

VI. PART B: GENERAL SUPERVISION

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

Validation Planning and Data Collection

Prior OSEP Monitoring

During OSEP's 1993 review of NJSDE's compliance with the IDEA, OSEP found that NJSDE had not exercised its general supervisory authority over programs providing special education and related services to children with disabilities. Specifically, the NJSDE's monitoring system failed to include methods to monitor for implementation of many Part B requirements, particularly those related to the placement of children with disabilities in the least restrictive environment, provision of a free appropriate public education, and confidentiality of student records. OSEP also found that NJSDE had not conducted comprehensive monitoring in some local education agencies for a number of years. OSEP required NJSDE to revise its monitoring procedures to address all Part B requirements, to ensure correction of all identified deficiencies in all public agencies visited by OSEP, and to conduct training for teachers and administrators in areas where deficient practices were identified.

A follow-up visit by OSEP in 1995 revealed that NJSDE had revised its monitoring procedures to include all the federal requirements identified in the 1993 review and had conducted extensive training and monitoring of most of the agencies previously visited by OSEP in an effort to ensure correction of all identified deficiencies. However, OSEP found that even though NJSDE had revised its monitoring system and completed extensive training, NJSDE had failed to ensure that all public agencies correctly implemented federal Part B requirements in the areas of placement in the least restrictive environment, provision of a free appropriate public education and provision of transition services. As a result of this review, OSEP required NJSDE to conduct additional program reviews in these areas, conduct an analysis of the resultant data and follow-up as necessary.

In 1998, OSEP conducted a second follow-up visit in three counties and went onsite to three local education agencies and a receiving school. As a result of this visit, OSEP found, in each

local education agency, continued noncompliance in each of the areas targeted for follow-up investigation: placement of students with disabilities in the least restrictive environment, provision of a free appropriate public education (provision of appropriate related services and extended school year services) and provision of secondary transition services. While OSEP made findings of noncompliance in the specific local education agencies visited at this time, OSEP noted NJSDE's continued failure to exercise its general supervisory authority over local education agencies across the state. OSEP's concern centered around NJSDE's administrative structure as well as the organization and implementation of its monitoring process.

In the area of General Supervision OSEP found that NJSDE failed to: (1) implement an effective monitoring system that enabled NJSDE to identify noncompliance and in those instances where noncompliance was cited, to effectively correct deficiencies in local education agencies; (2) implement and maintain consistent standards for County Supervisors of Child Study to follow in monitoring, correcting deficiencies and providing technical assistance to local education agencies and receiving schools; and (3) provide supervision, guidance and training to County Supervisors of Child Study. These State employees reported to the Division of Field Services and not the New Jersey Office of Special Education Programs, even though many of the functions they served such as monitoring and providing technical assistance to correct deficiencies related directly to NJSDE's general supervisory responsibility.

OSEP Required Correction: As part of the 1999 Report to address NJSDE's inability to exercise its general supervisory responsibility, OSEP required NJSDE to ensure that: (1) the monitoring system would be effective in identifying noncompliance throughout the State regarding all Part B requirements; (2) any noncompliance identified through monitoring would be effectively and promptly corrected; (3) when necessary because of uncorrected noncompliance by public agencies, including noncompliance identified through monitoring, NJSDE would take prompt and effective enforcement action; (4) personnel responsible for monitoring and ensuring the correction of identified noncompliance would be provided adequate training, guidance and supervision; and (5) NJSDE would identify any limitations on, or barriers to, NJSDE's implementation of necessary enforcement procedures and include any changes necessary to enable NJSDE to take enforcement actions and the timelines for completing those steps.

