UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 10 2003

Dr. Felipe Alanis
Commissioner of Education
Texas Education Agency
William B. Travis Building
1701 North Congress Avenue
Austin, Texas 78701

Ms. Mary Elder
Executive Director
Texas Interagency Council on Early Childhood Intervention
Brown-Heatly State Office Building
4900 North Lamar
Austin, TX 78751-2399

Dear Dr. Alanis and Ms. Elder:

The U.S. Department of Education's Office of Special Education Programs (OSEP) conducted a review in Texas from May 6 - 10, 2002 for the purpose of assessing compliance in the implementation of Parts B and C of the Individuals with Disabilities Education Act (IDEA). The IDEA Amendments of 1997 focus on "access to services" as well as "improving results" for infants, toddlers, children and youth with disabilities. In the same way, OSEP's Continuous Improvement Monitoring Process is designed to focus Federal, State and district resources on improved results for children with disabilities and their families through a working partnership among OSEP, the Texas Education Agency (TEA), and the Texas Interagency Council on Early Childhood Intervention (ECI).

A critical aspect of the Continuous Improvement Monitoring Process is the formation of a Steering Committee. The two Steering Committees in Texas assessed the effectiveness of State systems in ensuring improved results for children with disabilities and protection of individual rights. Please see the Introduction to the Report for a more detailed description of the Continuous Improvement Monitoring Process in Texas.

OSEP's review placed a strong emphasis on those areas that are most closely associated with positive results for children with disabilities. In this review, OSEP clustered the Part B (services for children aged 3 through 21) requirements into four major areas: Parent Involvement, Free Appropriate Public Education in the Least Restrictive Environment, Secondary Transition and General Supervision. Part C (services for children aged birth through 2) requirements were clustered into five major areas: Child Find and Public Awareness; Family-Centered Systems of Services; Early Intervention Services in Natural Environments; Early Childhood Transition; and General Supervision. Components were identified by OSEP for each major area as a basis to review the State's performance through examination of State and local indicators.

The enclosed Report addresses strengths noted in the State, areas that require corrective action because they represent noncompliance with the requirements of the IDEA, and technical assistance regarding improvement for best practice. It contains an executive summary, an introduction with background information, a description of OSEP's findings, and suggestions for improvement. TEA and ECI have indicated that this Report will be shared with the public, including members of the Steering Committee, the State Interagency Coordinating Council and the IDEA State Advisory Panel.

Texas' May 31, 2002 Biennial Performance Report showed that it was not reporting to the Secretary and the public on the participation of children with disabilities on alternate assessments, as required by 34 CFR §300.139 of the Part B regulations. Therefore, the State's 2002 Part B grant award was issued with Special Conditions. The Special Conditions stated that the Department would remove the Special Conditions if, at any time prior to the expiration of the grant year, Texas provided documentation, satisfactory to the Department, that it was fully meeting the Special Conditions. This report also includes a finding that, at the time of OSEP's visit to the State in May 2002, the State was not reporting to the Secretary and the public on the participation of children with disabilities on alternate assessments. The information that Texas submitted to OSEP on September 30, 2002 showed that the State reported to the public on the participation of children with disabilities on alternate assessments. Accordingly, no further correction is required regarding the monitoring finding and OSEP has removed the Special Conditions.

As part of the Continuous Improvement Monitoring Process, the State developed Improvement Plans for Part B and Part C, based on the Self-Assessments that the State submitted to OSEP. The State submitted the Part B Improvement Plan to OSEP on October 19, 2001 and the Part C Improvement Plan on March 4, 2002. The State must: (1) review the Improvement Plans; and (2) submit to OSEP, within 60 days of the date of this Report, amended Improvement Plans that includes any revisions in strategies, benchmarks, timelines, and evidence of change that are necessary to ensure that each of the findings of noncompliance in this Report will be corrected within one year from the date of OSEP's approval of the revised Improvement Plan. It is important that the State work with its Steering Committee in developing improvement strategies that will ensure improved results for children with disabilities and their families, and timely and effective correction of the noncompliance. OSEP will work with both Steering Committees to develop corrective actions and improvement strategies to ensure that the areas of noncompliance are adequately addressed through both Improvement Plans.

Thank you for the assistance and cooperation provided by your staffs during our review. Throughout the course of the review, Mr. Eugene Lenz, Ms. Kathy Clayton and Mr. David Carrales for Part B and Ms. Mary Elder and Ms. Donna Samuelson for Part C were responsive to OSEP's requests for information, and provided access to necessary documentation that enabled OSEP staff to work in partnership with the Steering Committee and the State to better understand the State's systems for implementing the IDEA. An extraordinary effort was made by State staff to arrange the public input process during the Summer of 2001, and as a result of their efforts, OSEP obtained information from a large number of parents, advocates, service providers, school and agency personnel, agency administrators, and special education administrators. OSEP would

also like to recognize the efforts that have taken place in Texas to improve results for children with disabilities and the strong commitment of State staff to continue these efforts.

Thank you for your continued efforts toward the goal of achieving better results for infants, toddlers, children and youth with disabilities in Texas. Since the enactment of the IDEA and its predecessor, the Education of All Handicapped Children Act, one of the basic goals of the law, ensuring that children with disabilities are not excluded from school, has largely been achieved. Today, families can have a positive vision for their child's future.

While schools and agencies have made great progress, significant challenges remain. The critical issue is to place greater emphasis on attaining better results. To that end, we look forward to working with you in partnership to continue to improve the lives of individuals with disabilities.

Sincerely,

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosures

cc: Ms. Cindy Martin
Mr. Eugene Lenz

EXECUTIVE SUMMARY
TEXAS MONITORING 2002

The attached Report contains the results of the first two steps (Self Assessment and Data Collection) in the Office of Special Education Program's (OSEP) Continuous Improvement Monitoring of the Individuals with Disabilities Education Act (IDEA), Parts B and C, in the State of Texas during the week of May 6-10, 2002. The process is designed to focus resources on improving results for infants, toddlers and children with disabilities and their families through enhanced partnerships between State agencies, OSEP, parents and advocates. The Self Assessment phase of the monitoring process included the completion of a Self-Assessment, a series of public input meetings with guided discussions around core areas of IDEA, and the organization of two Steering Committees (one for Part C and one for Part B of IDEA), that provided further comments on the implementation of IDEA. As part of the public input process, the Texas Education Agency (TEA) and the Texas Interagency Council on Early Childhood Intervention (ECI) made particular efforts to include a wide geographical area that included both multi-cultural and underrepresented populations. The Data Collection phase included interviews with parents, students, agency administrators, local program and school administrators, service providers, teachers and service coordinators and reviews of children's records. Information obtained from these data sources was shared in two meetings, one conducted with the TEA (Part B) and the other conducted with ECI (Part C).

The report contains a detailed description of the process utilized to collect data, and to determine strengths, areas of noncompliance with IDEA, and suggestions for improvement in each of the core IDEA areas.

Early Intervention Service for Infants and Toddlers With Disabilities: Part C of IDEA

Strengths

OSEP observed the following strengths:

- The Colonias Project represents a collaborative effort between ECI and the Texas Health and Human Services Commission and other agencies to inform Colonias residents of services for which they may be eligible.
- ECI has extensive requirements for evaluation and assessment for potentially eligible children.
- ECI provides a multi-faceted inservice training program to train early intervention staff including a partnership with a variety of university and community college teaching staff.
- In 1996, ECI established a policy that has moved early intervention services in Texas from a system of segregated, clinic and hospital services that pre-dated Part C to a system of services provided in natural environments unless it is not appropriate to do so.
- ECI provides flexible scheduling to meet the needs of infants and toddlers with disabilities and their parents to ensure integration of intervention into the family's daily routines.

- ECI provides mandatory training for program administrators responsible for early intervention as well as a comprehensive mentoring program for the administrators.
- ECI has been highly successful in identifying and incorporating funding streams from a variety of sources other than Part C to pay for early intervention services.
- ECI identifies and corrects deficiencies through thorough scrutiny of program implementation activities to ensure compliance with IDEA.
- ECI administers effective, timely, well-functioning complaint management and due process hearing systems.
- The State Interagency Coordinating Council works to ensure collaboration of agencies involved in the provision of services to infants and toddlers with disabilities and their families.

Area of Noncompliance

OSEP observed the following area of noncompliance:

- IFSPs do not include outcomes for the family, specific early intervention services for the family, medical and other services, and transition steps.

Education of Children and Youth with Disabilities
Part B of IDEA

Strengths

OSEP observed the following strengths:

- The Student Success Initiative includes ongoing training, development of products and research/evaluation findings. These activities have been integrated into the general curriculum to provide opportunities for the participation of children with disabilities.
- Texas has developed a training and technical assistance system that is proactive and is delivered in a regional format that allows for flexibility in the provision of services.
- Texas uses Automated and Integrated Subsystems to control the funding system for the flow of Federal and some State funds to local education agencies.
- Texas has used the Continuous Improvement Monitoring System to create an ongoing improvement process model, adapted to fit Texas's unique needs.
- The special education web page (http://www.tea.state.tx.us/special.ed/) created by TEA has been instrumental in making information readily available to the State.

Areas of Noncompliance

OSEP observed the following areas of noncompliance:

- IEPs do not reflect the frequency, amount (e.g., 30 minutes, 60 minutes, etc.) or location of services needed by children with disabilities as determined by admission, review and dismissal committees.
- When children with disabilities cannot participate in all, or part of, the Statewide assessment program, IEPs do not always reflect how a child will be assessed.
- The decisions to provide extended school year services may be based on the child's category of disability rather than the individual needs of each child. In addition, transportation as a related service is not always provided to children with disabilities participating in extended school year services.
- TEA has not reported publicly and to the Secretary of Education on the participation and performance of children with disabilities on alternate assessments.
- In Texas Youth Commission facilities, services needed to meet the unique needs of each child are not all reflected on IEPs.
- TEA does not ensure that when representatives from agencies that are expected to provide, or pay for, secondary transition services, do not attend IEP meetings when invited, that other methods are used to obtain their participation. Responsibilities of these agencies or linkages are not identified in IEPs.
- IEPs/ITPs do not represent a coordinated set of activities within an outcome-oriented process designed to promote movement from school to post-school activities.
- TEA does not ensure the identification and correction of deficiencies related to compliance with IDEA in a timely manner.
- The State complaint resolution process fails to meet the requirements of 34 CFR §§300.660-300.662.

Texas Monitoring Report
Table of Contents

INTRODUCTION.....1

I. PART C: COMPREHENSIVE PUBLIC AWARENESS AND CHILD FIND SYSTEM 4
A. STRENGTHS 5
B. SUGGESTED AREA FOR IMPROVED RESULTS FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES 5

II. PART C: EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS 7
A. STRENGTHS 8
B. AREA OF NONCOMPLIANCE.....9

III. PART C: FAMILY-CENTERED SYSTEM OF SERVICES.....11
A. STRENGTH.....12

IV. PART C: GENERAL SUPERVISION AND ADMINISTRATION 13
STRENGTHS 14

V. PARTS C/B: EARLY CHILDHOOD TRANSITION.....17
SUGGESTED AREA FOR IMPROVED RESULTS FOR CHILDREN WITH DISABILITIES.....17

VI. PART B: PARENT INVOLVEMENT 19

VII. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT.....21
A. STRENGTH.....23
B. AREAS OF NONCOMPLIANCE.....24
C. SUGGESTED AREAS FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES.....32

VIII. PART B: SECONDARY TRANSITION.....34
AREAS OF NONCOMPLIANCE.....36

IX. PART B: GENERAL SUPERVISION.....40
A. STRENGTHS 42
B. AREAS OF NONCOMPLIANCE.....43
C. SUGGESTED AREAS FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES.....46

INTRODUCTION

The Part C Program in Texas

The Texas Interagency Council on Early Childhood Intervention (ECI) is the State agency responsible for implementing Part C of the Individuals with Disabilities Education Act (IDEA) and providing services to Texas families who have infants and toddlers with disabilities or developmental delays. The ECI governing board is composed of eight voting members of families with children with developmental delays and one representative of the Texas Education Agency (TEA). In addition, there are six nonvoting members representing the Texas Commission on Alcohol and Drug Abuse; the Texas Workforce Commission; the Texas Department of Health; the Texas Department of Mental Health and Mental Retardation; the Texas Department of Human Services; and the Texas Department of Protective and Regulatory Services. The ECI Board is advised and assisted in the development and implementation of policies by a working 24-member Advisory Committee, which functions as the State's Interagency Coordinating Council. The ECI staff consists of 64 employees.

The ECI contracts annually with a variety of local agencies to fulfill its responsibility to provide early intervention services to every county in Texas. Currently 63 agencies provide ECI services in Texas. These include: Community/State Mental Health and Mental Retardation Centers, Regional Education Service Centers, local independent school districts, private nonprofit local organizations, and the University of Texas Medical Branch at Galveston. ECI works together with 12 other State-operated health and human services agencies under the regulatory authority of the Texas Health and Human Services Commission (HHSC).

According to the latest Annual Performance Report submitted to the Office of Special Education Programs (OSEP) by ECI, the ECI enrollment in 2001 has increased by more than 12% compared to the previous year. According to the December 1, 2000 Child Count Data, Texas serves 16,136 children, 1.65% of the birth through two-year-old population.

The Part B System in Texas

Texas has 1,040 independent school districts, 159 Charter Schools and 7,519 campuses (school sites) serving a diverse student population in grades kindergarten through twelve. The student population of these schools is 4,059,619. Approximately 483,442, or 11.9%, of the total student population has been identified as eligible for special education services. The State is divided into 20 regions, each served by an educational service center that provides technical assistance, training and support for educators and parents across the State.

