



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

October 19, 2020

Honorable Mike Morath
Commissioner
Texas Education Agency
1701 N. Congress Ave.
Austin, Texas 78701

Commissioner Morath:

This letter summarizes the results of the Office of Special Education Program's (OSEP) monitoring visit of the Texas Education Agency (TEA) during the week of May 6, 2019. The purpose of this visit was to monitor TEA's implementation of the State's Corrective Action Response (CAR) TEA developed in response to OSEP's January 11, 2018 letter of findings related to the State's implementation of Part B of the Individuals with Disabilities Education Act (IDEA).¹ OSEP staff members, accompanied by TEA staff observers, conducted onsite visits to six local educational agencies (LEAs), three of which were districts OSEP monitored previously, and three which were newly-selected. OSEP visited two schools in each of the six LEAs.² At each school, OSEP conducted interviews with two groups of teachers and a team of administrators. In addition to school-level interviews, OSEP also interviewed administrators from each LEA. OSEP communicated to school and district staff that OSEP's purpose was to collect additional information about TEA's implementation of its CAR.

OSEP recognizes that since OSEP conducted onsite monitoring in May of 2019, TEA may have implemented additional corrective actions that OSEP could not verify during the monitoring visit. OSEP welcomes TEA's submission of additional information and documentation that support the correction of any identified noncompliance stemming from OSEP's 2018 letter of findings.

¹ A copy of OSEP's January 11, 2018 letter is available at <https://www2.ed.gov/fund/data/report/idea/dmsrpts/index.html> Appendix B also includes a summary of OSEP's monitoring activities and TEA's CAR.

² The IDEA uses the term "local educational agency" (LEA), as defined in 20 U.S.C. § 1401(19), to refer to school districts. However, in Texas an LEA is commonly referred to as an "independent school district" (ISD). This letter uses the term "LEA" to refer to Texas' ISDs because the term "LEA" was used by Texas in its CAR. During the monitoring visit, OSEP visited: Comal ISD (Austin area), Everman ISD* (Dallas area), Houston ISD*, Laredo ISD*, Lubbock ISD, and Spring Branch ISD (Houston area) (districts identified with an asterisk were included in OSEP's monitoring in 2017).

The Enclosure provides a detailed summary of each TEA CAR item and OSEP's analysis of the actions TEA has implemented as of May 6, 2019. For each outstanding finding of noncompliance with the IDEA requirements, the Enclosure highlights specific details about the finding, the respective citation(s), and, if required, any next steps and required actions TEA must take to verify correction of the noncompliance.

OSEP's analysis of TEA's Notice of Procedural Safeguards, revised July 2020, TEA's dispute Resolution Handbook (March 2017), and TEA's Guide to the Admission, Review, and Dismissal Process (July 2020) related to the required action TEA must take to address CAR item 1.d will be forthcoming under separate cover.

We appreciate your efforts to improve results for children with disabilities. If you have any questions, please contact Alecia Walters, your OSEP State Lead, at 202-245-7176 or alecia.walters@ed.gov.

Sincerely,

/s/

Laurie VanderPloeg
Director
Office of Special Education Programs

Enclosure

OSEP's Analysis of the Texas Education Agency's Implementation of its Corrective Action Response

Background

On January 11, 2018, OSEP issued the results of its February 2017 on-site monitoring of TEA's implementation of certain IDEA requirements. The report identified noncompliance as a result of TEA's failure to properly implement IDEA requirements related to child find, ensuring individual evaluations of children suspected of having a disability under IDEA, and the provision of a free appropriate public education (FAPE) to eligible children with disabilities.

In response to these findings, TEA submitted its corrective action response (CAR) to OSEP on April 23, 2018. In its CAR, TEA outlined the steps it proposed to take to address each of the areas of noncompliance OSEP had identified. OSEP responded to TEA's April 23, 2018 CAR submission by letter dated October 19, 2018. In that letter, OSEP required TEA to take certain additional actions to address the findings of noncompliance identified in OSEP's January 11, 2018 monitoring report by the dates specified by TEA and informed the State that OSEP would be conducting a follow-up visit in 2019 to monitor TEA's implementation of the CAR. By letter dated January 9, 2019, TEA responded to OSEP's October 19, 2018 letter and provided additional information about its implementation of the CAR. This letter constitutes OSEP's response to TEA's implementation of its CAR based on OSEP's May 2019 on-site visit, and subsequent communications between OSEP and TEA as well as input that OSEP has received from stakeholders.

OSEP's May 2019 Onsite Visit to TEA

During the week of May 6, 2019, OSEP conducted an on-site visit to monitor TEA's implementation of its CAR. OSEP met with TEA staff and other education officials, including representatives from the State's Education Service Centers (ESCs) that support the State's delivery of technical assistance to local educational agencies (LEAs), including CAR implementation efforts. OSEP visited six LEAs, twelve schools and met with two groups of educators at each school, including general education teachers, special education teachers, and related service providers. OSEP also interviewed administrators at each school, as well as officials at each district office. TEA and ESC staff accompanied OSEP on these visits as observers to provide them an opportunity to identify LEA training needs and to enable them to follow up in a timely manner if noncompliant practices were discovered during the visits.

OSEP has carefully reviewed the documentation and interview information gathered in connection with the on-site visit. OSEP appreciates the positive steps that TEA has taken, as well as TEA's acknowledgment, at the time of the on-site visit, that there were additional actions that TEA was still required to take to fully implement the CAR and to achieve compliance. By letter dated October 5, 2020, to OSEP, TEA asserted that it has fully addressed all CAR items.

While OSEP recognizes that TEA has implemented some actions to address the noncompliance and improve its districts' implementation of IDEA requirements, for the reasons explained below, OSEP cannot determine, in the absence of additional and up-to-date information, whether these actions have been sufficient to fully address the noncompliance identified in OSEP's January 11, 2018 monitoring report. Accordingly, this letter will specify the additional actions

that OSEP is requiring TEA to take to fully address the noncompliance identified in OSEP's January 11, 2018 monitoring report, including the evidence that TEA must provide to OSEP to demonstrate that TEA and its LEAs have fully addressed this noncompliance.

TEA's Implementation of Its CAR for OSEP Finding #1

In OSEP's January 11, 2018 monitoring report, OSEP found that TEA failed to ensure that all children with disabilities residing in the State who are in need of special education and related services were identified, located, and evaluated, regardless of the severity of their disability, as required by IDEA section 612(a)(3) and its implementing regulation at 34 C.F.R. § 300.111. To correct these deficiencies, OSEP required TEA to provide "documentation that the State's system of general supervision requires that each LEA identifies, locates, and evaluates all children suspected of having a disability who need special education and related services, in accordance with section 612(a)(3) of the IDEA and its implementing regulation at 34 C.F.R. § 300.111, and makes FAPE available to all eligible children with disabilities in accordance with section 612(a)(1) of the IDEA and its implementing regulation at 34 C.F.R. § 300.101."

CAR 1.a.: Communicating Child Find and FAPE Requirements and Obligations Under IDEA to All LEAs

In its CAR 1.a., TEA stated that it would "[c]ommunicate to all LEAs the child find and FAPE requirements and obligations in IDEA." In its October 19, 2018 letter, OSEP responded that it expected "that TEA will identify and describe the additional activities it has carried out or is implementing, including providing the timeline for completion of such additional activities."

During the on-site visit, TEA reported that to carry out CAR 1.a., it had provided guidance, information, and support to LEAs by:

- Issuing a February 2018 letter to administrators, "Responsibilities and Timelines for Special Education Evaluations under the Individuals with Disabilities Education Act (IDEA)" (a copy had previously been provided to OSEP).
- Including information in the Student Handbook, "Aiding Students Who Have Learning Difficulties or Who Need Special Education or Section 504 Services."
- Making \$10 million available to help LEAs quickly fill short-term evaluation personnel needs.
- Allocating \$65 million for the provision of compensatory support to provide FAPE to eligible children with disabilities.
- Conducting a TEA co-sponsored Statewide evaluation conference in February 2019 featuring national and State level presentations on child find, evaluation, and special education requirements and best practices.
- Implementing an annual special education consolidated grant application process that requires LEA assurances related to IDEA requirements.
- Expanding TEA's State-level staff to include a 504 Specialist, Dyslexia Specialist, Intervention "Best Practices" Specialist, and Child Find and Evaluation Specialist.
- Developing and disseminating Frequently Asked Questions documents (Note as a current example: [Child Find Frequently Asked Questions](#)).

Despite these actions, stakeholders have expressed continued concerns about LEAs' implementation of IDEA's child find and FAPE requirements. OSEP has received 79 unique stakeholder inquiries. Of those 79 inquiries, 47 were related to FAPE, 10 were related to child find, 11 were related to Dyslexia issues and 11 inquiries expressed overall concerns with TEA's monitoring and TEA's ability to enforce IDEA. Stakeholder communications received by OSEP specifically questioned TEA's compliance with the child find requirements in section 612(a)(3) of IDEA to identify, locate, and evaluate children with disabilities who need special education and related services and the requirement in section 612(a)(1) of IDEA, to make available a free appropriate public education (FAPE) to all eligible children with disabilities residing in the State. Some stakeholders stated that school officials informed them that their children's dyslexia diagnoses indicated that dyslexia did not warrant an evaluation for special education and related services under IDEA. Additionally, some stakeholders expressed concerns about the dispute resolution process to handle concerns related to FAPE and Dyslexia within the State. In instances where such stakeholders granted permission, OSEP referred noncompliance concerns to TEA for resolution.

