



JUN 18 1991

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

Honorable Gene Mammenga
Commissioner of Education
State Department of Education
712 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

JUN 14 1991

Dear Commissioner Mammenga:

The purpose of this letter is to provide you and your special education staff with the results of the compliance review conducted by the Office of Special Education Programs (OSEP), U.S. Department of Education. A final copy of our report, "Office of Special Education Programs Compliance Monitoring Report: 1990 Review of Minnesota Department of Education" (Report) is attached.

First, I want to take this opportunity to commend members of the Minnesota Department of Education (MDE) staff who assisted OSEP during this review. Throughout the course of OSEP's monitoring activities, MDE staff members were cooperative and responsive to OSEP's requests for information about MDE's system for administering special education programs in Minnesota. OSEP was impressed with the MDE staff members' knowledge of and commitment to educational programs for children with disabilities.

Based upon the information collected and analyzed during OSEP's compliance review, determinations were made concerning whether MDE met all applicable requirements identified in each area of responsibility shown in the Report's Table of Contents. The findings are organized in accordance with the legal requirements established by Part B of the Individuals with Disabilities Education Act (Part B), formerly, Part B of the Education of the Handicapped Act (EHA-B), the Department's implementing regulations for Part B, and the Education Department General Administrative Regulations (EDGAR).

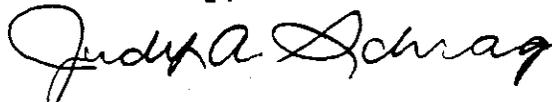
It is important to recognize that the OSEP report addresses only those aspects of Minnesota's special education system that OSEP reviewed and found not to be in compliance with Federal requirements. Numerous aspects of the State's special education system which were consistent with or exceeded Federal requirements are not discussed. Several commendations, however, are noted in the Report.

Regarding corrective action, MDE is required in every instance to immediately discontinue the deficient practice and inform all public agencies, if necessary, of the procedure required to comply with Part B. Until the affected regulations or statutes are changed, MDE must take steps to ensure that the State comes into immediate compliance with applicable requirements under Part B. The Report includes a chart which delineates further corrective actions to be carried out by MDE in order to ensure correction of the identified deficiencies. The chart describes the area of deficiency and the required corrective action, as well as the dates for completion of activities and submission of documentation to OSEP that will verify progress and completion of each activity. MDE has 15 days from receipt of the final Report to request, and justify, the revision of any of the required activities or timelines in the Corrective Action Chart. There are a number of corrective actions that require MDE to submit one or more products. MDE must obtain OSEP's approval of each product.

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

Thank you for your continued efforts toward the goal of achieving quality education programs for children with disabilities in Minnesota.

Sincerely,



Judy A. Schrag, Ed.D.
Director
Office of Special Education
Programs

Attachment: OSEP Final Report

cc: Mr. Wayne Erickson

OFFICE OF SPECIAL EDUCATION PROGRAMS
FINAL MONITORING REPORT:

1990 REVIEW OF THE MINNESOTA DEPARTMENT OF EDUCATION

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PREFACE

This Report contains the results of the Office of Special Education Programs (OSEP), U.S. Department of Education's review of the Minnesota Department of Education (MDE). The purpose of this review was to determine whether MDE fully met its responsibility to ensure that educational programs for children with disabilities were administered in a manner consistent with the requirements of Part B of the Individuals with Disabilities Education Act (Part B), formerly the Education of the Handicapped Act (EHA-B), and its implementing regulations, and the requirements of Education Department General Administrative Regulations (EDGAR). All regulatory citations in this Report refer to sections of Title 34 of the Code of Federal Regulations.

The Report contains an introduction, seven sections, and three appendices. The introduction briefly describes OSEP's review process and, in broad terms, assesses MDE's performance in fulfilling its general supervisory responsibility. Sections I, II, and III address the requirements related to individualized educational programs, least restrictive environment, and due process and procedural safeguards. Sections IV and V address the requirements related to provision of a free appropriate public education and complaint management. Section VI addresses MDE's local education agency application process and Section VII reviews MDE's monitoring system. Appendix A lists the specific LEAs and their corresponding letters used in the Report. Appendix B contains required corrective actions, and Appendix C explains differences between the draft and final reports, based on MDE's response to the draft report.

Where appropriate, sections are organized according to the following outline: (1) a statement of the legal responsibilities which MDE is required to fulfill in order to ensure that public agencies meet the requirements of Part B; and (2) findings of fact concerning MDE's implementation of its responsibilities.

Regarding corrective action, MDE is required in every instance to immediately discontinue the deficient practice. Until the affected regulations or statutes are changed, MDE must take steps to ensure that the State comes into compliance with the applicable requirements under Part B. The Report includes a chart which delineates further corrective actions to be carried out by MDE in order to ensure correction of the identified deficiencies. The chart includes the area of deficiency and the required corrective action, as well as the timelines for completion of activities and submission of documentation to OSEP that will verify progress and completion of each activity. MDE has 15 days from receipt of the final Report to request, and justify, the revision of any of the required activities or timelines in the Corrective Action Chart. There are a number of

corrective actions that require MDE to submit one or more products. MDE must obtain OSEP's approval of each product.

INTRODUCTION

MDE'S GENERAL SUPERVISORY RESPONSIBILITY: In order to be eligible to receive Part B funds, each participating State is required to meet the eligibility requirements of 20 U.S.C. §1412(6) which provides:

The State educational agency shall be responsible for assuring that the requirements of this part are carried out and that all educational programs for handicapped children within the State, including all such programs administered by any other State or local agency, will be under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency and shall meet educational standards of the State educational agency. See §300.600(a)(2).

Documentation gathered by OSEP as part of its monitoring review demonstrates that in regard to certain requirements of Part B, MDE did not exercise its general supervisory authority in a manner that ensured that all public agencies complied with the requirements of Part B. OSEP does not conclude that the identified instances of deficiencies are documentation of deficiencies in all public agencies in the State. However, because MDE's systems for ensuring compliance were unsuccessful in those instances cited in the Report, OSEP requires MDE to undertake certain corrective actions to improve its systems for ensuring statewide compliance with Part B.

OSEP REVIEW PROCESS: Beginning in October 1990, the OSEP team of Gregg Corr, Judy Gregorian, and Debra Sturdivant reviewed the Minnesota State plan and public agencies' policies, procedures, plans, standards, and other relevant documents relating to Part B. On November 7 and 8, 1990, public meetings were conducted in Bemidji and St. Paul, respectively, in order to solicit comments from parents, teachers, administrators, and other concerned citizens regarding MDE's compliance with Part B. During the week of December 3 through 7, 1990, Judy Gregorian, Deborah Havens, Ray Miner, and Debra Sturdivant made site visits to eight public agencies to review student records and interview agency personnel. Gregg Corr, the team leader, remained in the State capital for the entire week, examining SEA records and interviewing staff at the State agency level who were involved in the administration and supervision of educational programs for children with disabilities. Upon returning to Washington, DC, OSEP completed its analysis of the information collected and prepared its draft Report. The draft Report was issued to MDE on March 8, 1991, and MDE submitted its response on May 6, 1991,

after OSEP approved MDE's request for a 30-day extension for submission of the response. After considering the additional information presented in MDE's response, modifications were made to the draft Report which resulted in this final Report.

DESCRIPTION OF MINNESOTA SPECIAL EDUCATION SYSTEM

There are 435 school districts in the State of Minnesota. MDE receives 101 applications for Part B funds each year. Of these, 56 applications are submitted by independent school districts. The remaining 45 applications are submitted by cooperatives which are composed of between 2 and 24 districts which have combined for the purpose of providing and administering special education programs to children with disabilities. Each of these cooperatives submits an application for Part B funds on behalf of its member districts. Additionally, there are three intermediate units in the Minneapolis-St. Paul area that provide some services to 48 districts in the area. These intermediate units do not receive Part B funds from MDE, but are reimbursed by participating districts for services provided.

COMMENDATIONS

The focus of OSEP's compliance review monitoring is the examination of those areas in which there may be instances of noncompliance, and the focus of this report is the specification of areas of noncompliance. However, OSEP would like to commend Minnesota for the following special education program initiatives.

1. Although deficiencies are noted in this Report with regard to MDE's monitoring system, OSEP finds many aspects of this system to be commendable. Last year, MDE initiated a peer monitoring system, training approximately 15 peer monitors to participate in compliance reviews during the 1989-90 school year. A similar number was trained in December 1990. MDE's intensive training is provided to selected teachers, administrators, and parents so that they can participate in on-site monitoring visits to districts other than those in which they are employed or where their children are placed. Where an on-site review involves specialized issues, MDE is able to draw on the expertise of peer monitors with experience in those areas. After participating in MDE monitoring reviews of other districts, peer monitors are able to apply their knowledge of State and Federal requirements to their own districts.

2. Both the Office of Monitoring and Compliance (OMC) and the Aids, Data and Technology Unit (ADT) are involved in an intensive effort to recapture State and Federal special education funds improperly used by public agencies. OMC conducts a fiscal review

as a part of its on-site monitoring activities to verify proper expenditure of funds. Areas reviewed include Personnel, Materials/Supplies/Equipment, Contracts for Services, Personnel Development, Travel and Construction/Remodeling. Where it is determined that funds were improperly spent, ADT will make the appropriate adjustments. MDE has recaptured the following funds: \$226,502 (1987-88); \$349,081 (1988-89); and approximately \$30,000 in child count funds for 1989-90.¹

3. Beginning in 1989, the ADT developed a computerized system which requires all districts to key in their own detailed budgetary data. The system is designed to be self-correcting so that budget line items improperly coded will not be accepted by the system. For instance, a line for the salary of a special education teacher will not be accepted when that teacher is not properly licensed. The system gives districts information about "error codes" so that they can identify the problem with the expenditure and make the necessary corrections.

4. MDE has organized Federal and State legal responsibilities into 15 categories, with each category divided into detailed subcategories. This same system of categorization is used throughout MDE's documents, including the State's Total Special Education System, monitoring manuals, instruments, and monitoring reports issued to public agencies. This integrated system provides a clear and consistent method for referring to legal responsibilities.

5. In 1987, the Minnesota Board of Education established rules addressing the transition needs of youth with disabilities. Each district is required to establish or participate in local community transition interagency committees which are required to meet quarterly and report annually to MDE regarding progress and recommendations. The Community Transition Interagency Committee, established by statute, is to be composed of members who represent special education, vocational and regular education, community education, post-secondary education and training institutions, parents of youth with disabilities, local business or industry, rehabilitation services, county social services, health agencies, and additional public or private adult service providers as appropriate.

Additionally, the Minnesota Board of Education established a rule requiring that by grade nine or age 14, each IEP shall address the student's need to develop skills to live and work as independently as possible within the community. The IEP must include needs for transition from secondary services to post-secondary education and training, employment, and community living.

¹ Final amounts for 1989-90 are not yet available.

6. Although deficiencies are noted in this Report with regard to least restrictive environment requirements, OSEP finds that MDE has demonstrated leadership in the initiatives it has taken to assist local school districts in providing for full integration opportunities for all students with disabilities. OSEP found that some school districts in the Minneapolis-St. Paul area and several districts in rural areas are providing educational services for students with severe disabilities in regular schools, close to their homes. Formerly, these students with severe disabilities were educated in separate programs operated by cooperatives or intermediate units. OSEP also noted that some students with severe disabilities who generally are provided services in hospital settings or in the State's academy programs, are now being provided opportunities to return to the regular education classes and buildings.

I. INDIVIDUALIZED EDUCATION PROGRAMS

MDE is required to ensure that each public agency develops and implements an individualized education program for each of its children with disabilities (§300.341). Sections 300.340 through 300.349 set forth requirements for developing, implementing, reviewing, and revising IEPs. In addition to MDE's general responsibilities under §300.341, MDE is required to carry out specific activities in order to ensure that public agencies comply with §§300.340-300.349. These activities are:

(1) to include in its annual program plan, a copy of each State statute, policy, and standard that regulates the manner in which IEPs are developed, implemented, reviewed and revised (§300.130(b)(1));

(2) to monitor and evaluate the development, implementation, review and revision of IEPs (§§300.130(b)(2) & 20 U.S.C. §1232d(b)(3));

(3) to require LEA applications for Part B funds to include procedures to ensure that the local agency complies with §§300.340-300.349 (§300.235); and

(4) to ensure that all educational programs for children with disabilities within the State are under the general supervision of the State educational agency and that such programs comply with all the IEP requirements of §§300.340-300.349 (20 U.S.C. §1412(6)).