The Texas Education Agency (TEA) is the State agency charged with the responsibility for ensuring that special education services are provided in accordance with IDEA. While TEA was established in 1949 as the regulatory arm of the State legislature, today it also provides leadership to school districts and regional education service centers across the State in areas that include educational programs (including programs for children with disabilities), curriculum development, State funding and student assessment of achievement and performance.

Since May 2000, the State has been involved with several major priorities to improve special education programs across the State. The Statewide efforts include school district access to the Statewide curriculum, Texas Essential Knowledge and Skills (TEKS) and improving the accountability system to focus improvements in student performance in the State.

It is the goal of TEA to provide children with a quality education that empowers them with the academic skills necessary to function as productive citizens in a diverse geo-political arena and an ever-growing global economy.

Continuous Improvement Monitoring Process in Texas

As part of the Continuous Improvement Monitoring Process, both TEA and the Texas Interagency Council on Early Childhood Intervention (ECI) conducted Self-Assessments of the State's implementation of the IDEA. Two separate Part B and Part C Steering Committees were formed to assist TEA and ECI in conducting the Self-Assessments. For Part B, the Committee focused on four areas: Parent Involvement; Free Appropriate Public Education in the Least Restrictive Environment; Secondary Transition; and General Supervision. For Part C, the Committee focused on five areas of performance: Comprehensive Public Awareness and Child Find System; Early Intervention Services in the Natural Environment; Family Centered Services; General Supervision; and Early Childhood Transition. Both Steering Committees identified overall strengths and areas needing improvement. As part of this process, TEA and ECI conducted a series of public meetings to obtain information and input from stakeholders around the State, including parents, advocates, attorneys, physicians, local service providers, agency representatives and school personnel.

Texas developed Improvement Plans for Part C and Part B, based on the Self-Assessment that the State submitted to OSEP. The State submitted the Improvement Plan to OSEP for Part B in October, 2001 and the Improvement Plan for Part C in March, 2002. These Improvement Plans did not clearly identify: (1) benchmarks; (2) the improvement strategies Texas will implement; and (3) timelines by which Texas will complete its improvement strategies. The State must: (1) review the Improvement Plan; and (2) submit to OSEP within 60 days of the date of this Report, an amended Improvement Plan with revised strategies, benchmarks, timelines, and evidence of change for all improvement strategies and specifically identify those that are necessary to ensure that each of the findings of noncompliance in this Report will be corrected within one year from the date of OSEP's approval of the revised Improvement Plan. It is important that the State work with its Steering Committee in developing improvement strategies that will ensure improved results for children with disabilities and their families, and timely effective correction of the noncompliance. OSEP will work with ECI, TEA, and the Steering Committee to support the State's improvement efforts.

OSEP reviewed the December 2000 Texas Part B and Part C Self-Assessments, the information collected at the public meetings in Summer 2001, the October 2001 draft Improvement Plan for Part B, the March 2002 Improvement Plan for Part C, and other data submitted to OSEP. Based on this review, it was determined that a site visit to Texas would be conducted to collect additional data regarding compliance with IDEA in several areas.

OSEP conducted its on-site data collection visit during the week of May 6, 2002. For Part B, OSEP visited seven independent school districts and four sites under the jurisdiction of the Texas Youth Commission: El Paso; Denton; North East; Corpus Christi; Raymondville; Hondo; San Antonio; McLennan County State Juvenile Correctional Facility; Al Price State Juvenile Correctional Facility; Corsicana Residential Treatment Center; and Gainesville State School. For Part C, OSEP visited a total of nine programs in six regions: El Paso; McAllen; Houston; Fort Worth; San Antonio; and Lubbock. As part of the data collection process, OSEP reviewed children's records prior to visiting Texas. During the week of the site visit, OSEP Part B staff conducted interviews with personnel from schools, Texas Youth Commission Facilities and TEA, and with parents and students. OSEP Part C staff conducted interviews with local service providers, service coordinators, administrators, parents and ECI staff. At the end of the week, OSEP staff presented preliminary conclusions to the TEA and ECI staff and members of the Steering Committees.

I. PART C: COMPREHENSIVE PUBLIC AWARENESS AND CHILD FIND SYSTEM

The needs of infants and toddlers with disabilities and their families are generally met through a variety of agencies. However, prior to the enactment of Part C of IDEA, there was little coordination or collaboration of service provision, and many families had difficulty locating and obtaining needed services. Searching for resources placed a great strain on families.

With the passage of Part H in 1986 (now Part C), Congress sought to assure that all children needing services would be identified, evaluated, and served, especially those children who are typically underrepresented, (e.g., minority, low-income, inner-city, Indian and rural populations), through an interagency, coordinated, multidisciplinary system of early intervention services.

Each State's early intervention system must include child find and public awareness activities that are coordinated and collaborated with all other child find efforts in the State. Part C recognizes the need for early referral and short timelines for evaluation as development occurs at a more rapid rate during the first three years of life than at any other age. Early brain development research has demonstrated what early interventionists have known for years, that children begin to learn and develop from the moment of birth. Therefore, the facilitation of early learning, and the provision of timely early intervention services to infants and toddlers with disabilities are critical.

Self-Assessment: In the Child Find/Public Awareness area, the Texas Self-Assessment Steering Committee identified several strengths and opportunities for improvement. Strengths noted included: the increasing number of children referred to ECI; the efforts to provide materials and publications that are culturally relevant and bilingual; the efforts to involve families and stakeholders in the establishment of goals and the development of public awareness materials; and the variety of referral sources for the ECI system.

In addition to its strengths, the Self-Assessment Steering Committee identified the following opportunities for improvement: the need for a standardized and automated client-specific data system to assist in the identification of underserved populations; the need for a standard process for the ongoing review of related materials; and the enhancement of collaboration with State agencies to increase the effectiveness of the child find and referral system.

Public Input Process and Date Collection: Based on the information obtained through the review of the Self-Assessment, the public meetings, monitoring reports, local applications, and local and State procedures in the area of child find and public awareness, OSEP identified the following issues for investigation during the on-site visit: location and evaluation of eligible children; public awareness activities; and referrals by all primary referral sources.

To investigate the identified issues, OSEP collected data from parents, service coordinators, service providers, agency administrators, State agency staff, and the Interagency Council on Early Childhood Intervention. Analysis of the data collected resulted in identification of the following strengths and suggestion for improvement.

A. STRENGTHS

1. Colonias Project

The Colonias, located along the Texas-Mexico border, are unincorporated communities which often lack running water, storm drainage, sewers and paved streets. These conditions, as well as language barriers, present unique challenges in public awareness and child find. To meet these challenges, ECI has collaborated with the Texas Health and Human Services Commission and other agencies in a comprehensive program to inform Colonias residents of services for which they may be eligible. Promotoras, or Promoters, who are specially trained to create awareness of public services, go door-to-door explaining to residents the Texas service system and helping them access services that might benefit their families, including services provided through ECI to eligible infants and toddlers. Several ECI programs in these areas have assigned staff for the Colonias, which has resulted in an increase in the identification of eligible children from these areas. The program helps ECI to reach these communities that are traditionally hard-to-reach.

2. Evaluation and Assessment

ECI has extensive requirements for evaluation and assessment of potentially eligible children. To ensure that children receive all supports and services that would assist in making maximum developmental progress, ECI developed instruments to determine the needs of children in the areas of nutrition and assistive technology, as well as an extensive instrument to identify vision problems in infants and toddlers. ECI monitors programs to ensure that children have received assessments is these areas as well as other required evaluations.

B. SUGGESTED AREA FOR IMPROVED RESULTS FOR INFANTS AND TODDLERS WITH DISABILITIES AND THEIR FAMILIES

To ensure that all infants and toddlers in the State who are eligible for services are identified, located, and evaluated, Part C regulations require that the child find system include procedures for use by primary referral sources for referring a child to the appropriate public agency. See 34 CFR §303.321(b)(1) and (d).

In December 2000, ECI provided early intervention services for 16,136 infants and toddlers or 1.65 percent of its total birth through age two population, compared to a national average of 1.78 percent of the nation's infants and toddlers receiving services.[1] ECI reported that it has experienced a substantial growth throughout 2001, stating that 33,649 children have received some kind of service from one of its 63 program providers. Although the State continues to increase ECI enrollment (12 percent increase from the previous year) and has implemented many public awareness programs to inform eligible families of Part C services, OSEP monitoring indicates additional improvement is possible in this area. Parents, service coordinators, service providers, and administrators stated that there are physicians who do not refer children in a timely manner and some who refer families to private providers and clinics instead of to the ECI program. An ICC member stated that there are some physicians who do not refer outside of

[1] Data submitted to OSEP by ECI.

their practice network, even when children and families may require services not provided by their network. Parents, service coordinators, and service providers in several areas stated that there is a need for greater awareness of the ECI program.

The Interagency Coordinating Council and ECI have implemented a variety of activities to ensure that hospital staff and physicians are aware of early intervention services and refer children in a timely manner. An Interagency Coordinating Council Child Find/Public Awareness committee member (who is a physician) identified a variety of activities that the committee and ECI have implemented for child find and public awareness. Those activities include the creation of print, video and audio materials for physicians, presentations at medical meetings, individual visits to physicians, and a variety of other public awareness activities. This committee member identified the multitude of problems associated with ensuring physician referrals; therefore a variety of methods are needed to address the issues. He further stated that the committee and ECI were continuing to work on this issue.

OSEP suggests that ECI continue to focus on efforts to make physicians and hospital staff better aware of referral policies, procedures, and options. OSEP also suggests that ECI continue to focus on outreach programs in all areas of the State to ensure public awareness activities result in identification of all eligible children. Finally, by focusing its monitoring efforts to ensure that traditionally underserved groups, especially ethnic minorities and speakers of other languages, have sufficient culturally appropriate information ECI could improve the identification, evaluation, and early intervention services to eligible children from these populations.

II. PART C: EARLY INTERVENTION SERVICES IN NATURAL ENVIRONMENTS

In creating the Part C legislation, Congress recognized the urgent need to ensure that all infants and toddlers with disabilities and their families receive early intervention services according to their individual needs. Three of the principles on which Part C was enacted include: (1) enhancing the child's developmental potential; (2) enhancing the capacity of families to meet the needs of their infant or toddler with disabilities; and (3) improving and expanding existing early intervention services being provided to children with disabilities and their families.

To assist families in this process, Congress also requires that each family be provided with a service coordinator, to act as a single point of contact for the family. The service coordinator assures that children and families are provided due process rights, arranges for assessments and IFSP meetings, and facilitates the provision of needed services. The service coordinator coordinates required early intervention services, as well as medical and other services the child and the child's family may need. With a single point of contact, families are relieved of the burden of searching for essential services, negotiating with multiple agencies and trying to coordinate their own service needs.

Part C requires the development and implementation of an IFSP for each eligible child. The evaluation, assessment, and IFSP process is designed to ensure that appropriate evaluation and assessments of the unique needs of the child and of the family, related to the enhancing the development of their child, are conducted in a timely manner. Parents are active members of the IFSP multidisciplinary team. The team must take into consideration all the information obtained from the evaluation and child and family assessments, in determining the appropriate services needed to meet the needs.

The IFSP must also include a statement of the natural environments in which early intervention services will be provided for the child. Children with disabilities should receive services in community settings and places where normally developing children would be found, so that they will not be denied opportunities to be included in all aspects of our society. In 1991, Congress required that early intervention services be provided in natural environments. This requirement was further reinforced by the addition of a new statutory requirement in 1997 that early intervention could occur in a setting other than a natural environment only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment. In the event that early intervention cannot be satisfactorily achieved in a natural environment, the IFSP must include a justification of the extent, if any, to which the services will not be provided in a natural environment.

Self-Assessment: In the Self-Assessment, the Steering Committee identified a number of policies and procedures as significant strengths in the area of Early Intervention Services in Natural Environments. Other strengths included CI's training system, interagency collaboration with other family and child-service organizations and ECI's flexibility in contract funding. Areas of opportunities for improvement identified in the Self-Assessment document included the need: for data related to service coordination, assessment, and service delivery; for ECI to

recommend guidelines for contracts; to assess family perceptions of service satisfaction; to build community-based support; and to review and update service coordination.

From the State's monitoring reports, public input meetings, and other information, OSEP determined that additional data should be collected during the Data Collection visit in the following areas: service coordination activities and the provision of services needed by all eligible children.

Data Collection: To investigate these issues, OSEP collected data from parents, service providers, service coordinators, agency administrators and ECI staff. OSEP reviewed and analyzed the data and identified the following strengths and areas of non-compliance.

A. STRENGTHS

1. Preservice Project to Ensure Trained Early Intervention Staff

In many States, institutions of higher education specifically train graduate students to provide developmental early intervention services; however, Texas institutions of higher education currently do not offer degree programs to graduate students with the specific qualifications to provide special instruction for early childhood development. As a result, training staff in this area has been a challenge. ECI has developed a multi-faceted in-service training program to train staff to meet ECI's requirements for early intervention. ECI has partnered with various university and community college teaching staff to add into the existing university curriculum basic skills and knowledge for working with infants and toddlers with disabilities. These strategies are being incorporated into the preservice training programs for professionals who may work with infants and toddlers, including health workers, social service workers, as well as speech pathologists and occupational and physical therapists. The focus has been to better prepare graduates entering fields from which future staff for early intervention programs may be drawn.