Further, during the on-site visit, TEA did not provide evidence of a timeline for completion of the activities listed above, or evidence that those activities have been sufficient to ensure that parents whose children were not previously evaluated because of the 8.5 percent Indicator were provided with the information they need to obtain an evaluation.

CAR 1.b.: Ensuring All LEAs Have Policies, Procedures, and Programs that Meet IDEA's Child Find and FAPE Requirements

In its CAR 1.b., TEA stated that it would ensure that 100 percent of LEAs that submitted grant assurances would have policies, procedures, and programs in effect that satisfied IDEA's child find and FAPE requirements. TEA's timeline for completion of this corrective action was January 10, 2019. During the on-site visit, TEA reported that it was still developing and finalizing its monitoring protocols and it had implemented a pilot program to monitor the policies and procedures of 120 LEAs, which represent less than 10 percent of the total number of LEAs in Texas. Through this pilot program, TEA found that 1 of the 120 LEAs did not have appropriate policies and procedures. TEA reported that it would use the results of the pilot program, along with stakeholder feedback received from focus groups conducted throughout the State, to revise its monitoring system. At the time of OSEP's visit, TEA was still in the process of finalizing its pilot monitoring. In order for OSEP to determine whether TEA has satisfied CAR 1.b., TEA will need to provide OSEP with updated information regarding whether, subsequent to the monitoring visit, TEA has met its required target of ensuring that 100 percent of LEAs have current policies, procedures, and programs to implement IDEA's child find, individual evaluation, and FAPE requirements effectively.

OSEP also has concerns about the implementation of these policies and procedures based on the interviews with LEA personnel that were conducted during the on-site visit. Specifically, OSEP conducted 12 interviews with groups of teachers, 6 interviews with groups of school administrators, and 6 interviews with groups of LEA leaders. The teacher interviews consisted of a minimum of one special education teacher, one general education teacher, and one related service provider. These LEA personnel explained to OSEP staff that some LEAs were not properly implementing IDEA's child find and FAPE requirements. For example, staff members from two schools stated that before conducting an IDEA evaluation to determine eligibility for special education and related services, a student must show a lack of academic progress in the

State's dyslexia program. Therefore, this type of information demonstrates that the assurances alone have not been sufficient to ensure appropriate implementation of IDEA's child find and FAPE requirements at the local level.

CAR 1.c.: Revising Monitoring and Document Review Requirements to Ensure Appropriate General Supervision of LEAs' Implementation of Child Find and FAPE

In CAR 1.c., TEA indicated that its new monitoring protocols would be finalized by December 1, 2018. In its October 19, 2018 response, OSEP requested that TEA submit its revised monitoring protocols for OSEP's review. **At the time of OSEP's May 2019 on-site visit, TEA did not provide the finalized monitoring protocols.**

Rather, TEA only reported during the on-site visit that it was still developing and finalizing its monitoring protocols and was completing its pilot monitoring program. During the on-site visit, TEA explained that its pilot monitoring program of some of the LEAs in the State included a review of IDEA's child find and FAPE requirements. TEA also described the methodology for its selection of a representative sample of LEAs for the pilot program, the timeline of its monitoring review, the notice provided to LEAs selected for monitoring, and an overview of meetings with ESCs that provide technical assistance support to LEAs. TEA reported that its revised monitoring protocols would utilize both cyclical and risk-based monitoring and make use of LEA determinations made under section 616(d) of IDEA. **However, OSEP does not have sufficient information to determine whether TEA's revised monitoring system has been reasonably designed to address child find, individual evaluation, and FAPE requirements or has otherwise been fully implemented.**

CAR 1.d.: Making Dispute Resolution Information Available, Easily Accessible, and Understandable to the Public

Dispute Resolution Handbook:

<https://tea.texas.gov/sites/default/files/SE%20Dispute%20Resolution%20Handbook%20March%202017.pdf>

Parent's Guide to the Admission, Review, and Dismissal (ARD) Process:

https://framework.esc18.net/documents/ard_guide_eng.pdf

In CAR 1.d., TEA stated that it would make publicly available and easily accessible and understandable "information regarding available dispute resolution programs (including IEP facilitation, mediation, state complaints, and due process hearings) specific to child find, FAPE, and other IDEA requirements."

During the on-site visit, TEA reported that it had tasked one of its ESCs with managing a web site that will provide information to parents about their rights, including the dispute resolution options available under IDEA. The web site named the Legal Framework, is available at <http://framework.esc18.net/display/Webforms/ESC18-FW-LandingPage.aspx>. Two of the dispute resolution documents linked on the Legal Framework website are TEA's Notice of Procedural Safeguards, revised July 2020, and the Parent's Guide to the ARD Process. **Upon review, OSEP has identified a number of concerns with the content of TEA's Dispute Resolution Handbook, TEA's Notice of Procedural Safeguards, and the Parent's Guide to the ARD Process,** explained in detail in the Appendix to this monitoring report. These documents will require numerous revisions in order for TEA to comply with this CAR item as well as other CAR items referenced below.

CAR 1.e.: Ongoing Training of Hearing Officers, Mediators, and Complaint Investigators

In CAR 1.e., TEA committed to providing evidence of ongoing training of hearing officers, mediators, and complaint investigators regarding IDEA requirements related to child find and FAPE by December 1, 2018. In its October 19, 2018 letter, OSEP required TEA to provide documentation of trainings of hearing officers, mediators, and complaint investigators from January 11, 2018, through the end of the correction period.

In interviews conducted during the on-site visit, TEA reported that "the most recent training conducted by an independent expert in the field of special education law" was held in February of 2019. However, TEA did not provide OSEP with documentation of the February 2019 training, including whether hearing officers, mediators, and complaint investigators participated in this training. Further, TEA has not provided information regarding any trainings conducted subsequent to the February 2019 training session, including whether such trainings were specifically designed for hearing officers, mediators, and complaint investigators.

OSEP's Conclusion Regarding Finding #1:

Based on information obtained through OSEP's May 2019 on-site monitoring visit to TEA, review of documents provided by TEA, and interviews with TEA personnel, LEA officials, and school personnel, OSEP cannot determine whether TEA has sufficiently addressed the corrective action related to Finding #1 in OSEP's January 11, 2018 monitoring report. In order to determine whether TEA has satisfied CAR #1, TEA must provide additional and up-to-date information as set forth in the required actions below.

OSEP Required Actions/Next Steps:

In order for OSEP to determine whether TEA has satisfied CAR #1, within 90 days of the date of this letter, TEA must:

- a) To satisfy CAR 1.a., identify and describe the additional activities it has completed or is currently implementing related to this CAR item, including the timeline for full implementation and completion of those activities. Specifically, TEA must specify the resources that it is providing to parents in addition to the referenced FAQ on child find to ensure that parents are fully informed about the scope of IDEA's child find, individual evaluation, and FAPE requirements. This includes information about the obligation of each LEA under IDEA to conduct a timely individual evaluation of a child suspected of having a disability who needs special education and related services and the timely provision of FAPE to each eligible child with a disability under IDEA. Additionally, TEA must clarify what steps it has taken and is continuing to take to ensure that each LEA's Student Handbook contains complete information for parents on how to request an initial evaluation of their child for special education and related services under IDEA.
- b) To satisfy CAR 1.b., provide documentation that 100 percent of LEAs have submitted assurances in connection with their IDEA Part B subgrant applications, that each LEA has policies, procedures, and programs in effect that are consistent with IDEA's child find and FAPE requirements and verification that such policies, procedures, and programs are being properly implemented, or if TEA is unable to provide such documentation, a plan, and timeline for providing the necessary documentation, including the actions it has taken or will take, to address and ensure timely correction of the noncompliance by those LEAs that have not either provided or implemented the assurances in their IDEA Part B

subgrant applications with respect to IDEA's child find, individual evaluation and FAPE requirements;

- c) To satisfy CAR 1.c., provide OSEP with: (i) a copy of TEA's revised monitoring protocols for OSEP's review; (ii) the timeline for implementing the revised monitoring protocols, subject to OSEP's feedback; (iii) a sample monitoring report that was based upon the monitoring protocols used in the pilot program; (iv) an explanation of how TEA selects LEAs for monitoring; and (v) upon completion of a monitoring cycle, provide evidence and documentation of completed monitoring visits conducted under TEA's new monitoring system along with the finalized monitoring protocols used to complete those monitoring visits. This documentation must include how TEA identified noncompliance in an LEA and describe the specific actions TEA required noncompliant LEAs to complete to correct the identified noncompliance as soon as possible, but in no case later than one year from the State's identification of the noncompliance, as required by 20 U.S.C. §§ 1232d(b)(3)(E), 1412(a)(11) and 1416(a) and 34 C.F.R. § 300.600(e) and OSEP Memorandum 09-02 dated October 15, 2008;
- d) To satisfy CAR 1.d., a plan for making all of the revisions to TEA's Notice of Procedural Safeguards revised July 2020, TEA's Dispute Resolution Handbook (March 2017), and TEA's Parent's Guide to the ARD Process (July 2020), consistent with the required revisions outlined in OSEP's analysis in the Appendix to this monitoring report to ensure that those documents accurately address all applicable IDEA Part B requirements, including a plan to distribute these revised documents to LEAs, parents, and other stakeholders, as well as a plan to make these revised documents available to parents who are limited English proficient;
- e) To satisfy CAR 1.e., provide evidence of ongoing trainings conducted for the State's hearing officers, mediators, and complaint investigators on IDEA's FAPE, child find and individual evaluation requirements conducted since February of 2019, including dates of trainings previously held and any trainings that occurred during Federal Fiscal Year (FFY) 2020 and that have been scheduled in FFY 2021.