NJSDE Corrective Actions Taken

I. Revised Monitoring System

A. Process: To address the issue of an ineffective monitoring system, NJSDE took immediate steps following the 1999 OSEP report, to create an entirely new monitoring system and monitoring instrument that addressed all state and federal statutory and regulatory requirements. Instead of the previously used "single topic" approach on a five year cycle, the new system was designed to collect data across fifteen (15) areas: General Provisions (policies and procedures); Free Appropriate Public Education; Procedural Safeguards; Location, Referral and Identification of Children with Disabilities; Protection in Evaluation Procedures; Reevaluation; Eligibility; Individualized Education Program; Least Restrictive Environment; Secondary Transition and Transition from Part C to Part B; Discipline Statewide Assessment; Graduation; Program

Services; and Student Records. Together these fifteen (15) areas incorporated the requirements of the New Jersey Administrative Code (NJAC 6A:14) and the Individuals with Disabilities Education Act, as amended in 1997. The new process required that the State monitors conducting onsite visits use a variety of strategies and data sources to obtain a complete and comprehensive picture of the status of compliance in each local education agency. This comprehensive assessment of compliance included student record reviews; interviews with school personnel responsible for developing and implementing individualized education programs; interviews with parents; consideration of the number and types of complaints and due process hearing requests filed against the local education agency; previous NJSDE monitoring findings of noncompliance and status of correction of those deficiencies; a State-generated information profile of the district that identified problematic areas of noncompliance such as overrepresentation of minority students placed in special education; elevated numbers of students placed in segregated classrooms or out of district placements; and patterns of placement by disability category, etc. For the first time, NJSDE also conducted public focus groups prior to each onsite visit.

B. Monitoring Cycle: NJSDE revised the monitoring cycle to examine every local education agency in a comprehensive manner over a six-year cycle. For the first year of the new cycle, NJSDE took a two-prong approach for the 1999-2000 school year of: (1) piloting the new monitoring instrument and onsite review process and (2) requiring local education agencies that would be monitored during the 2000-2001 school year to complete a self-assessment. NJSDE identified twenty-five local education agencies for onsite monitoring with the new monitoring instrument and thirty-five other local education agencies to participate in a self-assessment of their ability to comply with state and federal special education statutes and regulations. Together, these sixty (60) local education agencies represent 43% of the total population of children with disabilities served in New Jersey.

For the 2000-2001 school year, the thirty-five local education agencies that completed the self-assessment during the 1999-2000 school year are scheduled to be monitored. A total of one hundred seventeen new local education agencies will complete the self-assessment process. Based on the experience with the self-assessment process for the 35 local education agencies in 1999-2000, NJSDE is modifying its approach in how the upcoming 117 local education agencies will participate in the completion of the self-assessment. NJSDE is scheduling an orientation to the process, including local education agencies that have completed the process; scheduling meetings with the directors of special education and local education agency steering committee members; meeting to review current local education agency documentation and identification of areas of need; discussing how to develop activities for identified areas of need; and developing strategies for completion of the self-assessment.

C. Monitoring Team: Instead of the single-person monitor (County Supervisor of Child Study) used in the previous monitoring system, NJSDE's new system has three multi-person monitoring teams each composed of four individuals, with a team leader assigned the responsibility of coordination of the process and report writing. These three teams are located in East Orange, Edison and Sewell and report directly to the NJSDE Program Accountability Unit manager in Trenton.

D. Monitoring Report: NJSDE redesigned the format for monitoring reports to clearly detail each area of compliance; each area of noncompliance, required corrections; and where necessary, directed sanctions such as the immediate provision of compensatory services, changes in administrative structure, staff training and revision of policies and procedures. In order to address noncompliance, each local education agency is directed to develop an improvement plan (corrective action plan) that outlines what steps the local education agency is going to take to address the identified noncompliance. As part of this improvement plan, the local education agency must: (1) identify compliance activities; (2) identify personnel responsible for ensuring progress; (3) specify projected dates for completion; and (4) denote documentation of activities. NJSDE further increased systemic accountability for compliance by issuing the report through the County Superintendent of Schools and advising the local district's Chief School Administrator and Board of Education of noncompliance and expected correction. For monitoring reports generated during the 2000-2001 cycle, NJSDE will also add an oversight statement that describes the type and level of oversight NJSDE will be placing on the local education agency in order for the local education agency to effectively address noncompliance in a timely manner.

