



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

AUGUST 30, 1996

Honorable Linda Schrenko
Superintendent of Schools
Georgia State Department of Education
2066 Twin Towers East
Atlanta, Georgia 30334

Dear Superintendent Schrenko:

During the week of May 13, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Georgia State Department of Education's (GADOE) implementation of Part B of the Individuals with Disabilities Education Act (Part B). The purpose of the review was to determine whether GADOE is meeting its responsibility to ensure that its educational programs for children 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; and our findings and corrective actions are presented in Enclosure C.

Our review revealed that the actions GADOE took in response to OSEP's prior monitoring report of September 1992 appear to have been effective in resolving a number of the problems identified in that report. We found no systemic deficiencies in the areas of individualized education programs (IEPs), provision of related services, and review and approval of local educational agency applications -- all areas where GADOE took corrective action after OSEP's 1992 report. OSEP also recognizes several initiatives undertaken by GADOE for providing services to students with disabilities, which are described in Enclosure B to this Letter.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Our monitoring revealed that GADOE did not always ensure the provision of services in the least restrictive environment, provision of extended school year services as a

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component of a free appropriate public education and provision of prior written notice. In addition, we found problems with GADOE's complaint management system, its due process hearing system and its procedures for monitoring for compliance with Federal requirements in local school systems statewide. The preliminary findings of the monitoring team were discussed with Ms. Paulette Bragg, Director, Division for Exceptional Students, and members of her staff at an exit conference held at the conclusion of OSEP's on-site visit. OSEP staff subsequently provided GADOE with further clarification of its findings through telephone conference calls. GADOE was invited to provide any additional information it wanted OSEP to consider during the development of OSEP's monitoring report. No additional information was submitted by GADOE; therefore, the findings presented in Enclosure C are final.

In the event GADOE, 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 are incorrect, GADOE may request reconsideration of the finding(s). In such a case, GADOE must submit reasons for its reconsideration request and any supporting documentation within 15 days of receiving this letter. OSEP will review the request and, where appropriate, will issue a letter of response informing GADOE that the finding has been revised or withdrawn. Requests for reconsideration of a finding will not delay development of the corrective action plan 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, Ms. Bragg and staff members of GADOE's Division for Exceptional Students were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to acquire an understanding of Georgia'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 GADOE's corrective actions. 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 these children and youth with disabilities in Georgia.

Sincerely,

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Ms. Paulette Bragg

ENCLOSURE A

OSEP's Monitoring Methodology

Pre-site Preparation. OSEP staff began its review of documents related to GADOE's special education program in January 1996. The review included, but was not limited to, GADOE'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 hearings, and State monitoring systems. OSEP also reviewed GADOE's placement data based on the December 1995 child count.

At GADOE's request, a staff member from the South Atlantic Regional Resource Center participated as an observer during some of the interviews at GADOE's administrative offices, and attended the exit conference. OSEP understands that South Atlantic Regional Resource Center staff will assist GADOE with development and implementation of corrective action plan activities based on the findings contained in this letter.

Involvement of Parents and Advocates During the week of April 1, 1996, OSEP held public meetings in Atlanta, Savannah and Valdosta. The purpose of these public meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of GADOE's compliance with Part B. In addition, OSEP conducted outreach meetings with representatives from the Parent Training and Information Project, the Georgia Protection and Advocacy Program, and the Georgia State Advisory Panel to receive additional information. The information obtained from the public meetings and outreach activities, as well as from interviews with State officials and a review of State documents, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Georgia; (2) selecting monitoring issues (e.g., the provision of services for students with disabilities in the least restrictive environment) to be emphasized while on-site; and (3) selecting the sites to be visited.

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

On-site Data Collection and Findings The OSEP team consisted of: Chuck Laster, the Team Leader, Delores Barber, Claudia Brewster, Catherine Cooke, Nell Eano, and Sheila Friedman. The team visited three high schools, two middle schools, four elementary schools (including two preschool programs housed in regular elementary school buildings) in six local school systems (agencies). In addition, the team spent a day at one of GADOE's psychoeducational centers. Where appropriate, OSEP has included in this letter data collected from the seven agencies to support or clarify OSEP's findings regarding the sufficiency and effectiveness of GADOE'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: Bulloch County
Agency B: Cobb County
Agency C: Harris County
Agency D: Mitchell County
Agency E: Muscogee County
Agency F: Oak Tree Psychoeducational Center
Agency G: Thomasville City

Corrective Action Procedures

In the interest of developing a mutually agreeable corrective action plan specifically designed to address these findings, OSEP proposes that GADOE 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 Georgia's Special Education Advisory Panel to participate in that discussion. GADOE's corrective action plan must be developed within 45 days of 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.

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

1. GADOE 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 GADOE'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. GADOE 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 GADOE that the changes necessary to comply with Part B requirements have been implemented. This memorandum must be submitted to OSEP within thirty days of the issuance of this letter. Within 15 days of OSEP's approval, GADOE must issue the memorandum to those public agencies in which OSEP found deficient practices. GADOE must send to OSEP verification that all corrective actions have been completed by these public agencies.