TEA's Implementation of Its CAR for OSEP Finding #2

OSEP's January 11, 2018 monitoring report includes a finding that TEA failed to ensure that FAPE was made available to all children with disabilities residing in the State in Texas's mandated age ranges (ages 3 through 21), as required by IDEA section 612(a)(1) and its implementing regulation at 34 C.F.R. § 300.101. As a corrective action, OSEP required TEA to provide "a plan and timeline by which TEA will ensure that each LEA will (i) identify, locate, and evaluate children enrolled in the LEA who should have been referred for an initial evaluation under the IDEA; and (ii) require IEP Teams to consider, on an individual basis, whether additional services are needed for children previously suspected of having a disability who should have been referred for an initial evaluation and were later found eligible for special education and related services under the IDEA, taking into consideration supports and services previously provided to the child."

CAR 2.a.: Requiring All LEAs to Distribute Information to Each Student's Family

In its CAR 2.a., TEA stated it would require all LEAs to "distribute information to every enrolled student's family regarding IDEA's Child Find and FAPE requirements and obligations, to inform

them of their rights under IDEA and to provide contact information to request an initial evaluation." TEA's communications with parents were to be based on its "Legal Framework" website, and TEA's timeline for completion of this corrective action was December 1, 2018.

In its October 19, 2018 response, OSEP requested that TEA provide additional information to describe TEA's "Legal Framework" and its relationship to this corrective action. In addition, with regard to the published materials that TEA has committed to providing for LEAs to post on their web sites, OSEP required TEA to explain, where applicable, how it will ensure LEAs communicate this information to families through means other than postings on web sites when necessary in an accessible and effective manner, including for parents who are limited English proficient.

As noted above, TEA tasked one of its ESCs (Region 18) to maintain the Legal Framework portal as a source of information for LEAs and families. OSEP notes that currently, the "Legal Framework for the Child-Centered Special Education Process" includes the Procedural Safeguards Notice in both English and Spanish, but OSEP has identified deficiencies with the content of that Notice, which TEA must revise in order to provide parents with a full explanation of procedural safeguards available under IDEA Part B.

OSEP reviewed the web sites of the six LEAs it visited to determine whether those web sites contained information about IDEA's child find and FAPE requirements, including information on how to request an initial evaluation, as well as how to request additional services if a child was previously denied a timely evaluation or appropriate services. Only three of the six LEAs posted information related to these areas on their web sites. One of the three LEAs with information posted on its website uploaded the information during OSEP's May 2019 on-site visit. After the visit, OSEP reviewed the websites of 15 additional LEAs to determine whether these LEAs had posted information about IDEA requirements regarding governing child find and FAPE. Six LEAs had posted information about IDEA requirements in these areas on their web sites.¹ Also, OSEP cannot determine the steps TEA has taken or will be taking, consistent with 34 C.F.R. § 300.503(c), to ensure that LEAs provide this information to parents in a manner that is understandable to the general public, including effectively communicating this information with parents who are limited English proficient, as well as to those parents who do not have access to a website.

CAR 2.b.: Providing Guidance and Information Regarding LEAs' Legal Responsibilities under State and Federal Law

In TEA's CAR 2.b., TEA stated that "TEA will provide guidance and information related to LEA [sic] legal responsibilities under state and federal law, including the identification of all eligible students and subsequent additional service guidelines, processes, and best practices regarding provision of Child Find, Evaluation, Procedural Notice and Safeguards, and supports and services that result in positive school outcomes and success." TEA's timeline for completion of this corrective action was December 1, 2018. TEA's Documentation/Evidence of Progress/Completion states that 100% of LEAs will receive guidance and information related to their legal responsibilities under state and federal law, including the identification of all eligible students and subsequent compensatory service guidelines.

¹ Five LEAs posted non-working links on their web sites.

In its October 19, 2018 response, OSEP indicated that it would review guidance and information provided by TEA related to the responsibilities of LEAs under state and federal law in connection with a subsequent on-site visit. However, at the time of the on-site visit, TEA did not produce documentation of any guidance, and the documents and materials provided to OSEP prior to OSEP's May 2019 on-site monitoring visit did not contain such guidance.

CAR 2.c.: Requiring LEAs to Collect and Retain Data on Requests for Evaluations and Outcomes of Those Requests

In its CAR 2.c., TEA stated it would require LEAs to collect and retain data that includes: (i) each request for an evaluation made during the 2018-2019 school year; (ii) whether the reason for the request indicates a claim that the child should have been referred for an initial evaluation prior to the 2018-2019 school year; and (iii) if the child is found eligible, whether compensatory services are needed. TEA's timeline for completion of this corrective action was September 1, 2018. TEA's Documentation/Evidence of Progress/Completion was that 100% of LEAs would receive information relating to this requirement and notice of how TEA would collect this data.

In its October 19, 2018 response, OSEP reiterated its understanding that TEA would use the referenced data to determine that each LEA: (i) identifies, locates, and evaluates children enrolled in the LEA who should have been referred for an initial evaluation under the IDEA, and (ii) provides technical assistance, as appropriate, to IEP Teams as they consider, on an individual basis, whether additional services are needed for children previously suspected of having a disability who should have been referred for an initial evaluation and were later found eligible for special education and related services under the IDEA, taking into consideration supports and services previously provided to the child, and that OSEP would, possibly in conjunction with future monitoring activities, review these efforts.

In interviews conducted during OSEP's on-site visit, TEA reported that it would require LEAs to collect and retain data that includes:

- Each request for an evaluation made during the 2018-2019 and the 2019-2020 school year;
- Whether the reason for that request is from a child who should have been referred for an initial evaluation before the 2018-2019 school year;
- If the child is determined eligible, whether compensatory services are needed.

These data were not available for OSEP's review during the on-site monitoring visit, but in interviews conducted during the on-site visit, officials from 3 LEAs reported an increase in parental requests for evaluations. However, based on OSEP's interviews with school personnel, none of the LEAs reported that students who should have been evaluated who were later evaluated and determined eligible were provided additional services and supports to make up for the delay in the child's evaluation and the provision of special education and related services.

It is very important for OSEP to review the data that TEA has required its LEAs to report for the 2018-2019 and the 2019-2020 school years in order to determine whether and to what extent TEA has implemented this provision of its CAR to correct the noncompliance that OSEP identified in its January 11, 2018 monitoring report.

OSEP’s Conclusion Regarding Finding # 2:

Based upon a review of documents, analysis of available data, and interviews with TEA and LEA and school personnel, OSEP cannot determine whether TEA has sufficiently addressed the actions included in its April 23, 2018 CAR submission related to CAR #2, and OSEP’s October 19, 2018 response related to Finding #2 in OSEP’s January 11, 2018 monitoring report. In order for OSEP to determine whether TEA has satisfied Car #2, TEA must provide the additional information described in the required actions set forth below.

OSEP Required Actions/Next Steps:

In order for OSEP to determine whether TEA has satisfied CAR #2, within 90 days of the date of this letter, TEA must:

- a) To satisfy CAR 2.a., provide evidence that all LEAs have posted accurate and complete information related to IDEA’s child find, individual evaluation, and FAPE requirements on their websites for parents. If TEA is unable to provide the necessary evidence that all LEAs have posted the required information on their websites, TEA must submit a plan and timeline for ensuring that all LEAs post the required information on their websites as soon as possible, but within 30 days after the expiration of the 90-day timeline. This information must include notice to parents on how to request an initial evaluation, the LEA’s obligation to provide a parent prior written notice, consistent with 34 C.F.R. § 300.503, if the request for evaluation is granted or denied, the scope of IDEA’s individual evaluation requirements in 34 C.F.R. §§ 300.300-300.311, and how to request additional services if the child was previously denied a timely evaluation or appropriate services.

TEA must also provide OSEP evidence that it has determined that the information posted on LEA websites is legally accurate, is consistent, as applicable, with the analysis provided in the appendix to this monitoring report, and meets the requirements in 34 C.F.R. § 300.503(c), and that those materials effectively communicate this information to parents who are limited English proficient. If TEA is unable to provide such evidence, TEA must provide a plan and timeline for meeting these requirements within 30 days after the expiration of the 90-day timeline;

- b) To satisfy CAR 2.b., provide for OSEP’s review, its guidelines for providing additional services and supports for students who were not previously evaluated, but who were later evaluated and found eligible and who were denied appropriate services, and who require additional services and supports in order to receive FAPE, in light of services and supports previously provided;
- c) To satisfy CAR 2.c., provide OSEP with a report on the data collected from its LEAs during the 2018-2019 and 2019-2020 school years that includes:
 - The number of children referred for IDEA evaluations;
 - The number of IDEA evaluations conducted;
 - The number of children determined eligible for special education and related services;

- The number of children for whom additional services and supports were provided to ensure the provision of FAPE; and
- The number of children for whom additional services were determined to be unnecessary for the provision of FAPE and the reasons for that determination.