II. Organizational Structure:

In order to address OSEP's 1998 finding (described in the 1999 Report) of a lack of supervisory control over the State staff (County Supervisors of Child Study) responsible for monitoring and correcting deficiencies, NJSDE assumed dual supervision over this staff with the Division of Field Services. NJSDE also redefined the role of the County Supervisors of Child Study to: (1) reviewing and approving local education agency applications; (2) monitoring receiving school districts; and (3) providing technical assistance to parents and local education agencies. NJSDE also created a Program Accountability Unit that utilizes an integrated approach to the oversight of complaint investigations and compliance monitoring. The unit employs twelve monitors and four complaint investigators who report directly to the manager of this unit. This integrated approach allows NJSDE to ensure that data obtained from complaint investigations and complaint decisions are integrated into the scope of monitoring each district. A computerized complaint and due process hearing database enables the complaint staff the opportunity to provide relevant data to the monitors regarding the types of issues, areas of noncompliance and required corrective actions that each local education agency is addressing as the result of complaint investigations and/or due process hearing decisions. This information is factored into the monitoring onsite visit and, if the issues remain problematic, becomes part of the corrective action required by the monitoring report. The information is also used to designate a local education agency as a high-risk grantee.

III. Enforcement

To address OSEP's 1999 required corrective action regarding enforcement of monitoring report findings of noncompliance and required corrective actions, NJSDE examined its existing enforcement activities (denial of an application for entitlement funds; redirection of entitlement funds; discontinuation of regular distribution of entitlement funds; withholding of entitlement funds; withholding of State funds; referral to the Office of the Attorney General to initiate the issuance of a show cause order and referral to the Office of Compliance for further action) and

implemented additional enforcement options when it is determined that a local education agency fails to correct identified areas of noncompliance. These additional enforcement options include:

- **High Risk designation:** A determination made by the NJSDE Office of Special Education Programs and the Division of Field Services for local education agencies that have demonstrated longstanding pervasive noncompliance and who have been unable to complete effective corrective action plans. The criteria used to make this designation include: (1) consistent failure to implement corrective actions required by the NJSDE; (2) significant LRE noncompliance findings from NJSDE's 1998-99 monitoring review and (3) lack of an organizational structure to effect systemic change. Of the twenty-five local education agencies monitored in 1999-2000, NJSDE designated fifteen as high risk. Of the thirty-five local education agencies completing the NJSDE self-assessment in 1999-2000, NJSDE has identified six as high risk. As a result of this designation, NJSDE will provide close oversight of these local education agencies and their efforts to come into compliance, including (a) biweekly meetings with the local education agency special education director, (b) assignment of individual monitors to verify status of correction and (c) solicitation of feedback from parents regarding the verification of correction and implementation.
- **Targeted Reviews.** Focused monitoring reviews based on feedback from parents and advocates that required corrections have either not been effective or implemented.
- **Directed Corrections:** A variety of directed corrections, including assignment of a task force with direct oversight to oversee corrective actions; State appointment of an interim superintendent; withholding funds; applying special conditions to IDEA funds; directing the provision of compensatory services to individual/groups of students; and requiring changes in local education agency administrative structures.
- **Reporting Noncompliance:** To ensure an increased awareness of local systemic noncompliance, NJSDE is now issuing monitoring reports through the County Superintendent's office under the County Superintendent's signature and requiring that the results of the monitoring report be reported to the County Board of Education.

IV. Model IEP

In an effort to provide technical assistance to local education agencies and reduce noncompliance in meeting State and Federal requirements regarding the development and implementation of the Individualized Education Program, the NJSDE created a model IEP format. The format: (1) guided the discussions of IEP teams in developing the contents of the IEP, paying attention to the decision-making process for determining placement in the least restrictive environment, determining the need for extended school year services, and completing the secondary transition requirements; and (2) meets all state and federal regulations to ensure that all local education agencies meet required regulations. Although the IEP is a model document and its use is voluntary on the part of the local education agencies, the NJSDE notes improved compliance results in local education agencies that adopted this model as their IEP format.

