

April 23, 2018

Ruth E. Ryder  
Acting Director  
United States Department of Education (USED)  
Office of Special Education Programs (OSEP)  
400 Maryland Avenue, S.W.  
Washington, DC 20202-2600

Dear Acting Director Ryder,

This letter is to provide you and the Office of Special Education Programs (OSEP) in the United States Department of Education (USED) a corrective action response (the Response) in reply to OSEPs findings of noncompliance outlined in a letter issued to Commissioner Mike Morath dated January 11, 2018. The letter, and enclosure to the letter, contained the results of a monitoring visit conducted in Texas during the week of February 27, 2017 and includes an issuance of three specific findings of noncompliance and four corresponding corrective action/next step requirements. The Texas Education Agency (TEA) has ensured that the findings were made publicly available to stakeholders in the state and were included in materials disseminated and presented to stakeholders. Over the past several months, TEA launched a comprehensive outreach effort to solicit feedback before finalizing and submitting the corrective action response to federal officials. The outreach efforts have included:

- More than 100 focus group meetings in all 20 education service center regions across the state;
- More than 4,000 responses from special education teachers and district administrators to a needs assessment survey;
- More than 7,000 responses to TEA's online survey regarding the special education strategic action plan draft; and
- More than 1,000 emails sent to [TexasSPED@tea.texas.gov](mailto:TexasSPED@tea.texas.gov), an email established to receive direct stakeholder feedback.

This interaction with stakeholders prior to the finalization of the enclosed Response resulted in meaningful discussions about the past, present and future needs of the State with regard to educating students with disabilities. Some stakeholders expressed concerns evidenced in media reports and echoed in the findings of the OSEP report, while other stakeholders expressed concerns and confusion relating to changes in IDEA and subsequent state law and policy that may have shaped behaviors over the years.

Although TEA's general supervision of LEAs has evolved into a balanced system of compliance and performance-based accountability through the current monitoring and intervention practices, the State recognizes the ongoing need to not just maintain, but continue to improve systems that are responsive to identified needs in Texas. These systems must take advantage of the significant amount of data reported annually by school districts, as well as rely on valuable stakeholder needs and meaningful input.

TEA is committed to high quality and effective support, vital to stakeholders, through mechanisms that will ensure:

- 1) clear understanding of the requirements found under the Individuals with Disabilities Education Act (IDEA);
- 2) use of highly effective evidence-based models of instruction and intervention; and
- 3) high expectations in results for students with disabilities.

Texas cannot improve special education in a way that students with disabilities deserve without meaningful collaboration among stakeholders in the special education community, and TEA will seek to increase varied opportunities for stakeholders to provide feedback on policies, communication, monitoring efforts and other issues relevant to outcomes for students with disabilities. Such feedback has been an incredibly valuable part of the process to date, and will continue in earnest.

TEA is committed to providing the high quality and effective support that is vital to the improvement of outcomes for students with disabilities. This commitment is operationalized through the creation and enhancement of infrastructures that will ensure clear understanding of the requirements found under the Individuals with Disabilities Education Act (IDEA); the use of highly effective evidence-based models of instruction and intervention; and high expectations with regard to results for students with disabilities.

Building on changes already begun at TEA, the enclosed Response addresses the specific findings and requirements issued by OSEP and provides the State of Texas the chance to make meaningful, lasting change in how we educate and support children with special needs.

Very Respectfully,



Penny Schwinn  
Chief Deputy Commissioner, Academics  
Texas Education Agency

**TEXAS EDUCATION AGENCY: CORRECTIVE ACTION RESPONSE (APRIL 23, 2018)**

**Citation 1** - 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 CFR §300.111.

**Citation 2** - 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 CFR §300.101.

**Citation 3** - 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 CFR §§300.149 and 300.600, along with 20 U.S.C. 1232d(b)(3)(A), to ensure that ISDs throughout the State properly implemented the IDEA Child Find and FAPE requirements.

The documentation provided in response to OSEP Requirement #1 provides the foundation upon which the response to OSEP Requirements # 2-4 is based.

**OSEP Requirement #1**

**Documentation** that the State’s system of general supervision requires that each ISD 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 CFR §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 CFR §300.101.