ENCLOSURE B

COMMENDABLE INITIATIVES

Following are commendable GADOE initiatives that OSEP identified during the onsite review:

The **Georgia Project for Assistive Technology** coordinates a statewide technical support network in the area of assistive technology. Staff members conduct a range of technical assistance and training activities such as on-site visits to assist local school system personnel in the development and implementation of programs for individual students, establishment of site-based assistive technology teams, provision of training on methods of evaluation of students for assistive technology, facilitation of Regional and State training workshops, and establishment of a short term lending library.

The **Bureau for Students with Severe Disabilities** is the result of a cooperative effort between the Division of Exceptional Students, GADOE, and Georgia State University, Department of Special Education and Educational Psychology. Its mission is to provide a statewide systemic approach to assist teachers and schools that are involved in the education of students with severe and profound intellectual disabilities. The Bureau is funded in part with Federal discretionary monies and provides training for teachers on a regional basis. Services include lectures on best practices, hands-on work with students in classrooms and demonstration teaching. The goal of the initiative is to develop a cadre of qualified teachers who can work with children with severe disabilities.

The **Institute for Educational Interpreters** provides specialized training opportunities for educational interpreters and para-professionals with interpreting duties. Each summer, approximately 30-50 individuals participate, and to date, approximately 150 individuals statewide have received training from the Institute.

Transition Consortium - Through awareness of the need for improved services in the area of transition, the Department of Rehabilitation Services, GADOE, the Department of Labor, Colleges and Universities, Mental Health and parents statewide have collaborated in their efforts to share resources at the local school system level to identify student needs for provision of transition services. The goal of the consortium is to provide a unified service delivery system, and eliminate duplication of effort among the agencies involved. This collaborative effort will allow local school systems to coordinate the provision of transition services, and identify issues, problems and barriers to implementation based on the collective experience of participants. The **Consortium** sponsors the annual **Statewide Transition Conference** which focuses on enabling more students with disabilities to obtain entry into colleges, universities and technical schools. Conference participants include representatives from the Department of Labor, Rehabilitation Services, Division of Exceptional Students, colleges and universities, adult and teacher education. A major thrust of the conference is the development of a collaborative agreement between GADOE, the Department of Adult and Technical Education and the Department of Vocational Rehabilitation to allow students who graduate with special diplomas or a GED to enter technical schools in the State.

Mediation - GADOE annually contracts with the Justice Center of Atlanta, to provide an alternative method for the resolution of special education disputes for all agencies in the State. The Justice Center conducts individual mediation sessions, as well as training activities for State and local school system personnel. GADOE's contract specifies that training is held twice each year. These efforts have led to fewer due process hearings and a greater number of successfully mediated disputes between parents and school system.

The **Behavioral Intervention Program** is a model collaboration between three local school systems in Georgia and GADOE for the purpose of dealing more effectively with children who exhibit self-injurious behaviors. Students may be referred for a period of six weeks. The program is available to students statewide, through technical assistance. The program is set up for replication back in the school setting, and teachers are assisted with developing skills and educational strategies, targeting behaviors, and taking these techniques back to implement in the regular education program. GADOE plans to expand the program to include additional districts in other geographic areas of the State.

The **Georgia Parent Initiative Program** is a technical assistance effort to facilitate communication between parents and educators in the special education process in Georgia. GADOE has developed the publication, Home and School, Partners in Special Education, which describes the special education planning process, informs parents of their rights and responsibilities in the system, and stresses the partnership between parents and schools. GADOE has also developed a series of videotapes explaining the role of parents in the special process, emphasizing effective communication skills. The booklet and videotapes are made available through each of the local school systems and through the Georgia Learning Resource System.