NJSDE Self-Assessment and Public Input Process

NJSDE identified the following areas as needing improvement through its self-assessment process and report:

- **Monitoring**: failure to identify systemic noncompliance; failure to follow-up on systemic noncompliance; and failure to utilize results of complaints and hearings in identifying noncompliance through monitoring
- **Personnel Shortages and Training**: lack of training for special education teachers in the general curriculum; lack of training for regular education teachers in special education; lack of trained specialists to provide related services statewide (counseling, speech, teachers of the handicapped, educational interpreters, teachers of the blind and visually impaired, support staff); and lack of personnel prepared to work collaboratively with each other and parents.
- **Statewide Assessments**: exclusion of children with disabilities from participation in statewide and district-wide assessments.
- **Appropriate Evaluations**: lack of qualified personnel to conduct evaluations in the student's native language; failure to consider or include information from parents and teachers; and lack of availability of test materials in other languages.
- **Access to the General Curriculum**: children with disabilities who are removed from regular classrooms do not have access to the general curriculum; children with disabilities placed in the general education setting without appropriate modifications, accommodations, supplementary aids and supports do not make satisfactory progress and may be placed in more restrictive settings; and curriculum for students placed in out-of-district programs is inconsistent with LEA curriculum standards.
- **Transition from Part C Early Intervention Programs to Part B**: failure to implement transition from Part C to Part B in a timely manner, resulting in programs not being initiated by the child's third birthday; lack of cooperation between early intervention providers and LEA staff in effecting a smooth transition; and lack of availability of preschool programs with typical peers.
- **Parent Involvement**: failure to provide parents information and involve parents in the decision-making process related to the least restrictive environment, extended school year services, secondary transition, general curriculum, New Jersey core curriculum content standards and procedural safeguards.
- **Public Input Meetings**: Input from the public input meetings resulted in participants identifying the following issues: lack of effective State system of monitoring and enforcement; ineffective system for enforcing complaint and due process decisions; lack of qualified trained special education and regular education personnel; Child Study Teams making decisions outside IEP process; lack of full continuum of placement options, including appropriate pre-school options; lack of appropriate supports, modifications and accommodations; lack of participation in statewide assessments; gaps in services for children

served in Abbott Districts³; lack of access to the general curriculum; provision of related services based on availability of services and not on individual needs; failure to provide related services and extended school year services; failure to provide counseling based on the IEP; lack of smooth and effective transition from Part C to Part B services; lack of information to parents regarding procedural safeguards, secondary transition, access to general education; lack of secondary transition planning; secondary school staff lack information about transition requirements; and lack of linkages with adult service providers.

A. AREAS OF STRENGTH

1. Core Curriculum Content Standards: NJSDE has established the Core Curriculum Content Standards (CCCS) as the standard of accomplishment for all New Jersey students. The Core Curriculum Content Standards represent what all New Jersey students, including those with disabilities, are expected to know and be able to accomplish by graduation. There are standards established in seven content areas including: language arts literacy, mathematics, science, social studies, health/physical education, visual and performing arts and world languages. There is a set of cross content workplace readiness standards that must be integrated into all of the content areas. Each content area contains a list of descriptive statements for each standard and cumulative progress indicators that serve as benchmarks for what a student should be able to do relative to the standard by the end of grades 4, 8 and 12. Local education agencies must develop curricula based on the core curriculum content standards in accordance with state regulations. Individual student achievement of the standards is measured through the statewide assessment system.

The general education curriculum for all New Jersey students must be based on the core curriculum content standards. All students, including those with disabilities, must be working in the general curriculum. In recognition of a small group of children with severe cognitive disabilities, for whom the standards would need to be modified, NJSDE developed a subset of the general core curriculum content standards focused on those standards that are more relevant to the needs of this population. This set of standards, Core Curriculum Content Standards for Students with Severe Disabilities (CCCSSD), will be the basis for the development of individualized education programs (IEPs) for students with disabilities.

To assist teachers with the implementation of the core curriculum content standards, curriculum frameworks were developed by the Office of Standards and Professional Development and teachers across the state. The frameworks list specific instructional activities for cumulative progress indicators in the standards. The frameworks contain model learning activities for grades K-4, 5-6, 7-8, 9-12. In order to foster instruction in the core curriculum content standards for students with disabilities, instructional adaptations were developed and included in the curriculum frameworks for each of the content areas. Training is being provided on effective instructional strategies and the development of IEPs that align with the core curriculum content standards. NJSDE is encouraging the use of these frameworks and adaptations in schools to ensure that students with disabilities are receiving instruction in the core curriculum content

³ Abbott Districts are districts for which a court order determined that preschool services would be provided for 3 and 4 year old children.

standards through the general education curriculum. NJSDE is also monitoring this alignment when reviewing IEPs as part of a monitoring review.

