSEP staff reviewed student files and interviewed both regular and special education teachers who participated in the most recent IEP meeting for those students, the building principals, and the school-based and agency administrators responsible for the provision of special education in the seven public agencies visited. OSEP noted progress in the districts visited regarding the use of alternative methods of providing special education in less restrictive settings through resource room programming and regular education classes in neighborhood schools for students with mild disabilities. However, it also found in some of the districts visited that students with disabilities were not being educated to the maximum extent appropriate with nondisabled students; that a full continuum of placement options was not available for all students with disabilities; that placements were not based on the IEP; and that individual determinations were not made regarding the extent to which it was appropriate for students with disabilities to participate with nondisabled students in nonacademic and extracurricular services and activities.</p> <p>OSEP was informed by teachers and administrators in three of the seven public agencies visited that students with mild to profound disabilities (including primarily those students with mental retardation) are placed in self-contained classes. In response to OSEP's questions regarding the district's placement data, administrators in public agencies B, E, and F told OSEP that the options of regular class or resource room were not available for these students. It was further reported by teachers and administrators in these three agencies that there is no individual determination made as to the maximum extent to which these students can be educated with students who do not have disabilities. The teachers interviewed reported to OSEP that students in their classes automatically go as a group to the resources (art, music, gym, homeroom) with their age appropriate peers. Integration opportunities occur on a group basis for nonacademic activities, without determining whether specific individual students could benefit from additional participation in regular education activities.</p> <p>An administrator in Agency B reported to OSEP that there is a belief in the agency that students with mental retardation need to be in a special class. The administrator reported to OSEP that all special education students had previously been educated in a separate wing of the building, but that their classes were currently located in the main building. Teachers in Agencies E and F reported to OSEP that the amount of time their students (with moderate to profound mental retardation) spend with nondisabled students in regular classes depends on scheduling of regular and special education classes, the number of students involved and the availability of an aide to accompany them to regular classes.</p> <p>A special education teacher in Agency F informed OSEP that no individual determinations are made to include the teacher's students with behavior disorders in regular education; such determinations are based on the feasibility of the entire classroom of students with behavior disorders participating in a regular education activity. Similarly, no individual determinations are made for the students in this teacher's class to eat lunch with nondisabled students; all students in this teacher's class eat lunch separately from students who do not have disabilities. Another teacher in Agency F told OSEP that</p>	<p>WVDE must ensure that each public agency makes all placement decisions in a manner consistent with the least restrictive environment requirements cited in this section. This must include ensuring that placement decisions are not based on category of disability or configuration of the service delivery system.</p> <p>WVDE must submit a plan that addresses the need to: (1) develop additional placement options for certain students with disabilities included in this section, in settings that are less restrictive than self-contained classes and separate schools (such as, resource rooms, and regular classes with supplementary aids and services provided); (2) review the placements of students currently placed in self-contained classes and separate day classes; and (3) where appropriate, change the placement of these students to less restrictive settings. The proposal should also include a timeline for implementation.</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>the size of the class dictates the amount of time preschool age students with disabilities spend with the regular class preschoolers. When the regular preschool class was smaller, integration occurred, but now that the class is larger, very few attempts are made for planned integration activities. The teacher stated that there were students in the self-contained special education preschool class who could be served in the regular preschool program. Two administrators in Agency F further reported that it would be the responsibility of the special education preschool teacher to initiate consideration of integration for the students with disabilities in the class. No individual determinations are made initially as to whether it is appropriate to remove preschool students with disabilities from the regular preschool classroom.</p>	