TEA’s Implementation of Its CAR for OSEP Finding #3

In its January 11, 2018 monitoring report, OSEP found that TEA failed to fulfill its general supervisory and monitoring responsibilities as required by IDEA sections 612(a)(11) and 616(a)(1)(C), and their implementing regulations at 34 C.F.R. §§ 300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A), to ensure that LEAs throughout the State properly implemented the IDEA child find and FAPE requirements. As a corrective action, OSEP required TEA to provide “a plan and timeline by which TEA will provide guidance to LEA staff in the State, including all general and special education teachers, necessary to ensure that LEAs (i) ensure that supports provided to struggling learners in the general education environment through RTI, Section 504, and the State’s dyslexia program are not used to delay or deny a child’s right to an initial evaluation for special education and related services under the IDEA; (ii) are provided information to share with the parents of children suspected of having a disability that describes the differences between RTI, the State dyslexia program, Section 504, and the IDEA, including how and when school staff and parents of children suspected of having a disability may request interventions and/or services under these programs; and (iii) disseminate such information to staff and the parents of children suspected of having a disability enrolled in the LEA’s schools, consistent with 34 C.F.R. § 300.503(c).”

CAR 3.a.: Facilitating a Process to Revise the State’s Dyslexia Handbook

In its CAR 3.a., TEA stated that “[u]pon direction from the State Board of Education, TEA will facilitate a process to revise the Texas Dyslexia Handbook to clarify the difference between dyslexia and dyslexia-related services, IDEA, Section 504, and RTI, and ensure clear guidance in the field, especially as it relates to dyslexia and dyslexia-related disabilities being eligible for IDEA. TEA will ensure that any guidance is compliant with IDEA.” TEA’s timeline for completion of this corrective action was November 1, 2018. TEA’s Documentation/Evidence of Progress/Completion was the completed, approved, and adopted Dyslexia Handbook.

In November of 2018, TEA revised the Dyslexia Handbook, which provides guidelines for school districts “to follow as they identify and provide services for students with dyslexia. In addition, the Dyslexia Handbook includes information regarding the State’s dyslexia statutes and their relation to various federal laws.” See the page on TEA’s web site, Dyslexia and Related Disorders, at <https://tea.texas.gov/academics/special-student-populations/dyslexia-and-related-disorders>.

Based on interviews with LEA and school staff that OSEP conducted during the May 2019 on-site visit, OSEP explored LEA and local school practices related to the implementation of the revised Dyslexia Handbook, particularly the implementation of IDEA requirements for evaluation and identification of children with dyslexia as children with disabilities under IDEA. Interviews that OSEP conducted with personnel at twelve schools in six LEAs demonstrated that there was continued confusion regarding the interpretation and implementation of the revised Dyslexia Handbook, specifically with regard to evaluation and identification of children with dyslexia who may be identified as needing special education and related services under IDEA

but who are receiving services under Section 504. For example, one LEA administrator stated that in Texas, a student could not be found eligible for special education and related services under IDEA based on dyslexia and that dyslexia is not considered a specific learning disability. This statement is inconsistent with IDEA’s definition of specific learning disability in 34 C.F.R. § 300.8(C)(10)(i), which specifically identifies dyslexia as a condition that could qualify as a specific learning disability. Another LEA administrator stated erroneously that special education for children with dyslexia is only for children not making progress through the dyslexia program. A school-level staff member within another LEA stated that the difference between a need for special education services under IDEA versus support provided through the dyslexia program is that students eligible for special education services experience problems with both reading fluency and comprehension; however, the staff member indicated that students with dyslexia do not have problems with fluency and comprehension. This statement is contradicted by TEA’s Dyslexia Handbook, which mentions students’ difficulties with reading comprehension and fluency throughout, including in Chapter 1 which lists “Variable difficulty with aspects of reading comprehension” on a bulleted list titled Consequences of Dyslexia. Further, IDEA specifically mentions difficulties with reading fluency and reading comprehension as criteria that the group may consider in determining whether the child’s underachievement in these areas constitutes a specific learning disability. See 34 C.F.R. § 300.309(a)(1)(v) and (vi). A staff member from another LEA stated that when a child can make educational gains from the dyslexia program, the student is not eligible for special education. OSEP interviewed some staff members who were confused about whether or how the supports provided through the State’s dyslexia program could be included in the IEP of a child with dyslexia who is identified as an eligible child with a disability. Several school staff members interviewed by OSEP expressed a need for clearer guidance on dyslexia and IDEA eligibility. TEA administrators acknowledged, at the time of OSEP’s May 2019, on-site visit, that additional actions were needed to ensure the revised Dyslexia Handbook guidance is properly implemented in a manner that is consistent with IDEA.

CAR 3.b.: Evaluate Existing Resources and Whether They Meet Legal Requirements Under the IDEA.

In TEA’s CAR 3.b TEA stated it would, “Evaluate existing resource content and whether the *Parent’s Guide to the Admission, Review, and Dismissal Process* meets legal requirements regarding a child’s right to an initial evaluation for special education and related services under the IDEA.” Although TEA revised its Parent’s Guide to the ARD Process in July of 2020, as detailed in the Appendix to this letter, in order to satisfy CAR 3.b., TEA must make further revisions to that document to accurately address applicable IDEA requirements.

CAR 3.c.: Creating a Suite of Information to Share with Parents of Children Suspected of Having a Disability under IDEA

In TEA’s CAR 3.c., the State reported that it would “leverage resources to enable the creation of a suite of information intended to be shared with parents of children suspected of having a disability.” The State indicated that these resources would describe the differences between RTI, the State dyslexia program (for dyslexia or dyslexia-related needs), Section 504, and the IDEA, and would be developed in conjunction with extensive stakeholder feedback. TEA stated that it would “provide resources and guidance to support LEA understanding of IDEA and state statute compliance.” TEA’s timeline for completion of this corrective action was December 1, 2018. TEA’s Documentation/Evidence of Progress/Completion measure is that “100% of LEAs will

receive materials that can be used to present their statutory and professional requirements to their local school boards; publish information on their websites, and provide assurances of this requirement through the Legal Framework.” OSEP reviewed the web sites of 15 LEAs to determine whether these LEAs had posted information about IDEA requirements for child find and the provision of FAPE. Six of those LEAs had posted information about IDEA requirements in these areas on their web sites, and the remaining nine web sites did not contain the information.

OSEP’s Conclusion Regarding Finding # 3:

Based upon the review of documents, analysis of available data, and interviews with TEA and LEA and school personnel, OSEP cannot determine whether TEA has sufficiently addressed the actions included in its April 23, 2018 CAR submission, and OSEP’s October 19, 2018 response related to Finding CAR 3.a. Despite revisions to the State Dyslexia Handbook, OSEP has serious concerns about LEAs’ implementation of TEA’s guidance in this area. LEA personnel or school staff referenced the Dyslexia Handbook as support for their current practices or, in some cases, a source of ambiguous guidance. Also, the lack of consistent interpretation of the Handbook at the LEA and local school levels conveyed to OSEP at the time of its on-site visit indicated the need for additional clarification, training, and monitoring to ensure proper implementation of IDEA requirements. Because OSEP continued to find that among LEA personnel and staff regarding how a child with dyslexia can qualify as having a specific learning disability under IDEA, TEA must provide OSEP with information demonstrating the additional actions it has taken to ensure that LEAs understand and are carrying out their obligations to promptly refer, for an evaluation, a student with dyslexia who is suspected of having a specific learning disability under IDEA.

With regard to CAR 3.b, OSEP identified a number of issues with the Parent’s Guide to the ARD Process that must be revised to accurately address IDEA requirements, as detailed in the appendix to this letter.

OSEP cannot determine if TEA has satisfied CAR 3.c. because OSEP found, both during and subsequent to its on-site visit, that not all LEAs had posted information about relevant IDEA requirements on their websites, nor did all LEAs include information describing the differences between RTI, the State’s dyslexia program, Section 504, and the IDEA. Therefore, in order for OSEP to determine whether TEA has fully addressed the noncompliance identified in OSEP’s January 11, 2018 monitoring report in this area, TEA must provide the additional information described in the required actions set forth below.

OSEP Required Actions/Next Steps:

In order for OSEP to determine whether TEA has satisfied CAR #3, within 90 days of the date of this letter, TEA must:

- a) To satisfy CAR 3.a., submit a detailed report of the specific steps TEA has taken since OSEP’s May 2019 on-site visit to provide clarification, training, and monitoring of LEAs that is necessary to ensure that LEA personnel and school staff are implementing the guidance in the State’s Dyslexia Handbook consistent with IDEA, including the additional actions that TEA has taken to ensure timely identification and correction of noncompliance through on-site monitoring and dispute resolution procedures;

- b) To satisfy CAR 3.b. make the necessary revisions to the Parent’s Guide to the ARD Process, revised July 2020, to be consistent with IDEA, as detailed in the appendix to this letter;
- c) To satisfy CAR 3.c., provide for OSEP’s review, a representative sample of the documents the State has produced to inform parents of the differences between Section 504, RTI, and services under the State’s dyslexia program. To the extent that the materials are utilized to meet the requirements of 34 C.F.R. §§ 300.503, 300.504, and 300.612, they must be provided in a manner that is consistent with the accessible communication requirements in 34 C.F.R. § 300.503(c), and if not provided to meet IDEA’s notice requirements, the published materials must meet the requirements for effective communication with parents who are limited English proficient. TEA must specify how it has ensured LEAs’ broader dissemination of these materials, to the extent that not all families in Texas may have access to web sites.