2. Participation of Students with Disabilities in Statewide Assessments: As noted in the next part of the General Supervision section of this Report, NJSDE has not yet developed an alternate statewide assessment for students with disabilities who do not participate in the statewide assessment system. However, a review of statistical data reported by NJSDE⁴ on the participation rates for students with disabilities statewide on the 1999 and 2000 Elementary School Proficiency Assessment (ESPA) and the Grade Eight Proficiency Assessment (GEPA) demonstrates a high rate of participation.

STATEWIDE PARTICIPATION RATES FOR STUDENTS WITH DISABILITIES ON STATEWIDE ASSESSMENTS				
	ESPA 1999 Participation Rate	ESPA 2000 Participation Rate	GEPA 1999 Participation Rate	GEPA 2000 Participation Rate
Language Arts Literacy	91%	95%	91%	89%
Math	92%	96%	90%	91%
Science	92%	96%	Not operational in 1999	91%

New Jersey requires that all students with IEPs take the High School Proficiency Test 11 (HSPT 11) which is required for graduation, unless the IEP specifies exemption. A student may take the Special Review Assessment as the alternative assessment to the HSPT11.

The New Jersey statewide assessment system is emerging as a measure of all students' progress toward achieving and mastering the core curriculum content standards. The Elementary School Proficiency Assessments (ESPA) are administered in grades four and five and the Grade Eight Proficiency Assessment (GEPA) is administered in grade eight. In 1999, the Elementary School Proficiency Assessments measured the progress of fourth graders in language arts literacy, math and science. The Grade Eight Proficiency Assessment measured language arts literacy and math. Additional content areas will be added annually. Each eleventh and twelfth grade student is currently required to take and pass the High School Proficiency Test 11 (HSPT11) for graduation unless the student's IEP states that he or she is exempt. Students with and without disabilities will also be eligible to graduate if they pass the Special Review Assessment (SRA), an alternative assessment for the High School Proficiency Test 11. The Special Review Assessment measures the same knowledge and skills as the High School Proficiency Test 11 but through a different format. In 1999-2000, the freshman class will be required to pass the High School Proficiency Assessment (HSPA) in their junior or senior year. The High School Proficiency Assessment will be aligned with the Core Curriculum Content Standards and replace the High School Proficiency Test 11.

⁴ December 1999 New Jersey State Department of Education Office of Special Education Programs, Biennial Performance Report 1997-1999

NJSDE, Office of Assessment, Office of Standards and Professional Development, and the Office of Special Education Programs have worked collaboratively to involve students with disabilities in the core curriculum content standards through the general education curriculum and to increase the performance of students with disabilities in the statewide assessment system. In addition to the core curriculum content standards and frameworks previously described, the Office of Assessment along with teachers from across the state developed directories of test specifications for each subject area for each Statewide assessment. The directories list the knowledge and skills tested and include sample items in order for teachers to see the types of questions and tasks included as well as the level of difficulty of the test items. Directories were disseminated to directors of special education in local education agencies to ensure that they are available to special education personnel. Local district personnel have been instructed to use the information provided in these directories for preparation for IEP meetings in making decisions about participation in statewide assessments. Statewide training has also been conducted regarding decisions for determining whether or not the student will participate in statewide assessments in the development of the IEP, selection of accommodations and their relationship to instruction and federal and state regulations. As a result of these efforts, high participation rates for children with disabilities on the statewide assessments were experienced during the 1999-2000 school year.

The New Jersey Administrative Code has been amended to include criteria for the participation of students with disabilities in the statewide assessments. Students must participate in the general Statewide assessments unless the IEP team determines the student has not been instructed in any of the knowledge and skills tested in a subject area and that the student would not be able to complete any of the types of items on the assessment.

3. Collaboration with State Parent Advocacy Network: NJSDE collaborated with the Statewide Parent Advocacy Network (SPAN) to co-produce an Inclusion Newsletter and Secondary Transition Newsletter focused on topical issues related to these two areas.