A. MDE is responsible for ensuring that each public agency takes steps to ensure that the IEP meeting includes a representative of the public agency, other than the child's teacher, who is qualified to provide, or supervise the provision of, special education, as set forth in §300.344(a)(1).

FINDING:

1. OSEP finds that MDE did not meet its responsibility under §300.341 to ensure that public agencies conducted IEP meetings in accordance with the participant requirements of §300.344(a)(1), as demonstrated by the following:

a. MDE approved an LEA application for public agency C that did not contain policies and procedures consistent with §300.344(a)(1). (See Section VI on page 34 of this Report.)

b. Although MDE has a method to identify deficiencies for §300.344(a)(1), its system did not identify all instances of noncompliance with this requirement in public agencies A, B, C and G. (See Table VII-1 on page 39 of this Report.)

c. In 12 of 86 student records reviewed by OSEP, IEPs were developed in meetings that did not include an agency representative, as required by §300.344(a)(1). This was confirmed by five teachers who attended IEP meetings in the three public agencies where OSEP noted these deficiencies. (See Table I on page 6 of this Report.)

B. MDE is responsible for ensuring that the IEP of each child with a disability contains all the information set forth at §300.346 (a)-(e).

Section 300.346 of the Part B regulations specifically requires that each IEP include the following: (a) a statement of the child's present levels of educational performance; (b) a statement of annual goals, including short term instructional objectives; (c) a statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular education programs; (d) the projected dates for initiation of services and the anticipated duration of the services; and (e) appropriate objective criteria, evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

The statement of present levels of performance, the annual goals and the short term instructional objectives are the framework for the child's educational program. They tell: (1) where the child is currently functioning (present levels of educational performance); (2) what progress the child can reasonably expect to achieve in the next 12 months (annual goals); and (3) what the measurable, intermediate steps (short term instructional objectives) are between the child's present level of performance and the specific goal.

FINDING:

1. OSEP finds that MDE did not meet its responsibility under §300.341 to ensure that public agencies developed IEPs in accordance with the content requirements of §300.346, as demonstrated by the following:

a. MDE approved LEA applications for public agencies A, B, C, D and F that contained no procedures or incomplete procedures for the requirements of §300.346. (See Section VI on page 34 of this Report.)

b. MDE is not properly monitoring compliance with §300.346. MDE has an incomplete method for monitoring to determine if IEPs contain evaluation procedures for determining the extent to which goals and objectives have been achieved (§300.346(e)). (See Section VII on page 38 of this Report). Although MDE's

monitoring instruments address all of the other requirements of §300.346, in some instances MDE did not identify all deficiencies regarding those requirements. (See Table VII-1 on page 39 of this Report.)

In other instances, OSEP found the same deficiencies that MDE had previously identified. Although MDE had approved the corrective actions and the corrective actions had been implemented, OSEP found that deficiencies had not been corrected. (See Table VII-2 on page 41 of this Report).

c. Set forth below are the deficiencies identified by OSEP but not identified, or identified but not corrected, by MDE, regarding present levels of performance, annual goals, short term objectives, objective criteria, evaluation procedures and evaluation schedules.

(1) PRESENT LEVELS OF EDUCATIONAL PERFORMANCE §300.346(a) - In 44 of 86 student records reviewed by OSEP, IEPs were developed that contained the following deficiencies:

(a) In three cases IEPs were developed that did not contain present levels of performance for one or more area(s) of need, where annual goals and short term objectives had been developed.

(b) In 41 other cases, the statements of present levels of performance did not clearly identify or communicate performance levels. The following are examples of statements that do not convey a level of performance. Primarily, the statements provide only global statements of the child's performance but do not specify the levels of performance.

EXAMPLES:

(i) Intellectual: WISC-R - Verbal = 96 - 40%
Performance = 120 - 91%
Full scale = 107 - 68%

(ii) Communicative Skills
Skills in all academic areas are significantly deficit.

(iii) Functional Skills
Student's scores as indicated on the SIB suggest that the handicapping condition greatly affects all of student's life.

(iv) Functioning in the MR range.

(v) Has some functional academic skills.

(2) **ANNUAL GOALS AND SHORT TERM OBJECTIVES §300.346(b)** - OSEP's review of 86 student records indicated that IEPs were developed which contained the deficiencies mentioned below. Some IEPs contained more than one deficiency.

(a) **NO ANNUAL GOALS** - In eleven IEPs, no goals were developed to address needs identified in one or more² of the student's present levels of educational performance.² There were two cases where IEPs contained no goals.

(b) **NO SHORT TERM OBJECTIVES** - There were 15 IEPs that did not include short term objectives for one or more annual goals.

(c) **OBJECTIVES THAT DID NOT SPECIFY INTERMEDIATE STEPS BETWEEN LEVELS OF PERFORMANCE AND ANNUAL GOALS** - There were 40 IEPs in which one or more annual goals had only one short term objective that did not include behavior which could be measured and did not specify the intermediate steps between the child's present levels of educational performance and the annual goals.

(d) **GOALS AND OBJECTIVES DID NOT MEET MDE'S MONITORING CRITERIA (§300.600(a)(2)(ii))** - OSEP reviewed MDE's monitoring procedures to determine how it evaluated annual goals and short term objectives. At monitoring criteria "52-D," MDE reviews goals and objectives as follows:

D. Is there an annual goal written for every specific instructional need identified?

Does each goal contain the following:

1. The general area of behavior to be changed
2. The direction of change
3. The desired level of achievement

Are there objectives for each goal?

Do objectives contain the following components:

- a. Specific behaviors to be performed
- b. Conditions/circumstances under which the behavior is to be performed

² Minnesota rules require that IEPs include present levels of performance in nine areas. Therefore, present levels of performance in Minnesota will not necessarily indicate that the child's disability has an adverse effect on all areas of the child's education. When OSEP conducted this analysis, it considered only those present levels of performance where the disability had an adverse effect on an area of the child's education.

c. Criteria for attainment

OSEP determined that in 39 IEPs, goals and objectives did not meet the criteria laid out in MDE's monitoring procedures described above. Some examples of these goals and objectives are:

- (i) EXAMPLE #1 is for a 13 year old student with emotional and behavior disturbances whose present levels of performance were at the following grade levels: Math - 7.45; Reading - 5.1; Spelling - 1.2.

GOAL: (Student) will demonstrate academic progress on curriculum modified to his ability level.

OBJECTIVES: (1) (Student) will pass classes with the grade of "C" or better. (2) (Student) will complete his assignments 95% of the time. (3) (Student) will complete his assignments 85% of the time. (4) (Student) will stay on task 90% of the time.

- (ii) EXAMPLE #2 is for a 13 year old student with mild multihandicaps whose present level of performance indicates that her "skills in all academic areas of concern are significantly deficient."

GOAL: Improve scores on weekly spelling and vocabulary tests.

OBJECTIVES: (1) A 70% rate of accuracy will be used as criteria on both spelling tests and vocabulary work.

The goals in Example #1 and Example #2 do not specify the "desired level of achievement" as evaluated at item 52-D.3. in MDE's monitoring procedures. The objectives in both examples do not describe the "conditions/circumstances under which the behavior is to be performed" as evaluated at item 52-D.b. in MDE's monitoring procedures.

(3) OBJECTIVE CRITERIA, EVALUATION PROCEDURES, EVALUATION SCHEDULES - OSEP's review of 86 student records indicated that IEPs were developed that contained the following deficiencies:

(a) In 37 IEPs, objective criteria were not included in IEPs.

(b) In 68 IEPs, evaluation procedures were not included in IEPs.

(c) In 15 IEPs, evaluation schedules were not included in IEPs.

TABLE I

Number of IEP-Related Findings Which Did Not Comply
With Federal Requirements to the Number of IEPs Reviewed

IEP REQUIREMENT	LOCAL EDUCATION AGENCIES								
	A	B	C	D	E	F	G	H	TOTAL
§300.344(a)(1) LEA REP	$\frac{1}{8}$	$\frac{3}{8}$	$\frac{7}{7}$	$\frac{0}{14}$	$\frac{0}{10}$	$\frac{0}{10}$	$\frac{1}{19}$	$\frac{0}{10}$	$\frac{12}{86}$
§300.346(a) PRESENT LEVEL OF PERFORMANCE	$\frac{5}{8}$	$\frac{7}{8}$	$\frac{5}{7}$	$\frac{10}{14}$	$\frac{2}{10}$	$\frac{2}{10}$	$\frac{8}{19}$	$\frac{5}{10}$	$\frac{44}{86}$
§300.346(b) ANNUAL GOALS	$\frac{7}{8}$	$\frac{5}{8}$	$\frac{2}{7}$	$\frac{10}{14}$	$\frac{4}{10}$	$\frac{2}{10}$	$\frac{9}{19}$	$\frac{8}{10}$	$\frac{47}{86}$
§300.346(b) SHORT TERM OBJECTIVES	$\frac{6}{8}$	$\frac{7}{8}$	$\frac{2}{7}$	$\frac{13}{14}$	$\frac{4}{10}$	$\frac{3}{10}$	$\frac{12}{19}$	$\frac{8}{10}$	$\frac{55}{86}$
§300.346(e) OBJECTIVE CRITERIA	$\frac{5}{8}$	$\frac{1}{8}$	$\frac{7}{7}$	$\frac{9}{14}$	$\frac{3}{10}$	$\frac{8}{10}$	$\frac{0}{19}$	$\frac{4}{10}$	$\frac{37}{86}$
§300.346(e) EVALUATION PROCEDURES	$\frac{6}{8}$	$\frac{6}{8}$	$\frac{7}{7}$	$\frac{12}{14}$	$\frac{6}{10}$	$\frac{8}{10}$	$\frac{14}{19}$	$\frac{9}{10}$	$\frac{68}{86}$
§300.346(e) EVALUATION SCHEDULES	$\frac{1}{8}$	$\frac{0}{8}$	$\frac{2}{7}$	$\frac{5}{14}$	$\frac{0}{10}$	$\frac{0}{10}$	$\frac{5}{19}$	$\frac{2}{10}$	$\frac{15}{86}$
Key: $\frac{\#}{\#}$ = $\frac{\# \text{ OF IEPS WITH DEFICIENCIES}}{\# \text{ OF IEPS REVIEWED}}$									

II. LEAST RESTRICTIVE ENVIRONMENT

MDE is required to ensure that public agencies establish and implement procedures which meet the requirements of §§300.550-300.553, regarding the placement of students with disabilities in the least restrictive environment (LRE). §300.550(a). Sections 300.555 and 300.556 set forth requirements which must be met by MDE. MDE is required to carry out activities to:

(1) ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing §300.550, and are provided with technical assistance and training necessary to assist them in this effort (§300.555);

(2) ensure that §300.550 is implemented by each public agency (§300.556(a)); and

(3) review a public agency's justifications for its actions and assist in planning and implementing any necessary corrective action, if there is evidence that the agency makes placements that are inconsistent with §300.550 (§300.556(b)).

Sections 300.550(b) through 300.553 delineate several specific requirements placed on public agencies to ensure that children with disabilities are educated in the least restrictive environment. MDE must carry out specific responsibilities, in addition to those required pursuant to §§300.550(b) - 300.553. MDE is required to:

(1) include in its annual program plan procedures to ensure that the requirements of §§300.550-300.553 are met (§300.132);

(2) require public agencies to establish and implement procedures which meet the requirements of §§300.550(b)-300.553 (§300.550(a));

(3) require that LEA applications for EHA-B funds include procedures to ensure that the local agency complies with §§300.550(b)-300.553 (§300.227);

(4) fully inform teachers and administrators in all public agencies of their responsibilities under §§300.550(b)-300.553 and provide them with the technical assistance and training they need (§300.555);

(5) monitor to ensure that public agencies implement §§300.550(b)-300.553 (§§300.556 & 20 U.S.C. §1232d(b)(3)); and

(6) ensure that all educational programs for children with disabilities within the State are under the general supervision of the State educational agency and comply with all of the LRE requirements of §§300.550-300.553 (20 U.S.C. §1412(6)).