Essential Corrective Actions	Applicable Citation	Timeline for Completion of Corrective Actions	Responsible for Essential Action	Documentation/Evidence of Progress / Completion
<p>1.a. Communicate to all local education agencies (LEAs) the Child Find and FAPE requirements and obligations in IDEA.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232d(b)(3)(A)</p>	<p><b>Completed on November 17, 2016</b>  <b>Completed on February 26, 2018</b></p>	<p>TEA</p>	<p><a href="#">To the Administrator Addressed</a> letter submitted on November 17, 2016, to every LEA in the state, reminding LEAs of their obligations under Child Find in IDEA and clarifying TEA’s monitoring efforts regarding preventing the over-identification of students with disabilities, signed by Deputy Commissioner Penny Schwinn.</p> <p><a href="#">To the Administrator Addressed</a> letter submitted on February 26, 2018, to every LEA in the state, clarifying LEA responsibilities and timelines regarding parent requests for special education evaluations under the Individuals with Disabilities Education Act (IDEA), the Texas Education Code, and the Texas Administrative Code, signed by Chief Deputy Commissioner Penny Schwinn.</p>
<p>1.b. Review and ensure that assurance statements received from LEA grantees, by way of signing Schedule #1—General Information of the paper Application or by certifying and submitting the eGrants Application, clearly conveys to the Applicant their acceptance of and required compliance with all state policies, and procedures under 34 CFR §§300.101 - 300.163 and 300.174 and 300.165 - 300.174.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)</p>	<p><b>By January 10, 2019</b></p>		<p>Annual submission of assurance requirements by each LEA grantee who assumes IDEA formula and discretionary funds clearly conveys that it has in effect policies, procedures, and programs that are consistent with the State policies and procedures under 34 CFR §§300.101–300.163 and 300.174 and 300.165–300.174 (34 CFR 300.201).</p> <p>Provide assurance statement that 100% of LEAs who assume IDEA formula and discretionary funds have provided the requisite assurances.</p>

<p>1.c. Revise monitoring protocols and document review requirements to ensure evidence of supervision activities related specifically to implementing regulations for Child Find and FAPE requirements.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)</p>	<p>December 1, 2018</p>	<p>TEA, with additional technical assistance support.</p>	<p>Produce evidence of monitoring protocols for use in on-site and desk review reviews that include information-gathering activities targeting LEAs' implementation of Child Find and FAPE requirements.</p>
<p>1.d. Make publicly available, 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.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)</p>	<p>December 1, 2018</p>	<p>TEA, with additional communication support from Regional Education Service Center (ESC)</p>	<p>Provide a copy of the Texas Education Agency Special Education Dispute Resolution Handbook.  Provide a copy of pamphlets that offer quick reference to parents about the dispute resolution programs.</p>
<p>1.e. Ongoing training of hearing officers, mediators, and complaints investigators regarding legal provision of Child Find.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)</p>	<p>December 1, 2018</p>	<p>TEA</p>	<p>Documentation of most recent training conducted by an independent expert in the field of special education law.</p>

<p>1.f. The Texas legislature passed, and Governor Abbott signed into law, new legislation prohibiting the use of a performance indicator based on the number or percentage of children who receive special education services.</p>		<p>SB 160 signed by governor on May 22, 2017, effectively immediately, codified at TEC §29.0011.</p>	<p>N/A</p>	<p>Copy of Texas Education Code §29.0011. Copy of PBMAS Manual.</p>
<p>1.g. The Texas legislature passed, and Governor Abbott signed new legislation, requiring districts to notify (requirements are defined in the bill) parents of each child, other than a child enrolled in a special education program, who receives assistance from the district for learning difficulties through the use of intervention strategies. An “intervention strategy” is defined in the bill and RtI is included within this definition. The law also gives parents the right to all written records and access to any records relating to assistance provided.</p>	<p>Not Applicable</p>	<p>SB 1153, signed by governor on June 12, 2017, effective immediately, codified at TEC §26.0081, applicable beginning with the 2017-2018 school year.</p>	<p>N/A</p>	<p>Copy of Texas Education Code §26.0081</p>

**OSEP Requirement # 2**

A **plan and timeline** by which TEA will ensure that each ISD will (i) identify, locate, and evaluate children enrolled in the ISD who should have been referred for an initial evaluation under the IDEA, (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.

<b>Essential Actions</b>	<b>Applicable Citation</b>	<b>Timeline for Completion of Corrective Actions</b>	<b>Responsible for Essential Action</b>	<b>Evidence of Progress / Completion</b>
2.a. Require all local education agencies (LEAs) to distribute information to every enrolled student's family regarding the Child Find and FAPE requirements and obligations in IDEA, to inform them of their rights under IDEA, and to provide the contact information to request an initial evaluation.	Citation 1  34 CFR §300.111 Citation 2  34 CFR §300.101	December 1, 2018	TEA and each LEA in the state.	100% of LEAs will receive materials that can be used to present their statutory and professional requirements to their local school boards, and materials to publish information on their websites. LEAs must provide assurance of having met this requirement through the Legal Framework.
2.b. TEA will provide guidance and information related to LEA 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 results in positive school outcomes and success.	Citation 1  34 CFR §300.111 Citation 2  34 CFR §300.101	December 1, 2018	TEA	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.