4. Early Childhood Program Expectations – Standards of Quality: In September 1999, Commissioner of Education, David C. Hespe appointed a task force of early childhood experts from across the state and charged the task force with developing early childhood education program expectations/standards for New Jersey's early childhood program. The document resulting from the work of this task force and subsequent public comment provided a foundation for early childhood educators on which to create developmentally appropriate learning environments. The intent of the implementation of these expectations/standards is to support and prepare young children including children with disabilities to meet New Jersey's core curriculum content standards when they enter kindergarten.

5. Capacity Building Grants: In September 2000, NJSDE issued a grant application entitled Local Capacity Building and Improvement Project for Special Education – Least Restrictive Environment. The purpose of this grant program will be to assist eligible local education agencies in building capacity for educating an increased number of students with disabilities, ages 5-21, in general education programs, by adopting the inclusive practices and program components of administrative leadership, building level support systems, and individualized program modifications and supports. NJSDE has earmarked \$4 million for this grant to enable

school districts to change their placement patterns and successfully transition a targeted number of students with disabilities from separate special education programs and/or facilities to general education programs with appropriate supports and services. The grant application process is open to 67 local education agencies identified by NJSDE. These local education agencies have a total resident enrollment of 1,000 or greater and a special education placement pattern of students with disabilities placed in separate special education settings that is six percent or greater. The funds received by selected local education agencies are available for an 18 month period so that appropriate supports and staff can be established to initiate systemic change within the following school year. A minimum of fourteen grant awards is anticipated.

6. Comprehensive System of Personnel Development (CSPD): The New Jersey Office of Special Education Programs has integrated its Comprehensive System of Personnel Development with other professional development plans and activities related to New Jersey's Strategic Plan for Systemic Improvement of Education in New Jersey. NJSDE has: (1) conducted three needs assessments (Survey of Professional Development Needs, NJDOE Self-Assessment, Needs Assessment in Special Education Personnel); (2) amended the New Jersey Administrative Code 6A:14 to strengthen local education agencies' responsibilities for identifying and meeting the inservice training needs for professional and paraprofessional staff who provide special education, general education or related services; (3) identified the critical personnel shortages and areas where there are currently no standards and programs to train qualified personnel; (4) applied for a federally funded state improvement grant; and (5) collaborated with agencies, organizations and local education agencies regarding the planning and implementation of NJSDE's personnel development activities.

7. Whole School Reform: In an effort to ensure that students with disabilities are represented in all State reform efforts, NJSDE's Office of Special Education Programs collaborated with its State partners to effectively utilize the resources available in the state to secure buy-in from major stakeholders at all levels, both intra- and inter- departmentally, regionally and county. These efforts are demonstrated by the collaboration with the Office of Assessments and Office of Standards and Professional Development previously noted to: (1) develop an alternate assessment; (2) collaborate with Safe and Drug Free Schools to develop a web site capable of collecting suspension/expulsion data on all students, including those with disabilities; and (3) collaborate with the Office of School Choice to monitor placement of students with disabilities in charter schools.

B. AREAS OF NONCOMPLIANCE

During OSEP's September 2000 monitoring visit, OSEP sought to determine the:

- effectiveness of the NJSDE's revised monitoring system in identifying systemic noncompliance in the areas identified in OSEP's 1999 monitoring report and fiscal years 1999 and 2000 Special Conditions: least restrictive environment, provision of extended school year services, provision of counseling as a related service and provision of secondary transition) and
- existence of systemic noncompliance identified in New Jersey's self-assessment and in public input meetings conducted by OSEP in the areas of statewide assessments; appropriate

evaluations (qualified examiners and evaluations conducted in the student's native language); access to the general curriculum; transition from Part C (early intervention programs) to Part B (preschool); and parent involvement.

In each of the areas noted above, OSEP monitoring teams conducted (a) student record reviews; (b) interviews with school personnel; interviews with students and parents in two local education agencies; (c) interviews with local education agency administrators responsible for services to children with disabilities in the agency; (d) reviews of placement data for placement of children with disabilities in the least restrictive environment; and (e) interviews with Part C and B staff responsible for smooth and effective transition from Part C to Part B. OSEP staff also conducted extensive interviews with NJSDE agency staff in Trenton regarding these same areas. OSEP's findings are as follows:

1. The state monitoring system is effective in identifying systemic noncompliance, but OSEP was unable at the time of the visit (September 2000) to determine the effectiveness of corrections ordered by NJSDE.