<p>Four administrators and one teacher in Agencies D and E reported to OSEP that no individualized determination had been made as to the maximum extent to which secondary-aged students with mild to moderate mental retardation (Agency E) and students who are served in a separate school for the entire day (Agency D), can participate with students who do not have disabilities in nonacademic and extracurricular services and activities. Administrators in Agency E reported to OSEP that secondary-aged students with mild to moderate mental retardation who are served in self-contained classes have participate with nondisabled students in vocational training classes. Also, the community participation component of these students' education includes interaction with nondisabled members of the community. No further integration opportunities are available for these students. An administrator and teacher in Agency D reported to OSEP that the team considers community participation and exposure for the students placed at the separate school, but does not consider nonacademic and extracurricular services and activities in the regular education program in schools where students without disabilities attend. The teacher further stated that there were some students in the class who could benefit from such interaction, but that such participation is not discussed on an individual basis. The administrator clarified that the students are placed at separate school because of their need for pre-vocational or vocational programming. Therefore, they do not participate in nonacademic and extracurricular activities with their nondisabled peers. Another administrator in Agency D stated that while they do consider integration in the community, they do not consider the participation of full-time separate school students in nonacademic and extracurricular services and activities with nondisabled students within the school environment.</p>	
<p><u>TRANSITION SERVICES</u></p> <p><b>BACKGROUND:</b> Because the Part B regulations for the transition requirements were not promulgated until September 29, 1992, OSEP did not monitor for those requirements in State reviews, such as the West Virginia review, conducted during the 1992-93 school year.</p> <p>WVDE has incorporated the transition requirements into its monitoring review procedures. OSEP reviewed WVDE's most recent monitoring reports to the public agencies visited by OSEP in 1996 and saw that deficiencies were identified for transition requirements in all of the seven agencies. However, WVDE's procedures to ensure corrective action had not, in all cases, been effective in eliminating system-wide deficiencies.</p>	
<p><b>FINDINGS:</b> OSEP finds that WVDE did not ensure, in all cases, that public agencies implemented polices and procedures which complied with the requirements of Part B relative to Individualized Education Programs and Transition Plans.</p> <p>OSEP visited four secondary programs in the seven public agencies monitored (Agencies C, D, F, and G). These programs included three high schools and one separate school that served students 16 and older. OSEP reviewed the records of 23 students, and interviewed the students' teachers who participated in the most recent IEP meeting, the building principals and the agency administrators responsible for the provision of special education services in these public agencies. Based on these interviews and record reviews, OSEP made the following findings:</p> <p>??300.346(b), 300.18(b) - <b>Statement of Needed Transition Services.</b> OSEP found that the IEPs in four out of seven files in public agency C did not have a statement of needed transition services. Instead, Agency C listed as transition goals and objectives, the accommodations and adaptations that</p>	<p>WVDE must ensure that the IEP for each student beginning no later than age 16 (and at a younger age, if determined appropriate), must include 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. WVDE must also ensure</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>were made in the regular classroom placement, academic goals and objectives, and activities that the students were responsible for, such as keeping an assignment book or a time management schedule. The statement of needed transition services in IEPs did not include instruction, community experiences, and development of employment and other post-school adult living objectives (or a statement that the IEP team determined that services are not needed in one or more of those areas, and the basis upon which the determination was made) to prepare the students for individually determined post-school activities such as postsecondary education, vocational training, integrated and supported employment, independent living, etc. A special education administrator in Agency C explained that some special education staff lacked understanding of the transition process, explaining that transition was a weak area for the public agency. The administrator added that they were doing more with their severely involved students than they were with their mildly involved students, and that more staff training was needed.</p> <p>OSEP found that the transition plans in all seven IEPs reviewed in public agency G were generic and were not based upon the individual needs, preferences or interests of the students. OSEP found that there was no linkage between the transition plan and the rest of the IEP. Two special education administrators in public agency G stated that they were aware that what they were doing in the area of transition was inadequate and that they need more staff training. They confirmed that many of the transition plans were not unique or based on the individual needs of the students, and that in some instances individual student assessment information was not used in developing the transition plans. These administrators stated that they were doing more in the area of transition than was documented in the IEPs, adding that they were doing more with severely involved students than with mildly involved students. They showed OSEP the agency's new forms and training materials that were to be implemented beginning December 9, 1996. In addition, OSEP found that four out of seven IEPs in public agency D and six out of seven IEPs in public agency G did not include community experiences (or a statement that the IEP team determined that such services are not needed and the basis upon which the determination was made) as a part of the statement of needed transition services.</p>	<p>that the transition services consist of 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. WVDE must also ensure that these activities are based on the individual student's needs, taking into account the student's preferences and interests, and include instruction, community experiences and the development of employment and other post-school adult living objectives, or a statement that the IEP team determined that such services are not needed and the basis upon which the determination was made).</p>