2. Systems Change from Segregated Center-Based Services to Services in the Natural Environment

Prior to the enactment of Part C, Texas had a system of services for infants and toddlers in which services were provided in segregated settings, clinics, and hospitals. Beginning in 1994, ECI began preparing local programs for delivering services in natural environments. Through a series of strategy meetings and workshops throughout the State, local program staff began identifying their service delivery procedures that met the required Federal regulations. In 1996, ECI established policy that included a timeline for eliminating segregated service settings that were not justified by child need. Currently, children are served in natural environments, except when services cannot be effectively delivered in a natural environment. The ECI requires that the need for delivery of services in other than the natural environment must be redetermined every six months or sooner.

B. AREA OF NONCOMPLIANCE

1. Steps to Implement Transition of the Child Not Included on the IFSP.

Each State must ensure that the IFSP includes "the steps to be taken to support the transition of the child to preschool services or other services, as appropriate. These steps include: (1) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition; and (2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting. See 34 CFR §303.344(h).

OSEP found that ECI has not ensured that steps to support the child and family for transition to preschool and other services are consistently included in IFSPs. Most of the programs visited by OSEP did not have transition steps on the IFSPs for the child or the family. In reviewing the IFSPs of children who were age-appropriate for transition, 14 out of 23 (64%) did not include transition steps. In the nine that did have steps, these steps tended to be general (e.g., school visits) and did not address specific training for the family. Service providers stated that inclusion of steps on the IFSP to support transition is an area of needed improvement. Parents in most areas could not identify steps to prepare their children for transition even after attending the transition meeting. When asked about transition steps for the child on the IFSP, service providers and service coordinators could not identify specific steps documented or implemented. An administrator admitted that plans for transition were not individualized and that improvement is needed in documenting the transition activities that are actually occurring for each child. Service providers stated that there is frustration because there are no steps to assist children in transitioning into the school system. State personnel stated that required corrective actions have been completed for the programs identified by State monitoring as having a lack of individualization in transition.

OSEP found that steps for transition were frequently not included on the IFSP as required by Part C. ECI must ensure that IFSPs for children include the steps necessary to ensure a smooth transition to Part B or other services, as appropriate.

2. Outcomes for the Family, Specific Early Intervention Services for the Family, and Medical and Other Services Are Not Included on the IFSP

Part C requires that the IFSP include "a statement of the major outcomes expected to be achieved for the child *and family*" (34 CFR §303.344(c)), "a statement of the specific early intervention services necessary to meet the unique needs of the child and family" (34 CFR §303.344(d)); and "medical and other services that the child needs but that are not required under this part" (34 CFR §303.344(e)(i)).

OSEP found that ECI has not ensured that all of the required content is included in the IFSP. The majority of the 55 IFSPs reviewed by OSEP did not include family outcomes, and 71% did not include any family needs, or supports and services to enhance the capacity of the family to assist their child. Although family supports and services were not included on the IFSPs in all nine programs visited, all programs recorded supports and services to families in service coordinator and provider notes.

Service coordinators and administrators across the State told OSEP that they did not include in IFSPs specific outcomes or supports and services for families. They stated their reluctance to do so for fear that this personal nature of this information could embarrass the family. Through service coordination, Texas is already ensuring that families receive extensive supports and services to enhance their children's development, but these supports and services do not appear on the IFSP. Service coordinators' notes identified many activities and services to assist families in enhancing the development of their child; however, these services were not recorded on the IFSP. Local programs and the State monitor service coordinator and service provider notes to ensure they include the identification of family needs and provision of services and supports. Lead agency staff acknowledged that efforts to include family outcomes on the IFSP were inadequate.

Since Federal regulations require that IFSPs include outcomes to meet the needs of the child and family, as well as supports and services to address those outcomes, OSEP suggests that ECI convene a task force, including parents, to identify procedures and family-friendly language that could be used in the IFSPs. Because Texas already has in place strong supports for families, the objective of the task force would be to provide guidance around family-friendly IFSP language.

In addition to the exclusion of family outcomes, services and supports on the IFSP, OSEP also found that medical and "other services" required by Federal regulations were not included on the IFSP. Ninety-eight percent of the IFSPs did not include medical services and 87 percent did not include other services, such as parent support groups, respite care, family counseling, and parent-to-parent linkages, that the child or family needed. Service coordinators, service providers, and administrators from across the State told OSEP that non-required services, including medical services, were not included on children's IFSPs. Parents stated that they receive services (such as orthopedic and cardiology services) from many specialists, but that these services are not included in the IFSP. Lead agency staff stated that there is a policy that medical services be included in IFSPs, but that this has not been a focus of State training.

ECI must ensure that IFSPs include: needed outcomes for the child *and family*; the specific early intervention services and supports necessary to meet the unique needs of the child and the family to achieve the outcomes; and medical and other services to meet all the needs of the family.

III. PART C: FAMILY-CENTERED SYSTEM OF SERVICES

Research has shown that improved outcomes for young children are most likely to occur when services are based on the premise that parents or primary caregivers are the most important factors influencing a child's development. Family-centered practices are those in which families are involved in all aspects of decision-making, families' culture and values are respected, and families are provided with accurate and sufficient information to be able to make informed decisions. A family-centered approach keeps the focus on the developmental needs of the child, while including family concerns and needs in the decision-making process. Family-centered practices include establishing trust and rapport with families, and helping families develop skills to best meet their child's needs.

Parents and other family members are recognized as critical partners in the Part C system. As such, States must include parents as an integral part of decision-making and service provision, from assessments through development of the IFSP, to transition activities before their child turns three. Parents bring a wealth of knowledge about their own child and family's abilities and dreams for their future, as well as an understanding of the community in which they live.

In 1986, Part H (now Part C) of the IDEA was recognized as the first piece of Federal legislation to specifically focus attention on the needs of the family related to enhancing the development of children with disabilities. In enacting Part C, Congress acknowledged the need to support families and enhance their capacity to meet the needs of their infants and toddlers with disabilities. On the cutting edge of education legislation, Part C challenged systems of care to focus on the family as the unit of services, rather than the child. Viewing the child in the context of her/his family and the family in the context of their community, Congress created certain challenges for States as they designed and implemented a family-centered system of services.

Self-Assessment: In the Self-Assessment, the Steering Committee identified, as a central area of strength, ECI's effort to promote a high degree of family involvement resulting in a continued increase in the number of families participating in a wide range of ECI activities. Other identified strengths included integration of the family-centered focus in the development of child find and public awareness activities as well as the integration of family-centeredness and natural environments throughout ECI policy and procedures.

On the Self-Assessment, the Steering Committee cited the need for a more comprehensive data collection system providing greater specificity regarding program implementation and service characteristics as well as a means for program evaluation. Finally, the Steering Committee indicated a need to bolster networking and interagency relationships to facilitate family access to ancillary services and to improve the transition of children into services.

Data Collection: Based on a review of the State's monitoring reports, public meeting input, and other information, OSEP determined that additional data should be collected during the Data Collection week in the following areas: identification of the needs of the family; provision of services to meet the identified needs of the family; and inclusion of family supports and services on the IFSP.

To investigate these issues, OSEP collected data from parents, service providers, service coordinators, agency administrators and lead agency staff throughout Texas. OSEP reviewed and analyzed the data and identified the following strength and suggested area for improved results for infants, toddlers, and their families.

A. STRENGTH

Flexible Schedules

Parents, service providers and administrators across the State identified many instances of provider flexibility in evaluation and provision of services. Parents, particularly, spoke with gratitude about the flexibility of service providers, especially when their own schedules allowed for little flexibility. Parents in military service expressed appreciation for this flexibility because of the lack of flexibility in their work schedules. In all areas of the State, service coordinators, service providers and administrators stated that in order to accommodate families' schedules, visits and contacts are made to children and families during evening hours, early in the morning or on Saturdays to ensure children receive appropriate services. ECI requires each of its 63 program contractors to ensure that family schedules, not program schedules, determine how and when IFSP services are delivered. ECI State staff told OSEP that flexible scheduling is an essential part of integrating intervention into the family's daily routine. Staff in every program spoke of the importance of flexibility in scheduling in providing family-centered services.

IV. PART C: GENERAL SUPERVISION AND ADMINISTRATION

The State lead agency is responsible for developing and maintaining a Statewide, comprehensive, coordinated, multidisciplinary, interagency early intervention system. Administration, supervision and monitoring of the early intervention system are essential to ensure that each eligible child and family receives the services needed to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay. Early intervention services are provided by a wide variety of public and private entities. Through supervision and monitoring, the State ensures that all agencies and individuals providing early intervention services meet the requirements of IDEA, whether or not they receive Part C funds.

While each State must meet its general supervisory and administrative responsibilities, the State may determine how that will be accomplished. Mechanisms such as interagency agreements and/or contracts with other State-level or private agencies can serve as vehicles for the lead agency's implementation of its monitoring responsibilities. The State's role in supervision and monitoring includes: (1) identifying areas in which implementation does not comply with Federal requirements; (2) providing assistance in correcting identified problems; and (3) as needed, using enforcement mechanisms to ensure correction of identified problems.

Self-Assessment: In the Self-Assessment, the General Supervision cluster-group identified several strengths and opportunities for improvement. Strengths noted by the Steering Committee included the following: the effectiveness of ECI's monitoring and technical assistance systems; the responsiveness of ECI's complaint and formal hearing process; the representation of parent members on the ECI Board and Advisory Committee; and the increased use of data in analyzing program performance. Several of these strengths were also supported by relevant data sources. The General Supervision cluster group cited ECI's increased use of data as a strength. However they suggested that ECI develop systems to compile and analyze existing data to identify overall trends and potential systemic issues in agency functioning. In addition, the cluster group indicated opportunities for improvement in the area of family rights and a need for ECI to implement a variety of methods to gather parents' input.

Data Collection: Based on the information obtained through the review of the Self-Assessment, the public meeting report, monitoring reports, local applications, and local and State procedures, OSEP identified coordination of the Child Find system and general oversight of the early intervention program as a concern. To investigate this issue, OSEP collected data from parents, service providers, service coordinators, agency administrators, the Interagency Coordinating Council on Early Childhood Intervention, and State agency staff. These data are related to the Lead Agency's responsibility for supervision and administration of the early intervention program. Analysis of the data collected resulted in identification of the following areas of strength.

STRENGTHS

1. Director Leadership Training

Texas has recognized the importance of leadership as an indicator of successful implementation of early intervention at the local level. Texas' 63 local ECI program administrators responsible for early intervention are required to attend a leadership-training program and to participate in a mentorship program. State personnel and veteran program directors conduct the training. The weeklong program includes training on the philosophy of early intervention, requirements for each program (i.e., evaluation and assessment, IFSP development and services, personnel qualifications, timelines, etc.), and administrative issues (i.e., managing State contracts, billing processes, securing funding from multiple sources, tracking maintenance of effort, ensuring non-supplanting, and managing cost reimbursement billing).

Mentors, chosen from senior directors with at least five years of experience, are paired with less experienced directors to provide coaching and technical assistance. Mentors assist the new director through all of the implementation phases of the program including application for funds, monitoring their programs and reporting to the State, as well as the day-to-day operations. State and local administrators told OSEP that the leadership training and mentoring program has strengthened the Statewide system both in communicating the values and philosophy of IDEA and in teaching new directors skills essential to managing a local ECI program.

2. Multiple Funding Sources for Delivery of Early Intervention Services

ECI State staff told OSEP that ECI has been highly successful in identifying and incorporating funding streams from a variety of sources other than Part C to pay for early intervention services. Less than one third of its funding for early intervention services is comprised of Federal Part C dollars. State general funds (over 35 %) and local funding sources (7%) account for a significant portion of the support for early intervention. Other funding sources supporting the provision of early intervention services in the State include Temporary Assistance to Needy Families, Medicaid (including Targeted Case Management and Early Periodic Screening, Diagnosis, and Treatment), Developmental Rehabilitation Services, Title V, IDEA Part B discretionary grant funds, and School Foundation Funds. Just recently, ECI was successful in securing reimbursement for developmental services through Medicaid.

ECI's accounting system identifies maintenance of effort and funding streams at the local level. ECI maintains complete and audited records of the funds used at the city, county, state, and federal level for services to all children with an IFSP since 1986. The fiscal data along with growth data has enabled ECI to establish cost projections and work through the Texas legislature to secure additional state general revenue and access other funding streams to support services as the system grows.

ECI's database (TKIDS) captures extensive information on each child enrolled in Part C services. For funding purposes, this database can track a child's eligibility for alternative payment sources for services. As the TKIDS system matures, the data will provide needed

information to local program directors and State monitors to enhance implementation of State review and oversight processes already in place.

3. General Supervision and Administration

a. Monitoring System

OSEP reviewed the State's monitoring documents and procedures before and during the onsite monitoring visit. Prior to the visit, OSEP reviewed State monitoring reports for the programs OSEP later visited. In each site visited, OSEP gathered information to determine if the non-compliance issues identified by the State had been corrected. OSEP reviewed the State's monitoring materials, documents, and results of the most recent monitoring activity of local programs. OSEP determined that the findings of noncompliance identified by ECI had been corrected in each site visited by OSEP. In addition, OSEP did not identify any non-compliance that had not been identified by ECI except failure to include all information required on the IFSP (see earlier section of the Report). OSEP determined that ECI thoroughly evaluates the program's implementation activities to ensure compliance. In addition, ECI recently instituted a plan to identify program outcomes based on monitoring as a crucial part of determining service effectiveness. ECI uses a risk assessment that identifies critical features of program administrative and fiscal operations. The assessment determines the level of risk for each local program in providing appropriate services. The State's monitoring report identifies possible causal factors for noncompliance. The State then works with the local program on remedies and improvement strategies. Monitoring is designed to address risk factors related to non-compliance and to construct a communication system to provide local programs the information they need to manage their implementation procedures on a daily basis.

b. Complaint and Due Process Hearing Systems

During the monitoring visit, OSEP reviewed ECI's complaints and due process hearing files to determine if these systems were administered in a manner consistent with Federal regulations. In addition to OSEP's determination that ECI had, in the past year, conducted six complaint investigations and four due process hearings in an effective, timely manner, OSEP learned of an exemplary feature of the complaint management system. After an on-site complaint investigation, if ECI believes that an issue addressed in the complaint has the potential to adversely affect other children and families, it conducts an investigation of all similarly-situated children. This strategy ensures that the non-compliant practice is not pervasive throughout the district or, if appropriate, the State.