OSEP was able to determine the effectiveness of NJSDE's revised monitoring system in identifying systemic noncompliance as a result of two activities: (a) OSEP's onsite monitoring of eight local education agencies (see sections of this report related to a provision of a free appropriate public education in the least restrictive environment, including transition from Part C to Part B; secondary transition; and parent involvement) and (b) a comprehensive review of NJSDE's monitoring reports issued for the twenty-five local education agencies monitored by NJSDE during the 1999-2000 school year.

Results of NJSDE 1999-2000 Monitoring of 25 local education agencies (LEAs) related to OSEP Findings and Special Conditions⁵				
Total number of LEAs with 10-15 areas of noncompliance⁶	Total number of LEAs found noncompliant with <u>least restrictive environment</u>	Total number of LEAs found noncompliant with <u>provision of extended school year services</u>	Total number of LEAs found noncompliant with <u>provision of counseling as a related service</u>	Total number of LEAs found noncompliant with <u>provision of secondary transition services</u>
23	25	25	10	25

Since NJSDE requires that local education agencies submit corrective action plans within 45 days of receipt of the State's monitoring report and since many of the agencies visited by OSEP were in the process of either developing their plans, submitting their improvement plans, receiving approval of the plans by NJSDE or beginning implementation of corrections, OSEP was unable to determine the effectiveness of the corrections ordered by NJSDE.

⁵ Areas identified by OSEP in the 1999 Monitoring Report and subsequent Special Conditions to the FYs 1999 and 2000 grant awards: least restrictive environment, provision of extended school year services, provision of psychological counseling as a related service and secondary transition.

⁶ NJSDE monitors fifteen areas that reflect the requirements of New Jersey Administrative Code 6A:14 and the Individuals with Disabilities Education Act.

OSEP's June 2001 Follow-Up Visit

OSEP conducted a follow-up visit in June 2001 for the purpose of determining NJSDE's effectiveness in ensuring correction of noncompliance identified in local education agencies as described in the FY 2000 Special Conditions. OSEP found evidence of change in the manner that the State exercises its general supervision responsibilities. Specifically, OSEP found NJSDE demonstrated (a) a comprehensive system to identify and correct noncompliance; (b) a raised level of accountability by local school district administrators and staff; (c) an ability to link SEA technical assistance to monitoring and LEA improvement planning activities in a comprehensive, results-oriented manner; (d) a results-oriented improvement planning process; and (e) an ability to identify specific problem areas and address the problems through funding initiatives.

2. Complaint Procedures are Ineffective: OSEP reviewed NJSDE complaint and due process logs and complaint procedures in place at the time of the visit. From a review of the logs available onsite, OSEP determined that at the time of OSEP's visit NJSDE is currently meeting the 60-day timeline for rendering complaint decisions and the 45-day timeline for due process hearing decisions. Although OSEP determined that for a period before July 1, 2000, the SEA was unable to meet the 60-day complaint timeline due to a personnel shortage of complaint investigators, NJSDE is now meeting that deadline utilizing three investigators. The SEA is attempting to fill a vacancy for a fourth investigator. On July 1, 2000, the role of the complaint investigator was changed to include not only investigations but also tracking of corrective actions related to complaint decision findings and advising monitoring staff of complaint investigations and outcomes in districts to be monitored.

As set forth in 34 CFR §§300.660-662, NJSDE is required to have written procedures for resolving any written signed complaint, including a complaint filed by an organization or individual from another State. OSEP's review found that NJSDE's Complaint Investigation Policy and Procedures limit the definition of a complaint more narrowly than Part B and do not include all of the provisions required by the regulations implementing IDEA '97. NJSDE staff informed OSEP during the on-site visit that NJSDE was in the process of revising and updating its complaint procedures and that they would subsequently be forwarded to OSEP for review and approval.⁷

NJSDE's procedures in effect at the time of the OSEP September 2000 visit require the investigation of written signed complaints "of substance" regarding the provision of special education and related services under state and federal laws. Those procedures include no criteria for determining whether a particular complaint is one "of substance". Part B requires NJSDE to resolve any timely complaint that includes a statement that a public agency has violated a requirement of Part B and the facts on which the statement is based. Part B requires that NJSDE resolve any written signed complaint that includes a statement that a public agency has violated a requirement of Part B, and the facts on which the statement is based, and alleges a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the

⁷ NJSDE provided revised complaint procedures on February 8, 2001.

complaint is received. Part B does not permit a state to decline to resolve such a complaint because it is not "of substance."