TEA’s Implementation of Its CAR for OSEP Finding #4

TEA created CAR 4 in order to demonstrate that it had a plan and timeline for restructuring its monitoring system.

CAR 4.a.: TEA Restructuring of Agency Oversight with Increased Capacity and Monitoring Expertise

In its CAR 4.a TEA stated that it “will restructure Agency oversight with increased capacity and monitoring expertise, ensuring a balanced system of compliance and results-driven accountability monitoring and intervention practices in the State, that includes specific monitoring requirements to review LEAs’ implementation of the IDEA requirements found in 34 C.F.R. §§ 300.111 and 300.101 when struggling learners suspected of having a disability and needing special education and related services under the IDEA are receiving supports through RTI, Section 504, and/or the State’s dyslexia program.” TEA’s timeline for completion of this corrective action was August 2018. TEA’s Documentation/Evidence of Progress/Completion was the transition of the Special Education monitoring duties from School Improvement to Special Populations (in the Office of Academics) as part of a new Review and Support Team. Until the transition was complete, TEA had indicated that it would require School Improvement to include specific monitoring requirements to review LEAs’ implementation of the IDEA child find, evaluation, and FAPE requirements and other IDEA requirements found in its CAR. Based upon a review of documents, interviews with TEA, LEA, school personnel, and stakeholder reports, it appears to OSEP that TEA’s restructuring included hiring additional staff and developing specific monitoring requirements to review LEAs’ implementation of IDEA requirements in 34 C.F.R. §§ 300.111 and 300.101 when struggling learners suspected of having a disability and needing special education and related services under the IDEA are receiving supports through RTI, Section 504, and/or the State’s dyslexia program.

OSEP’s Conclusion Regarding Finding #4:

While TEA has restructured its oversight to increase capacity and monitoring expertise to help ensure a balanced system of compliance and results-driven accountability monitoring and intervention practices in the State, OSEP cannot determine, without reviewing up-to-date evidence, whether TEA has a fully operational and effective monitoring system.

OSEP Required Actions/Next Steps:

In order for OSEP to determine whether TEA has satisfied CAR #4, within 90 days of the date of this letter, TEA must:

- a) Provide OSEP with an update on the specific actions it has taken to restructure its general supervision and monitoring systems, including its updated general supervision policies and procedures and revised monitoring protocols, the number of staff that conduct monitoring visits, the criteria it uses in selecting LEAs for on-site monitoring, and how TEA considers stakeholder input in the monitoring process; and
- b) Provide evidence demonstrating that, consistent with its general supervisory and monitoring responsibilities, TEA has the capacity and has a system in place to identify and correct noncompliance by all LEAs throughout the State with all IDEA requirements in a timely manner, particularly those requirements related to child find, individual evaluations, and the provision of FAPE in accordance with 20 U.S.C. §§ 1412(a)(11) and 1416(a) and 34 C.F.R. §§ 300.149 and 300.600, 20 U.S.C. § 1232d(b)(3)(E) and 34 C.F.R. § 300.600(e), and OSEP Memorandum 09-02.

Appendix

Analysis of “A Parent’s Guide to the Admission, Review, and Dismissal Process” July 2020

General Comments

- This document uses the term “special education services,” and this term is incomplete without additional clarifying information. For example, the term appears in the explanations of referral, initial evaluation, and eligibility determination. TEA must either use the term “special education and related services” or must provide additional clarification to specify that the term “special education services” includes both special education and related services.
- TEA may wish to include cross-references to its Notice of Procedural Safeguards document, particularly where the ARD Guide does not provide a full explanation of the applicable regulatory requirements (*e.g.*, prior written notice content).
- OSEP notes that there are a number of spacing issues in this document. TEA may wish to address those when the required revisions are made.

Early Childhood Intervention -- Page 3 of TEA’s ARD Guide

- TEA’s ARD Guide uses the term “early intervening services” in this section. However, in accordance with Part C of IDEA (34 C.F.R. § 303.13), the term must be changed to refer to “early intervention services.” Note that IDEA uses the term “early intervening services” when referring to comprehensive, coordinated early intervening services, particularly for students in kindergarten through grade three not currently identified as needing special education and related services, but who need additional academic and behavioral support to succeed in a general education environment. See 34 C.F.R. § 300.226. Early intervention services is the term used in IDEA to refer to services provided to infants and toddlers, and, if applicable, to children with disabilities pursuant to an individualized family service plan (IFSP). See page 3.
- Page 3 of TEA’s ARD Guide states: “...children with disabilities may become eligible for services from the public school.” While it is accurate to state that children may be eligible for services from a public school, that explanation is incomplete. Under IDEA Part B, children with disabilities also may require special education and related services to be provided at public expense and at no cost to the parents at a private school or facility if there is no public school program that can provide FAPE to the child. This is particularly true where LEAs offer limited preschool options for three and four-year-olds. Thus, TEA must revise its statement to read: “At age three, children with disabilities may become eligible for special education and related services. If so, the child’s school district is responsible for ensuring FAPE is made available to the child by the child’s third birthday.” See page 3.

Help for the School-Aged Child -- Page 3 of TEA’s ARD Guide

- TEA’s ARD Guide states that a child having difficulty in the regular classroom should be considered for “all support services available to all children” before being referred for a

special education evaluation. This statement could be read to suggest that in all situations, consideration of supports available to all children is appropriate before a referral is made and an IDEA evaluation is conducted. However, there could be situations where those supports would not be appropriate to address the student’s special education and related services needs. Therefore, OSEP recommends that TEA provide additional clarification to address this concern. See page 3.

- TEA’s ARD Guide contains a non-exhaustive list of services available in the regular classroom, including compensatory services. Because compensatory services are also understood to be services for students with disabilities who have been denied a meaningful educational benefit, see 34 C.F.R. § 300.151(b)(1), OSEP strongly recommends that TEA clarify that it is referring to the State compensatory education program that is available to nondisabled students in Texas under Sec. 29.081 of the Texas Code to distinguish these services from compensatory services under IDEA, as described in <https://statutes.capitol.texas.gov/Docs/ED/htm/ED.29.htm#29.081>. See page 3.

Response to Intervention- 34 C.F.R. § 300.307(a)(2) -- Pages 3 and 4 of TEA’s ARD Guide

- TEA’s ARD Guide states: “Children, who do not respond to the initial interventions within a reasonable time, as suggested by research, are referred for interventions that are more intensive.” It may not be clear to parents what constitutes a reasonable time as suggested by research. OSEP recommends that TEA provide examples to clarify this point. See page 4.
- TEA’s ARD Guide states that “once it is apparent” that the student is not benefitting from “general education interventions.” OSEP recommends that TEA elaborate further on what criteria it instructs its LEAs to use to determine that it is apparent that the student is not making sufficient progress through general education interventions. See page 4.

Further, when school personnel suspect the child of having a disability, the Guide states that they “should initiate a referral.” Consistent with their child find obligations under 34 C.F.R. §§ 300.111 and 300.201, school personnel must initiate a referral in this circumstance. TEA must revise its ARD Guide by changing the “should” to “must.” See page 4.

- TEA must include the following sentence at the conclusion of this section, before the link to more information about the RtI process: “RtI strategies may not be used to delay or deny a timely evaluation of a child suspected of having a disability under IDEA.” See page 4.

Referral for an Initial Evaluation- 34 C.F.R. §§ 300.301, 300.503, and 300.504—Page 4 of TEA’s ARD Guide

- Page 4 of TEA’s ARD Guide states: “However, a verbal request does not require the district or charter school to respond within the 15-school day timeline.” It is unclear to OSEP when prior written notice and a copy of the Notice of Procedural Safeguards is provided when a verbal request for evaluation is made. OSEP requests that TEA clarify when Notices are provided to parents in this situation. See page 4.

Prior Written Notice- 34 C.F.R. § 300.503 -- Page 4 of TEA’s ARD Guide

- TEA must revise the first sentence of this section to read: “One of your rights under IDEA is to receive prior written notice about certain actions or inactions concerning your child **a reasonable time** before the school actually takes the action **or refuses to take the action.**” Text edits have been bolded. See page 4.
- This section does not describe any of the required content of the prior written notice as set forth in 34 C.F.R. § 300.503(b). TEA must revise the Guide to include all of the required content addressed in 34 C.F.R. § 300.503(b) or indicate to parents where more information about the content of the notice can be found. See page 4.