ENCLOSURE C
FINDINGS AND EXPECTED RESULTS/ACTION REQUIRED/TIMELINES

FEDERAL REQUIREMENT	OSEP FINDING	EXPECTED RESULTS/ ACTION REQUIRED/ TIMELINES
<p>SEA MONITORING (§§80.40, 300.402, 300.556, and 20 U.S.C. §1232d(b)(3))</p> <p>[GADOE is responsible for the adoption and use of proper methods to monitor public agencies responsible for carrying out special education programs, and for adoption and use of effective methods for the correction of deficiencies identified through monitoring.]</p>	<p>BACKGROUND: GADOE monitors public agencies in the State through its Program Review process on a five year cycle. The process begins with the notification of the onsite visit, and a technical assistance visit by the District Liaison. At that time, the <u>Program Review Document</u> is provided to the agency, which is used as a self-study guide. Selected teachers, administrators and parents complete questionnaires which are sent to GADOE for review prior to the onsite visit. The self-study document, along with personnel lists and other information is submitted to GADOE two to three weeks prior to the onsite visit, and the issues investigated, files to be reviewed, and facilities to be visited are determined through information derived from these materials. GADOE staff conduct an entrance conference, to discuss the scope of the review. GADOE staff then review student files and other selected documents and visit a predetermined number of buildings to view instructional space and verify existence of materials purchased with Federal funds. Interviews with teachers and/or parents may also be conducted at this time. The onsite visit lasts typically from two to four days, and findings are presented at a working exit conference, where the team provides clarification to agency staff and gathers additional information. Commendations and findings are presented at the final exit, along with the process for completing the corrective action plan. The final program review report is sent to the agency within 30 days, and includes timelines for corrective actions, with each compliance item designated as in full compliance, partial compliance or noncompliance. The agency has 30 days to respond with its plan. Isolated issues must be corrected immediately, and all systemic issues must be corrected within 12 months. At least one postprogram review/follow-up visit is scheduled within 12 months of the onsite. All actions initiated by the agency are verified by GADOE, either through onsite visits, correspondence, calls or assurance statements. When all issues have been verified as corrected, GADOE will issue a postprogram review approval of the agency's corrective action plan. In its 1992 Report, OSEP made findings of noncompliance with regard to methods for identification of deficiencies regarding certain specified Part B requirements. (20 U.S.C. 1232d(b)(3)(A)).</p> <p>FINDING: OSEP reviewed GADOE's procedures for conducting program reviews, including the <u>Program Review Document/Self Study</u>, along with questionnaires, interview forms, GADOE's due process checklists, and all other ancillary monitoring procedures and materials, and finds that the procedures that were in effect at the time of OSEP's visit did not include a method to determine compliance regarding the following requirements:</p> <p style="text-align: center;">§§300.300-Free Appropriate Public Education-Extended school year 300.342(b)(2)-IEP implemented following meeting</p>	<p>GADOE will revise its monitoring procedures and data collection instruments to ensure that it has an effective method to monitor for each Federal requirement related to Part B specified in this Letter.</p>

<p><u>SEA MONITORING</u></p> <p>(Continued)</p>	<p>Requirements for which GADOE's monitoring procedures did not contain a method to determine compliance [continued]:</p> <p>§§300.344-(c)(3)-Agency does not attend; steps to ensure participation 300.345(b)(2)-Transition notice: purpose; invite student; representative of other agency 300.346(b)(2)-IEP content - Basis for transition services not addressed 300.347(a)-If agency fails to provide services public agency schedules a meeting 300.505(a)(4)-Factors relevant to agency's proposal or refusal 300.505(b)(1)-Notice in language understandable to the general public 300.550(b)(1)-Children with disabilities are educated with nondisabled students to the maximum extent appropriate to the needs of the child 300.551(b)(2)-Provision for supplementary aids and services to be provided in conjunction with regular class placement</p>	
	<p>In addition, OSEP's review indicated that GADOE does not have a complete method for monitoring compliance with the following requirements:</p> <p>§300.504(a) - Prior notice - The language "a reasonable time" is not included in the <u>Program Review Document</u>. Also, this document states that notice will be provided in instances where the public agency proposes or refuses to initiate or change the related services provided to the student, but does not state that notice is provided when a public agency otherwise proposes or refuses to initiate or change the provision of a free appropriate public education to a child.</p> <p>§300.533(a)(3) - Placement procedures - The <u>Program Review Document</u> does not include the requirement that the individuals making the placement decision must include those knowledgeable about the placement options.</p> <p>§300.553 - Nonacademics - The <u>Program Review Document</u> states that each child with a disability participates with nondisabled children in nonacademic and extracurricular services and activities <u>when appropriate</u>. The Federal requirement specifies that such participation must be <u>to the maximum extent appropriate</u> to the needs of the child.</p>	