NJSDE's complaint procedures also provide that complaints identify a "specific" state or federal law or regulation that has been violated. Complaints that are determined not to have substantive issues are returned to the complainant as outside the jurisdiction of NJSDE. OSEP's review of 7 complaints that were "returned" to the complainant for lack of substance revealed that 6 of these were legitimate complaints that met the requirements of Part B and should have been investigated by NJSDE. These complaints included allegations related to child find, confidentiality of educational records, lack of educational continuum, free appropriate public education, physical abuse, failure to follow an IEP and three different allegations of failure to follow Part B disciplinary requirements.

NJSDE's complaint procedures lack any requirements for: 1) resolving complaints by an organization or individual from another State; 2) resolving any issues in a complaint that are not part of an ongoing due process hearing; and, 3) resolving complaints alleging a public agency's failure to implement a due process decision. Furthermore, NJSDE's complaint procedures do not provide that: (1) the complainant have an opportunity to submit additional information either orally or in writing about the allegations in the complaint; (2) NJSDE must review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B; and (3) NJSDE must issue a written decision to the complainant that addresses each allegation in the complaint and contains the findings of fact and conclusions and reasons for the State's final conclusion. NJSDE's procedures still provide that complainants may "appeal" the findings and conclusions of the final report to the United States Department of Education's Secretary. The final Part B regulations published on March 12, 1999 eliminated the Secretarial Review process, and therefore this provision should be removed from NJSDE's procedures.

34 CFR §300.660(b) requires NJSDE, in resolving a complaint in which it has found a failure to provide appropriate services, to address the remediation of the denial of those services and the appropriate future provision of services for all children with disabilities. NJSDE's written decisions did not always address the remediation of findings of a denial of services as required by §300.660(b)(1). In fact, in a majority of the complaints reviewed by OSEP, when a denial of services to a child with disability was found, NJSDE used a similar statement in each letter of findings. This statement merely requires the public agency to develop a corrective action plan that identifies the procedures it will follow to ensure the violation will not recur. Examples of denials of service included a child who had 3 years without an assistive technology evaluation, despite a hearing officer's decision requiring it; a child without any services for 4 months despite a valid IEP; and four children who were without computers required by their IEPs for one and a half years. No compensatory education or other remediation of these denials of services was required by NJSDE's letters of findings.

In September 2000, NJSDE implemented a computerized complaint tracking system that allows a weekly tracking of the status of corrections concerning complaint decisions issued. The system allows NJSDE to track patterns of issues across local and state levels. In the enforcement of complaint decisions, NJSDE has increased its enforcement actions in a more direct ways. For

example, NJSDE has ordered local education agencies to reconvene IEP meetings for specific students based on individual complaint; required the provision of compensatory services and purchase of assistive technology equipment for specific students; and ordered the placement of students in out-of-state facilities at district expense.

3. Lack of Alternate Statewide Assessment: Even though the participation rate of students with disabilities in the statewide assessment system is increasing (as noted in the previous part of the General Supervision section of this Report), the State lacks an alternate statewide assessment for students with disabilities who do not participate in the statewide assessment system. NJSDE is currently working to develop an alternate assessment. A request for proposal has been disseminated for the construction of an alternate assessment based on the Core Curriculum Content Standards for Students with Severe Disabilities through the Office of Assessments. NJSDE anticipates that the assessment will be piloted during the 2001-2002 school year. At the time of OSEP's visit, and at the present, NJSDE is using the goals and objectives in the student's IEP as the alternate assessment for the child, but is not reporting on the performance of children with disabilities who use this form of alternate assessment rather than participating in the regular statewide assessment.⁸ This is inconsistent with §300.139(a)(2)(ii).

⁸ Statewide assessments: Elementary School Proficiency Assessment (ESPA), Grade Eight Proficiency Assessment (GEPA) and the High School Proficiency Test II (HSPTII)