4. Effective State Interagency Coordinating Council

The State Interagency Coordinating Council works to ensure collaboration of agencies involved in the provision of services to infants and toddlers. ECI State staff and Council members provided examples of collaboration among agencies. Examples included collaborative activities involving the following: identification of funds from other agencies to provide support for the early intervention system; child find activities and ensuring referrals; memoranda of agreement for transition; and use of funds. In addition, the Council, the ECI program and the ECI Board,

which governs the ECI program, have a strong and committed partnership that is evident in the quality of implementation of early intervention in Texas.

The State Council committees are active in identifying and overcoming barriers to identification of eligible children. For example, the ICC committee for Child Find has identified several issues associated with referral by primary referral sources. Recognizing that no single activity will be effective with every potential referral source (for example, medical and child care personnel), the ICC has developed a dynamic plan for informing primary referral sources using a variety of print, video and audio materials, presentations, personal visits, and conferences. The plan is continually updated and includes multiple activities to inform referral sources of the importance and advantages of referral to the early intervention system. The ICC has Family Centered and Transition subcommittees that are also very active in addressing the program's current priorities in its improvement plan.

V. PARTS C/B: EARLY CHILDHOOD TRANSITION

Congress included provisions to assure that preschool or other appropriate services would be provided to eligible children leaving early intervention at age three. Transition is a multifaceted process to prepare the child and the child's family to leave early intervention services. Congress recognized the importance of coordination and cooperation between the educational agency and the early intervention system by requiring that a specific set of activities occur as part of a transition plan. Transition activities typically include: (1) identification of steps to be taken to prepare the child for changes in service delivery and to help the child adjust to a new setting; (2) preparation of the family (i.e., discussions, training, visitations); and (3) determination of other programs and services for which a child might be eligible. Transition planning for children who may be eligible for Part B preschool services must include scheduling a meeting, with approval of the family, among the lead agency, the educational agency and the family, at least 90 days (with parental permission up to six months) prior to the child's third birthday. Transition of children who are not eligible for special education also includes convening a meeting to assist families in obtaining other appropriate community-based services. For all Part C children, States must review the child's program options for the period from the child's third birthday through the remainder of the school year and must establish a transition plan.

Self-Assessment: In the Self-Assessment, the ECI Steering Committee Cluster Group for Transition identified ECI's transition policy and monitoring of transition processes at the program level as central strengths in the area of Early Childhood Transition. The group also cited as strengths the availability of training on the topic of transition and the variety of formats used to provide transition information to parents. The majority of the opportunities for improvement suggested by the cluster group involved the need to build a more comprehensive and cohesive Statewide transition system. The cluster group also cited the need to have a joint evaluation by ECI and TEA of the early childhood transition process between the two programs.

Data Collection: From the State's Self-Assessment, public input meetings, and other information, OSEP determined that additional data should be collected in the following areas: transition activities; invitation/participation of school personnel in transition activities; and the inclusion of transition steps on the IFSP to support the child and family. To investigate these issues, OSEP collected data from local programs, parents, service providers, service coordinators, ECI staff, preschool coordinators, special education directors and TEA staff. OSEP reviewed and analyzed the data collected and identified one area of non-compliance with the requirements of Part C (See finding in the Early Intervention Services in Natural Environments section of this report) and no area of non-compliance for Part B.

SUGGESTED AREA FOR IMPROVED RESULTS FOR CHILDREN WITH DISABILITIES

Documenting Transition Processes

ECI and TEA should continue to focus their monitoring activities on early childhood transition to ensure that young children receive Part B services by their third birthday as required by 34 CFR §300.121(c). Monitoring procedures for both TEA and ECI should contain strategies to ensure

that agencies clearly document activities to demonstrate compliance with IDEA requirements. Specifically, ECI records should document inviting the local education agency to the transition conference, the date of the transition conference, the discussion during the conference (i.e., services the child may receive, program options from the child's third birthday through the rest of the school year, etc.), and the contents of the transition plan. The local school system's records should document the participation of staff in the transition conference, the steps to determine the child's Part B eligibility, and the minutes of the child's IEP meeting.

VI. PART B: PARENT INVOLVEMENT

A purpose of the IDEA Amendments of 1997 is to expand and promote opportunities for parents and school personnel to work in new partnerships at the State and local levels. Parents must now have an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of their child, and the provision of a free appropriate public education to their child. Parental involvement has long been recognized as an important indicator of a school's success and parent involvement has positive effects on children's attitudes and social behavior. Partnerships positively impact achievement, improve parents' attitudes toward the school, and benefit school personnel as well.

Previous Monitoring: OSEP's 1997 Texas monitoring report identified TEA's toll-free hotline as a strength in answering parents' questions about special education and providing them with additional information about filing complaints or requesting due process hearings. In addition, that 1997 report determined that TEA's complaint resolution mechanism did not meet the requirements of IDEA (See IX: General Supervision in this report) and that parents were not informed when secondary transition would be a consideration at an IEP meeting (See VIII: Secondary Transition in this report for issues related to parent participation at individualized transition plan meetings).

Self-Assessment: The Texas Self-Assessment reported that: (1) some Educational Service Centers and/or local education agencies provide high quality training and meet the multi-cultural and other special needs of their areas of responsibility; (2) recent parent surveys indicate satisfaction with services received by their children, except for secondary transition, and performance goals and indicators indicate improved results for children with disabilities; and (3) there is increased parent involvement at the State level.

Identified areas of improvement included a need: (1) to conduct parent surveys, create indicators to measure parent involvement and identify training needs, and identify mechanisms to increase parent involvement; (2) to improve provision of transition services; (3) to consider languages other than English or Spanish, and accommodations when utilizing parent surveys; (4) to use monitoring, complaint and round table information to identify services needed; (5) to disseminate survey results to parents; (6) to include information regarding opportunities for parent involvement in the parent's rights document; (7) to include in the parent survey parent participation in program improvement; and (8) to obtain feedback from parents who participated in State-level activities.

Public Input Process: One of the focus questions asked during the public meetings was: "How are parents involved in the education of their children with disabilities?" Responses from parents indicated that: (1) there is effective planning for students and parent confidence in the process is enhanced when information is provided to parents and when there is collaboration among all parties; (2) effective planning occurs when parents are involved in pre-admission, review, and dismissal committee meetings; (3) students receive needed services when the parents are involved in the education process; (4) TEA is helpful and supportive of parents; and (5) TEA's task force for parent involvement is a positive initiative.

Reported areas needing improvement included: (1) parents need to be better informed about their rights and services for their children; (2) special education is complex and difficult for parents to access and understand; (3) local education agencies and schools need to be more consistent in their efforts to involve and inform parents so that they are routinely included in decision-making; (4) there is a need for more collaboration between parents and schools; (5) admission, review, and dismissal committee meetings are often adversarial; and (6) there is a lack of flexibility in scheduling admission, review, and dismissal committee meetings.

Data Collection: In response to the concerns identified in both the Self-Assessment and the public input process, TEA included the following activities in its draft Improvement Plan: (1) collect data on parent participation in Educational Service Centers trainings and other activities; (2) develop a State-wide plan for parent training; (3) involve parents and stakeholders in implementing the training; (4) monitor training to determine effectiveness and parental involvement; (5) create a user-friendly parent survey to obtain feedback on involvement and participation; (6) obtain data from monitoring, complaints and parent round tables (a component of TEA's monitoring process) regarding the effectiveness of services received; (7) obtain feedback from parents who participate in State-level activities; and (8) include in the parent rights document a description of opportunities for parent involvement at the local, regional and State levels.

After reviewing TEA's planned activities in response to the concerns expressed in the Self-Assessment and the public input process, OSEP determined that no additional data were needed in this area. Some parent concerns have been addressed, as indicated above, in the General Supervision and Secondary Transition sections of this report.

VII. PART B: FREE APPROPRIATE PUBLIC EDUCATION IN THE LEAST RESTRICTIVE ENVIRONMENT

The provision of a free appropriate public education in the least restrictive environment is the foundation of IDEA. The provisions of the statute and regulations (evaluation, IEP, parent and student involvement, transition, participation in large-scale assessment, eligibility and placement decisions, service provision, etc.) exist to achieve this single purpose. It means that children with disabilities receive educational services at no cost to their parents, and that the services provided meet their unique learning needs. These services are provided, to the maximum extent appropriate, with children who do not have disabilities and, unless their IEP requires some other arrangement, in the school they would attend if they did not have a disability. Any 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.

The IDEA '97 Committee Reports of the Senate Committee on Labor and Human Resources and the House of Representatives Committee on Education and the Workforce emphasized that too many students with disabilities are failing courses and dropping out of school. Those Reports noted that almost twice as many children with disabilities drop out as compared to children without disabilities. They expressed a further concern about the continued inappropriate placement of children from minority backgrounds and children with limited English proficiency in special education. The Committees reported their intention that "once a child has been identified as being eligible for special education, the connection between special education and related services and the child's opportunity to experience and benefit from the general education curriculum should be strengthened. The majority of children identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some adaptations and modifications. This provision is intended to ensure that children's special education and related services are in addition to and are affected by the general education curriculum, not separate from it."

Previous Monitoring: In its 1997 Texas monitoring report, OSEP reported that TEA did not ensure, in all cases, that public agencies implemented policies and procedures that complied with the least restrictive environment requirements. In some of the districts visited, OSEP found that: (1) students with disabilities were not being educated to the maximum extent appropriate with non-disabled students; (2) students were removed from the regular education environment without a determination that their education could not be achieved satisfactorily in regular classes; (3) a continuum of placement options was not available; (4) placements were not based on the IEP; and (5) individual determinations were not made regarding the extent to which it was appropriate for students with disabilities to participate with non-disabled students.

Self-Assessment: The Texas Self-Assessment addressed the extent to which students with disabilities receive a free appropriate public education in the least restrictive environment. The strengths identified included: (1) the use of qualified personnel in conducting evaluations and interpreting results; (2) the State's system for providing technical assistance, training, and support; (3) the increase in the topics and range of training offerings; (4) the State's plan to include students with disabilities in the State-wide accountability system; (5) a State-wide

initiative to provide training on positive behavior interventions, including, to date, the development of pilot training courses; (6) State performance goals and indicators are the same for children with and without disabilities; and (7) State-wide performance results for children with disabilities on State-wide assessments have improved at a rate which is at least as great as that of children without disabilities.

The Self-Assessment also identified a number of activities to address areas needing improvement, including: (1) increasing the numbers of appropriately trained administrators, teachers, paraprofessionals, and related service personnel providing services to children with disabilities; (2) developing a system for measuring/evaluating the transition from Part C to Part B; (3) training assessment and enhancement for parents and support personnel; (4) developing a data collection system to comprehensively assess if appropriate special education and related services are being provided to children with disabilities served by the public agency; (5) disaggregating graduation data; (6) improving available training to achieve the intended level in which direct behavior interventions occur where needed; (7) identifying relevant indicators to assess services and their outcomes in order to evaluate whether children with disabilities receive the appropriate positive behavioral supports needed when behavior impedes learning; (8) increasing the number of children with disabilities taking the State-wide assessment; (9) improving the data collection and reporting mechanisms for State-wide assessment; (10) assessing the difference between the percentage/number of students with disabilities who graduate meeting the same requirements as nondisabled peers and the percentage/number of students with disabilities who graduate meeting alternative requirements; (11) developing additional mechanisms and measures to determine the extent to which students with disabilities are adequately educated and actively participating in services with nondisabled peers; (12) developing mechanisms to determine the effectiveness of training regarding least restrictive environment; and (13) developing training for admission, review and dismissal committees, parents and other organizations to increase the participation of students with disabilities in education and activities with nondisabled peers.

Public Input Process: The focus questions for the public meetings included: “Are students with disabilities receiving the special education and related services they need?”; “To what extent do students with disabilities participate with nondisabled students?”; and “Do all students, regardless of placement, have access to the general curriculum?”. Responses included the following strengths: (1) many regions are providing services to meet student needs; (2) many regions implement best practices and innovative programs to improve education and outcomes for students with disabilities; (3) in some areas, extended school year services are effective and provided in the regular environment; (4) inclusion is effectively achieved in many regions, and opportunities for participation are appropriate; and (5) innovative and effective models for teaching and best practices for inclusion are implemented in many regions.