<p>COMPLAINT MANAGEMENT §§300.660(a) and 300.662 [GADOE must ensure that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless GADOE has extended the time limit because exceptional circumstances exist with respect to a particular complaint.]</p>	<p>BACKGROUND: GADOE informs parents and other interested parties of its procedures for complaint management through the regionalized Georgia Learning Resource System, and through reminders to public agencies and advocacy groups. GADOE's formal complaint procedures are detailed in the State regulations at 160-4-7-.03. These procedures require that a complainant must file a written, signed complaint with GADOE alleging that a public agency is not in compliance with a Part B requirement. GADOE then sends a letter to the public agency involved, informing them of the complaint, and requesting a response within ten calendar days. The complainant also receives a copy of the letter, and is also invited to submit additional documentation. GADOE then reviews the agency's response to determine if the issue has been resolved or, if it is necessary for GADOE to make an onsite visit to resolve or further clarify the issue. GADOE's onsite team may examine records, conduct interviews and/or classroom visitations. GADOE then reviews all relevant information, and makes a determination whether the agency has violated a Part B requirement. If the resolution letter sent to the public agency indicates that a violation has occurred, the letter will inform the agency that it must submit a plan for correction with specific timelines for completion. GADOE incorporates all issues involved in complaints from each public agency into that agency's subsequent program review.</p> <p>FINDING: OSEP finds that GADOE does not ensure that complaints are resolved within 60 calendar days after the complaint is filed, unless the timeline is extended due to exceptional circumstances with respect to a particular complaint. OSEP interviewed GADOE officials responsible for complaint resolution in the State, and reviewed complaint logs tracking complaints filed from June 1993 through December 1995. Of the 41 complaints filed with GADOE during this period, 15 exceeded the established 60 day timeline or the extended timeline from two to 26 days beyond the required timeline.</p>	<p>GADOE must demonstrate that its procedures ensure that any complaint that a public agency has violated a requirement of Part B be investigated and resolved within 60 calendar days after the complaint is filed, unless GADOE has extended the time limit because exceptional circumstances exist with respect to a particular complaint.</p>
<p>PROCEDURAL SAFEGUARDS: Impartial due process hearings §300.512(a) and (c) [GADOE is responsible for ensuring that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension is granted at the request of either party.]</p>	<p>BACKGROUND: Prior to 1994, GADOE maintained a two-tier system for conducting impartial due process hearings. In January 1994, GADOE converted to a one tier due process hearing system. In April 1995, GADOE initiated a contract with the Georgia Office of Administrative Hearings to conduct impartial due process hearings. Under the present system, parents who wish to request a due process hearing are instructed to contact their local agency. When the agency receives a request for an impartial due process hearing, or when the agency initiates a request, it informs GADOE's Office of Legal Services which contacts the Office of Administrative Hearings. The Office of Administrative Hearings appoints an administrative law judge to serve as the hearing officer. The administrative law judge then makes the necessary arrangements and conducts the impartial due process hearing.</p> <p>GADOE Division for Exceptional Students staff informed OSEP that until April 1996, the Office of Legal Services maintained a log of impartial due process hearing activities and provided the log to the Division for Exceptional Students. The Division then used the log to monitor for timelines. Division staff stated that they also contacted the Office of Administrative Hearings, the Administrative Law Judge, and the Office of Legal Services, to obtain additional information that was not provided on the log, or to provide guidance. In April 1996, the responsibility for preparation and maintenance of a log of due process hearings was transferred from the Office of Legal Services to the Division for Exceptional Students. Division staff informed OSEP that it monitors for the requirements of §300.512(a) and (c) through the preparation and maintenance of the log.</p> <p>OSEP reviewed the fiscal year 1996 log of impartial due process hearings that was prepared by the GADOE Division for Exceptional Students as part of its oversight and monitoring responsibilities. The headings under which information was recorded include the following: Case Number, Name of Hearing Officer/Administrative Law Judge, Date of Hearing Request, Mediation, Time Extension, Date</p>	<p>GADOE will ensure that not later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties unless a specific time extension is granted at the request of either party.</p> <p>GADOE will revise its monitoring procedures to ensure that the requirements of §300.512(a) and (c) are met.</p>

	<p>of Hearing, Time Extension (subsequent to the initiation of the hearing), Other Action, Date Resolved, and File Completion. The column titled "Date Resolved" indicated whether resolution was by consent agreement, hearing decision, settlement, request for hearing withdrawn, or an order of dismissal agreement. Records of completed due process hearings are maintained by the Division. In its 1992 monitoring Report, OSEP made findings with regard to timelines in due process hearings and reviews. (§300.512).</p> <p>FINDING 1: OSEP finds that GADOE has not implemented effective monitoring procedures to ensure that the requirements of §300.512(a) and (c) are met.</p> <p>GADOE officials informed OSEP that the only data that they review in the hearing records to determine whether hearing decisions are reached and mailed to the parties within the timelines required by §300.512(a) and (c) are those that GADOE includes in its log. OSEP reviewed that log and determined that while it does indicate whether a hearing officer extended the timeline, the log does not direct the person completing it to make a determination whether the hearing officer has met the requirements of §300.512(c) (i.e., whether the extension was at the request of a party and a specific period of time), and to record that information. As explained below, OSEP finds that the log did not, in many cases, indicate whether the extension was for a specific period of time and at the request of a party.</p>	
<p>PROCEDURAL SAFEGUARDS: Impartial due process hearings §300.512(a) and (c)</p> <p>[Continued]</p>	<p>OSEP reviewed the twenty-eight requests for due process hearings that were logged between 7/1/95 and 12/1/95. Five of the 28 requests resulted in due process hearings, and the other 23 requests were withdrawn, settled, dismissed, or a consent agreement was reached.</p> <p>In 12 of the 28 requests for a due process hearing, the 45 day timeline was exceeded, and there were no requests for extensions recorded in the log prepared by GADOE. The timelines in these cases exceeded the 45 day timelines in amounts ranging from 7 days to 4 months and 27 days.</p> <p>The log noted that of the 16 requests for which extensions were recorded, 10 were extended for a specific period of time. The log entries for the other six extensions did not include a specific time limit, and all were resolved from 56 to 169 days beyond the 45 day timeline requirement.</p> <p>There was a notation on two of these entries that stated that the "parties waived the timelines." On another entry, under "Time Extension" was stated "continued until further notice," and in the remaining three entries, there was no reference to the amount of time.</p> <p>FINDING 2: OSEP finds that GADOE does not always ensure that no later than 45 days from the receipt of a request for a hearing, a final decision is reached and a copy is mailed to each of the parties, unless a specific time extension is granted at the request of either party.</p> <p>OSEP randomly selected for review files of four hearings noted on the log that included extensions. The log indicated that three of the four requests selected by OSEP resulted in a due process hearing decision, and one resulted in dismissal. For the purpose of this Report, OSEP labeled the records it reviewed, Record A, B, C, and D. OSEP's review of these files indicated that in records C and D, the hearing exceeded timeline requirements without extensions for specific periods of time, record B indicated that an extension was granted, but it was not for a specific period of time, and in record A, the hearing officer initiated an extension for a specific period of time, and exceeded this timeline without granting another extension.</p> <p>Record A was listed on the log as having extensions for specific periods of time. 15 days after the request for a hearing was received, the hearing officer initiated a continuance, quoting the Office of Administrative Hearings Rule 616-1-2-.06, Changes of Time, that allowed an administrative law judge to initiate a change, for good cause shown, any time limit prescribed or allowed by the</p>	