<p>2.c. TEA will require LEAs to collect and retain data that includes (i) each request for evaluation made during the 2018-2019 school year, (ii) whether the reason for request indicates a claim that the child should have been referred for an initial evaluation prior to the 2018-19 school year, and (iii) if the child is found eligible, whether additional services are needed, taking into consideration supports and services previously provided, and what those services are determined to be, including the timeline for implementation. LEAs may produce this data to TEA upon request or through approved TEA data collection processes.</p>	<p>Citation 1 34 CFR §300.111  Citation 2 34 CFR §300.101</p>	<p>September 1, 2018</p>	<p>TEA</p>	<p>100% of LEAs will receive information relating to this requirement and notice of how TEA will collect this data.</p>
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<p><b><u>OSEP Requirement # 3</u></b></p>				
<p>A <b>plan and timeline</b> by which TEA will provide guidance to ISD staff in the State, including all general and special education teachers, necessary to ensure that ISDs (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 ISD’s schools, consistent with 34 CFR §300.503(c)</p>				
<p><b>Essential Actions</b></p>	<p><b>Applicable Citation</b></p>	<p><b>Timeline for Completion of Corrective Actions</b></p>	<p><b>Responsible for Essential Action</b></p>	<p><b>Evidence of Progress / Completion</b></p>



<p>3.a.</p> <p>Upon direction from the State Board of Education, TEA will facilitate a process to revise the <i>Texas Dyslexia Handbook</i> to clarify the difference between dyslexia and dyslexia-related services, IDEA, Section 504, and Rtl, 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.</p>	<p>Citation 1</p> <p>34 CFR §300.111</p> <p>Citation 2</p> <p>34 CFR §300.101</p>	<p>November 2018</p>	<p>State Board of Education</p> <p>TEA</p>	<p>Completed, approved, and adopted <i>Dyslexia Handbook</i>.</p>
<p>3.b.</p> <p>Evaluate existing resource content and whether the <i>Parent’s Guide to the Admission, Review, and Dismissal Process</i> meets legal requirements regarding a child’s right to an initial evaluation for special education and related services under the IDEA.</p>	<p>Citation 1</p> <p>34 CFR §300.111</p>	<p>Completed Spring 2017</p>	<p>TEA and ESC partners</p>	<p><a href="#"><i>The Parents Guide to the Admission, Review, and Dismissal Process</i></a>, was found to appropriately contain:</p> <p>“A child does not need to advance through each tier of the RTI system before a referral for special education is made. Once it is apparent that general education interventions are not sufficient, school personnel should suspect that the child has a disability and should initiate a referral. Parents can also request a referral at any time regardless of whether the child is receiving interventions through an RTI system.”</p> <p>Additionally, TEA’s website contains a <a href="#">page dedicated to RTI</a> which provides additional links to resources. This page similarly notes:</p> <p>“Students who may have a disability should be referred for a full and individual evaluation for special education services. States and LEAs have an obligation and requirement under federal law (34 CFR §300.111 Child Find) to see that evaluations of children suspected of having a disability are not delayed or denied because of schools using an RTI strategy.”</p>

<p>3.c. TEA will leverage resources to enable the creation of a suite of information intended to be shared with the parents of children suspected of having a disability. These resources will 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. This will include how and when school staff and parents of children experiencing learning difficulties may request interventions and/or services under these programs. This will include policy development relating to timelines, forms, with relatable and understandable translation of federal regulations and state statutes and will be readily available to all stakeholders. TEA will provide resources and guidance to support LEA understanding of IDEA and state statute compliance.</p>	<p>Citation 1 34 CFR §300.111</p> <p>Citation 2 34 CFR §300.101</p>	<p>December 1, 2018</p>	<p>TEA and ESC partners</p>	<p>100% of LEAs will receive materials that can be used to present their statutory and professional requirements to their local school boards, and materials to publish information on their websites, and provide assurance of this requirement through the Legal Framework.</p>
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**OSEP Requirement # 4**

A **plan and timeline** by which TEA will monitor ISDs' implementation of the IDEA requirements described above when struggling learners suspected of having a disability and needing special education and related services under the IDEA are receiving services and supports through RTI, Section 504, and the State's dyslexia program.

<b>Essential Actions</b>	<b>Applicable Citation</b>	<b>Timeline for Completion of Corrective Actions</b>	<b>Responsible for Essential Action</b>	<b>Evidence of Progress / Completion</b>
4.a.  TEA 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 CFR §§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.	Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)	Reorganization completed by August 2018	TEA	Transition the Special Education monitoring duties from School Improvement to Special Populations (in the Office of Academics) as part of a new Review & Support Team. This will allow for significantly increased capacity and expertise. Until the transition is complete, require School Improvement to include specific monitoring requirements to review LEAs' implementation of the IDEA requirements found in 34 CFR §§300.101, 300.111, and other requirements of LEAs found in this corrective action response.  Increase the scope and size of the Review & Support Team in Special Education. The scope of the team will include reviews of programs that provide services and supports to struggling learners suspected of having a disability and needing special education and related services under the IDEA inclusive of RTI, 504, and the State's dyslexia program.

<p>4.b. TEA will establish broad stakeholder involvement opportunities, including input from the State’s Continuing Advisory Committee (CAC) to inform and provide feedback on effective monitoring practices that will be additionally developed and implemented by TEA to ensure LEAs are meeting regulatory requirements under IDEA for struggling learners suspected of having a disability and needing special education and related services, regardless of whether they are receiving other services and supports through RTI, Section 504, and the State’s dyslexia program.</p>	<p>Citation 3 34 CFR §§300.149 and 300.600 along with 20 U.S.C. 1232 d(b)(3)(A)</p>	<p>Established by December 2018</p>	<p>TEA</p>	<p>At least six stakeholder meetings held between May 2018 and December 2018, inclusive of representative stakeholder groups.</p>
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