Responses also identified the a number of issues that must be addressed in order to improve services for children with disabilities, including: (1) shortages of qualified teachers and other personnel; (2) inconsistency regarding availability, quality and effectiveness of services; (3) services offered based on availability of resources rather than individual child needs; (4) the availability of services and support for special education is driven by, and too dependent on, leadership at the administrative level; (5) IEPs do not adequately address the unique needs of

children with disabilities; (6) IEPs are not always implemented; (7) intensity and availability of services varies based on degree of disability (with more limited options for students with severe disabilities); (8) extended school year services are not always provided when needed or do not effectively meet the individual needs of children with disabilities; (9) inconsistencies exist across districts, schools and classrooms regarding opportunities for participation in the general curriculum and extracurricular activities; (10) limited availability of integrated preschool programs; (11) inclusion of children with disabilities often occurs for only basic activities such as art, music and physical education; (12) assistive technology needs are not always met and technology is sometimes used inappropriately; (13) unique, individual children's needs are not always considered or met in their placements in special and general education classrooms; (14) participation of children with disabilities in the general curriculum and extracurricular activities does not always lead to meaningful interaction and inclusion; and (15) there is limited participation of children ages three through five through Preschool Programs for Children with Disabilities (PPCD).

Data Collection: After reviewing the State's Self-Assessment, public input, previous monitoring data and other information, OSEP determined that additional data were needed in the following areas: (1) obtaining written parental consent for evaluation and reevaluation; (2) providing all needed special education and related services; (3) providing extended school year services; (4) accessing the general curriculum; (5) providing needed assistive technology devices and services; (6) using positive behavioral interventions, supports and strategies for children with disabilities whose behavior impedes learning; (7) providing functional behavior assessments and behavior intervention plans, when required; (8) providing and reporting of alternate assessment procedures when children with disabilities cannot participate in State-wide assessment procedures; (9) making placement options available for children transitioning from Part C; and (10) identifying and implementing modifications and accommodations that are utilized to facilitate participation of children with disabilities in the least restrictive environment.

To investigate the identified concerns, OSEP collected information from the review of children's records and State and local policies and procedures, and interviews of State personnel, local program administrators, teachers, related service providers, students and parents. OSEP reviewed and analyzed the data and identified the following strength, areas of noncompliance and suggestions for improved results for children and youth with disabilities.

A. STRENGTH

Student Success Initiative

Enacted by the 76th Texas Legislature (1999), the Student Success Initiative (SSI) mandates new passing requirements to be phased in as follows: beginning in school year 2002-2003 for the reading test at Grade 3; beginning in school year 2004-2005 for the reading and mathematics tests at Grade 5; and beginning in school year 2007-2008 for the reading and mathematics tests at Grade 8. As specified by these requirements, a student may advance to the next grade level only by passing these tests or by unanimous decision of his or her grade placement committee that the student is likely to perform at grade level after accelerated instruction.

The goal of the SSI is to support on grade level academic achievement for every student. This depends greatly on schools, parents and community members working in partnership to meet individual student needs. In collaboration with education service centers, the agency plans to develop and distribute suggested materials to help schools focus on what is most important in this initiative: working for every student's academic success.

The activities of the Student Success Initiative include: ongoing training, development of products and research/evaluation findings. These activities have been integrated into the general curriculum to provide opportunities for the participation of children with disabilities. Additionally, through the Reading Initiative for Special Education (RISE) and the agency partnership with the Texas Center for Reading and Language Arts (TCRLA), the following additional projects/products have been developed:

- Adaptations made for struggling readers added to the existing Training and Professional Development Modules developed by TCRLA
- The Red Book Series/*Beginning Reading Instruction: Components/Features of a Research Based Reading Program* (Eight Essential Elements for Adapting Instruction to Facilitate Beginning Reading Success for Children with Special Needs)
- Effective Instruction for Struggling Readers: Research-Based Practices
- Coordinating for Reading Instruction: General and Special Education Working Together
- Essential Reading Strategies for the Struggling Reader: Activities for an Accelerated Reading Program - Expanded Edition
- Higher Education Collaborative – Provides all project materials to general and special education teaching faculties at participating institutions of higher education (IHEs); provides training in the use of these materials; and provides ongoing support and evaluation in the use of the materials in classrooms in the institutions of higher education.

B. AREAS OF NONCOMPLIANCE

1. IEPs do not reflect the amount of service needed

The IDEA regulations at 34 CFR §300.347(a)(3) require that the IEP for each child with a disability include a statement of the special education and related services and supplementary aids and services to be provided to the child and 34 CFR §300.347(a)(6) requires that the IEP include the frequency of services and modifications included in the IEP. 34 CFR §300.300(a)(3) requires that a State ensure that the services provided to the child include the services needed to address all of the child's special education and related services needs.

As discussed below, OSEP found that the IEPs of children with disabilities do not reflect the amounts of services that the IEP team has determined that the child needed nor do they reflect the amount and frequency of services provided to the child.

In five of seven districts, related services providers reported, and special education directors confirmed, that IEPs reflect "minimum" amounts of services to be provided to children with disabilities, regardless of individual students' needs. In these six districts, children were provided with greater amounts of service than reflected on their IEPs and service providers

indicated that the additional service actually reflected the amount needed by the children as determined by their IEP team. They also reported, however, that sometimes children are provided only the "minimums" that are identified in their IEPs, regardless of individual students' needs.

For example, in one district, a physical therapist reported that while the amount of service specified in the IEPs is typically less than children need, based on determinations of the admission, review, and dismissal committee s, most children are provided the services the committee determines they need. However, when increased demands are placed on service providers (such as completion of assessments or additional caseload hours), some children may not be provided the needed services that had been provided to that child up to that time. Rather, they are provided the "minimum" amount of service reflected on the IEP. A group of related service providers told OSEP that when a child with a disability transfers to another school district that the actual amount of service provided is transmitted to the receiving district, along with the child's IEP and other records, so that the receiving district will be informed of the actual amount of service the child needs, not just the "minimum" amount indicated on the child's IEP. It is necessary to include the actual amount of service needed by a child on the IEP to ensure that all who work with the child are aware of the child's needs and that the child receives all needed services.

A building administrator in a second district reported that children who need counseling services are typically provided with more than 60 minutes per week; however, 60 minutes per week is all that is specified on the IEPs. Another building administrator in this second district reported that children typically are provided the amount of services determined necessary by the admission, review, and dismissal committee; however, the amount of service needed by the child and provided by the district is not the amount of service specified on IEPs.

In a third district, a building administrator reported that the IEP identifies a "minimum" amount of service that a child will be provided, regardless of the child's actual needs as determined by the admission, review, and dismissal committee. A coordinator in this district reported that because there is a shortage of speech pathologists in the district, they use "minimums" because they do not want to commit to providing more service than they may be able to provide, given caseloads, assessment responsibilities and the addition of newly-identified students to caseloads. Another coordinator confirmed the use of "minimums" and stated that if they recorded the actual amount of service that the child needs and later failed to provide it, litigation could result. Four related service providers and two special education directors in a second district reported that "minimums" are reflected on the IEP and if a child moves to another district, there is no indication from the IEP of how much service the student actually needs and receives.

In a fourth district, two building administrators, three related services providers, seven general education teachers, and five special educators reported, and the special education director confirmed, that IEPs reflect the "minimum" amounts of services to be provided to children with disabilities. These services do not reflect the actual services needed by the child (as determined by the admission, review, and dismissal committee) or the services actually provided to the child.

In a fifth district, a building administrator reported that many children's IEPs specify identical amounts of services because those IEPs reflect "minimum" amounts of service. The services actually provided, based on what the child actually needs as determined by the admission, review, and dismissal committee, exceed the amount specified on the IEP.

Other reasons for IEPs not reflecting the amount of service needed by a child, as determined by the admissions, review and dismissal committee, varied across districts but illustrate the problem: (1) in one district, a related service provider reported, and a building administrator confirmed, that they provide counseling services for a "minimum" of 60 minutes a month, 20 minutes three times a month, regardless of the individual needs of the child, to accommodate the need for the counselor to attend admission, review, and dismissal committee meetings; (2) a related service provider in a second district reported that there is insufficient time in her schedule to provide individualized speech and language services, so the service is provided in a small group. The related service provider added that there is some individual speech service provided, depending on time available, rather than on the needs of the children; and (3) two related service providers in this second district indicated that the "minimum" services at the high school level are always reflected as a consultative model rather than a direct service model, regardless of the individual needs of the child.

In a third district, a related service provider reported that because of large assessment caseloads, only children with the most severe disabilities are referred for counseling since most of the provider's time is spent in testing. The provider reported that parents are first given the names of three counselors in the community. If the provider (rather than the admission, review, and dismissal committee) determines that the child needs counseling during the school day, the provider first checks with the related service director. A screening might be conducted, but not if the parents are unreceptive to the counseling. This provider reported that counseling is always provided in a group setting and never on an individual basis because there is not time to do individualized counseling. Two coordinators and a building administrator at the high school reported that when a child needs counseling, as determined by the admission, review, and dismissal committee, they recommend to the family counseling by an outside agency. Otherwise, families are provided with list of agencies to contact, when counseling is identified through evaluation as a child need. In these instances, counseling is not specified on the child's IEP. A special educator reported that school counselors provide direct counseling services only in severe cases or crisis situations.

In a fourth district, the IEP may indicate that a related service (including counseling) will be provided "4x30" which means four sessions of 30 minutes each. It cannot be determined from the IEP whether these sessions are once per quarter, four times in a month, every week for four weeks, etc. In a fifth district, psychological counseling, when needed, is reflected automatically as "6x30" or "6x60" (depending on the school). Interviews clarified that these sessions are provided weekly for six weeks for 30 or 60 minutes per session. If the child requires more service, an admission, review, and dismissal committee meeting must be convened to request more service – which is again reflected as "6x30" or "6x60." One related service provider reported, and the building administrator confirmed, that the person providing the counseling determines whether the child needs additional sessions, rather than the admission, review, and dismissal committee. One Juvenile Justice Alternative Education Placement general teacher

reported that a counselor is available once a week for three hours and if the children choose to speak with him, they can. This teacher did not know if the services actually related to an IEP or not, although he has five special education students in his classroom and indicated familiarity with their IEPs.

OSEP found that the IEPs of children with disabilities do not reflect the amounts of services that the IEP team has determined that the child needed nor do they reflect the amount and frequency of services provided to the child. TEA must ensure that children with disabilities receive the amounts of services that the IEP team has determined that the child needs.

2. IEPs do not reflect alternate assessments

The IDEA regulations at 34 CFR §300.347(a)(5)(ii) require that if the IEP team determines that a child will not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), the IEP will include why that assessment is not appropriate for the child; and how the child will be assessed.

OSEP reviewed 142 IEPs and noted that it was not necessary to specify the method of alternate assessment in 52 cases, as those children participated in one of the State-developed regular assessments (for a description of Texas' assessment system, see pp. 25-26 of this Report). In the remaining 90 cases, the method of alternate assessment was identified in only 48 (53%) instances.

OSEP found that the IEPs of children with disabilities do not always reflect how the child will be assessed when they do not participate in a particular State or district-wide assessment of student achievement (or part of an assessment), as determined by the admission, review, and dismissal committee. TEA must ensure that an IEP of a child with a disability specify an alternative assessment (or part of an assessment), if the student will not participate in a particular State or district-wide assessment, and indicate why that assessment is not appropriate for the student.

3. Extended School Year services may be categorical and may not include transportation, when necessary

Each public agency shall ensure that extended school year services are available as necessary to provide a free appropriate public education. Extended school years services must be provided only if a child's IEP team determines, on an individual basis, that the services are necessary. In implementing this requirement, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services. (34 CFR §300.309). In addition, a public agency must provide, as a related service, transportation to and from school, to children with disabilities who need this related service to benefit from special education. (34 CFR §§300.24(a) and (b)(15).

As discussed below, OSEP found that the decisions to provide extended school year services may be based on the child's category of disability rather than the individual needs of each child. In addition, OSEP found that transportation, as a related service is not always provided to children with disabilities participating in extended school year programs.

In one district, a special educator, three related service providers and two administrators reported that children with autism are provided a longer extended school year program than children with other disabilities. Children with disabilities other than autism do not have this longer extended school year program available to them, regardless of their individual needs.

In a second district, elementary special educators, elementary related service providers and both elementary and high school building administrators reported that half-day extended school year services are offered for one month except for children with autism who receive six weeks of service. The special education directors confirmed that extended school year services are provided for half days during the month of June, except for children who have autism who are provided six hours of service per day for six weeks. Elementary school staff reported to OSEP that the same types of services provided during the regular school year are also provided during the extended school year. However, the special education director informed OSEP that the amount of service provided during the extended school year is half that provided during the regular year, but that IEPs are not revised to reflect the decrease in the amount of service.

In a third district, the special education director and special education supervisors reported that during the summer of 2002, extended school year services would be offered for four weeks, beginning as soon as the regular school year ends, for the same number of hours every day, regardless of the individual needs of the child. High school related service providers indicated that some low-functioning or medically fragile students will only receive a half-day of extended school year service, regardless of their individual needs.

In addition, children with disabilities in this third district who need transportation as related service to access the extended school year program are not provided with this service. A contracted counselor reported that parents must bring their children to the counselor's office in order to be provided counseling services during the extended school year session. The counselor, three other related service providers, and a supervisor stated that parents were not reimbursed for the cost of providing transportation to their children.

In a fourth district, five elementary related service providers indicated that extended school year services are a set amount for all children participating in the service, regardless of the individual needs of those children. The alternative school representative for this district reported that there are no extended school year services available for children placed in the alternative setting. Three high schools related service providers reported that children who need only speech, occupational or physical therapies during the extended school year are not provided transportation by the district and must instead be transported by their parents. These related service providers told OSEP that some parents have declined extended school years services due to the unavailability of transportation.