Rules that is not otherwise specified by law. The hearing officer stated that since mediation had been scheduled for the parties involved, "good cause" was found for a continuance, and scheduled a hearing date to take place 25 days from the date of the order. The hearing was subsequently rescheduled, and the hearing officer directed that the closing argument briefs were to be submitted within seven days from the close of the evidence, at which time the hearing was considered complete. The hearing officer further ruled that the decision would be rendered within twenty days of the completion of the hearing. 28 days after the due date of the decision that had been set by the hearing officer, an order was issued that stated that due to the length of the hearing and the complexity of the issues, the time in which the decision shall be rendered is extended to and including eight days after the issuance of the order of extension.

Record C stated that the hearing officer granted an extension at the request of a party, and scheduled a date for the hearing to be held two months and four days after the request was received. The record stated that the parties negotiated an agreement following the opening statement at the hearing. A dismissal was ordered two months and two days following the date that the due process hearing began. There was no reference to requests for extensions other than the request prior to the initiation the due process hearing.

Record B contained the statement that "the parents consented to a delay in the proceedings." There was no indication that the continuance was for a specific period of time.

Record C stated that the hearing officer granted an extension at the request of a party, and scheduled a date for the hearing to be held two months and four days after the request was received. The record stated that the parties negotiated an agreement following the opening statement at the hearing. A dismissal was ordered two months and two days following the date that the due process hearing began. There was no reference to requests for extensions other than the request prior to the initiation the due process hearing.

Record D contained information that indicated that 16 days after the request for a due process hearing, the parties agreed to a specific time extension to begin the hearing. A decision was rendered one month and 27 days after the conclusion of the hearing. There was no notation in the file that an extension was granted at the request of a party for a specific time for a final decision to be reached and a copy of the decision mailed to each of the parties.

Record B contained the statement that "the parents consented to a delay in the proceedings." There was no indication that the continuance was for a specific period of time.

Record C stated that the hearing officer granted an extension at the request of a party, and scheduled a date for the hearing to be held two months and four days after the request was received. The record stated that the parties negotiated an agreement following the opening statement at the hearing. A dismissal was ordered two months and two days following the date that the due process hearing began. There was no reference to requests for extensions other than the request prior to the initiation the due process hearing.