A. MDE is responsible for ensuring that public agencies remove children with disabilities from the regular educational environment only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily, that placements are determined annually, and that placement decisions are based on each student's IEP. §§300.550(b)(2) and 300.552(a)(1) and (2).

FINDING: PLACEMENT DECISION BASED ON THE IEP

1. The facts set forth below provide documentation that MDE did not ensure that educational placement decisions for children with disabilities in the public agencies visited were based on each student's IEP. In order to meet this requirement, the IEP must be completed before the placement decision is made.

a. MDE approved LEA applications in public agencies B, C and D that did not contain policies and procedures consistent with §300.552(a)(2). MDE approved the application for public agency F, that contained an incorrect procedure for this requirement. (See Section VI on page 34 of this Report.)

b. MDE is not properly monitoring and ensuring compliance with §300.552(a)(2). Although MDE has a method to monitor for this requirement, its system did not identify all instances of noncompliance in public agencies B, D, E and H. (See Table VII-1 on page 39 of this Report.)

For public agencies A, F and G, OSEP identified deficiencies that MDE had also identified in its latest monitoring reports to those agencies. Although MDE had approved the corrective action plans for those agencies and all deficiencies were to have been corrected prior to OSEP's visit, these deficiencies had not been corrected. (See Table VII-2 on page 41 of this Report).

c. Although MDE did not find these deficiencies when it most recently monitored the public agencies indicated below, OSEP found that those agencies made placement decisions for certain students which were not based upon completed IEPs.

(1) OSEP determined through nine of 15 interviews with school district administrators who participated in meetings in which placement decisions were made, that it was the practice of district officials to make placement decisions either at the eligibility meeting before the IEP was developed or after the goals and objectives were developed, but before the objective criteria, evaluation procedures, and schedules were written.

(2) Two administrators of special education programs in public agencies F and H informed OSEP that the placement decision is made by the assessment team. After the assessment results are discussed by the team, the placement decision is made and the IEP is then developed.

(3) Four administrators at regular education facilities in public agencies B and E, who served as agency representatives at IEP meetings held at the schools, informed OSEP that placement decisions are made at meetings after discussion of evaluation and testing information, but

before goals and objectives are developed. Part of the IEP was developed at the meeting. Subsequent to the meeting, the teacher added goals and objectives and other IEP components. These were not developed at the meeting or at a subsequent meeting.

(4) Three special education administrators for public agencies A and D informed OSEP that the eligibility/IEP committee first determined whether a child was eligible for special education and related services and the child's educational needs. The committee then also determined the level of services and where the services were to be provided (i.e., the child's placement). After the placement decision was made, goals and objective were developed.

d. OSEP determined through interviews with 21 teachers who were involved in IEP development and placement decisions from seven of the eight³ public agencies visited by OSEP, that IEPs were completed following determination of placement in a program. OSEP finds that because the complete IEP was developed after the placement decision was made, the placement decision could not have been based on the IEP.

(1) Several teachers in public agencies G, E and H, informed OSEP that after the assessment results are discussed at the intake/eligibility meeting, the placement decision is made and the IEP is then developed.

(2) Several teachers in public agencies F and G informed OSEP that the placement decision is made at the spring periodic review meeting in order to plan for the next school year. The IEP is developed in the fall, about 6 weeks after school begins.

(3) Two teachers in the public agency A informed OSEP that at the IEP meeting the placement decision is made before objective criteria, and evaluation schedules are determined.

(4) Several teachers in public agencies B and E informed OSEP that at the IEP meeting, evaluation data is discussed at the beginning of the IEP meeting and then the placement is determined before the IEP is developed. Goals and objectives are written by the teacher after the meeting based on what was discussed at the meeting. The completed IEP is then sent home to the parents.

³ Public agency C which was visited by OSEP during the on-site is not being considered in this Report for LRE data analysis. The program that OSEP reviewed is in a correctional facility where youth are placed by the courts.

(5) In public agency D, a teacher informed OSEP that it was standard procedure in this building to discuss and decide placement before the IEP was completed because the space for indicating the child's placement appears at the top of the district's IEP form. Therefore, the IEP teams determines placement before it develops the IEP goals and objectives.

FINDING: REMOVAL FROM REGULAR EDUCATION ENVIRONMENT

2. The facts set forth below provide documentation that MDE did not ensure that children with disabilities in public agencies visited by OSEP were removed from the regular educational environment only when the nature of severity of the disability was such that education in the regular classes with supplementary aids and services could not have been achieved satisfactorily.

Additionally, all the requirements of §§300.550-.556 apply to all preschool children with disabilities who are entitled to receive a free appropriate public education.

a. MDE approved LEA applications in public agencies B, C, D and F that did not contain policies and procedures consistent with §300.550(b)(2). (See Section VI on page 34 of this Report.)

b. MDE has effective methods for identifying deficiencies with regard to the requirements of §300.550(b)(2). In every case where OSEP identified deficiencies, MDE has also identified deficiencies in its most recent monitoring reports to those same agencies.

Although MDE had identified these same deficiencies, it had not ensured that all such deficiencies had been corrected at the time of OSEP's visit, even though the corrective action plan for each agency had been approved by MDE and all deficiencies were to have been corrected prior to the time of OSEP's visit (See Table VII-2 on page 41 of this Report.)

c. OSEP found that some students were removed from the regular education environment for reasons other than a determination that the nature and severity of the disability of the students was such that education in a regular education facility with the use of supplementary aids and services could not be achieved satisfactorily, as demonstrated by the following:

(1) OSEP reviewed the records of 28 students who were placed at separate schools and in separate classes in public agencies A, B, E, and G (student records from public agency E were reviewed at public agency H). The records included "justification" statements and parent notice forms which were used to document the basis for placement decisions. In the justification statements and notice forms contained in those files, the sole documented basis for removal of those

students from the regular education environment was a combination of category of disability, configuration of service delivery and other reasons not related to the education of the students. Examples of the justification statements set forth in student records for such removal included: "Due to (Student's) handicapping condition"; "Due to difficulties in manipulating school materials, (Student) requires specialized teaching strategies, modified curriculum and individual and small group instruction"; and "Because of (students') functional curriculum needs which are not offered in regular education classrooms." None of these statements indicates why the student's education could not occur in regular classes with the use of supplementary aids and services. Teachers who had been present at the time placement decisions were made confirmed that placement decisions for students had been made based solely upon these factors.

(2) A special education administrator of a separate program operated by public agency H informed OSEP that it was agency practice to consider "mainstreaming" or the integration of students with non-disabled students only at the request of parents or when the student showed interest in returning to the home school. The student would then be placed on a "mainstream contract" which could be activated once the student earned the appropriate points.

(3) OSEP reviewed 12 records of three and four year old students placed in separate classes for preschool aged children with disabilities in public agencies F and G. Public agency G serves all preschool-aged children with disabilities in its early childhood program located in an elementary school. Public agency F serves preschool-aged children with hearing impairments in an elementary school. All other preschool-aged children with disabilities in public agency F receive their special education in the district's early childhood center, which serves children in regular education and special education.

The records for these 12 children in public agencies F and G included justification statements which were used to document the basis for placement decisions. The justification statements contained in those files documented that the removal of these students from the regular educational environment was based on the child's category of disability and the configuration of services available. Teachers who were present at the time placement decisions were made confirmed that placement decisions for students had been based solely upon those two factors.

(a) The teachers and administrators in public agencies F and G involved in the IEP development and placement

decisions for the early childhood students with disabilities informed OSEP that both districts have regular early childhood programs located in their districts. Public agency F currently has an early childhood center in the district which serves both regular and special education early childhood students. The teachers involved in the IEP development and placement process for the twelve early childhood student records reviewed by OSEP stated that most of their students could benefit from interaction with non-disabled students. These teachers also stated that while there were opportunities available for integrating these students with their non-disabled peers, the IEP teams had not considered integration for these students. One teacher in public agency G informed OSEP that because integration opportunities were not made available to her students, the parents of one of her students had enrolled their child in a day care center in the home district for half days, so that the child could interact with his non-disabled peers. The parents paid for this program themselves.

(b) An administrator and a teacher in public agency G informed OSEP that they are aware of the lack of integration opportunities made available to preschool-aged children with disabilities served in early childhood programs. They also stated that both the early childhood special education program and regular education early childhood program would be moving in into a new building sometime next year, so that integration can occur.

FINDING: PLACEMENT DETERMINED ANNUALLY

3. The facts set forth below provide documentation that MDE did not ensure that educational placement decisions for children with disabilities in public agencies visited by OSEP were determined at least annually.

a. MDE approved LEA applications in public agencies B, C, D and F that did not contain policies and procedures which included the requirements of §300.552(a)(1). (See Section VI on page 34 of this Report.)

b. MDE did not effectively monitor compliance with the requirements of §300.552(a)(1). Although MDE has a method for determining compliance with this requirement, OSEP found deficiencies at two public agencies that had not been identified by MDE in its most recent monitoring reports to those agencies (See Table VII-1 on page 39 of this Report).

(1) Although not found by MDE, OSEP found that for some students, placement decisions were not determined annually, as required by §300.552(a)(1), as demonstrated by the following:

One administrator who served as public agency E's representative at the IEP meetings held at the schools and three teachers from public agencies E and D reported to OSEP that following initial placement into a specific special education program, placements were not reviewed annually unless parents requested that the current placement be reconsidered. Instead, placements are only reviewed tri-annually, after the three year reevaluation is conducted. One teacher also confirmed that placement was not discussed at the annual IEP meeting or any other meeting or any other meeting unless parents indicated an interest in discussing other placement options. Another teacher stated that placement decisions were not discussed annually at the IEP review or at any other meeting.

- B. MDE is responsible for ensuring that each public agency ensures that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. §300.551(a). In addition, MDE is responsible for ensuring that each public agency ensures that the various alternative placement options are available to the extent necessary to implement the IEP for each child with a disability. §300.552(b).

FINDING:

1. OSEP finds that MDE did not meet its responsibility under §300.550(a) to ensure that public agencies have available and consider placement options to the extent necessary to implement the IEP for each child with a disability as required at §§300.551(a) and 300.552(b), as demonstrated by the following:

a. MDE approved LEA applications in public agencies B, C, D and F that did not contain policies and procedures which included the requirements of §§300.551(a) and 300.552(b). (See Section VI on page 34 of this Report.)

b. MDE did not effectively monitor compliance with the requirements of §300.552(b). Although MDE has a method for determining compliance with this requirement, OSEP found deficiencies at two public agencies that had not been identified by MDE in its most recent monitoring reports to those agencies (See Table VII-1 on page 39 of this Report).

(1) OSEP found that two public agencies did not make placement options available to the extent necessary to implement the IEP for each student with a disability as required by §§300.551(a) and 300.552(b), as demonstrated by the following:

(a) An administrator from public agency F stated that at the secondary level, students with emotional/behavior

disorders (EBD) needing special education services for at least a half day, but less than a full day, can only be served in resource room and multidisciplinary self-contained models, both housed in regular schools. At the elementary level, students needing the same intensity of services (at least half-day, but less than full day) can only be served in separate class and separate school placements, because the less restrictive resource model used with secondary level students is not available to elementary level students.

(b) OSEP found through its review of student records at the separate school and confirmed with an administrator of public agency H, that several districts served by the intermediate unit did not have the self-contained option available to students with EBD. OSEP was also informed that several students did not meet public agency H's entrance criteria which required documentation of interventions tried, and at least 4 hours of EBD and/or special education programming. This further documents that in some districts, EBD students requiring more than Level 3 services are removed from the regular education environment and categorically placed in separate school programs.

- C. MDE is responsible for ensuring that each public agency ensures that placement decisions are made by a group of persons including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. MDE is also responsible for ensuring that the educational placement for each child with a disability is as close as possible to the child's home. §§300.533(a)(3) and 300.552(a)(3).