In a fifth district, eight related services providers, two special educators, two building administrators reported, and the special education director concurred, that extended school year services are available for only four weeks for half-day sessions, regardless of individual needs of the child. One related services provider indicated that while extended school year services could, in special circumstances, be provided for longer than four weeks, she was unable to recall when

this had last happened. The special education director indicated that students with autism could receive extended school year services throughout the summer although this is a district decision, based on building availability, rather than on the individual needs of children to be provided with extended school year services throughout the summer.

OSEP found that the decisions to provide extended school year services may be based on the child's category of disability rather than the individual needs of each child. In addition, OSEP found that transportation, as a related service, is not always provided to children with disabilities participating in extended school year programs. The TEA must ensure that extended school year services must be based on the individual needs of each child and that needed transportation as a related service, is provided to the child participating in the extended school year program.

4. Participation and Performance on Alternate Assessments is not reported, as required

The State must have on file with the Secretary information to demonstrate that the State has established performance indicators that the State will use to assess progress toward achieving those goals that, at a "minimum", address the performance of children with disabilities on assessment, drop-out rates, and graduation rates. (34 CFR §300.137(b)). The State must have on file with the Secretary information to demonstrate that: (a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary; (b) As appropriate, the State or LEA (1) Develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; (2) Develops alternate assessments in accordance with this section; and (3) Beginning not later than July 1, 2000, conducts the alternate assessments described in this section. (34 CFR §300.138). In implementing the requirements addressing participation in assessments the SEA shall make available to the public and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information: the number of children with disabilities participating in regular assessments and alternate assessments. Reports to the public must include: aggregated data that include the performance of children with disabilities together with all other children; and disaggregated data on the performance with children with disabilities. (34 CFR §300.139(a)(1) and (b)).

As discussed below, OSEP found that TEA is not reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments. TEA received its Part B of IDEA §611 and §619 FY2002 Grant Award subject to Special Conditions to address its failure to report publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments.[2]

[2] As noted in the cover letter to this Report, Texas' May 31, 2002 Biennial Performance Report showed that the State was not reporting to the Secretary and the public on the participation of children with disabilities on alternate assessments, as required by 34 CFR §300.139. At the time of OSEP's visit to the State in May 2002, the State was not reporting to the Secretary and the public on the participation of children with disabilities on alternate assessments. The information that the State submitted to OSEP on September 30, 2002 showed that Texas has reported to the public on the participation of children with disabilities on alternate assessments. Accordingly, no further correction is required regarding the monitoring finding.

In Texas, districts are using a wide variety of alternate assessments for children with disabilities who do not participate in all, or part of, the Texas Assessment of Academic Skills or the State-Developed Alternate Assessment. Because such a wide variety of alternate assessments are used, TEA has not been able to aggregate the performance data of children with disabilities on these assessments, as required by 34 CFR §300.139. Assessments include: Texas Assessment of Academic Skills-release (which cannot be scored in the same way as the Texas Assessment of Academic Skills is scored); Brigance (which does not yield a level or score, but yields levels of functioning across domains); Commercially-based Assessment for Low-functioning Special Education Students (CLASS), recorded in terms of mastery or non-mastery; After-CLASS (none of the interviewees were able to describe in terms of results or scoring); Functional Academic Curriculum for Exceptional Students (FACES) (scored in terms of mastery or non-mastery); portfolios; end-of-chapter tests; and locally-developed tests. The CLASS has been aligned with the Texas Essential Knowledge and Skills so that teachers could determine whether students were, in fact, mastering those requirements. However, the wide range of assessments, scores, content and formats do not allow schools, districts or the State to identify performance results for children with disabilities who do not participate in the Texas Assessment of Academic Skills or the State-Developed Alternate Assessment. In addition, teachers and administrators in six of seven districts reported that the scores/results are not requested by, or reported to, either the district level or State level. In the seventh district, alternate assessment results are reported on individual children to the district level, but not to the State.

TEA staff reported that a questionnaire, consisting of eight items, was provided to districts to be completed for each child with a disability participating in an assessment other than the Texas Assessment of Academic Skills or the State-Developed Alternate Assessment; however, this information will be received based on individual children and will not be in a form that allows aggregation of the data in order to establish baseline performance levels across the State.

TEA staff reported that the 2001-2002 was the first school year that TEA has requested that local education agencies report alternate assessment scores. It is still waiting for 182 districts to submit the scores on alternate assessment. In addition, it is waiting for about half of the charter schools to submit this information. When students are not participating in the academic curriculum aligned with the Texas Essential Knowledge and Skills, it is difficult to get a score that can be readily interpreted in the same way as the Statewide assessment scores. There is no State structure that regulates a pre-academic curriculum. One TEA staff member reported that it is difficult to get valid results because there is not one instructional treatment or assessment tool being used to obtain common scores on alternate assessments. Another TEA staff member reported that it would be another year before Texas will be able to comply fully with the requirement to report on the participation and performance of children with disabilities on alternate assessments.

TEA reported that in Spring 2003, students in the ninth and tenth grades will have to take Texas Academic Knowledge and Skills instead of the Texas Assessment of Academic Skills. There will not be a State-developed alternate for this assessment until 2005. Students in these two grades will have to take a locally developed alternative for school years 2003-2004 and 2004-2005.

The Texas Education Code, Chapter 1 indicates which Chapters of the code must be followed by the Texas Youth Commission in providing services to students in its facilities. The chapters include 19, 29 and 30. None of these chapters addresses the requirement for students to participate in the Statewide assessment programs. This is inconsistent with the requirement that children with disabilities participate in State and district level assessments. Although the Texas Youth Commission has chosen to assess all students using the Texas Assessment of Academic Skills or the State-Developed Alternate Assessment, it continues to be permissible under State law to exempt youth in Texas Youth Commission facilities from this requirement should any facility choose to do so.

OSEP found that TEA is not reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments and the eligibility documents must be revised to individualize assessment decisions for children served by the Texas Youth Commission (TYC). TEA indicated that it has revised its MOU with the TYC. The MOU may be a vehicle to resolve the issue. TEA received its FY2002 Part B Grant Award subject to Special Conditions to address its failure to report publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments. TEA must ensure that there will be reporting to the public and the Secretary on the participation and performance of children with disabilities on alternate assessments and comply with the Special Conditions of its FY 2002 Part B Grant Award.

5. <u>Required services are not reflected on IEPs at Texas Youth Commission Facilities</u>

The IDEA regulations at 34 CFR §300.2(b) state that the provisions of IDEA apply to all State and local juvenile and adult correctional facilities. The IDEA regulations at 34 CFR §300.347(a)(3) require that the IEP include a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child. In addition, 34 CFR §300.300(a)(3)(i) requires that the services provided to the child address all of the child's identified special education and related services needs.

As discussed below, OSEP found that IEPs at Texas Youth Commission Facilities did not include all services determined by the admission, review, and dismissal committee to be needed by each individual child with a disability related to psychological counseling services.
In four of four reporting facilities, all interviewees reported that counseling is provided for both students with disabilities and nondisabled students as part of a resocialization program. However, psychological counseling is never included in the IEP, even when needed to ensure a free appropriate public education for an individual child. Psychological counseling is not considered as a related service because it is addressed through the resocialization program rather than through the IEP process. Texas Youth Commission central office staff confirmed that while counseling is provided to both students with disabilities and nondisabled students in accordance with their needs, it is not included in the IEPs of students with disabilities, even when needed as a related service. Central office staff agreed that failure to include counseling in the IEP as a related service is a potential problem when students transition from the Texas Youth Commission Facility to another educational setting.

OSEP found that IEPs at Texas Youth Commission facilities did not include all services determined by the admission, review, and dismissal committee to be needed by each individual child with a disability related to psychological counseling services. The TEA must ensure that IEPs for students at Texas Youth Commission facilities must include psychological counseling as a related service, as determined appropriate by the IEP team.

C. SUGGESTED AREAS FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES

Placements in the Least Restrictive Environment

General teachers, special educators, related service providers, administrators and special education directors across all districts visited described a wide variety of modifications and accommodations being provided in general education classrooms, particularly at the elementary school level. These are documented in the IEPs that are shared by the responsible special educator with all teachers responsible for implementation. Administrators reported that they have responsibility to ensure that modifications and accommodations are implemented. Special education teachers and administrators reported to OSEP a number of practices that support the placement of children with disabilities in less restrictive settings. One teacher noted that the use of modifications and accommodations for children with disabilities "allows the student to function in your classroom as a regular student – to become part of the community of the classroom."

IDEA requires that each public agency shall ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; 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. (34 CFR §300.550). Although OSEP found no systemic noncompliance with regard to the least restrictive environment requirements, it did note in several districts, areas for improvement that, if addressed, will further enhance districts' ability to better serve the diverse needs of children with disabilities in regular classrooms.

Several elementary respondents, including an administrator and two related service providers, reported that placement is determined based solely on behavior, the extent of modifications and accommodations that might be necessary if placed in a regular classroom, toileting and physical needs of the child, reading ability, writing ability, student's frustration level, the structure of the regular classroom being considered, and severity of the student's symptoms rather than the individual needs of the child. A general teacher in a high school reported that if a child exhibits behavior problems, that child may be placed in a more restrictive setting. Special education teachers reported that although a number of children with disabilities had been moved to a less restrictive environment, these placements were not individually determined but made on a group basis. This was because special educators discontinued – as a district-wide policy – providing services in science and social studies. Therefore, all children with disabilities receiving services in these two subjects were moved to the regular classroom, regardless of their individual needs.

In one district, teachers and administrators reported that a lack of space and the preferences of children with disabilities for separate classes determine children's placements, rather than the individual needs of the child. A high school special educator reported that some students who could be successfully educated in regular classrooms are instead served in special classes because those students prefer the more segregated setting.

OSEP was told that the willingness of regular education teacher to serve students with disabilities in regular classrooms can be a determining factor in making placement decisions. A special education director reported that the new generation of regular education teachers is much more receptive to including children with disabilities in regular classrooms. However, there are still regular educators who are reluctant to serve children with disabilities in their classrooms; therefore, children with disabilities are less likely to be placed in those teachers' classrooms. A special educator pointed out that most teachers will "give them a try" and that some teachers are more tolerant than others. This special educator also stated that when children are placed in the regular classroom, this district requires that those students abide by the regular discipline rules. Consequently, IEP teams are less likely to place children with behavior needs in those classrooms for fear that they will not be successful in that setting. Three elementary general education teachers concurred with a special education teacher who reported that if it is known that modifications are not being made, the child with a disability is removed from the general education classroom to a more restrictive setting.

In another district, a related service provider reported that some general teachers are unwilling to make the accommodations and modifications necessary to successfully educate children with disabilities in regular classroom settings. Because of this unwillingness, children with disabilities are placed in resource rooms rather than in the general classrooms. A special educator and six related services providers reported that children with disabilities can be placed into the regular classroom after they are able to achieve their IEP goals and objectives in a separate classroom. Conversely, three special educators concurred that a child would be moved from the regular classroom to a more restrictive environment when that child is not meeting IEP goals and objectives. A building administrator told OSEP that some general educators are unwilling to differentiate instruction for children with disabilities and that if the child does not "fit their mold," the teachers believe the child does not belong in their class. A special educator and building administrator in another district reported that some general education teachers are reluctant to use modifications because of concerns for showing preferential treatment to children with disabilities.

TEA should continue to provide ongoing training in the implementation of modifications and accommodations, especially for regular educators. In addition, TEA should identify the specific districts where barriers such as those described above exist and focus efforts and resources, under the provisions of its revised Improvement Plan, to eliminate those barriers.

VIII. PART B: SECONDARY TRANSITION

The National Longitudinal Transition Study reported that the rate of competitive employment for youth with disabilities out of school for three to five years was 57 percent, compared to an employment rate of 69 percent for youth in the general population. The Study identified several factors that were associated with post-school success in obtaining employment and earning higher wages for youth with disabilities. These include completing high school, spending more time in regular education, and taking vocational education in secondary school. The Study also showed that post-school success is associated with youth who had a transition plan in high school that specifies an outcome, such as employment, as a goal. The secondary transition requirements of IDEA focus on the active involvement of students in transition planning, consideration of students' preferences and interests by the IEP team, and the reflection, in the IEP, of a coordinated set of activities within an outcome-oriented process which promotes movement from school to post-school activities. Through parent and student involvement, along with the involvement of all agencies that can provide transition services, student needs can be appropriately identified and services provided that best meet those needs.

Previous Monitoring: In its 1997 Texas monitoring report, OSEP reported three findings in the area of secondary transition. OSEP found that TEA did not ensure: (1) that the IEP for each student, beginning no later than age 16, included a statement of the needed transition services; (2) if a purpose of an IEP meeting was the consideration of transition services for a student, the notice of the meeting provided to parents indicated that purpose; and (3) if a purpose of an IEP meeting is the consideration of transition services, the notice informed the parents that the student would be invited to the meeting.

Self-Assessment: The Steering Committee identified the following areas of strength related to secondary transition: (1) since the 1990 implementation of the memorandum of understanding regarding the coordination of transition services to students with disabilities, the number of signatory Texas agencies responsible for transition has increased dramatically from six to 13; (2) although it is no longer legislatively-mandated, TEA continues to fund the Texas Effectiveness Study which provides information on the post-school outcomes of individuals with disabilities; (3) the percentage of students with disabilities who are participating in post-school activities has increased; and (4) students with disabilities are graduating at the same rate as all Texas students.