<p><b>? 300.344 (c)(1)(ii) - Transition Services: Invitations to Representatives of Other Agencies</b> OSEP found that in Agencies D and F, representatives of other agencies that are likely to be responsible for providing or paying for transition services are not, in all cases, invited to IEP meetings where transition is discussed. A teacher in Agency F stated that representatives of other agencies do not attend IEP meetings, and did not know if they were invited. Another teacher in this agency stated that although outside agencies already involved with the students are sometimes invited (e.g., medical service providers, social service agencies), there are no invitations extended to agencies that may be responsible for providing or paying for transition services. A special education administrator from Agency F confirmed that the agency is weak in initiating agency linkages and other agencies were only listed on the notice if they were already involved with the student. A special education administrator in Agency D said that needed linkages with other agencies were not identified because they did not know how to assign responsibility to other agencies, stating further that they do not invite outside agencies because they would not want to be responsible if these agencies did not follow through on their responsibilities.</p> <p><b>? 300.345(b)(2)(i) - Parent notices must include transition as a purpose of the meeting</b> OSEP found that in three of seven files it reviewed in Agency C, one of the five files in public agency D, six of six files in Agency F, and three of seven files in public Agency G, notices did not include that a purpose of the meeting would be the consideration of transition services. One factor contributing to this deficiency was that standard notice forms used by these agencies did not include a method for indicating that transition was a purpose of the IEP meeting. In some cases, teachers added that information to the notice before providing it to parents. A special education administrator in Agency F stated that the agency's revised notice forms would address transition as a purpose of the IEP meeting.</p> <p><b>? 300.345(b)(2)(ii) - Parent notice must include that the agency will invite the student.</b> OSEP found in three out of seven files in Agency C, one out</p>	<p>WVDE must ensure that if the purpose of a meeting is consideration of transition services for a student the public agency must ensure that: (1) the public agency invites a representative of any other agency that is likely to be responsible for providing or paying for transition services; and (2) the notice sent to parents notifying them of the IEP meeting contains all requirements specified at ?300.345(b)(2).</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>of six files in Agency D, six out of six files in agency F, and six out of seven files in public agency G, that the notices did not indicate that the agency would invite the student to an IEP meeting where transition is to be discussed.</p>	
<p><b><u>Free Appropriate Public Education</u></b></p> <p><b>BACKGROUND:</b> In its February 7, 1994 monitoring report to WVDE, OSEP's findings included a lack of consideration for needed related services, and extended school year services, as well as a lack of provision of related services specified in the IEP. OSEP also found an interruption of services and that some children with disabilities were not provided an instructional school day of a length that met State standards. OSEP noted that the implementation of WVDE's procedures to ensure correction of all identified deficiencies did not consistently result in the provision of a free appropriate public education as specified in students' IEPs. The corrective action plan included in the 1994 monitoring report required WVDE to submit its plans and procedures including training at all levels to ensure that all identified deficiencies in the areas of the provision of a free appropriate public education were corrected and would not recur.</p> <p>To prepare for the December 1996 compliance review of WVDE, OSEP reviewed the most recent WVDE monitoring reports for the seven public agencies visited. In those reports, WVDE determined that Part B requirements were not met for the consideration of extended school year services in Agencies C, D, E and F. Extended school year services were not considered for all students annually in Agencies C and D, as is required by the State. The need for these services was neither considered nor determined for all students with disabilities in Agency D, and were considered and made available only for students with severe disabilities in Agency E. WVDE reports also identified deficiencies in the provision of related services in Agencies B, C, D, E and F. Finally, WVDE also found that public agencies failed to use professional personnel who met the State's requirements for qualified staff to provide special education and related services. Although WVDE was able to identify deficiencies in the provision of a free appropriate public education in these agencies, its procedures for ensuring that all deficiencies were corrected in a timely manner were not fully effective, as is demonstrated in OSEP's findings, below.</p>	
<p><b><u>FINDINGS</u></b></p> <p><b>Provision of Related Services as Specified in IEP (??300.300 and 300.8)</b></p> <p>WVDE did not fully ensure that, in all cases, public agencies provide special education and related services based on the student's unique needs, as specified by an IEP. Administrators and teachers in Agencies A, C, E and F informed OSEP that the number of personnel needed for psychological counseling on an individualized, ongoing basis to ensure the provision of a free appropriate public education had not been made available. If a student requires psychological counseling in order to receive a free appropriate public education, families must obtain outside counseling services or the school might seek services from the regular school guidance counselors.</p> <p>In Agency A three teachers told OSEP that: 1) the guidance counselors could not always provide the service that was needed; 2) IEP teams did not include the amount of counseling services to be provided because they did not know the counselor's schedule; and/or 3) the amount of time provided for counseling was based on the counselor's availability, which changed from week to week. A teacher in Agency C told OSEP that students who need counseling services were referred to community agencies to try and obtain services and were provided services at the public agencies' expense in those cases where the students' parents were able to obtain the services. A central office administrator in Agency C told OSEP that counseling services were not available in most elementary schools to assist students to benefit from special education. The administrator added that there was no funding available for additional counseling services because of budgetary constraints. An Agency E teacher reported that although an eligibility report stated</p>	<p>WVDE must ensure that: (a) public agencies make available and provide psychological counseling as a related service to assist students who require this service to benefit from special education; and (b) teachers and administrators receive training regarding their responsibilities in this area.</p>