FINDING:

1. OSEP finds that when students are placed outside of their school district of residence, MDE did not ensure that educational placement decisions were made by a group of persons knowledgeable about the placement options available to the child in the home district because either a representative of the home district, did not attend the IEP meeting where the placement decision was made, or the group of persons from the operating district making the placement decision were unfamiliar with options available to the child in the home district.

a. MDE approved LEA applications in public agencies B, C, D and F that did not contain policies and procedures consistent with §300.552(a)(3). (See Section VI on page 34 of this Report.)

b. MDE did not effectively monitor compliance with the requirements of §300.533(a)(3) and 300.552(a)(3), as demonstrated by the following:

(1) Although MDE did not find these deficiencies when it most recently monitored the public agencies indicated below, OSEP found that in some of the public agencies it visited educational placement decisions were not made by a group of persons knowledgeable about placement options, including the options as close as possible to the child's home, as required by §§300.552(a)(3) and 300.533(a)(3) (See Table VII-1 on page 39 of this Report).

(a) According to administrators in public agencies A, B and C, some special education students who need more intensive services are placed outside their school district of residence in special education programs administered by neighboring school districts. The administrators from these three cooperatives informed OSEP that LEA representatives from sending districts do not always attend IEP meetings. The receiving district representative may attend the IEP meeting for these students but they are not always aware of options in the home district.

(b) In eleven student records reviewed by OSEP in public agencies A, B and C, OSEP found that the representative of the district of residence did not attend the IEP meeting conducted by the operating district. OSEP confirmed, through interviews with four teachers who had been present at the IEP meetings, that the representative of the district of residence did not attend.

III. DUE PROCESS PROCEDURES AND PROCEDURAL SAFEGUARDS

MDE is required to ensure that due process procedures and other procedural safeguards are available to parents and children with disabilities. §300.501. Sections 300.500 through 300.514 delineate the due process and procedural safeguard requirements that each public agency must meet. In addition to MDE's general responsibilities under §300.501, MDE is required to fulfill specific responsibilities in order to ensure that public agencies comply with §§300.500-300.514. These responsibilities are to:

- (1) include in its annual program plan, procedural safeguards which ensure that the requirements in §§300.500-300.514 are met (§300.131);
- (2) include in its annual program plan, procedures established to inform each public agency of its responsibility for ensuring effective implementation of the procedural safeguards (§300.136);
- (3) require LEA applications for Part B funds to include an assurance that the LEA has procedural safeguards which meet the requirements of §§300.500-300.514 (§300.237);

(4) monitor public agencies' establishment and implementation of the procedural safeguard requirements of §§300.500-300.514 (§76.101); and

(5) ensure that all education programs for children with disabilities are under the general supervision of the State educational agency and that such programs comply with all the procedural safeguards requirements of §§300.500-300.514 (20 U.S.C. §1412(6)).

A. Public agencies are responsible for establishing and implementing procedural safeguards which meet the requirements of §§300.500-300.514. (§300.501.)

FINDINGS:

1. OSEP finds that MDE did not meet its responsibility under §300.501 to ensure that public agencies visited by OSEP established procedural safeguards as required by Federal law, as demonstrated by the following:

a. Although MDE had monitoring procedures for determining whether public agencies had established procedural safeguards which meet the requirements of §300.500-514 (including §§300.560-569, as incorporated by §300.502), MDE's system was not effective in identifying all procedural safeguard deficiencies.

Table III-1 on page 17, OSEP identifies all of the procedural safeguards which public agencies did not establish or established incompletely or inaccurately. OSEP reviewed MDE's most recent monitoring reports to these same agencies and determined that MDE had not identified any of these deficiencies regarding the establishment of procedural safeguards (See Table VII-1 on page 39 of this Report).

TABLE III-1

Procedural Safeguards Not Established by Public Agencies

Section	Content	PUBLIC AGENCY							
		A	B	C	D	E	F	G	H
300.503(a)(2)	Info. re: where indep. eval. obtained	I	I	I	I	I	I		I
300.503(c)(1)	Consider independent evaluation	X	X	X	X	X	X		X
300.503(c)(2)	Independent eval. evidence at hearing	I	I	I	I	I	I		
300.503(d)	Evaluation by hearing officer	X	X	X	X		X		
300.504(a)	Notice: proposal/refusal init./change	I	I	I	I	I	I	I	I
300.504(b)(2)	Consent not condition of benefit	X	X	X	X	X	X	X	X
300.505(b)(1)	Understandable language		X	X			X		
300.505(b)(2)	Notice in native language		X	X			X		
300.505(c)(1)	Oral translation of notice	X	X	X			X		
300.505(c)(2)	Understands notice	X	X	X			X		
300.505(c)(3)	Evidence of (c)(1) and (2)	X	X	X			X		X
300.506(a)	Parent initiate hearing	I							
300.506(b)	Conducting the hearing		X	X	X		X		
300.506(c)	Info. re: low-cost legal services		I	I	I	I	I	I	I
300.507(a)(1)	H.O. not an employee	X		X	X		X		
300.507(a)(2)	H.O. no conflict	X	X	X	X		X		
300.507(b)	H.O. paid by public agency	X	X	X	X		X		
300.508(a)(3)	Prohibit evidence not disclosed	I	X	X	X	I	I		I
300.509	Final decision unless appeal	X	X	X	X				
300.510	Administrative appeal	X	X	X	X	X	X		X
300.511	Right to civil action (State/Federal)		X	X	X	X	X		X
300.512(a)(2)	Decision mailed within 45 days	I	X	X	X	I	X		X
300.512(b)(1)	Review decision w/in 30 days		X	X	X	X	X		X
300.512(b)(2)	Copy mailed w/in 30 days	X	X	X	X	X	X	I	X
300.512(c)	Specific extensions of time		X	X	X		X		
300.512(d)	Convenience of hearings		X	X	X				
300.513(a)	Pendency during proceedings	I	I	I	I				
300.513(b)	Pendency during admissions		X	X	X				
300.514(a)(1)	Surrogate parent- identification		X	X	I	I	X	I	*
300.514(a)(3)	Surrogate parents-wards of State		X	X			X		*
300.514(b)	Method to determine & appoint		X	X			X		*
300.514(c)	Criteria for selection of surrogates		X	X			X		*
300.514(d)(1)	Surrogate not employee of agency		X	X			X		*
300.514(d)(2)	Not employee solely paid by agency	X	X	X	X		X		*
300.514(e)(1)	Represent child in identification...	X	X	X	X		X		*
300.514(e)(2)	Represent in provision of FAPE	X	X	X	X		X		*
300.562(a)	Right to review and inspect records	X	X	X	X	I	X	I	I
300.563	Access to records	X		X	X		X		
300.564-566	Confidentiality of information	X	X	X	X		X		

KEY: X = Absent I = Inaccurate or Incomplete
 * = Not an intermediate school district responsibility

TABLE III-1 (continued)

Procedural Safeguards Not Established by Public Agencies⁴

Section	Content	PUBLIC AGENCY							
		A	B	C	D	E	F	G	H
300.567	Amendment of records	X	I	X	X		X		
300.568-569	Confidentiality / hearing	X	X	X	X		X		
KEY:		X = Absent		I = Inaccurate or Incomplete					
		* = Not an intermediate school district responsibility							

EXPLANATION OF AREAS DETERMINED TO BE INSUFFICIENT OR INCORRECT

§300.503(a)(2) Public agencies A, B, C, D, E, F, and H, have a policy which states that parents are informed that they may request from the district information about where an independent evaluation may be obtained. This policy, however, does not include a statement about the district's obligation to provide this information. Federal regulations at this part require each public agency to provide parents, upon request, information about where an independent evaluation may be obtained.

§300.503(c)(2) Public agencies A, B, C, D, E, and F have policies and procedures which state that the district informs parents of their right to present evidence including relevant tests, assessments, reports and other information, but these procedures do not specify that the results of an independent evaluation obtained by the parents at private expense may be presented as evidence at a hearing regarding the child. Federal regulations at this part require that the public agency ensure that parents have the right to present as evidence at a hearing regarding the child the results of independent evaluations obtained at private expense.

⁴ Public agencies B, C and F did not have policies or procedures setting forth methods to: (1) determine if a child needs a surrogate parent; and (2) assign a surrogate parent to a child. MDE's administrator's manual, Implementation of Minnesota's Surrogate Parent Rules, includes methods for determining a child's need for a surrogate parent and assigning surrogate parents, and provides districts with the option of adopting these methods for use in their systems. However, OSEP did not find in the documents it reviewed, indication that these districts adopted the methods contained in MDE's manual.

§300.504(a) All public agencies have a procedure which states that the district provides notice to parents prior to initiating or changing or refusing to initiate or change a child's educational placement or special education services and assessment. The Federal regulations under this part also require districts to send notice before it initiates or changes or refuses to initiate or change the identification of a child.

§300.506(a) Public agency A has established procedures which are inconsistent both with the Federal regulation at this part and its own Parent Rights and Procedural Safeguards brochure. The public agency has produced a manual entitled Due Process Manual for use by "district staff and administration" which contains these procedures on when a hearing must be held, at 3525.3800 on page 127. These procedures are as follows:

"A hearing regarding a proposed action as set forth in parts 3525.3600 to 3525.3800 or part 3525.3900, subpart 5, shall be held whenever the providing district receives the parent request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to part 3525.3700, subpart 2. Provided however, that no parent shall have the right to request a hearing unless at least one conciliation conference has been convened pursuant to part 3525.3700, subpart 1..."

The Federal regulation under this part does not limit the time within which a parent can initiate a due process hearing or permit the public agency to deny a parent's request for a due process hearing on any matter contained in this part.

§300.506(c) Public agencies B, C, D, E, F, G and H have procedures which state that the districts will inform parents of any free or low cost legal services available in the area, but these procedures do not specify that this information must be provided if: (1) the parent requests it; or (2) the parent or school district initiates a due process hearing.

§300.508(a)(3) Public agencies A, E, F and H have a procedure which states that parents have the right to receive from the district evidence that was not disclosed in the original notice at least five days prior to the hearing. The procedure also states that the person conducting the hearing may determine if evidence that is not disclosed within this time frame should be introduced or considered. The Federal regulations under this part state that any party to the hearing has the right to prohibit the introduction of evidence that has not been disclosed at least five days before the hearing.

§300.512(a)(2) Public agencies A and E have a procedure which states that a final written decision must be made within 45 days

from the receipt of the request for a hearing, and a procedure that all hearing decisions must be sent by mail to all parties. Neither procedure specifies that a final decision must be made and sent to the parties within 45 days as required by §300.512(a)(2).

§300.512(b)(2) Public agency G has a procedure which states that reviews of hearing decisions must be issued within 30 days of the receipt of a request for a review, but does not specify that the decision in the review must be mailed to both parties within the 30 days.

§300.513(a) Public agencies B, C, and D have a procedure which states that there will be no change of educational placement while conciliation or due process activities are carried out when parents do not give permission for an educational assessment to determine eligibility for special education. Public agency A has a procedure which states that parents should be informed that their child's educational placement will not be changed as long as the parent objects to the proposed action according to the procedures outlined for due process resolution. Federal regulations under this part require that during any administrative or judicial proceeding regarding a complaint, the child who is the subject of the complaint remain in his or her present educational setting, unless the LEA and the parents of the child agree otherwise.

§300.514(a)(1) Public agencies D, E and G follow the State's procedure which states that the public agency shall appoint a surrogate parent when the child's parent, guardian or conservator is unknown or unavailable. The Federal regulations under this part require the appointment of surrogate parents only when the parents are unavailable because they cannot be identified or located, or the child is a ward of the State. If the child's parent(s) can be identified and located, the public agency should not assign an individual to act as a surrogate for the parent unless the parent specifically requests a surrogate in writing (see Minnesota Department of Education memorandum dated September 7, 1990 from Wayne Erickson to OSEP)⁵.