The following areas needing improvement were also identified by the Steering Committee: (1) there is no baseline for assessing linkages to transition service providers outside the SEA; (2) local education agencies need to report outside agency involvement in the transition-planning process; (3) data documentation is recommended to be part of a revised memorandum of understanding even though the willingness of agencies to collect such data will be a key challenge; (4) the State should establish legal requirements, incentives, or consequences that will require State agencies to commit resources for transitioning students with disabilities from school to independent living; (5) graduation-rate data should be disaggregated; (6) the higher education coordinating board should be encouraged to supply data regarding students with disabilities; and (7) Texas should evaluate whether the students with the greatest needs (for example, those with low-incidence disabilities) are being provided appropriate transition services.

Public Input Process: With regard to transition requirements, participants at the public input meetings were asked to respond to the following: (1) "Describe the planning process that takes place for students age 14 and older to ensure a successful transition to work, independent living, or additional education services (e.g. college, technical school);" and (2) "Are students receiving the services needed?". Responses included the following areas of strength: (1) in many regions, the transition-planning process is working effectively to prepare students for independent living; (2) in many regions, effective vocational training is provided and partnerships are formed with local higher education institutions so students can learn independent living skills and gain work experience; (3) many districts and schools are successfully informing parents and students about the transition planning process and available opportunities for work experience; and (4) in some regions, agencies are actively involved and contribute to a successful transition process and in many areas, vocational adjustment coordinators assist with the transition planning process.

The responses also identified the following areas needing improvement: (1) there is variation across districts regarding the effectiveness, outcomes and resources available for secondary transition planning: (2) in some regions, adequate secondary transition planning services are not available; (3) the secondary transition planning process does not always adequately prepare students with disabilities for independent living; (4) there is a need for greater focus on independent living skills in students' curricula (as opposed to academic skills); (5) there is a need for more flexibility regarding the age that secondary transition planning begins in order to best meet the needs of individual students; (6) individualized transition plans are often not tailored to meet the unique needs of students; (7) there is a need for the goals of the individualized transition plan to better coordinate with and drive the goals of the IEP; (8) work experiences offered to students are limited and do not focus on the development of higher-level skills; (9) the secondary transition process is not well understood by parents and staff in many areas and there is not enough importance placed upon it as part of students education; and (10) secondary transition services are often based on resources currently available at the district or school rather than the student's needs.

Data Collection. After reviewing the State's Self-Assessment, public input responses, and other information, OSEP determined that additional data were needed in the following areas: (1) whether individualized transition plans/IEPs represent a coordinated set of activities within an outcome-oriented process that results in a successful transition from school to post-secondary activities; (2) how the content of the individualized transition plan identifies the transition services to be considered and how transition services are documented; (3) whether IEP content includes a statement of interagency responsibilities and linkages; (4) whether all required participants attend individualized transition plan/IEP meetings; and (5) how individualized transition plan-identified needs are related to IEP content.

To investigate the identified concerns, OSEP collected information from the review of children's records and State and local policies and procedures, and interviews of State personnel, local program administrators, teachers, related service providers, students and parents. OSEP reviewed and analyzed the data and identified the following areas of noncompliance.

AREAS OF NONCOMPLIANCE

1. Identification of Other Steps to Obtain Outside Agency Participation, Other Agency's Responsibilities or Any Needed Linkages in the IEP

The IDEA regulations at 34 CFR §300.344(b)(3)(ii) require that if an agency invited to send a representative to a meeting does not do so, the public agency takes other steps to obtain participation of the agency in the planning of any needed transition services. In addition, 34 CFR §300.347(b)(2) requires that the IEP for each student beginning at age 16 (or younger, if determined appropriate by the IEP team), include a statement of the interagency responsibilities or any needed linkages.

As discussed below, OSEP determined that public agencies do not take other steps to obtain participation in the individual transition planning for each child with a disability beginning no later than age 16 (or younger, if determined appropriate by the IEP team), if agencies invited to send a representative to transition planning meetings do not do so. The Memorandum of Understanding (MOU) on Transition Planning for Students Receiving Special Education between TEA and other State agencies specifies that the school district shall take other steps to obtain the participation of the agency if a representative does not attend a meeting planning any transition services.

While all reporting districts routinely invite agencies that are expected to pay for, or provide, transition services to students with disabilities, beginning no later than their 16th birthday, most agencies do not attend until the last IEP meeting before the student exits high school. In one district, a special education director reported that agencies do not participate and the school district has no authority to make them participate. The director also reported that Texas Rehabilitation Commission will not get involved until the student is about to turn 21. A high school special educator reported that the work program teacher talks to agency representatives about the students, but the agencies do not send representatives to the admission, review, and dismissal committee meetings. A transition coordinator reported that a barrier to agency involvement is the number of students needing services from different agencies and the fact that the agencies do not require participation.

In a second district, a high school special educator reported that other agency personnel often do not attend IEP meetings because of schedule conflicts and the unavailability of personnel to attend. A second special educator reported that the agencies usually appear at graduation admission, review, and dismissal committee meetings but not before. A related service provider reported that the agencies all come for a single day to conduct a "fair," and are available to parents and students to talk about their services, but that he has never seen any representatives from those agencies at an IEP or individualized transition plan meeting. Two special educators report that if parents so request, school personnel will make a special effort to obtain agency participation in the meetings; however, the agency representatives seldom attend. School personnel have literature to distribute to the parent at the meeting. At the beginning of the school year, there is a packet of information about available services from all the agencies.

In a third district, the coordinator reported that a barrier to outside agency participation is the large caseloads of agency staff. Agency representatives will attend and present during group information sessions but cannot attend individual meetings. The transition coordinator reported that agencies are expected to send school personnel information but that they do not provide materials, so the coordinator develops informational materials to distribute to students and families. A special educator reported that outside agencies lack consistency in staffing and services. The transition coordinator reported that: (1) the only agencies that will send representatives are the Center for Health Care Services and Mental Retardation Association; (2) these agencies will only attend if they are actually providing services to a child; (3) the staff of the rehabilitation agency will attend during the student's senior year but do not believe that the agency has a responsibility to send representatives any earlier; and (4) although there is a memorandum of understanding, the agencies' staff believe that only the school districts are responsible for carrying out the activities described in the memorandum. The transition coordinator reported school district staff invited to meetings convened by Mental Health and Mental Retardation will typically attend those meetings; however, these agencies do not reciprocate and will not attend transition-planning meetings for individual students. These agencies have progress reports on students who are receiving their services but will not share the information with the school. The coordinator reports that all outside agencies inform the students to stay in school until they are twenty-two so that the school district, rather than the outside agency, will remain responsible for provision of all services. The special education director confirmed all of this information presented above.

In a fourth district, a special education teacher, transition coordinator, building administrator and special education director reported that while the Mental Health/Mental Retardation agency representatives will attend meetings, they only do so for students with whom they are already involved. Agencies will send a list of available services but parents must follow up with these agencies to receive services. Agency representatives do visit the school during the student's final semester; however, they rarely attend individualized transition plan meetings. Representatives will discuss service options with groups of parents and students, instead of doing so within the context of an IEP meeting.

In the fifth and sixth districts, school district personnel reported that representatives of outside agencies rarely attend individualized transition plan meetings. The special education director for the fifth district reported that transition is an area of concern for the entire district. In a sixth district, the building administrator reported that agencies usually become involved only during the last semester before the student leaves school.

In the seventh district, the transition coordinators, two parents and the alternative school teacher reported that some agencies do not become involved until the student's final semester of high school. The transition coordinators report that Mental Health and Mental Retardation representatives will attend only if they are currently providing services to the student and that the parent is required to make the contact with Mental Health and Mental Retardation and obtain the services. One problem is that there is a waiting list for caseworkers at Mental Health and Mental Retardation and a high turnover in caseworkers that can delay services and prohibit attendance at individualized transition plan/IEP meetings. In some cases, the Texas Rehabilitation

Commission representative will attend an individualized transition plan meeting prior to the last semester if the student can become a client before that time.

Due to the problems described above with the participation of representatives of outside agencies, IEPs typically do not include interagency responsibilities or any needed linkages, when appropriate. OSEP reviewed the IEPs of 69 students age 16 and older, and determined that only 13 identified interagency responsibilities or needed linkage.

OSEP reviewed the MOU on Secondary Transition Services between TEA and other State agencies and determined that representatives were required to attend meetings regarding transition planning or that other steps must be taken to obtain the participation of agencies if representatives were unable to attend the meetings. OSEP determined that public agencies do not take other steps to obtain participation in the individual transition planning for each child with a disability beginning no later than age 16 (or younger, if determined appropriate by the IEP team), if agencies invited to send a representative to transition planning meetings do not do so. The TEA must ensure that, if agencies invited to send a representative to a transition planning meeting do not do so, public agencies must take other steps to obtain participation in the individual transition planning for each child with a disability beginning no later than age 16 (or younger, if determined appropriate by the IEP team).

2. <u>IEPs/ITPs do not represent a Coordinated Set of Activities Within An Outcome-Oriented Process</u>

The IDEA regulations at 34 CFR §300.347(b)(2) state that for each student with a disability beginning at age 16 (or younger, if determined appropriate by the IEP team), each IEP must include a statement of needed transition services, including, if appropriate, a statement of the interagency responsibilities or any needed linkages. 34 CFR §300.29 states that transition services means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services are based on individual student's needs taking into account the student's preferences and interests and include instruction, related services, community experiences, the development of employment and other post-school adult living objectives and if appropriate, acquisition of daily living skills and functional vocational evaluation.

As discussed below, OSEP found that TEA did not ensure that the IEPs of students include a statement of needed transition services that represents a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into an appropriate post-secondary situation.

Based on its review of student records, OSEP determined that in only 38 of 69 cases did the IEP represented a coordinated set of activities within an outcome-oriented process that promotes transition from school to post-secondary activities.

In one district, special educators reported that vocational services are determined by the availability of services at other campuses, rather than on the individual needs of the child. If a student is interested in a service not offered at the home campus, the student must investigate service availability at other schools in the district; however, no students have attended any programs away from their home campus in the last three years, even where student interests and needs could be addressed in a location other than the home campus. One special educator reported that there is no coordination between the individualized transition plan and IEP – that regardless of the individualized transition plan, which is supposed to include recommendations for the student's course of study, activities are not coordinated with the IEP. The special educator told OSEP, "If the student is happy in welding class, why look for other options?" The special education teacher reported and the special education director confirmed that the district views the individualized transition plan as a multi-agency document and only school district responsibilities are transferred to the IEP, thus fragmenting and "losing" services and components that support the students' transition goals.

In a second district, the transition coordinator reported that a barrier to obtaining special educator participation in the individualized transition plan meeting is substitute coverage. The special education director reports that implementation of transition requirements varies across the district. There is a lot of training on transition provided by the Educational Service Center and this training is ongoing; however, the individualized transition plan and IEP processes are disconnected and respondents reported that this creates a problem for the district in creating a coordinated set of activities within a process directed toward outcomes for individual students.

In one district, the Juvenile Justice Alternative Education Placement teacher reported never seeing a transition plan although the IEP is provided. Transition is not a part of anything done by this teacher at Juvenile Justice Alternative Education Placement center. The Juvenile Justice Alternative Education Placement teacher in a second district also reported that no transition services are offered to students at the Juvenile Justice Alternative Education Placement center. The alternative education placement teacher in a third district reported that there are no vocational classes for students placed in the alternative education placement. Therefore, transition goals for students in these facilities are not supported by services designed to reach these goals.

TEA staff reported that although the concept of a separate transition plan seems like a good idea, in practice the process is cumbersome and creates barriers to the provision of coordinated activities focused on outcome-oriented goals. Vocational rehabilitation counselors understand the importance of attending IEP meetings, but their caseloads are too high.

OSEP found that TEA did not ensure that the IEPs of students include a statement of needed transition services that represents a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into an appropriate post-secondary situation. TEA must ensure that IEPs of students include a statement of needed transition services that represents a coordinated set of activities within an outcome-oriented process designed to facilitate a student's transition from high school into an appropriate post-secondary situation.

IX. PART B: GENERAL SUPERVISION

The IDEA assigns responsibility to state education agencies for ensuring that its requirements are met and that all educational programs for children with disabilities, including all such programs administered by any other State or local agency, are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities and that these programs meet the educational standards of the State educational agency. State support and involvement at the local level are critical to the successful implementation of the provisions of the IDEA. To carry out their responsibilities, States provide dispute resolution mechanisms (mediation, complaint resolution and due process), monitor the implementation of State and Federal statutes and regulations, establish standards for personnel development and certification as well as educational programs, and provide technical assistance and training across the State. Effective general supervision promotes positive student outcomes by promoting appropriate educational services to children with disabilities, ensuring the successful and timely correction of identified deficiencies, and providing personnel who work with children with disabilities the knowledge, skills and abilities necessary to carry out their assigned responsibilities.

Previous Monitoring: In its 1997 Texas monitoring report, OSEP reported that TEA did not ensure that it implemented an appropriate method to identify and correct deficiencies, in a timely manner, in all public agencies responsible for providing special education and related services to children with disabilities. During school years 1993-1996, Texas monitored only 108 of 1,065 districts. Further, OSEP reported that TEA did not meet its responsibility to resolve complaints within the timelines specified by Part B. OSEP granted conditional approval of TEA's corrective action plan, submitted pursuant to the 1997 report, pending verification during the 2002 monitoring visit that the current system for monitoring is effective in identifying and correcting deficiencies in a timely manner.