Parental Consent- 34 C.F.R. §§ 300.300, 300.321(e), 300.622 -- Page 5 of TEA’s ARD Guide

- Consistent with 34 C.F.R. § 300.9, TEA must revise the following sentence to read: “When you give consent, it means that you understand and agree in writing for the school to carry out the activity for which **your** consent is sought.” Text edits have been bolded. See page 5.
- TEA provides examples of activities that require parental consent. This list must be revised to read as follows: “**A reevaluation of your child once every three years, or a more frequent** reevaluation if more information is needed;...” 34 C.F.R. § 300.300(c), “but a reevaluation may occur without your consent if the school made reasonable efforts to obtain your consent, but you did not respond.” Text edits have been bolded. See page 5.
- TEA’s ARD Guide identifies additional situations when parental consent is required, including “[e]xcusing an ARD committee member from attending an ARD committee meeting...” Under 34 C.F.R. § 300.321(e)(2), parent consent is only required “when the meeting involves a modification to or discussion of the member's area of the curriculum or related services.” If TEA intends to address the excusal requirement in 34 C.F.R. § 300.321(e)(2), TEA must revise the text to be consistent with the IDEA provision. However, if the provision permitting excusal of an ARD committee member’s attendance is applied more broadly in Texas, OSEP would like to discuss how TEA can address its State provision in this Guide in a manner that is not inconsistent with IDEA. See page 5.

Initial Evaluation- 34 C.F.R. § 300.304 -- Pages 5 and 6

- OSEP recommends that TEA change the heading to “Evaluation Procedures.” 34 C.F.R. § 300.304.

OSEP is providing the following information to ensure that TEA provides a more complete explanation of IDEA’s evaluation procedures.

- TEA must revise the first paragraph of this section to read: “If you give your consent for an initial evaluation, the school **must provide prior written notice of any evaluation procedures the school will conduct. The school must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about your child, including information that you provide. Your child’s school may not use any measure or assessment as the sole criterion for determining whether your child is a child with a disability and for determining an appropriate educational program for your child.**” Your school must conduct an evaluation of your

child in all areas related to the suspected disability to determine if your child has a disability and to determine his or her educational needs.” Text edits have been bolded. See page 5.

- TEA must revise the explanation of how testing or other evaluation materials must be administered by revising the following bullet point to read: “Be administered by trained and knowledgeable personnel **in accordance with the instructions of the test producer and be administered for purposes for which the assessments are valid and reliable**;...” 34 C.F.R. § 300.304(c). Text edits have been bolded. See page 5.
- TEA must clarify that testing or other evaluation materials must be administered in a child’s native language or other mode of communication used by the child, unless clearly not feasible to do so
- As a technical assistance matter, because in Texas, stakeholders frequently refer to TEA’s initial evaluation process as an “FIE” (full and individual evaluation), OSEP recommends that TEA include this acronym with an explanation that “FIE” is an abbreviation for “full and individual evaluation.” See page 5.

Eligibility- 34 C.F.R. § 300.8(c)(2), (3), and (13) -- Page 7 of TEA’s ARD Guide

- The ARD Guide indicates that to be eligible for special education, the child must first meet the criteria for one or more of the listed disability categories. Two of the disabilities listed are “deaf or hard of hearing (from birth)” and “deaf-blindness (from birth).” IDEA’s definitions of these disabilities do not require that a child manifest these disabilities “from birth.” We note that the State’s rules at § 89.1040(c)(2), (3), and (12) reference IDEA’s definitions and do not require these disabilities to be present “from birth.” There also could be situations where children acquire these disabilities after birth. TEA must revise the ARD Guide to be consistent with the IDEA definitions and the corresponding State rules. See page 7.

Individualized Education Program- 34 C.F.R. § 300.300(b) -- Pages 8 and 9 of TEA’s ARD Guide

- TEA must change the heading to read “Initial Provision of Services” because the parental consent that IDEA requires is not for the specific special education and related services in the initial IEP. See 71 Fed. Reg. 46540, 46634 (Aug. 14, 2006). If Texas does require consent for the initial IEP rather than just for the initial provision of special education and related services, OSEP would like to discuss with TEA how its State provision can be implemented in a manner that is not inconsistent with IDEA.
- TEA must revise its ARD Guide to include the following sentence in its explanation of refusal to consent: “The school is not in violation of its duty to make FAPE available to your child if you refuse consent or fail to respond to a request to provide consent to the initial provision of special education and related services.” See page 9.
- After the discussion of refusal to consent, OSEP recommends that TEA insert the original “Individualized Education Program” heading.

- In the list of the IEP’s major components, TEA must revise the bullet point about annual goals by inserting the following at the end: “including academic and functional goals;...” See page 9.
- TEA must revise the bullet point about assessments by inserting the following after “districtwide assessments”: “including a statement of any individual appropriate accommodations that are necessary for your child to take an assessment, and whether your child needs to take an alternate assessment, instead of the regular Statewide assessment, and why the alternate assessment is appropriate for your child.” See page 9.
- TEA must revise the final bullet point in the list of an IEP’s major components to read: “Other areas that must be **considered, and if determined necessary**, addressed, for children with certain disabilities, needs, or circumstances.” Text edit has been bolded. See page 9.
- TEA must revise the first bullet point in its explanation of special factors the ARD committee must consider and address to read as follows: “Consider the use of positive behavioral interventions and supports and other strategies to address that behavior when a child’s behavior impedes **the child’s learning or that of others**;...” Text edit has been bolded. See page 9
- In this section, TEA accurately addresses the IEP Team’s responsibility to consider the communication needs of the child who is deaf or hard of hearing in the development and review of a child’s IEP. However, TEA must revise this section to specify that under 34 C.F.R. § 300.324(a)(2)(iv), the IEP Team must consider the communication needs of each child with a disability. In addition, TEA must revise this section to address 34 C.F.R. § 300.324(a)(2)(v) to specify that the IEP Team must consider for each child, “whether the child needs assistive technology devices and services.” See page 9.64 Fed. Reg. 48 12406, 12590 (Mar. 12, 1999).

Annual Goals- 34 C.F.R. § 300.320(a)(2) -- Page 10 of TEA’s ARD Guide

- As noted in our comment on page 9 about “measurable annual goals,” TEA’s ARD Guide states that “the IEP must contain measurable annual goals,” but does not mention the specific types of goals. TEA must revise the first sentence in this section by inserting the phrase “including academic and functional goals” after the words “measurable annual goals.” See page 10.

State Assessments- 34 C.F.R. § 300.160 -- Pages 10 and 11 of TEA’s ARD Guide

- TEA must revise the following sentence at the end of the first paragraph to read: “Children who receive special education services will take the appropriate state assessments, either the regular assessment or an alternate assessment for children with the most significant cognitive disabilities, aligned with alternate academic achievement standards. Regardless of whether your child takes the regular assessment or an alternate assessment, the assessment is aligned with the State’s challenging academic content standards, and your child must receive **appropriate accommodations on State and districtwide assessments, if necessary, as indicated in your child’s IEP.**” Text edits have been bolded. See page 10.

- TEA’s ARD Guide states that a child’s IEP must contain benchmarks and short-term goals. TEA must clarify that this IDEA requirement applies only to those children with the most significant cognitive disabilities who take an alternate assessment aligned with alternate academic achievement standards. 34 C.F.R. § 300.320(a)(2)(ii). See page 11.

Transition- 34 C.F.R. 300.320(b) -- Pages 11 and 12 of TEA’s ARD Guide

- TEA’s ARD Guide states that transition planning may not begin later than when a student turns 14. Because this is a requirement for all children in Texas, not just for those for whom the IEP Team considers it appropriate as addressed in IDEA, OSEP recommends TEA revise the Guide to specify that this is a requirement under Texas law, and not an IDEA requirement. See page 11.
- TEA must revise the following paragraphs to ensure that the IDEA requirements in 34 C.F.R. §§ 300.320(b) and 300.321(b) are addressed: **“Part B of IDEA** requires that beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the ARD committee, the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The IEP must include the transition services, **including courses of study**, needed to assist the child in reaching those goals.

Your child must be invited to the ARD committee meeting when transition services **and postsecondary goals** will be discussed. If your child is younger than 18 and at least 14, the ARD committee must also consider involvement in the student's transition by you and other persons invited to participate by you and the school.

If your child does not attend the meeting, the ARD (IEP Team) must take other steps to ensure that your child’s preferences and interests are considered.” Text edits have been bolded. See page 12.

Children with Autism -- Page 13 of TEA’s ARD Guide

- This section of the ARD Guide lists 11 strategies that must be considered for children with autism. The legal basis for these “requirements” is not addressed. A parent reading this explanation would reasonably assume that these are referring to IDEA requirements. OSEP recommends that TEA revise its ARD Guide to clarify whether these are actual requirements and include references to State law or policy. See page 13.

Children who are Blind or Visually Impaired -- Pages 13 and 14 of TEA’s ARD Guide

- TEA’s ARD Guide also lists other needs the child might have that the ARD committee must consider. OSEP recommends that TEA clarify that some of these are requirements in State law or policy, and not of IDEA. See page 13.

Behavioral Intervention Plan (BIP)- 34 C.F.R. § 300.324(a)(2)(i) -- Page 14 of TEA’s ARD Guide

- Despite the heading, in the first sentence of this section, TEA’s ARD Guide refers to a “behavior improvement plan.” 34 C.F.R. § 300.324(a)(2)(i) refers to a behavioral

intervention plan. OSEP recommends that TEA revise the text to use consistent terminology. See page 14.

Copy of IEP- 34 C.F.R. § 300.322(e) -- Page 16 of TEA’s ARD Guide

Under 34 C.F.R. § 300.322(f) a parent must be given a copy of their child’s IEP at no cost to the parent.