§300.562(a) Public agencies E and G 's procedures have a footnote which states that according to Minnesota's statute at

⁵ OSEP identified this issue in its review of MDE's State plan. MDE proposed to include in its administrator's manual titled: Implementation of Minnesota's Surrogate Parent Rules a definition of "unavailable" which meets Federal requirements. MDE also agreed to disseminate statewide, clarification of "unavailability". At the time of OSEP's monitoring visit, clarification of these procedures was not reflected in local policies and procedures.

section 13.04, data need not be disclosed to parents for inspection and review for six months after the last review. OSEP reviewed this statute and determined that it is inconsistent with Federal regulations because it limits the disclosure of records to once every six months "unless a dispute or action pursuant to the record is pending or additional data has been collected." Federal regulations under this part do not limit the parent's right to inspect, review, and receive interpretations of a child's records. public agency H has a procedure which is incomplete. The procedure permits parents to inspect and review records under this part, but it does not state that the public agency will comply with a request without unnecessary delay and before any meeting regarding an IEP, or hearing relating to the identification, evaluation, or placement, and in no case more than 45 days after the request is made.

§300.567 Public agency B has a procedure which states that an "individual and/or parent may enter amendments to objectional data" contained in a student's record. The Federal regulation under this part provides the parent with the right to request the public agency to amend objectionable information.

- B. Public agencies are responsible for providing a written notice (under §300.504) to parents of children with disabilities which contains: (1) a full explanation of procedural safeguards available to parents under Subpart E; (2) a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected; (3) a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and (4) a description of any other factors which are relevant to the agency's proposal or refusal. §300.505(a).

FINDINGS:

1. OSEP finds that MDE did not meet its responsibility under §300.501 to ensure that public agencies provided parents with prior written notices as required by §300.504(a) which meet the requirements of §300.505(a), as demonstrated by the following:

a. OSEP reviewed the policies and procedures public agencies submitted to MDE as part of the LEA application review and found that they do not require that parents be provided with a full explanation of all their procedural safeguards under Subpart E each time the district sends notice before it initiates or changes, or refuses to initiate or change the identification, evaluation, or the provision of a free and appropriate public education to a child. Although each LEA has a policy which

states that parents will be provided with a full explanation of all their procedural safeguards, the public agencies also have a procedure which states that a description of parent rights and procedures relative to a due process hearing will be sent to parents within 5 days of the parent's written request for a hearing. The directions for disseminating the copy of these rights and procedures are consistent with this procedure.

b. MDE's method for monitoring to determine if a public agency's full explanation to parents of Subpart E rights does not include all the rights available to parents. MDE's monitoring instrument is based upon the parent rights included in MDE's model parent rights notice. Therefore, the deficiencies with MDE's method of monitoring corresponds to deficiencies in its model brochure, as described below (See page 38 of this Report).

c. The eight public agencies visited by OSEP provided written notices to parents which included the State's model brochure titled, Parent Rights and Procedural Safeguards. OSEP reviewed this brochure and determined that it did not contain a full explanation of all procedural safeguards, in accordance with §300.505(a)(1), as indicated in Table III-2.

TABLE III-2

Procedural Safeguards Not Included in Parent Rights Notices

Section	Content	
300.503(a)(2)	Info. re: where indep. eval. obtained	I
300.503(c)(1)	Consider independent evaluation	X
300.503(c)(2)	Independent eval. evidence at hearing	I
300.503(d)	Eval. requested by h/o	X
300.504(a)	Notice: proposal/refusal init./change	X
300.504(b)(2)	Consent not condition of benefit	X
300.505(a)(1)	Subpart E Safeguards	X
300.505(a)(2)	Notice content	X
300.505(a)3;4	Description of Eval.; Other Factors	X
300.505(b)	Understandable Lang.; Native Lang.	X
300.505(c)	Translation; Understands Notice; Evi.	X
300.506(b)	Conducting the hearing	X
300.506(c)	Info. re: low-cost legal services	I
300.507	Impartial hearing officer: requirement and criteria	X
300.508(a)(3)	Prohibit evidence not disclosed	X
300.508(a)(5)	Written facts and decisions	
300.509	Finality of hearing decision	X
300.510	Administrative Review	X
300.511	Right to civil action (State/Fed)	X
300.512	Timelines for Hearings	X
300.513(a)	Pendency During Proceedings	I
300.513(b)	Pendency for Admissions	X
300.514	Surrogate Parents	X
300.562(a)	Public Agency re: Inspect and Review	I
300.562(b)(c)	Parent Rights to Inspect and Review	X
300.563-569	Confidentiality of Information	X
KEY: X = Absent I = Inaccurate or Incomplete		

Explanation of Areas Determined to be Insufficient or Incorrect

§300.503(a)(2) The "Parent Rights" notice includes the right to request from the district information about where an independent evaluation may be obtained. The notice does not include a statement about the district's obligation to provide this information. Federal regulations at this part require each public agency to provide parents, upon request, information about where an independent evaluation may be obtained.

§300.503(c)(2) The "Parent Rights" notice includes the right to present evidence including relevant tests, assessments, reports and other information, but does not specify that the results of an independent evaluation obtained by the parents at private

expense may be presented as evidence at a hearing regarding the child, as required under this part.

§300.506(c) The "Parent Rights" notice includes the right to be informed by the district of any free or low cost legal services available in the area, but the notice does not specify that this information must be provided if: (1) the parent requests it; or (2) the parent or school district initiates a due process hearing.

§300.513(a) The "Parent Rights" notice includes the right to be assured that a child's education program will not be changed as long as parents object to the proposed action in writing. The Federal regulations under this part state that the child involved in the complaint must remain in the current educational placement unless the parent and the public agency agree to a change.

§300.562(a) The "Parent Rights" notice includes the right to review and receive copies of all records or other written information the school has in its possession regarding their child, but it does not include the parents' right to receive this information without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

C. MDE is responsible for ensuring that decisions in due process hearings are reached and mailed to the parties no later than 45 days after the receipt of a request for a hearing, unless an extension is granted at the request of either party. §300.512(a) and (c).

DESCRIPTION OF MDE'S DUE PROCESS HEARING SYSTEM: Minnesota currently has a two-tier system for due process hearings. Requests for hearings are directed to the Office of Administrative Hearings (OAH) which is an independent State office. Due process hearings in Minnesota are heard by administrative law judges. Between 1987 and 1990, 24 requests were made for due process hearings, of which 7 were withdrawn and 9 were appealed to the Commissioner of Education. Minnesota is currently in the process of changing to one-tier system wherein due process hearing decisions will be appealable to the State Court of Appeals. All districts are required to offer at least one conciliation conference to parents in an effort to resolve disputes.

FINDING:

1. OSEP finds that MDE did not meet its responsibility to ensure that decisions in due process hearings are reached and mailed no later than 45 days after the receipt of a request for a

hearing, unless a specific extension of time is granted at the request of either party, as demonstrated by the following:

a. OSEP received a document from MDE's Office of Monitoring and Compliance which states that the Department does not track the extension of hearing timelines. Although information on extensions of hearing timelines is contained in the hearing officer's final report, MDE informed OSEP that it does not review the reports for this information (See Section VII on page 37 of this Report).

b. OSEP examined the files for hearing reviews of 8 due process hearing decisions which were issued after the 45 day timeline had elapsed. Each file includes a statement (in reference to the due process hearing) that, "The parties waived the 45 calendar day requirement contained in Minn. Stat. Sec. 120.17 Subd. 3b(e)." No time-specific extensions were documented.

IV. FREE APPROPRIATE PUBLIC EDUCATION

MDE is responsible for ensuring that a free appropriate public education is available to all children with disabilities within the State. §300.300. In part, "free appropriate public education" means special education and related services which are provided in conformity with an IEP. §300.4(d). "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disability. (Emphasis added.) §300.14(a)(1).

In order to meet the general responsibility specified under §300.300, MDE is required:

(1) to include in its annual program plan, information which shows that the State has in effect a policy ensuring: (a) the right to free appropriate public education to all children with disabilities, and (b) that this policy is applicable to all public agencies in the State (§300.121); and

(2) to monitor public agencies responsible for carrying out the programs and enforcement of obligations imposed on these agencies (20 U.S.C. §1232d(b)(3)(A)).

A. MDE is responsible for ensuring that each public agency makes available a free appropriate public education which meets the unique needs of each child with a disability. §300.300.

FINDINGS:

1. OSEP finds that MDE did not ensure that all public agencies make extended school year (ESY) services available as a component

of FAPE, if necessary, to meet the unique needs of an individual child with a disability, as demonstrated by the following:

a. MDE's method for monitoring to ensure that students with disabilities are receiving a free appropriate public education is not, in all cases, effective.

(1) OSEP visited public agencies and collected data on this requirement, which MDE had previously monitored. In addition, OSEP reviewed records and interviewed staff from the same "pool" from which MDE would have drawn. In three agencies, OSEP found deficiencies with regard to the provision of an extended school year that had not been identified by MDE in its last monitoring reports to the respective agencies. Because there were deficiencies identified by OSEP that MDE did not identify, OSEP concludes that MDE's method to monitor this requirement was not fully effective in identifying deficiencies. (See Table VII-1 on page 39 of this Report).

(2) In one instance where MDE had identified a deficiency with regard to the provision of ESY, the deficiency had not been corrected at the time of OSEP's visit, even though the corrective action plan for this agency had been approved by MDE and all deficiencies were to have been corrected prior to the time of OSEP's visit. (See Table VII-2 on page 41 of this Report.)

b. In interviews with OSEP, building administrators who participated in IEP meetings stated that ESY services were only available to students with certain disabilities, as indicated by the following statements: (1) "[ESY] services are only discussed at IEP meetings if parents ask for it. (2) [ESY services are] not generally provided for EBD students" (public agency H); and (3) "The district provides summer school ESY services for students who have the following impairments- severe, LD, PI, EC, and EBD" (public agency G).

c. A building administrator from public agency D who participated in IEP meetings stated in an interview with OSEP that the budget determines if ESY is offered.

2. OSEP finds that MDE did not meet its general responsibility under §300.300 to ensure that related services were made available to assist all students with disabilities to benefit from special education, and as demonstrated by the following:

a. MDE's method for monitoring to ensure that students with disabilities had available to them related services necessary to benefit from special education was not fully effective. In two instances, OSEP found deficiencies with regard to the availability of related services which had not been identified by

MDE in its last monitoring reports to the agencies (See Table VII-1 on Page 39 of this Report).

b. Public agency D submitted to OSEP a copy of the guidelines and criteria it follows to determine if a student is eligible for the related services of occupational therapy and physical therapy. OSEP reviewed this document and found that direct services (those services "carried out directly by an occupational therapist or physical therapist") were available only to those "GLD" students, (students with mild mental retardation) who, on a norm referenced test, exhibit a deficit of -2.0 standard deviations, or a 35% delay below his/her mental age (for students ages 9 through 12), or a deficit of -1.5 standard deviations, or a 25% delay below his/her mental age (for students ages 5 through 8), in fine motor and visual motor skills. These procedures categorically exclude students with learning disabilities who do not exhibit a 25% or 35% delay below their mental age for these developmental areas, regardless of whether they need direct services to benefit from a special education.

A teacher of GLD students stated in an interview with OSEP, that these students could not be recommended for direct OT or PT services even if they were functioning 2-3 years below their chronological age because the guidelines for recommending direct OT and PT services "are according to mental age."

c. A building administrator in public agency D stated in an interview with OSEP that counseling services are not written in IEPs because, "We don't have a counseling service provider." When asked the question, "What do you do for students who need counseling services?", the administrator responded, "We refer kids to community services but we don't put it on the IEP because parents' insurance will pay for it."

d. OSEP reviewed the entrance criteria for direct occupational therapy in public agency E and found that to be eligible for these services, a child: (1) must be receiving direct service, Level III or above, from another special education program; and (2) must be in third grade or below unless there is a medical diagnosis.

3. OSEP finds that MDE did not meet its general responsibility under §300.300 to ensure that special education and related services contained in IEPs of children with disabilities were designed to meet their unique needs, as demonstrated by the following:

a. MDE's method for monitoring to ensure that special education and related services contained in IEPs of children with disabilities were designed to meet their unique needs was not fully effective. Although MDE has a method to identify

deficiencies in this area, its system did not identify all instances of noncompliance with this requirement. (See Table VII-1 on Page 39 of this Report.)

b. OSEP reviewed seven files of students with "emotional-behavior disorder (EBD)" in public agency G and found that all seven students were receiving 30 minutes of counseling a week. OSEP interviewed the social worker who provided the service, and was told that all students with EBD receive 30 minutes of service and that the amount of service is determined according to administrative policy rather than individual need.

c. OSEP also reviewed the files of two preschool students with hearing impairments in public agency G and found that they were not receiving the amount of adaptive physical education contained in their IEPs. The IEP indicated that these children were to receive 20 minutes of service two times a week. OSEP interviewed the adaptive physical education teacher to confirm the schedule, and was told that the amount of service is based not on individual need, but is determined according to administrative policy. OSEP was also told during this interview that the students were only receiving 20 of the 40 minutes of service on their IEPs because of scheduling problems.