Self-Assessment: As part of its Self-Assessment, the Steering Committee identified the following areas of strength in TEA's general supervision of IDEA: (1) TEA's coordinated monitoring system includes mechanisms for gathering parent input; (2) in addition to the cycle-based visits, TEA has begun conducting focus-based monitoring visits so that monitoring is not only driven by the calendar, but by need; (3) consequences for noncompliance have been strengthened; (4) recent legislation (House Bill 2172) and policy letters have clarified the Commissioner's authority to hold districts accountable for meeting special education requirements; and (5) a desk audit of charter schools is conducted on an annual basis.

The following areas needing improvement were identified by the Steering Committee: (1) TEA must ensure that there are enough resources to implement the monitoring system; (2) TEA should formalize its processes for incorporating various findings and data into the State's monitoring processes; (3) TEA should develop a system/process that would allow for the identification and analysis of systemic issues based on compliance mechanisms; (4) TEA should continue to work to ensure that the monitoring system is coordinated and leads to the improvement of results for students with disabilities; (5) TEA should continue plans to implement the special education tracking (SET) system and integrate it with other systems so that information from parent complaints and due process hearings are tracked and effectively utilized to ensure compliance and continuous improvement; (6) information regarding

complaints and hearings at the agency is collected but is not currently maintained in a central data base where it can be effectively used as an integral part of the monitoring system (the agency is in the process of integrating this information into the data base so that it can be effectively used); (7) TEA and the Windham School District will continue to coordinate in the refinement of the provision of special education and related services within adult correctional facilities for eligible students with disabilities; (8) other entities, such as the Texas Youth Commission, the Texas Juvenile Probation Commission, and private providers should be included in planning and coordinating improvements in provision of special education and related services in youth and adult correctional facilities; and (9) TEA should develop a data collection system to assess the outcomes of services to students with disabilities in juvenile and adult correctional facilities.

Public Input: One of the focus questions asked during the public input meetings for Part B was: "How is the State involved in assuring that appropriate services are provided to students in disabilities?" Responses indicated the following strengths: (1) the monitoring process is positive and effective and further improvements to the process are being piloted in the State; and (2) TEA works quickly to resolve complaints and respond to information requests.

The following concerns were expressed: (1) the monitoring process focuses too much on district paperwork rather than the quality and availability of services; (2) the State does not have an accurate view of district and school performance because parent input is only solicited by the State in the presence of school personnel, and, in some cases, parents are not notified of the monitoring visit; (3) the complaint process is ineffective; (4) complaint process decisions often seem biased in favor of TEA and the districts; (5) there is a need for the TEA Complaint Hotline to more clearly communicate the complaint process, including that complaints must be submitted in writing in order to receive a response; and (6) districts are not required to participate in the mediation process and are not always willing to do so.

Data Collection: After reviewing the State's Self-Assessment, public input responses, and other information, OSEP determined that additional data were needed in the following areas: (1) whether TEA's current monitoring system is effective in identifying and correcting all deficiencies in a timely manner; (2) whether TEA's complaint resolution process meets the requirements of IDEA §§300.660-300.662; and (3) whether youth with disabilities in Texas Youth Corrections facilities are receiving special education and related services in accordance with an approved IEP.

To investigate the identified concerns, OSEP collected information from the review of children's records and State and local policies and procedures, and from interviews with State personnel, local program administrators, teachers, related service providers, students and parents. OSEP reviewed and analyzed the data and identified the following strengths and areas of noncompliance.

A. STRENGTHS

1. Training and Technical Assistance System

Texas has developed a training and technical assistance system that is proactive and is delivered in a regional format that allows for flexibility in the provision of services. In addition to ongoing regional leadership, technical assistance, and training, the TEA/Education Service Center (ESC) Leadership Framework not only serves to address critical State issues, but also allows for a linkage of efforts and better results. At this time the Leadership Framework includes the following elements:

- State Leadership Functions
- State Leadership Projects
- Legislative Mandates/Rule Driven Initiatives
- Improvement Framework Committees

2. Completely Automated Funding System

Texas uses Automated and Integrated Subsystems to control the funding system for the flow of federal and some State funds to local education agencies. Additionally, the Agency has leveraged technology to implement data collection requirements related to the Charter School Expansion Act. As a result of these developments, time spent completing administrative responsibilities has been greatly reduced, allowing staff to devote more time to improving services for children with disabilities.

3. OSEP's Continuous Improvement Monitoring Process Fully Implemented by TEA

Although the catalyst for the self-assessment and improvement process was the OSEP Continuous Improvement Monitoring Process, the State of Texas is now implementing (at the SEA level) a self-initiated, ongoing improvement process model to identify systemic, State-wide areas of improvement and to involve a broad-based Steering Committee in improvement planning activities for the State. TEA has identified new measures that focus on what matters most for the State of Texas. The measures to be used incorporate the spirit of OSEP's Continuous Improvement Monitoring Process, but are adapted to meet the unique needs of Texas and TEA.

4. Dissemination of Information to the State via the Web Page

The special education web page (http://www.tea.state.tx.us/special.ed/) at the Texas Education Agency has been instrumental in making information readily available to the State. Not only can information flow from the Agency in a timely manner, but also it has been used to request feedback and public comment. Additionally, a list serve is maintained that alerts recipients to new information added to the TEA web page. Information available on the page includes:

- E-mail requests for information/guidance
- Documents/products

- Links to State, regional, and national information
- Due Process Hearing Decisions (including a search feature)
- Public Comment Information to collect feedback for proposed rules and draft documents
- Meeting schedules and minutes for the State Continuing Advisory Committee
- OSEP/TEA Continuous Improvement Monitoring Process
- Rules and Regulations

B. AREAS OF NONCOMPLIANCE

1. Failure to Identify and Correct Deficiencies in a Timely Manner

The IDEA regulations at 34 CFR §300.600 require that TEA be responsible for ensuring that the requirements of IDEA are implemented and that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency, is under the general supervision of TEA and meets the education standards of TEA, including those related to IDEA.

As discussed below, OSEP found that TEA's monitoring system is not effective in identifying and correcting all deficiencies in a timely manner and that there is no other mechanism for ensuring compliance with the requirements of IDEA.

Special educators, administrators, special education directors and related services personnel reported that TEA monitoring has resulted in changes that improve results for children with disabilities. In one district, related service providers and the special education director, along with a special educator and building administrator, reported that the monitoring process motivated the special education department to assist teachers in promoting inclusion and decreasing the provision of services in separate classrooms. The special education director reported that monitoring helps refocus district activities and provides an opportunity to reflect on current practices and ensure that all students are successful. In a second district, the special education director reported that monitoring has a positive result only indirectly - that the monitoring is too focused on compliance rather than outcomes. However, the director added at the new self-assessment that is required has been helpful in identifying strategies to improve results for children with disabilities. The director further reported TEA's use of risk indicators (e.g. drop-out rate, graduation rate, placement data, etc.) promotes greater district accountability on the part of special education and regular education staff.

In a third district, the special education director reported that, as a result of monitoring, the numbers of children educated in two segregated buildings have been dramatically reduced. One building has been converted to a regular elementary school, while many children previously attending the second segregated school have been place in the regular neighborhood schools. Students formerly served in a segregated occupational center have all been placed into regular schools.

In a fourth district, a building administrator reported deficiencies identified in TEA's monitoring report helped justify the hiring of an additional diagnostician needed to meet the needs of children with disabilities. A special educator reported that monitoring resulted in an increased

awareness of special education requirements. The special education director reported that changes resulting from monitoring have included the provision of more services to students and staff and helped change building administrators' and regular educators' attitudes about educating students in less restrictive environment settings.

While districts reported that TEA's monitoring activities have resulted in positive changes for children with disabilities, TEA has failed to monitor 302 agencies for more than six years. Included in this number are 235 public agencies that have not been monitored in more than 10 years. TEA staff stated that in the absence of monitoring, there are really no other methods being used consistently that would enable TEA to determine if the 302 agencies above are in compliance with IDEA. Therefore, TEA does not monitor frequently enough to make compliance determinations in these public agencies. TEA staff reported that there is no mechanism, apart from monitoring, to identify noncompliance.

In addition, TEA staff reported that an internal decision has been made at TEA that the District Effectiveness and Compliance (DEC) process can only be implemented in an agency once during any three year period; therefore, if risk-based factors, class-action complaints or other information indicate a basis for conducting an on-site monitoring visit (e.g., the District Effectiveness and Compliance (DEC) process), TEA is prohibited from carrying out such a visit. Section 29.010(d) of the Texas Education Code states "For districts that remain in noncompliance for more than one year, the first stage of sanctions shall begin with annual or more frequent monitoring visits." The internal policy decision is currently a barrier to implementing this provision of the Texas Education Code, in addition to contributing to TEA's inability to ensure that deficiencies under IDEA are identified and corrected in a timely manner.

OSEP found that TEA's monitoring system is not effective in identifying and correcting all deficiencies in a timely manner and that there is no other mechanism for ensuring compliance with the requirements of IDEA. TEA must ensure that the monitoring system is effective in identifying and correcting all deficiencies in a timely manner and ensures compliance with the requirements of IDEA.

2. The Complaint Resolution Process Fails to meet the Requirements of 34 CFR §§300.660-300.662

Based on information discussed below, OSEP found that TEA's complaint resolution system failed to meet the identified requirements of 34 CFR §§300.660-662.

a. The Expedited Complaint Resolution System Fails to Meet the Requirements of 34 CFR §§300.660-300.662

Among other requirements, 34 CFR §§300.660-300.662 requires that, in resolving formal complaints submitted to the State, the State conduct an independent on-site investigation, if determined necessary. It also requires that the process allow for the complainant to submit additional information. In addition, it requires that the complaint be resolved through a written decision that contains findings of fact and conclusions and the reasons for the State's final decision.

As a part of its complaint management system, TEA includes an "expedited complaint" process that requires that issues be addressed within 30 days. TEA's expedited complaint system, while commendable in the intent to resolve complaints within 30 calendar days from receipt of the complaint, does not include all of the requirements of 34 CFR §300.660-§300.662.

OSEP found from its interview with TEA staff and review of State complaint management procedures that the expedited complaint process does not provide for: (1) the opportunity for TEA to conduct an independent on-site investigation, if determined necessary; (2) the opportunity for the complainant to submit additional information; and (3) a written decision which contains findings of fact and conclusions and the reasons for TEA's final decision. TEA staff confirmed that, in fact, these elements are not included in the 30-day expedited process. TEA must ensure that the State complaint management procedures must provide for: (1) the opportunity for TEA to conduct an independent on-site investigation, if determined necessary; (2) the opportunity for the complainant to submit additional information; and (3) a written decision which contains findings of fact and conclusions and the reasons for TEA's final decision; and that these elements are included in the 30-day expedited process.

b. <u>Failure to resolve complaints within 60 days of receipt of the complaint</u>

The IDEA regulations at 34 CFR §300.661(a)-(b) require that complaints be resolved within 60 days after a complaint is filed unless the time is extended due to exceptional circumstances with respect to a particular complaint.

OSEP found that from January 1, 2001 to August 31, 2001, TEA did not meet the 60-day time line for 11 complaints and that from September 1, 2001 to April 8, 2002, 24 of 83 complaints exceeded the 60-day time line. TEA staff reported that reasons included the moving of their office space, that other responsibilities took them away from the complaint investigations, and that staffing was insufficient.
TEA must ensure that complaints must be resolved within 60 days of receipt of the complaint.

c. <u>Inappropriate requirement to use the complaint system to ensure implementation of hearing officer decisions</u>

TEA staff also reported that when a parent believes that a due process hearing officer's decision is not being implemented, the parent must use the 60-day complaint process to achieve resolution. Federal law requires that the decision of a hearing officer is final unless appealed, and must be implemented. (34 CFR §300.510(a), (d)). It is the responsibility of the State educational agency to ensure that hearing officer decisions are implemented. (34 CFR §300.600(a)).

OSEP found that TEA inappropriately utilizes the complaint system to ensure the implementation of hearing officer decisions. TEA must ensure that it will not inappropriately utilize the complaint system to ensure the implementation of hearing officer decisions.

C. SUGGESTED AREAS FOR IMPROVED RESULTS FOR CHILDREN AND YOUTH WITH DISABILITIES

1. Utilization of Educational Service Center Training Related to Monitoring Activities

Educational Service Centers in Texas provide a wide variety of ongoing technical assistance and training activities for districts and other public agencies. A variety of interviewees, including an Educational Service Center staff member, reported that the Educational Service Centers are involved in preparing districts for monitoring visits, including mock interviews to ensure that staff are knowledgeable and prepared to answer questions correctly; reviewing and organizing records; and ensuring that records contain required documents. Interviewees report an extraordinary amount of time spent in these preparation activities.

The Education Service Centers should focus technical assistance and training resources and activities to ensure that districts and other public agencies understand, implement and comply with IDEA as part of daily practice and procedure rather than focusing on coaching and preparing district staff for periodic on-site monitoring activities.

2. TEA Complaint Hotline

TEA staff reported that there are a relatively low number of complaints because of the complaint hotline. There are over 1000 calls to the hotline per month. Staff reported that most calls are returned quickly, usually no later than the next business day, and that this reduces the number of issues that become formal complaints; however, there is no system in place to track and analyze the data from the large number of calls. This inhibits TEAs ability to identify and address systemic issues. In addition, the lack of a tracking system and data analysis prohibits TEA from utilizing the information as part of its monitoring process to identify at-risk districts, identify district-specific issues and problems, address parent complaints that may represent systemic issues, and provide appropriate and ongoing technical assistance to its districts.

TEA should develop a system to ensure that the responses to these calls resolve the identified issues and develop a system to track and analyze these complaints to assist TEA in the identification of systemic issues.