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<p>PROCEDURAL SAFEGUARDS: Impartial due process hearings §300.512(a) and (c)</p> <p>[Continued]</p>	<p>Record B contained the statement that "the parents consented to a delay in the proceedings." There was no indication that the continuance was for a specific period of time.</p> <p>Record C stated that the hearing officer granted an extension at the request of a party, and scheduled a date for the hearing to be held 65 days after the request was received. The record stated that the parties negotiated an agreement following the opening statement at the hearing. A dismissal was ordered 63 days following the date that the due process hearing began. There was no reference to requests for extensions other than the request prior to the initiation the due process hearing.</p> <p>Record D contained information that indicated that 16 days after the request for a due process hearing, the parties agreed to a specific time extension to begin the hearing. A decision was rendered 78 days after the conclusion of the hearing. There was no notation in the file that an extension was granted at the request of a party for a specific time for a final decision to be reached and a copy of the decision mailed to each of the parties.</p>	
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<p><u>Prior notice; parent consent. §300.504</u> [Written notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency -- Proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.]</p>	<p><u>BACKGROUND:</u> Prior to the onsite visit, OSEP reviewed GADOE's most recent monitoring reports for each of the seven public agencies to be visited. OSEP found that GADOE made no findings of noncompliance with regard to provision of prior written notice in any of these agencies.</p> <p>All the required components of prior notice must be provided to the parents at each of the times cited under 300.504(a); however, there is no requirement that the components be embodied in a single document. GADOE provides agencies with a model notice, <u>Parental Rights in Special Education</u>, that meets the requirements of §300.505(a)(1), and the notice requirements of §300.505(a)(2)-(4) may be included in minutes of IEP or placement meetings, on the IEP, or on specially designed notice documents.</p> <p><u>FINDING:</u> GADOE does not always ensure that public agencies provide notice when proposing a change in the provision of a free appropriate public education to a student. As defined at 34 CFR §300.8, a free appropriate public education must consist of special education and related services that are "provided in conformity with an IEP ..." A change in the special education and related services set forth in a student's IEP therefore constitutes a change in the provision of a free appropriate public education to the student. A change in free appropriate public education may include, but is not limited to: a change in the type or amount of specially designed instruction, type or amount of related services, type or amount of special accommodations, and type or amount of supplementary aids and services. OSEP's review of GADOE's procedures for conducting Program Reviews indicated that GADOE monitors to ensure that notice is provided prior to a proposal or refusal to initiate or change the provision of related services to a child, but does not specify that notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency otherwise proposes or refuses to initiate or change the provision of a free appropriate public education to the child (including the amount of time in regular and/or special education classes).</p> <p>In interviews that OSEP conducted with teachers and administrators during its onsite visit to Agencies A, D and E, OSEP was informed that notice that meets the requirements of §300.505(a) was not provided at IEP meetings that did not involve a change of placement.</p> <p>A special education administrator in Agency A informed OSEP that they provide a copy of the Parental Rights booklet to the parents at initial placement, reevaluation, and when a change of placement is recommended, but not at annual review meetings when a change in placement is not recommended.</p> <p>A special education administrator in Agency D stated that this agency prepares minutes of meetings and provides the parents with a copy of Parental Rights prior to evaluation, initial placement, or reevaluation of a student, and when a change of placement is recommended. They do not provide the Parental Rights booklet or minutes at annual reviews that do not involve a change of placement.</p> <p>In Agency E, two administrators stated that when a change of IEP (free appropriate public education) is initiated, the IEP, the Parental Rights booklet and the IEP minutes are provided to the parent, but a description of any options the agency considered and the reasons why those options were rejected are not included in the minutes or on the IEP.</p>	<p>GADOE must ensure that public agencies provide written notice that meets the requirements of §300.505 must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.</p>
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<p>Content of notice. §300.505 [The notice under §300.504 must include -- (1) A full explanation of all of the procedural safeguards available to the parents; (2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected; (3) description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal.</p>	<p>OSEP also reviewed the Parental Rights statement from three Agencies: B, C and E. Even though the model Parental Rights statement provided by GADOE to the agencies included the right to notice prior to the proposal or refusal to initiate or change the provision of a free appropriate public education, this right was omitted from the Parental Rights notice in Agencies B, C, and E.</p>	
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u> (§300.550(b)(2)) [Public agencies must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily].</p> <p>§300.552(b) [Each public agency shall ensure that the various alternative placements included in §300.551 are available to the extent necessary to implement the IEP for each child with a disability.]</p>	<p><u>BACKGROUND:</u> Prior to its onsite visit, OSEP reviewed the most recent program review report for each of the agencies to be visited. OSEP determined that GADOE made the following findings with regard to the Federal requirements for placement in the least restrictive environment: In Agency C, GADOE found that a continuum of alternative placements was not available to students with moderate intellectual disabilities (§300.551(a)); and in Agency G, GADOE determined that placement decisions were made prior to the completion of the IEP (§300.552(a)(2)). GADOE provides technical assistance to public agencies statewide in the Federal and State requirements of least restrictive environment through the document, <u>Documentation and Decision-Making Related to Special Education Placement</u>, which includes guidance on IEP development and making placement decisions in conformance with State and Federal requirements. In its 1992 Report, OSEP made findings with regard to least restrictive environment in the following areas: placement determined annually and placement based on IEP (§300.552(a)(1) and (2)), and availability of a continuum of alternative placements (§300.551).</p> <p>In order to meet the requirement of §300.550, a public agency must, at least annually, make a placement decision for each child with a disability that is based upon that child's IEP. In making that decision, the public agency must, prior to making any decision to remove the child from the regular education environment--determine whether the child's education can be achieved satisfactorily in the regular education environment with the provision of supplementary aids and services. In determining whether a child with disabilities can be educated in a regular education class or activity with supplementary aids and services, several factors must be considered including: (1) whether reasonable efforts have been made to accommodate the child in the regular classroom or other regular education environment; (2) the educational benefits available to the child in the regular education environment, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class or other separate environment; and (3) the possible negative effect of the inclusion of a child on the education of the other students in the class. If, after considering these factors, the IEP team determines that, even with the use of supplementary aids and services, some removal from the regular educational environment is necessary, the IEP team must then determine those portions of the day (both academic and nonacademic) for which the child's education can be achieved satisfactorily in regular education with the use of supplementary aids and services.</p> <p>The findings set forth below are based upon a review of GADOE's monitoring procedures, placement data provided by the public agencies visited by OSEP, student records, statements from teachers regarding placement determinations as made in IEP meetings in which they participated, and interviews with administrators and other agency personnel, regarding the placement practices throughout public agencies and specific schools.</p> <p><u>FINDING 1:</u> OSEP finds that GADOE did not always meet its responsibility under §300.550(a) to ensure that public agencies remove a student from the regular education environment only when the nature or severity of the disability is such that education in the regular education environment with the use of supplementary aids and services cannot be achieved satisfactorily as required by §300.550(b)(2), and that GADOE has not ensured that the various alternative placements included under §300.551 are available to the extent necessary to implement the IEP for each child with a disability. OSEP's review of GADOE's</p>	<p>GADOE must ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p>GADOE must ensure that the various alternative placements included in §300.551 are available to the extent necessary to implement the IEP for each child with a disability.]</p>