V. COMPLAINT MANAGEMENT

MDE is responsible for adopting written procedures for receiving and resolving any complaint that the State or a subgrantee is violating Part B or its regulations. §76.780(a)(1). These procedures must include a time limit of 60 calendar days after the State receives a complaint to resolve the complaint, unless an extension is granted if exceptional circumstances exist with respect to a particular complaint. §76.781(a)(2) and (b).

FINDING:

1. MDE's "Procedures for Reviewing Special Education Complaints" states that, upon receipt of a written complaint, MDE makes a "determination as to whether the issues should be resolved through the complaint procedure and/or due process hearing procedures." If the issue can only be resolved by a due process hearing and there is no clear allegation of noncompliance with a rule or law, the issue is not investigated under MDE's complaint process. In an interview with OSEP, MDE's manager for the Office of Monitoring and Compliance further explained that MDE's complaint management procedure differentiates among types of contacts: hearable, complainable, and non-complainable contacts. The options are:

(a) When a contact relates to an issue that is "hearable" such as parents complaining that the district is not providing FAPE, MDE informs the parties of their rights

regarding a due process hearing and does not use the formal written complaint procedure.

(b) When a contact relates to a "complainable" issue such as failure to implement a part of an approved IEP, MDE uses the formal written procedure described in its "Procedures for Reviewing Special Education Complaints."

(c) When a contact relates to a "non-complainable" issue, such as parents complaining that they do not like their child's teacher, MDE suggests a variety of alternatives open to the parties but does not use the formal written procedure.

Section 76.780(a)(1) requires that States receive and resolve any complaint that the State or a subgrantee is violating a Federal statute or regulation that applies to special education programs. By making the distinction between complainable and hearable issues, MDE does not, in all cases, resolve the complaint, that is, reach a compliance determination with regard to the allegation.

For example, an SEA has an obligation to investigate and resolve a parent's allegation that FAPE has not been made available, because failure to provide FAPE would constitute a violation of Federal and State requirements. To conduct such an investigation, the SEA would verify that the LEA had followed the proper procedures in determining the child's special education program. The SEA would "resolve" the parent's allegation by ensuring that all proper procedures had been followed. Such a resolution would not preclude that parent from initiating a due process hearing. If a parent already has initiated a due process hearing before filing a complaint, or initiates such a hearing while the SEA is in the process of resolving the complaint, the SEA could put the complaint on hold pending the outcome of the due process hearing.

2. OSEP finds that MDE did not implement procedures, including a 60 calendar day deadline for resolving complaints, unless an extension is granted if exceptional circumstances exist with respect to a specific complaint, as required by §76.781(a)(2) and (b).

OSEP used MDE's Complaint Log to review timelines for the most recent twelve-month period for which complete records were available. Between July 7, 1989, and July 12, 1990,⁶ MDE entered 32 complaints into its complaint management process.

⁶ MDE had no information available regarding the number of complaints determined to be hearable, rather than complainable, and therefore not investigated and resolved through its complaint

OSEP reviewed 23 of MDE's case files to determine whether complaints were resolved within 60 days of the date of receipt unless an extension was granted in those cases where exceptional circumstances existed with respect to a specific complaint. In 11 of 23 cases, the complaint was either resolved within 60 days, withdrawn by the complainant, or, in one case, referred to another State agency. In 12 of 23 cases, complaints were not resolved within the 60-day timeline. In three of these 12 cases the timeline was extended in a manner consistent with Federal requirements, but in the remaining nine cases, the 60 day timeline was improperly exceeded:

- (1) In three cases MDE extended the timeline for submission of documentation by agencies against whom complaints had been made. MDE did not, however, indicate how or if this extension of an internal procedure would affect the overall 60-day timeline; and
- (2) In six cases, there was no information in MDE files indicating that an extension had been granted.

VI. STATE EDUCATIONAL AGENCY REVIEW AND APPROVAL OF LOCAL EDUCATIONAL AGENCY APPLICATIONS

Federal regulations establish the requirements that must be satisfied as a condition for distributing Part B funds to LEAs. §§300.180-300.240.

A State is responsible for developing procedures that applicants must follow when submitting applications for Part B funds and for providing assistance in applying for funds. §§76.770(b) and (d). A State is responsible for approving applications that meet Federal requirements. §76.400(b).

- A. MDE is responsible for developing procedures that applicants must follow when submitting applications for Part B funds. §76.770(b). The procedures must identify all the requirements that must be satisfied as a condition for distributing Part B funds to LEAs. §§300.180-300.240.

FINDING:

1. MDE states in its instructions to applicants that a completed copy of Section I of the Total Special Education System (TSES) must accompany the annual LEA application for Part B funds. The LEA is not required to submit all policies and procedures, but just the brief description required by Section I.

management system.

MDE requires each public agency applying for Part B funds to submit Section I of its TSES. An outline and checklist format is used in Section I. Special education directors for public agencies are instructed to use a check in the checklist column to answer the question, "Does your agency have this (policy, procedure, guideline) in place?" Checks in the appropriate column will indicate "Yes", "No", or "NI" (needs improvement) with regard to the particular policy, procedure or guideline. Section I then requires the agency to provide a brief description of local policies, guidelines, and procedures for meeting State and Federal requirements.

- B. MDE is responsible for approving applications for Part B funds that satisfy applicable Federal statutes and regulations and disapproving applications that do not meet Federal requirements. §§76.400(b) and (d). MDE must maintain records to show its compliance with this requirement. §76.731. In addition, if a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application. §76.305.

FINDING:

1. OSEP found that MDE approved applications that did not meet the requirements of §§300.220-300.240, as demonstrated by the following:

a. In interviews with MDE staff, OSEP was told that the submission of TSESSs as a part of each public agency's application for Part B funds began about 1980. All of these TSESSs were reviewed and retained by ADT. During 1989, ADT determined that the TSESSs it had on file were out of date and needed to be resubmitted using a revised format cooperatively developed by MDE and the Minnesota Administrators of Special Education. Therefore, the TSESSs which had been retained by ADT were purged.

Because all public agencies were in the process of completing these new TSESSs, MDE did not require TSESSs to accompany Part B applications for the 1989-90 school year. Therefore, for that year MDE approved applications which did not include the TSESSs.

In a May 1990 memorandum, MDE informed LEAs that Section I of the TSES must be submitted as a part of the 1990-91 application for Part B funds. In interviews with OSEP, MDE staff stated that, although most LEAs had submitted Section I, some had not, and that applications for Part B funds were approved even though LEAs had not submitted TSESSs. At the time of OSEP's on-site visit to Minnesota, 35 LEAs had not yet submitted Section I of their TSESSs.

When ADT receives Section I of the TSES, it determines that the applicant has completed the checklist, but conducts no detailed analysis of policies and procedures to ensure that they are consistent with State and Federal requirements. OSEP was told by MDE staff that an in-depth analysis of local policies and procedures is conducted by OMC. The completed copy of Section I and all of the policies and procedures referenced therein are reviewed by the OMC every six years in the course of the on-site monitoring review. After reviewing these policies and procedures, OMC retains them until the LEA's corrective action plan is approved, after which time they are purged. OMC has no formal method for notifying ADT of deficiencies with local policies and procedures.

b. As part of the pre-site and during the on-site activities, OSEP requested copies of policies and procedures for each Part B applicant which was to be visited. Upon returning to Washington, DC, OSEP reviewed all the documents it had collected. Where public agencies had not provided documents that met the requirements of §§300.220-240, OSEP informed MDE and provided it with the opportunity to submit additional documents. Based on these requests for policies and procedures, OSEP analyzed the documents listed in Table VI-1 to determine if public agencies had the policies and procedures required as part of the LEA application process for Part B funds.

⁷ Agency H is an intermediate unit and does not apply for Part B funds. Therefore, OSEP did not analyze its policies and procedures.

TABLE VI-1

Documents Reviewed by OSEP for LEA Application Requirements

A	Total Special Education System, Section I Due Process Manual
B	Total Special Education System, Section I Process for Developing Alternatives to Classroom- Related Learning and Behavior Problems Child Study Process
C	Total Special Education System, Section I
D	A Professional Handbook for Special Education (September 1989)
E	Total Special Education System, Section I - V
F	Special Education Department Child Study System Manual/Procedures (1990)
G	Total Special Education System, Sections I, II, and III and appendices (November 1990).

Table VI-2 on page 34 provides a summary of the results of OSEP's review of the documents and the LEA applications. The LEA application requirement (§§300.220-300.240) is listed in bold. Listed in regular type are the corresponding requirements for which public agencies did not develop complete policies and/or procedures.

⁸ To avoid redundancy, the review of policies and procedures addressing §§300.562-300.569, as required by §300.221, is presented in Table III-1 on page 17 of this Report and therefore, has been omitted from Table VI-2.

TABLE VI-2

Policies and Procedures Which Do Not Address
All Federal Requirements

FEDERAL REQUIREMENT	LEA						
	A	B	C	D	E	F	G
300.220 Child Find	I					I	
300.221 Confidentiality							
300.570 - 572	X	X	X	X	X	X	X
300.573		X	X	X	X	X	X
300.574	X	X	X	X	X	X	X
300.224 CSPD	X	X	X	X		X	
300.226 Parent partic.	X	X	X	X		X	
300.227(a) LRE							
300.550(b)(1)-552(a)(1)		X	X	X		X	
300.552(a)(2)		X	X	X		I	
300.552(a)(3)-553		X	X	X		X	
300.235 IEP							
300.342(a)-343(c)		X	X	X		X	
300.343(d)		X	X				
300.344(a)(1)			X				
300.344(a)(2)	I	I	X		X	X	X
300.344(a)(3)			X				
300.344(a)(4)			X	X		X	
300.344(a)(5)-(b)(2)			X			X	
300.345(a)(1)			X			X	
300.345(a)(2)			X				
300.345(b)			X				
300.345(c)		X	X	X		X	
300.345(d)(1)-(3)		X	X			X	
300.345(e)		X	X			I	
300.345(f)			X			X	
300.346(a)			X			X	
300.346(b)			X	I		X	
300.346(c)			X	X		X	
300.346(d)			X			X	
300.346(e)	I	I	X			X	
300.347(a)(1)-348(b)		X	X	X		X	

Key: X = absent I = incomplete or incorrect

EXPLANATION OF AREAS DETERMINED TO BE INCOMPLETE OR INACCURATE

§300.220

Public agency A - Although this public agency states that it will not refuse parents' requests to assess children, its procedures for the identification, location and evaluation of children with disabilities are limited to the school age population.

Public agency F - Procedures for identifying individual school-age children suspected of having a disability are described, but do not include screening activities or identification, location and evaluation of children who have not reached school age.

§300.227

§300.552(a)(2)

Public agency F - Procedures state that placement is made after the program staffing team discusses the child's current levels of performance, but before the IEP is completed.

§300.235

§300.344(a)(2)

The procedures for public agencies A and B's incompletely address the requirement that the child's teacher attend the IEP meeting. Their procedures require that the child's regular education teacher and appropriate special education personnel attend the IEP meeting.

§300.345(e)

Public agency F does not include that an interpreter must be provided when the parent is deaf or speaks a native language that is not English.

§300.346(b)

Public agency D lists goals but not objectives in its procedures.

§300.346(e)

Public agency A and public agency B each have a procedure in its IEP form for including schedules for determining the extent to which goals and objectives have been achieved. Their procedures do not include the criteria and procedures for determining whether goals and short term objectives have been achieved.