- TEA’s ARD Guide states: “If you are unable to speak English and your native language is not Spanish, the school must make a good faith effort to provide a written copy or audio recording of your child’s IEP translated into your native language.”

OSEP recommends that TEA add the following clarification: There is no IDEA requirement for schools to translate IEP documents into other languages. However, the school must ensure that parents are fully informed of the contents of their child’s IEP documents and that they have the information they need to make educational decisions for their child. See e.g. 34 C.F.R. § 300.9 (definition of consent); 34 C.F.R. § 300.503(c) (notice in understandable language); and 34 C.F.R. §§ 300.503 and 300.504 (providing prior written notice and procedural safeguards notices in parent’s native language).

TEA must also revise the Guide to address the following IDEA requirement:

Under 34 C.F.R. § 300.322(e), the school must take whatever action is necessary to ensure that the parent understands the proceedings at the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. See page 16.

Reevaluation- 34 C.F.R. § 300.303 -- Pages 16 and 17 of TEA’s ARD Guide

- TEA must revise the following sentence in its Guide to read: “A review of existing evaluation data (REED) must take place as part of an initial evaluation, if appropriate, and **a REED must occur** as part of any reevaluation of a child under IDEA.” If this edit is not made consistent with 34 C.F.R. § 300.305(a), a parent could get the impression that a REED may only occur for a reevaluation if determined appropriate. See page 17.
- TEA must revise the following sentence in its ARD Guide to read: “The reevaluation must be sufficiently comprehensive to determine whether your child continues to be a child with a disability **and the educational needs of your child.**” (required edit reflected in bold text). See page 17.

Independent Educational Evaluation (IEE)- 34 C.F.R. § 300.502 -- Page 17 of TEA’s ARD Guide

- TEA’s ARD Guide explains what the school must do if a parent requests an IEE at public expense. However, it does not explain that the school must do so without unnecessary delay, consistent with 34 C.F.R. § 300.502(b)(2). TEA must revise its Guide to state “...the school must, without unnecessary delay, either pay for the IEE or...” See page 17.

Graduation- 34 C.F.R. § 300.305(e) -- Pages 18 and 19 of TEA’s ARD Guide

- TEA must revise the following paragraphs to read: “Under IDEA, special education **and related services** must be available to an eligible child or adult student until he or she

graduates with a regular high school diploma or exceeds the age eligibility requirements for a **free appropriate public education** under state law, which is age 21 in Texas, or until the student's 22nd birthday. An adult student receiving special education services who is 21 years of age on September 1 of a school year is eligible for services through the end of that school year or until **graduation with a regular high school diploma based upon** meeting the curriculum standards and credit requirements applicable to students in general education, whichever comes first.

When your child's or adult student's eligibility for special education is terminating due to graduation with a regular high school diploma or due to exceeding the age eligibility for special education services, the school must give you prior written notice of the termination of services. Furthermore, the school must give the child or adult student a summary of his or her academic achievement and functional performance, **which shall include recommendations on how to assist the child or adult student in meeting the child's or adult student's postsecondary goals.**" Text edits have been bolded. The addition of "which shall include recommendations on how to assist the child in meeting the child's postsecondary goals" is consistent with 34 C.F.R. § 300.305(e). See page 18.

- TEA must revise the following sentence to read: "All graduating students who were eligible for special education **services whose eligibility terminates because of the award of a regular high school diploma** must be provided with a summary of academic achievement and functional performance." Text edit has been bolded. See page 19.
- TEA must revise the following sentences to read: "A child or adult student who graduates but **without a regular high school diploma and** is under age 22 is still entitled to a free appropriate public education **under IDEA. The child may**, under some circumstances, be able to return to school and receive services through the end of the school year in which he or she reaches age 22." Text edits have been bolded. See page 19.

Discipline- 34 C.F.R. § 300.530 -- Page 19 of TEA's ARD Guide

- Under the sub-heading Short-Term Removals, TEA must revise the second paragraph to read: "Disciplinary removals for 10 consecutive school days or less do not trigger the requirement to hold an ARD committee meeting, **unless the removal constitutes a change in placement.** The school is only required to provide services to your child during **the first short-term removal of ten school days or less** in a school year if it provides services to a child without a disability who is similarly removed." This edit is necessary so as not to suggest incorrectly that educational services may be discontinued after the first time that a child has been removed from the current educational placement for more than ten school days or less in a school year. Under 34 C.F.R. § 300.530(d)(3), services are only required to be provided to a student with a disability during a removal that totals ten school days or less over the course of a school year, if services are provided to nondisabled students who are similarly removed. Text edits have been bolded. See page 19.
- Under the sub-heading Cumulative Removals Totaling 10 Days or More, TEA must insert the following sentence at the end of the section: "Note though that pursuant to 34 C.F.R. § 300.530(d)(5), the IEP Team determines appropriate services if the removal is a change in placement." See page 20.

Change of Placement- 34 C.F.R. § 300.536(b)(2) -- Page 20 of TEA’s ARD Guide

- TEA’s ARD Guide states that a parent “may challenge the school’s decision about this [whether a pattern of removals amounts to a change in placement] through a due process hearing or judicial proceeding.” TEA must revise its statement to read: “You may challenge the school’s decision about whether a pattern of removals has occurred through a due process hearing **and** judicial proceedings.” This change is consistent with the requirement in 34 C.F.R. § 300.536(b)(2), and changing the “or” to “and” is necessary to ensure that a parent is aware that they generally would need to request an expedited due process hearing before initiating a court action. See page 20.

Manifestation Determination- 34 C.F.R. § 300.530(e) -- Page 20 of TEA’s ARD Guide

- TEA must specify that the manifestation determination meeting must occur within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct in accordance with 34 C.F.R. § 300.530(e). See page 20.

Additional Assistance- Page 22 of TEA’s ARD Guide

- The SPEDTex web link referenced on page 22 is not working.

Appendix
Analysis of Texas Dispute Resolution Handbook September 2020 (TEA Handbook)

Part 2: Special Education Mediation (Pages 8-12)

- **Relevant Federal Regulations: 34 C.F.R. § 300.506**

- Question 1: “What is Mediation?” (page 8)
The TEA Handbook states: “TEA is required by state and federal law to offer mediation to parents and school districts who disagree about the educational program for a student with a disability.” This language is not consistent with the regulation, which requires that mediation be available to resolve any matter arising under this part, including matters arising prior to the filing of a due process complaint. TEA must revise this language to be consistent with 34 C.F.R. 300.506(a). See also OSEP’s July 2013 Questions and Answers on Dispute Resolution Procedures under IDEA Part B (Part B Dispute Resolution Q&A), Questions and Answers A-6 through A-8. OSEP’s Part B Dispute Resolution Q&A can be found at: <https://sites.ed.gov/idea/idea-files/osep-memo-and-qa-on-dispute-resolution/>.

- Question 19: “Are mediation discussions confidential?” (page 12)
The question explains that discussions during mediation are confidential and may not be used later as evidence in a due process hearing or court case. However, because 34 C.F.R. § 300.506(b)(6) refers to “civil proceeding,” TEA must add the word “civil” prior to the words “court case.” See also 34 C.F.R. § 300.506(b)(8).

Part 3: Special Education Complaint Resolution (Pages 13-18)

- **Relevant Federal Regulations: 34 C.F.R. §§ 300.151-300.153**

- In general, OSEP recommends adding language to distinguish these types of complaints from due process complaints to ensure that the differences between State complaint procedures and due process complaint procedures are clearly explained. TEA could either: (i) add an asterisk clarifying that special education complaints as used in this portion of its Handbook are State complaints that must be resolved pursuant to 34 C.F.R. §§ 300.151-300.153; or (ii) add a reference to “State complaint” in each question and answer, including changing the heading to read “Part 3: Special Education State Complaint Resolution.”

- Question 1: “Who may file a special education complaint?” (page 13)
The TEA Handbook states that “[A]nyone can file a complaint with TEA.” This language is too broad and does not address all requirements in 34 C.F.R. § 300.151(a) by explaining that the right to file a State complaint is available to an organization or individual, including one from another State. The IDEA does not permit a public agency to file a State complaint, and the phrase “anyone can file” may be read to suggest that a public agency could file a State complaint. TEA must revise its response to Q.1 to be consistent with 34 C.F.R. § 300.151(a).

- Question 4: “How is a complaint different from a due process hearing?” (page 14)
The answer to Question 4 describes a due process hearing as “much like a trial before a judge.” Although a due process hearing is a formal process, it is an overstatement and overly vague to suggest that it is like a trial before a judge because the requirements and procedures are different. Likewise, a criminal and civil trial will have different standards and a trial before a federal judge is likely different from one before a State judge. IDEA affords parents the right to request a due process hearing if other less formal mechanisms are unsuccessful in resolving the matter. TEA’s language could operate to deter parents from requesting a due process hearing if they are otherwise unable to resolve their disagreement with the school district. We recommend that TEA delete this statement and consult the website of the Center for Alternative Dispute Resolution in Special Education (CADRE) for language describing due process hearings that is more precise. For more information about CADRE, see: <https://www.cadreworks.org/>

Additionally, after the last sentence of the first paragraph explaining that there is no appeal process for State complaints, OSEP also recommends that TEA add a reference to the Part B Dispute Resolution Q&A, Question B-32.