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u></p> <p>(Continued)</p>	<p>procedures for program review indicated that GADOE did not have a specific procedure to monitor compliance with the following requirements: §300.550(b)(1) - children with disabilities are educated with nondisabled children to the maximum extent appropriate; §300.551(b)(2) - Provision of supplementary aids and services in conjunction with regular class placement.</p> <p>In addition, GADOE had incomplete procedures for monitoring compliance with: §300.552(a)(2) and (3) - Placements; §300.553 - Nonacademics. compliance with the following requirements: §300.550(b) - Children with disabilities are educated with nondisabled children to the maximum extent appropriate; §300.551(b) - Continuum.</p> <p>OSEP found that in six of the agencies visited (A, B, C, D, E, and G) special education within a full time regular education environment is not considered as a placement option for all students with disabilities. In addition, placement decisions in these agencies are based on the category of disability rather than on the individualized needs of each student that are based on an IEP.</p> <p>Administrators and teachers from Agencies A and D informed OSEP that the full continuum, including regular education with supplementary aids and services, was considered only for students with mild disabilities. In Agency G, an agency administrator stated that full time regular education placement with supplementary aids and services is not considered as an option for all disability categories - at the elementary level, full time regular education is considered only for students with speech and language disabilities, other health impairments and visual impairments. At the high school level, full time regular education is considered only for students with learning disabilities and students with emotional and behavioral disorders. Two teachers from this agency confirmed this, and stated, "if test scores come up, and the child functions at the expected grade level, we could consider regular education. We would not discuss regular education as an option at an annual review meeting if very little or no progress has been made." It was the expectation of teachers and administrators in this agency that in order for students to achieve success in regular education settings, it was the student, rather than the environment, that needed to change (the student must demonstrate progress in a special education class before the agency would consider either a regular education placement or consider making modifications to the regular education setting). An administrator from Agency E, explaining why all students with moderate intellectual disabilities from this agency were placed in self-contained classes, stated that these students require a very prescriptive program, which is provided only in a self-contained setting. Another administrator from this agency reported that pressure from regular education teachers may be a reason why more students are not placed in regular education settings.</p> <p>Administrators and teachers in agencies A, B, C and E further explained that placement in regular education with supplementary aids and services is not always considered at annual review meetings. When asked if regular education with supplementary aids and services was considered at each annual review/placement meeting, a teacher from Agency A and a teacher and an administrator from Agency B informed OSEP that at annual review meetings, the team always considered the next less restrictive level on the continuum (i.e., a resource placement might be considered for a student currently placed in a self-contained setting). As a result, regular education with modifications was not always considered for students with moderate and severe disabilities in self-contained classes. One teacher from Agency C stated that consideration of regular education depends on the "comfort level" of the regular education</p>	<p>GADOE must ensure that each public agency ensures that the educational placement of each child with a disability is determined at least annually.</p> <p>GADOE must ensure that each IEP meeting includes a representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of special education.</p>
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<p><u>LEAST RESTRICTIVE ENVIRONMENT</u> (§300.552(a)(1)) [GADOE is responsible for ensuring that each public agency ensure that the educational placement of each child with a disability is determined at least annually.]</p> <p>(§300.344(a)(1)) [GADOE must ensure that each meeting includes a representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of special education.]</p>	<p>teacher and the functioning level of the student. For example, OSEP reviewed a file of a fifth grade student who received regular education instruction in a regular first grade class, due to his functional/academic level. This teacher informed OSEP that at the middle school, this student would not be able to receive instruction in regular education classes, because there are no such classes at his (functional) level. A teacher of preschool students from Agency C stated that there is no discussion of modifications, aids and services or other regular education programming at annual review meetings. A preschool teacher from Agency E stated that regular education with supplementary aids and services is not considered as a placement option, because, "at this age, these students are new to special education...if parents requested it, it could be done."</p> <p>File data from two self-contained classes of students with moderate intellectual disabilities from Agency A confirmed that regular education with supplementary aids and services was not considered for these students - IEPs indicated that the only options to the self-contained classes that were considered were home placement or additional time in the self-contained class for students in a preschool self-contained class, and for students in a high school self-contained class, approximately one hour per day outside of the self-contained classroom. File review data from Agency C indicated that for students in a self-contained class of students with moderate intellectual disabilities, placement in regular education was rejected as a placement option because, "the student is functioning within the moderate range." OSEP reviewed student records from two self-contained preschool classes in Agency B. Each file indicated that placement options considered at the most recent IEP meeting included facility-based, (self-contained class) homebound and community-based services. It was noted on the IEPs of each of the four students, however, that regular class participation was "not applicable for preschool."</p> <p>Placement data from Agencies A, C, D, E and G indicated that no students with moderate or severe/profound intellectual disabilities were in regular education placements. In Agencies E and G (and at the middle and high school levels in Agency A, and at the elementary level in Agency B), all of these students were in self-contained placements.</p> <p><u>FINDING 2:</u> OSEP finds that GADOE has not ensured that the student's placement is determined at least annually and is based on his or her IEP, as required by §300.552(a), and that GADOE has not ensured that a representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education is present at all meetings that are conducted for the purpose of developing, reviewing, and revising the IEP of a student with a disability, in accordance with §300.344(a)(1). OSEP learned through interviews with administrators and teachers in Agencies A, B, D, and E that education placement decisions for students with disabilities were not determined at least annually. Administrators and teachers from these public agencies told OSEP that placement determinations for students with disabilities are made at the time of the initial placement into special education, and thereafter at three-year intervals coinciding with the time of the student's reevaluation. In addition, OSEP found that, an agency representative, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education, attends IEP meetings only when placement is to be determined or a change of placement is to be considered.</p>	<p>~</p>
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LEAST RESTRICTIVE ENVIRONMENT