2. MDE staff told OSEP that it does not require Part B applicants to submit significant amendments to their policies and procedures. Amendments to local policies and procedures are reviewed during the LEAs next comprehensive on-site monitoring review. Because MDE uses a six year monitoring cycle, the date

that amendments are reviewed is dependent on where that LEA is in the cycle. (See Section VII, below, for a description of MDE's monitoring cycle.)

VII. STATE EDUCATIONAL AGENCY MONITORING

States must develop and use procedures to monitor subgrantees. §76.772(a)(3). In addition, 20 U.S.C. 1232d (b)(3) requires that States assure that each program (such as the Part B program) will be administered in accordance with all applicable statutes, regulations, State plans, and applications. 20 U.S.C. 1232d (b)(3)(A) further requires each State to adopt and use proper methods of administering each program, including:

(1) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions and organizations under the law; and

(2) correction of deficiencies in program operations that are identified through monitoring and evaluation.

See also §80.40(a).

States also have specific monitoring responsibilities under Part B with regard to the implementation of the least restrictive environment, §300.556, and the placement of children with disabilities in private facilities by public agencies, §300.402.

DESCRIPTION OF MDE'S MONITORING PROCESS

Monitoring is conducted on a six year cycle, composed of a three year compliance monitoring cycle followed by a three year follow-up monitoring cycle.

Year One The district conducts a self-study to identify areas which require improvement.

Year Two The Office of Monitoring and Compliance (OMC) conducts a formal compliance review of the district. This includes a fiscal review, as well as a review of all district policies and procedures, forms, and program implementation. OMC issues a preliminary report and permits the district to respond to the findings. After it receives the district's response, the report is issued in final form. A corrective action plan must be submitted by the district within 45 days of receipt of the final report. This plan must be approved by OMC.

Year Three The district implements its plan to correct deficiencies identified in the final monitoring report.

Year Four A second year of self-study follows implementation of the corrective action plan to enable the district to evaluate whether it has corrected all identified deficiencies.

Year Five The district is again monitored by OMC to confirm that it has corrected all areas of noncompliance identified in Year Two.

Year Six If there are any remaining areas of noncompliance identified during the follow-up monitoring conducted during the previous year, the district is required to submit another corrective action plan.

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

FINDING:

1. OSEP reviewed MDE's monitoring procedures and determined that MDE's provisions for monitoring compliance with Federal requirements did not address or ineffectively addressed certain requirements as specified below.

a. NO METHODS FOR IDENTIFYING DEFICIENCIES

§300.512(a)(1) - MDE does not monitor to ensure that due process hearing decision are issued within 45 days of the receipt of request unless a specific extension of time is granted at the request of either party. In its response to an OSEP document request, MDE answered that it collected no information regarding hearing timeline extensions.

OSEP noted in its review of Minnesota's due process log, that final decisions in 14 of 15 due process hearings were not reached within 45 days of the receipt of the request for a hearing, and no specific extensions of time were documented. The range of days beyond the 45 day timeline was from 24 to 176 days, with 4 decisions between 24 and 49 days beyond, 3 decisions between 50 and 100 days beyond, 1 decision from 100-150 days beyond, and 2 decisions between 150-176 days beyond 45 days. OSEP could not determine whether decisions were rendered within the 45 day timeline in 4 cases because the date of request was logged in with only the month and year, or the date of request was not entered in the log at all.

b. INCOMPLETE METHODS FOR IDENTIFYING DEFICIENCIES

(1) §300.344(a)(2) - With regard to the requirement that the child's teacher participate in each IEP meeting, MDE monitors to determine participation by the following staff: (1) the

student's regular education teacher, and (2) appropriate special education personnel including at least one member of the school staff qualified in the area of suspected disability. MDE does not have a method to determine if the child's teacher attends.

This method may be sufficient for initial placements where no special education teacher has yet been designated. For IEP meetings which occur after initial placement, MDE has no method monitor to determine if the child's special education teacher attends.

§300.346(e) - MDE monitors to determine if evaluation criteria and schedules are included in IEPs, but does not monitor to ensure that evaluation procedures, used to determine whether short term objectives are being achieved, are included in IEPs.

§300.505(a)(1) - MDE's method for determining if a public agency's full explanation to parents of Subpart E rights does not include all the rights available to parents. MDE's monitoring instrument is based upon the parent rights included in MDE's model parent rights notice. For a complete listing of deficiencies with the notice, and subsequently with MDE's method for monitoring, see Section III of this Report.

(2) Each of the public agencies included in Table VII-1, below, were monitored by MDE during the two years preceding OSEP's visit. OSEP visited these public agencies and collected data on the same requirements for which MDE had previously monitored. In addition, OSEP reviewed records and interviewed staff from the same "pool" from which MDE would have drawn. Because there were deficiencies identified by OSEP that MDE did not identify, OSEP concludes that MDE's methods to monitor the requirements included in the Table VII-1 were not fully effective in identifying deficiencies.

TABLE VII-1

Deficiencies Identified by OSEP and Not Identified by MDE
in Public Agencies Monitored Within the Last Two Years

Section	Content	Agency							
		A	B	C	D	E	F	G	H
300.300	FAPE: Unique IEPs							X	
300.300	FAPE: ESY				X		X	X	
300.300	FAPE: rel. service provided				X	X			
300.341	IEP complete before service								
300.342(b)(1)	IEP complete before service			X					X
300.344(a)(1)	IEP meetings: LEA rep.	X	X	X				X	
300.346(a)	IEP: level of performance	X							
300.346(b)	IEP: short term objectives			X		X			
300.346(e)	IEP: criteria, procedures	X	X	X	X	X	X		X
300.501	Estab/implem safeguards	X	X	X	X	X	X	X	X
300.533(a)(3)	Placement decision group	X	X	X					
300.552(a)(1)	Placement determined annually				X	X			
300.552(a)(2)	Placement based on IEP		X		X	X			X
300.552(a)(3)	Placement close to home	X	X	X					
300.552(b)	Availability of alt. placemnts	X			X				

Key: X = OSEP identified deficiency not identified by MDE

B. MDE is responsible for the adoption and use of proper methods for the correction of deficiencies in program operations that are identified through monitoring. 20 U.S.C. 1232d(b)(3)(E); See §§76.772(a)(3) and 300.556(b)(2).

FINDING:

1. OSEP has concluded that MDE did not ensure that public agencies that had been monitored carried out the necessary actions to correct identified deficiencies.

As described in the beginning of this section, OMC has a six year cycle for monitoring public agencies. OMC's formal follow-up activity to determine if all necessary corrective actions have been completed does not occur until the fifth year of the cycle,

⁹ For §300.300, MDE's system did identify that goals and objectives were not always uniquely determined at public agency G. However, MDE did not identify that the amount of service contained in the IEP was uniquely based on student needs, rather than determined categorically.

which is three years after deficiencies are first identified by OMC.

In interviews with three monitoring chairpersons who had conducted follow-up monitoring reviews, OSEP was told that not all deficiencies identified during Year Two of the monitoring cycle had been corrected by Year Five when OMC returns to the district to conduct its follow-up review. These monitoring chairpersons explained that although, in most cases, the magnitude of deficiencies was not as great, significant residual problems were typically identified during the follow-up reviews. As an example, OSEP was told that one district which had had 70 areas of noncompliance identified in its original monitoring report still had not corrected 11 of these areas at the time of OMC's follow-up visit. In such cases the district is directed to submit a second CAP. Implementation of these corrective actions are reviewed by OMC during Year Two of the second monitoring cycle, which is six years after the deficiencies is initially identified.

a. OSEP reviewed three sets of OMC monitoring reports, to verify that deficiencies originally identified in reports had not been fully corrected at the time of the follow-up visits three years later.

Public agency D OMC issued final reports to the public agency D on April 2, 1987, and on November 20, 1990. In at least six areas, deficiencies identified in 1987 had not been fully corrected by 1990. These areas included: (1) problems with assessments for students suspected of having emotional and behavioral disturbances (§300.532); (2) no observations for students suspected of having learning disabilities (§300.542); (3) missing, incomplete, or inadequate written reports for students suspected of having learning disabilities (§300.543); (4) IEPs which did not include or included inadequate present levels of performance statements (§300.346(a)); (5) IEPs which included inadequate goals, objectives and criteria for evaluating progress in meeting goals and objectives (§300.346(b) and (e)); and Comprehensive System of Personnel Development plans which were not submitted or substantially deficient (§300.224).]

Public agency G OMC issued final reports to public agency G dated January 21-28, 1986, and December 14, 1989. In at least five areas, deficiencies identified in 1986 had not been fully corrected by 1989. These areas included: (1) students were placed before a full and individual assessment was completed (§300.531); (2) the district did not adhere to its learning disabilities eligibility criteria (§300.541); (3) present levels of performance statements in IEPs were either missing or inadequate (§300.346(a)); (4) Goals and objectives in IEPs were missing or inadequate (§300.346(b)); and (5) lack of clear documentation demonstrating why a student could not be

successfully educated in a less restrictive setting (§300.550(b)(2)).

Public agency H On February 11, 1985, MDE issued a report containing the results of a follow-up visit. Presumably, these were issues which had been identified in a previous monitoring visit. OSEP found that one issue included in the 1985 report was also included in OMC's November 28, 1989, final report to 917. Deficiencies regarding missing or deficient present levels of performance statements first identified prior to 1985 had not been fully corrected by 1989.

b. In some cases, OSEP found that deficiencies MDE had identified in its most current monitoring reports to public agencies, and for which MDE had approved corrective action plans, had not been corrected at the time of OSEP's visit.¹⁰

TABLE VII-2

Deficiencies Identified by MDE but Not Corrected at the Time of OSEP Visit

Section	Content	Agency				
		A	E	F	G	H
300.300	FAPE: ESY					X
300.342(b)(1)	IEP complete before service			X		
300.346(a)	IEP: level of performance		X	X	X	X
300.346(b)	IEP: annual goals	X	X	X	X	X
300.346(b)	IEP: short term objectives	X		X	X	X
300.550(b)(2)	Removal from regular ed.	X	X	X	X	X
300.552(a)(2)	Placement based on IEP	X		X	X	

Key: X = Deficiencies identified by MDE but not corrected at the time of OSEP visit

¹⁰ In conducting this analysis, OSEP noted the completion date for correcting relevant deficiencies, as stated in public agencies' corrective action plans. In those cases where the date for completing the corrective action was later than the date of OSEP's visit, OSEP did not make findings, even in those cases where it found that deficiencies had not yet been corrected.