- Question 5: “Is there a time limit for filing a complaint?” (page 14)
In the first sentence of the answer, the word “matter” has been substituted for “action” because a complaint must include a statement that a public agency has violated a requirement of Part B of IDEA or of the Part B regulations; a violation could include an action as well as a failure to act.
- Question 6: “May someone file a complaint and request a hearing at the same time?” (page 14)
The text of the question has been changed to “May a **parent** file a complaint and request a hearing at the same time?” TEA must make this change, because, while both parents and public agencies can file due process complaints, the IDEA does not permit a public agency to file a State complaint.
- Question 9: “How long does TEA have to make a determination about a complaint?” (page 16)
The TEA Handbook lists two examples of exceptional circumstances that may permit TEA to extend the 60-day complaint resolution timeline: (1) an unforeseen crisis, such as a natural disaster or emergency; and (2) a complaint that involves a group of students. OSEP has not specifically identified these situations as exceptional circumstances that would justify extension of the 60-calendar-day complaint resolution timeline. See Part B Dispute Resolution Q&A, Question B-21. TEA’s language is also inconsistent with the Department’s guidance and interpretations that decisions about time extensions based on exceptional circumstances must be made on a case-by-case basis.

The Department has not provided guidance permitting blanket extensions of the 60-calendar-day complaint resolution timeline because of a natural disaster. Note that in the case of an emergency a case-by-case determination is still required, see OSEP's June 2020 Questions and Answers on Dispute Resolution Procedures under [IDEA Part B in the COVID-19 Environment](https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/) (Part B COVID-19 Dispute Resolution Q&A) available at: <https://sites.ed.gov/idea/idea-files/part-b-dispute-resolution-in-covid-19-environment-q-a-document-june-22-2020/>

With regard to the second exception identified in the TEA Handbook, OSEP has not advised that the 60-day complaint resolution timeline can be extended in all instances because a complaint is filed on behalf of a group of students. Accordingly, TEA must revise its explanation to delete this exception and, as noted above, must clarify that the determination of whether an exceptional circumstance exists that would warrant an extension of the complaint resolution timeline must be made on a case-by-case basis for each particular complaint. See Part B Dispute Resolution Q&A, Question B-21. TEA may also refer to the above-referenced Part B COVID-19 Dispute Resolution Q&A.

- Question 12: “What action will TEA take if it finds a violation?” (pages 17-18)
The TEA Handbook states: “If the school district has appropriately corrected the violation before TEA issues an Investigative Report, TEA may choose not to issue a finding of noncompliance.” OSEP is unclear what this means. Is a purpose of this statement to address reporting correction of noncompliance to OSEP and “pre-finding” correction by the State’s LEAs ?

Note also that even if a complaint is resolved through a pre-finding correction, TEA remains obligated to meet the requirements in 34 C.F.R. § 300.152. Specifically, § 300.152(a)(4) requires TEA to make an independent determination as to whether a public agency has violated a requirement of Part B of IDEA or of the Part B regulations, even though the district has corrected the violation before TEA issues its report.

- Question 13: “What are compensatory services?” (page 18)

Corrective Action Response 1.d. cites the TEA Dispute Resolution Handbook as a source of the information that TEA has provided to parents about TEA’s dispute resolution procedures. Given the noncompliance that OSEP identified in the January 11, 2018 monitoring report to TEA, OSEP is concerned about the explanation in Q. 13 of TEA’s Handbook. Specifically, the statement that compensatory services are only required “when the violation may have resulted in denying the student a free appropriate public education” is incomplete. Compensatory services are also required to make up for any skills that may have been lost. For Example, this may be especially relevant for those children who should have been evaluated and a timely and appropriate IEP was not developed, but the child was later found eligible after having been denied the special education and related services to which the child was entitled. TEA must revise its explanation of when compensatory services may be needed to address this situation. See

also OSEP’s Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak Question A-2, March 2020.

- Question 15: “How does TEA ensure that the school district or other public agency completes the corrective actions?” (page 18)
The TEA Handbook states: “All noncompliance must be corrected as soon as possible and in most cases within one year from the date of the Investigative Report.” The reference to “in most cases” is inconsistent with the State’s duty under 20 U.S.C. 1232d(b)(3)(E) and 34 C.F.R. § 300.600(e) to correct noncompliance as soon as possible and *in no case later than one year* from the State’s identification of the noncompliance.

Part 4: Special Education Due Process (Pages 19-30)

- **Relevant Federal Regulations: 34 C.F.R. §§ 300.507-300.518**
- In general, TEA must revise this entire section to clarify, as appropriate, that a parent or public agency, or the attorney representing the party, is to file a due process complaint that meets the requirements in 34 C.F.R. § 300.508 in order to request a due process hearing. To clarify this point, OSEP recommends that TEA add a question “What is a due process complaint?”
- Question 2: “Who may request a hearing?” (page 19)
The question asks who may request a hearing, and the response states that a parent or a school district may request a hearing. Because under 34 C.F.R. § 300.507(a), a parent or a public agency may request a hearing, are there entities in Texas that satisfy the definition of public agency in 34 C.F.R. § 300.33 that are not school districts? For example, some States identify a State school for the deaf as a public agency, but not a school district for State law purposes. If so, TEA must revise the response to Question 2 to clarify that those entities also may file a due process complaint to request a due process hearing.
- Question 17: “What happens if a school district fails to hold a dispute resolution meeting or the parent fails to attend a resolution meeting?” (page 23)
The last sentence of the response to Question 17 states that the school district may request that the hearing officer dismiss the hearing. To be consistent with 34 C.F.R. § 300.510(b)(4), TEA must delete the phrase “dismiss the hearing” and substitute it with “dismiss the parent’s due process complaint.”
- Question 18: “What happens if the parties reach an agreement at the resolution meeting?” (page 23)
OSEP recommends that, to be consistent with 34 C.F.R. § 300.510(d), TEA revise the first sentence of the response to Question 18 by adding the words “legally binding” prior to “written agreement” so that the legally binding nature of the settlement agreement is

clear to parents. TEA must also revise the third sentence by deleting the phrase “the entire hearing” and substituting “the parent’s due process complaint.”

- Question 25: “May a party watch a hearing to prepare for the party’s own hearing?” (page 26)
TEA should insert “*i.e.*, personally identifiable” after “confidential” and before “information” in both paragraphs.
- Question 26: “What happens to the student while a case is pending?” (page 26)
The TEA Handbook explains that “during the hearing process and any court appeals the student must remain in the current educational placement (*i.e.*, the last-agreed-upon placement), unless the parent and the school district agree otherwise.” This language is inaccurate. IDEA Part B requires that once a due process complaint is filed and during the resolution process, unless the complaint involves a disciplinary matter under 34 C.F.R. § 300.532, the student must remain in the current educational placement, unless the school district and parent agree otherwise. 34 C.F.R. § 300.518(a). This requires that the student’s current educational placement be maintained prior to the initiation of the due process hearing timeline. TEA must revise this language to be consistent with 34 C.F.R. § 300.518(a).

Also, consistent with 34 C.F.R. § 300.533 and with respect to disciplinary matters, the phrase “if the parent or the LEA requests a hearing” must be added.

TEA must also revise Question 26 to address 34 C.F.R. § 300.518(d). That regulation provides that: If the hearing officer in a due process hearing conducted by the SEA agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents. Therefore, if a hearing officer issues a decision in favor of the parents, that decision becomes the child’s current placement pending the outcome of any further appeals.

- Question 30: “What are the parties’ rights at the hearing?” (page 27)
Additional information must be added. The IDEA gives the parties the right to “receive written or electronic findings of fact and decisions. ...” Therefore, to be consistent with 34 C.F.R. § 300.512(a)(4) and (5), this language must be revised to read as follows: “receive, at the option of the parent, a verbatim record of the hearing and written or electronic findings of fact and decisions, at no cost...”

The TEA Handbook also states that the parties have the right to “ask the hearing officer to exclude any evaluation that has not been disclosed at least five calendar days before the hearing.” This explanation is not consistent with 34 C.F.R. § 300.512(a)(3), which refers to the introduction of any evidence, and not just any evaluation. TEA must revise this language to explain that, under IDEA, the parties have the right to “ask the hearing

officer to exclude any evidence, such as an evaluation, that has not been disclosed at least five calendar days before the hearing.”

- Question 31: “What happens at a hearing?” (page 27)
The TEA Handbook explains that the hearing is “similar to a courtroom trial but not as formal.” Although this is less problematic than the answer to Question 4 of Part 3: Special Education Complaint Resolution, both statements could be confusing to parents. OSEP recommends this statement be revised by substituting more precise and less confusing language, such as that appearing on the CADRE website.
- Hearing Timeline Chart (page 25):
TEA must make the following edits to the Hearing Timeline Chart on page 25 in order to accurately reflect all applicable due process complaint and hearing procedures:

30 Day Resolution Period, Day 10

This box must be revised to reflect the requirement in 34 C.F.R. § 300.508(e) that an LEA must respond to a parent’s due process complaint within 10 days of receiving the complaint only if the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint.

45-Day Hearing Period, Decision:

The decision row must be revised because it does not specify that, in accordance with 34 C.F.R. § 300.515(c), the relevant due process hearing decision timeline in 34 C.F.R. § 300.515(a) may be extended. To make this clear, TEA must add the clause “unless the hearing officer grants a specific extension of the 45-day timeline at the request of either party.”