(Continued)

Fifteen of seventeen student records reviewed by OSEP in Agency B and six of nine in Agency E indicated that the agency representative did not attend the most recent annual review meeting. Two administrators and a teacher from public Agency B informed OSEP that administrators were required to attend placement meetings, but not annual reviews. These individuals explained that an agency representative attended annual review meetings only when there were special issues to discuss, such as discipline or a change in placement.

An administrator from Agency E explained that "the administrator is present if there is going to be a commitment of resources. It is not really necessary for the administrator to be present for a regular annual review meeting."

Another administrator from this agency agreed with this statement, and explained that at annual review meetings where goals and objectives are written, an administrator is invited, but is not required to attend.

When asked how often placement determinations for students with disabilities are made, three administrators and four teachers from Agencies A, D, and E informed OSEP that placement options are considered at initial placement and at triennial meetings, but not at annual reviews. "At annual reviews, we just look at goals and objectives" explained a teacher from Agency A. In Agency E, an administrator reported that placement is determined at the eligibility meetings and the IEP is written based on the placement decision. A teacher from Agency E confirmed this practice and further explained that placement at an annual review meeting is not routinely considered unless the parent and teacher believe that a change in placement may be needed. An administrator from Agency D stated that placement decisions could be considered at annual reviews "if an event triggers the attention of the IEP committee." This information was confirmed by two teachers from Agency D, who informed OSEP that if a change in placement is going to be considered at an annual review meeting, the recommendation is documented on the Annual Review Contact Sheet and brought to the attention of the special education director prior to the meeting. This form verifies that all staff have been contacted before the meeting to determine whether it is necessary to consider a change in placement. At annual review meetings the IEP meeting participants must also include an agency representative only in instances where a change of placement is to be considered.

<p>FREE APPROPRIATE PUBLIC EDUCATION: Extended School Year \$300.300 [GADOE is responsible for ensuring that all children with disabilities are provided a free appropriate public education, including ensuring that public agencies consider and make available extended school year services as a component of a free appropriate public education, to students with disabilities, if necessary.]</p>	<p>BACKGROUND: In preparation for its onsite visit, OSEP reviewed GADOE's most recent monitoring reports for the seven agencies to be visited. OSEP found that GADOE made no findings of noncompliance with regard to provision of extended school year services in any of these agencies. OSEP was informed by GADOE officials that it does not provide any statewide technical assistance activities or procedures in this area, and that each public agency in the State must establish its own criteria and procedures for implementation for provision of extended school year services.</p> <p>FINDING: GADOE has not fully ensured that public agencies consider and make available extended school year services, as a component of a free appropriate public education, to students with disabilities. OSEP reviewed GADOE's procedures for conducting program reviews, including the <u>Program Review Document/Self Study</u>, along with all other ancillary monitoring procedures and materials, and found that these procedures did not include a method to determine compliance regarding the requirements of provision of extended school year. Teachers, agency and building administrators interviewed by OSEP in Agencies A, D, G, and F, indicated that extended school year services were not available in the facilities visited by OSEP. Teachers interviewed in these agencies indicated that they were unsure as to the specific criteria for making referrals to and providing extended school year services, and that a summer school program might be available, however, the need, or the student's participation was not addressed in the IEP, nor was it necessarily free. Administrators in Agencies A, G and F confirmed this information, stating that a summer school program (i.e., services provided during the summer not pursuant to an IEP) was available to students with disabilities in these agencies. The administrators in Agencies D, F and G also informed OSEP that there was no procedure in place in these agencies for making determinations as to the need for extended school year services, and that no such services were provided to any students in these agencies the prior year.</p>	<p>GADOE must ensure that students with disabilities receive extended school year services, if necessary, to ensure that the student receives a free appropriate public education.</p>
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