APPENDIX A

The individual public agencies visited by OSEP and referenced in this Report are as follows:

- Public agency A: Northeastern Education District No. 6033
- Public agency B: Mid-Range Special Education Cooperative
No. 5-932
- Public agency C: Cloquet Area Special Education Cooperative
- Public agency D: Duluth Public Schools
- Public agency E: Independent School District No. 194
- Public agency F: District 724 Community Schools
- Public agency G: St. Paul Public Schools
- Public agency H: Intermediate School District 917

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>I. IEP (Continued from previous page)</p>	<p>3. Develop training materials to inform and train teachers and administrators in their responsibilities in the areas cited in this Section.</p> <p>4. Provide training, on 1/15/92, as described above.</p> <p>5. Revise LEA application procedures and SEA monitoring procedures and provide training as indicated in Sections VI and VII.</p>	<p>Submit training materials by: <u>11/15/91</u></p> <p>Submit verification by: <u>2/15/92</u></p> <p>See Sections VI and VII</p>
<p>II. Placement in Least Restrictive Environment</p> <p>A. §§300.550(b)(2), 300.552(a)(1-2) (Removal from regular education environment. Placement decisions are based on the IEP and made annually.)</p> <p>B. §§300.551(a), 300.552(b) (A full continuum of placement options is available and alternative placements available as necessary to implement each IEP.)</p>	<p>1. Issue a memo to all public agencies which informs them that although currently addressed in the monitoring procedures, the following requirements will be a focus of monitoring in the future: (A) Removal from the regular classroom occurs only when the nature and severity of the disability is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily. Also placement decisions must be determined only after the IEP is fully developed; (B) A full continuum of alternative placements is available to meet the needs of children</p>	<p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/15/91</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>II. Placement in Least Restrictive Environment (Continued from previous page)</p> <p>C. §§300.533(a)(3), 300.552(a)(3) (Placement decisions are made by groups of persons, including those knowledgeable about the child, the evaluation data and the placement options. Placements is as close as possible to the child's home)</p>	<p>with disabilities for special education and related service; and (C) Placements are decided by groups of persons, including those knowledgeable about the child, the evaluation data and the placement options. Also placements is to be as close as possible to the child's home.</p> <p>The memo must notify all public agencies that, to the extent that their current practice(s) does not meet these requirements, they must immediately discontinue their current practice and implement the correct procedures.</p> <p>2. In addition to issuing the above memo, MDE must also issue a memo to those agencies in which OSEP found deficient practices requiring those public agencies to discontinue the current practice and to submit documentation to MDE that changes necessary to comply with Part B requirements have been implemented.</p> <p>3. Develop training materials to inform and train teachers and administrators in their responsibilities in the areas cited in this Section.</p> <p>4. Provide training as outlined above (begin 1/15/92, finish 12/31/92).</p>	<p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/1/91</u></p> <p>Submit training materials by: <u>11/15/91</u></p> <p>Submit verification by: <u>12/31/92</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>III. Procedural Safeguards</p> <p>A. §300.501 (Public agencies establish and implement procedural safeguards which meet the requirements of §§300.500-300.514.)</p>	<p>5. Revise LEA Application and SEA monitoring procedures and provide training as indicated in Sections VI and VII.</p> <p>1. Issue a memo to all agencies which informs them that although currently addressed in the monitoring procedures, the procedural safeguards required by §300.501 will be a focus of monitoring (§§300.500-300.514).</p> <p>The memo must notify all public agencies that, to the extent that their procedural safeguards do not meet these requirements, they must immediately develop or revise, as appropriate, policies and procedures which establish the procedural safeguard requirements of §§300.500-300.514.</p> <p>2. In addition to issuing the above memo, MDE must also issue a memo to those agencies which OSEP found did not establish and implement procedural safeguards and require those agencies to develop or revise, as appropriate, policies and procedures which establish the procedural safeguard requirements of §§300.500-300.514 and submit documentation to MDE that the changes necessary to comply with Part B have been implemented.</p>	<p>See Sections VI and VII</p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/15/91</u></p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/1/91</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>B. §300.505(a)(1) (Public agencies provide written notice to parents as required by §300.504(a), which contains the required content of §300.505(a)</p>	<p>3. Revise SEA monitoring procedures as indicated in this Section and Section VII.</p> <p>1. Issue a memo to all public agencies which informs them that the following requirements not previously addressed by the monitoring procedures will be addressed in the future: (B) Public agencies must provide written notice to parents as required by §300.504(a), which contain the required content of §300.505(a).</p> <p>2. In addition to issuing the above memo, MDE must issue a memo to those agencies in which OSEP found deficient practices requiring those public agencies to provide notice as required by §300.504(a), which meets the content requirements of §300.505(a) and submit documentation to MDE that the changes necessary to comply with Part B have been implemented.</p> <p>3. Submit the revised notices or documentation that the LEAs have adopted a Standard Parent Notification letter which contains the requirements of §300.505(a).</p> <p>4. Revise SEA monitoring procedures and provide training as indicated in this Section and Section VII.</p>	<p>See Section VII</p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/15/91</u></p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/1/91</u></p> <p>Submit documentation by: <u>11/15/91</u></p> <p>Submit monitoring procedures by: <u>11/15/91</u></p> <p>See Section VII</p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>III. Procedural Safeguards</p> <p>C. §300.512(a) and (c) (Decisions in due process hearings are reached and mailed to the parties within 45 days after the receipt of request of a hearing, unless an extension is granted at the request of either party.)</p>	<ol style="list-style-type: none"> 1. Revise the procedures to ensure that decisions in due process hearings are reached and mailed to the parties no later than 45 days after the receipt of a request for a hearing, unless an extension is granted at the request of either party. 2. Develop a memo for hearing officers which informs them that OSEP found a deficiency with regard to the requirements of §300.512 (a) & (c), and which describes the steps MDE will take to ensure that hearing timelines are complied with. 3. Develop materials to inform public agencies and parents regarding the changed procedures. 4. Disseminate the developed materials, beginning 1/15/92. 	<p>Submit revised procedures by: <u>11/15/91</u></p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to hearing officers by <u>9/1/91</u></p> <p>Submit materials by: <u>11/15/91</u></p> <p>Submit verification by: <u>7/1/92</u></p>
<p>IV. Free Appropriate Public Education</p> <p>A. §300.300 (Public agencies make FAPE available which meets the unique needs of a child with a disability.)</p>	<ol style="list-style-type: none"> 1. Issue a memo to all public agencies which informs them that the following requirements, although addressed in MDE's monitoring procedures, will be the focus of monitoring activities in the future: (A) Extended school year (ESY) services must be available as a component of FAPE, if necessary, to meet the unique needs of an individual child with a disability; and 	<p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/15/91</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>IV. Free Appropriate Public Education (continued)</p>	<p>(B) that public agencies make available related services to assist all students with disabilities to benefit from special education; and (C) that public agencies ensure that special education and related services contained in IEPs are designed to meet the unique needs of children with disabilities.</p> <p>The memo must notify all public agencies that, to the extent that their current practice(s) does not meet these requirements, they must immediately discontinue their current practice(s) and implement the correct procedures.</p> <p>2. In addition to issuing the above memo, MDE must also issue a memo to those agencies in which OSEP found deficient practices requiring those public agencies to discontinue the deficient practice and submit documentation to MDE that the changes necessary to comply with Part B requirements have been implemented.</p> <p>3. Develop materials to inform and train teachers and administrators in their responsibilities in the areas cited in this Section.</p> <p>4. Provide training as outlined above (begin 1/15/92, finish 12/31/92).</p>	<p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/1/91</u></p> <p>Submit training materials by: <u>11/15/91</u></p> <p>Submit verification by: <u>12/31/92</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	SUBMISSION TIMELINE
<p>IV. Free Appropriate Public Education (Continued from previous page.)</p>	<p>5. Revise SEA monitoring procedures and provide training as indicated in this Section and Section VII.</p>	<p>See Section VII</p>
<p>V. Complaint Management</p> <p>§§76.781(a)(2) and (b) (60 day timeline for resolving complaints unless an extension is granted)</p>	<p>1. Develop and implement procedures to ensure that MDE receives and resolves any complaint that it or a subgrantee is violating Part B or its regulations and that complaints are resolved within the 60 day calendar timeline unless an extension is granted under exceptional circumstances with respect to a particular complaint.</p>	<p>Submit revised complaint procedures by: <u>10/1/91</u></p>
<p>VI. Review and Approval of LEA Applications</p>	<p>1. Revise the application process to require all public agencies receiving Part B funds to submit content required at §§300.220, 300.221, 300.222, 300.224, 300.226, 300.227(a) and 300.235.</p>	<p>Submit revised materials by: <u>11/15/91</u></p>
<p>A. §76.770(b) (Procedures for submission)</p>	<p>2. Provide training in use of revised application procedure.</p>	<p>Submit training materials by: <u>11/15/91</u> training verification by: <u>1/15/92</u></p>
<p>B. §§76.400(b) and (d) (Procedures for approval)</p>	<p>1. Revise LEA application approval materials to address all required content requirements, and develop procedures to maintain records to show MDE's compliance with the requirements of §§76.400(b) and (d), and develop procedures to require that if a subgrantee makes a</p>	<p>See A. 1 above</p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
	<p>significant amendment to its application, that it uses the same procedures as those it must use to submit an application.</p> <p>2. Provide training to staff who will be reviewing and approving LEA application in the use of the new approval materials.</p> <p>3. Submit documentation that MDE reviewed and approved the LEA applications of the LEAs visited by OSEP and the their applications included all of the required content.</p>	<p>See A. 2 above</p> <p>Submit documents by: <u>7/1/92</u></p>
<p>VII. SEA Monitoring</p> <p>A. 20 U.S.C. 1232d (b) (3) (A) (Methods for identifying deficiencies)</p>	<p>1. Revise method of monitoring to effectively identify deficiencies regarding requirements cited in Sections I, II, III, IV, and V of this Report.</p> <p>2. Issue a memo which informs all public agencies that those requirements identified in Section VII, not identified elsewhere in the Report, are requirements against which they will be monitored in the future.</p> <p>3. Provide training to monitoring personnel in the use of revised monitoring procedures for identifying deficiencies.</p>	<p>Submit revised monitoring procedures by: <u>11/30/91</u></p> <p>Submit memo: to OSEP by <u>8/1/91</u>; to public agencies by <u>9/15/91</u></p> <p>Submit training materials by: <u>12/31/91</u></p>

FINDING/FEDERAL REQUIREMENT	ACTION REQUIRED	TIMELINE FOR SUBMISSION
<p>B. 20 U.S.C. 1232d (b)(3)(E) (Correction of deficiencies)</p>	<p>1. Revise method of monitoring to ensure that deficiencies identified as part of monitoring are corrected.</p> <p>2. Provide training to monitoring personnel in the use of the revised monitoring procedures for ensuring correction.</p>	<p>See A. 1 above</p> <p>See A. 3 above</p>

APPENDIX C

REVISIONS TO THE REPORT BASED ON ADDITIONAL INFORMATION PROVIDED BY MDE IN RESPONSE TO THE DRAFT REPORT

IV. FREE APPROPRIATE PUBLIC EDUCATION

REQUIREMENT A.3(a): MDE has a general responsibility under §300.300 to ensure that special education and related services contained in IEPs of children with disabilities are designed to meet their unique needs.

ISSUE: Although MDE had a system to identify deficiencies with regard to this requirement, its system did not identify all instances of noncompliance. When OSEP reviewed IEPs at public agency G, it found that the amount of related service was determined categorically. MDE had not identified the same deficiency in monitoring reports issued to public agency G.

ADDITIONAL INFORMATION PROVIDED: MDE submitted a monitoring report it issued to public agency G which contained a finding that the goals and objectives for many students were often identical, and not individualized. Therefore, MDE believed that it is inaccurate to state that its system did not identify deficiencies regarding unique IEPs at public agency G.

REVISIONS TO THE REPORT: Although MDE did identify deficiencies with regard to identical goals and objectives, it did not find that the amounts of service stated on IEPs were determined categorically, rather than individually. Although OSEP has retained this finding of fact, it has inserted a footnote in the SEA Monitoring section of the Report which explains that MDE did identify problems with the development of goals and objectives, but not with the determination of the amount of service.

V. COMPLAINT MANAGEMENT

REQUIREMENT: MDE is responsible for adopting written procedures for receiving and resolving any complaint that the State or a subgrantee is violating Part B or its regulations.

ISSUE: By making the distinction between complainable and hearable issues, MDE does not, in all cases, resolve the complaint, that is, reach a compliance determination with regard to the allegation.

ADDITIONAL INFORMATION PROVIDED: MDE further explained the options that its staff uses to resolve various categories of complaints, and requested clarification regarding the

standard used by OSEP in reaching its determination that MDE had not fully complied with §76.780(a)(1).

REVISIONS TO THE REPORT: OSEP added language more fully explaining MDE's process for resolving complaints, and provided an example of how an SEA would investigate and resolve a complaint that MDE considers to be "hearable," but not "complainable."

APPENDIX B - CORRECTIVE ACTIONS CHART

The Corrective Actions section of the draft Report required MDE to carry out various corrective actions within specified numbers of days after the receipt of the final Report. For instance, the IEP subsection required that MDE, "Within 30 calendar days, issue a memo to all public agencies which informs them that ... the following requirements will be a specific focus of monitoring in the future..."

MDE pointed out in its response to the draft Report, that the 30-day timeline would result in these memos being sent during the summer when schools are out of session and most administrators on vacation. As an alternative, MDE proposed that such memos be sent by September 15, 1991, after the fall term has begun. MDE also proposed dates, for subsequent activities, which will require the sequential submission of products, and allow sufficient time for OSEP to review and approve these products before MDE disseminates them to SEA and LEA staff. In MDE's proposal, all documentation of corrective action will be submitted no later than December 31, 1992. OSEP has accepted MDE's proposed due dates for corrective actions and incorporated these into Appendix B of the final Report.