REQUIREMENTS AND FINDINGS	EXPECTED RESULTS
<p>that a student's "anxiety/depression needs to be addressed," no counseling was included in the IEP. The teacher said that the child was recommended to the general school guidance counselor, but that the counselor could not make a commitment to provide services because of a demanding caseload. A building administrator in Agency E confirmed that the school staff had been instructed not to include counseling on IEPs as a related service even if it is required to assist a student to benefit from special education. A teacher of students with behavioral disabilities in Agency F told OSEP that psychological counseling services were not recommended to the IEP team to address the needs of students with behavioral disorders because it was understood that the service was not available. An agency F building administrator confirmed that psychological counseling service was not made available to students who needed it.</p>	
<p><b>Individualized Determination of Needed Related Services (? ?300.300 and 300.8)</b></p> <p>Teachers and administrators from Agencies A, B, D and E informed OSEP that an IEP team did not always make a determination of need for related services (e.g., occupational therapy, physical therapy, and speech-language therapy services) or include the specific amount of service in each child's IEP. Further, public agencies did not ensure that the service was provided as specified in the IEP. For two of six students whose records OSEP reviewed in Agency A, occupational therapy needs were not being met because qualified personnel were not made available. An Agency A teacher informed OSEP that at least two other students on the class list were receiving occupational therapy that they needed for educational benefit only because their parents took them to a local clinic. Two administrators in Agency A reported that no students in the school whose IEPs included speech-language and occupational therapy were provided those services during the first three weeks of school. A central office administrator for Agency A told OSEP that the students were entitled to receive compensatory education, but that the public agency had not yet established a plan to provide the services. In Agency B a special education teacher said that the public agency had a shortage of physical therapy staff. Students were not receiving the services stated in their IEPs. Although Agency B was paying for private therapy obtained by parents, the contracted providers still could not provide the amount of services specified in students' IEPs. The same Agency B teacher added that students will be offered compensatory services. Central office administrators for Agencies B and D confirmed that services had not been provided as stated on IEPs, and explained their efforts to address the shortage of personnel. In Agency D, a building administrator stated and a central office administrator confirmed, that students did not receive physical therapy services for at least three weeks. A teacher in Agency E stated and a building administrator confirmed, that student needs for occupational and physical therapy were not being met because of a shortage of funds and available personnel.</p>	<p>WVDE must ensure that:</p> <p>(a) public agencies do not delay and/or interrupt the provision of a free and appropriate public education because public agencies have not made qualified service providers available, or are using them for other duties; and (b) public agencies make determinations for the amount and type of related service to be provided based on individual need, not on the availability or cost of the service.</p>
<p><b>Findings: Provision of a Free Appropriate Public Education (Extended School Year) (?300.300)</b> A teacher in Agency A told OSEP that the need for extended school year services is not discussed in IEP meetings. In Agency A, a teacher reported that the special education director determines which students, by category of disability, will be eligible for extended school year services and provides teachers with a list of eligible students. No students with behavioral disorders whose files were reviewed by OSEP had extended school year services considered at their IEP meetings. A central office administrator confirmed that consideration of the need for these services had been a problem in the past and acknowledged that some teachers may still not be aware that a revised process had been established. An Agency D building administrator told OSEP that consideration of need and decisions about extended school year services were not being made on an individualized basis, but rather by category of disability. Only students with profound mental impairments were considered for, and offered, speech/language, occupational, and physical therapy services during the summer through a county extended school year program.</p>	<p>WVDE must ensure that: (a) public agencies consider and make a determination of the need for extended school year services based on each child's unique needs; (b) each child with a disability who needs extended school year services as a component of a free appropriate public education receives those services; (c) students will not be excluded from receiving such services based solely upon their category of disability; and (d) teachers and administrators receive training regarding their responsibilities in these areas.</p>