



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

August 27, 2021

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

Dear Commissioner Morath:

The Office of Special Education Programs (OSEP) supports the safe return to in-person instruction for all students, including students with disabilities. Though not covered by our review and analysis of the Texas Education Agency's (TEA) longstanding noncompliance with the Individuals with Disabilities Education Act (IDEA) that has been the focus of our work with the Texas Education Agency (TEA) since 2016, we are also concerned about the recently issued State of Texas Executive Order (EO) GA 38 in July 2021. This Texas EO restricts the ability of local educational agencies to implement policies aligned with the current Centers for Disease Control guidance regarding mask requirements in schools.¹ The State of Texas EO, as written, may also impact the provision of a free appropriate public education in the least restrictive environment for students with disabilities and foster an unsafe learning environment.

Consistent with the direction outlined in the [President's Memorandum on Ensuring a Safe Return to In-Person School for the Nation's Children](#), OSEP will, in coordination with other offices within the Department, follow up with the TEA on this matter.

In addition to the concerns mentioned above related to the Texas EO and its impact on the safe return to in-person instruction in Texas, this letter summarizes OSEP's review and analysis of the TEA document submissions to OSEP on October 5, 2020, regarding TEA's status of longstanding noncompliance with IDEA. The document submissions were based, in part, on OSEP's May 2019 on-site monitoring visit to TEA. OSEP conducted the May 2019 on-site monitoring visit in order to assess TEA's progress in implementing its Corrective Action Response (CAR), submitted to OSEP on April 23, 2018, and the findings and required actions set forth in OSEP's January 11, 2018 monitoring report (hereafter, 2018 monitoring report).² In our 2018 monitoring report, OSEP included the results of its February 2017 on-site monitoring visit,

¹ That guidance is available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

² A copy of OSEP's 2018 monitoring report is available at <https://www2.ed.gov/fund/data/report/idea/dmsrpts/index.html>

and notified TEA of its continued failure to comply with the requirements under the Individuals with Disabilities Education Act (IDEA). Specifically, 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.
- Ensure that a free appropriate public education (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.
- 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 local educational agencies (LEAs),³ throughout the State properly implement the IDEA child find, individual evaluation, and FAPE requirements.

TEA's CAR, outlined the steps TEA proposed to take to address each of the areas of noncompliance that OSEP had identified in the 2018 monitoring report. OSEP responded to TEA's CAR 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 2018 monitoring report by the dates specified by TEA and informed TEA that OSEP would be conducting a follow-up visit in 2019 to monitor TEA's implementation of the CAR. In a letter dated January 9, 2019, TEA responded to OSEP's October 19, 2018 letter and provided additional information about its implementation of the CAR.

During the week of May 6, 2019, OSEP conducted an on-site visit to monitor TEA's implementation of its CAR. As part of OSEP's Review of TEA's CAR implementation efforts, OSEP met with TEA staff and other education officials, including representatives from the State's Education Service Centers (ESCs) that support TEA's delivery of technical assistance to LEAs. OSEP also visited 12 schools within six LEAs 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 administrators at each LEA's district office. TEA and ESC staff accompanied OSEP on these visits as observers to provide TEA and ESC 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.

By letter dated October 5, 2020, TEA informed OSEP that it believed that TEA completed all the required corrective actions in its CAR. On October 19, 2020, OSEP issued a new monitoring report (hereafter, 2020 monitoring report⁴) based on the results of its May 2019 on-site monitoring of TEA's implementation of its CAR. In addition to the May 2019 on-site visit, the 2020 monitoring report addressed communications between OSEP and TEA and additional input that

³ Generally, independent school districts in Texas are considered local educational agencies under IDEA. See 34 C.F.R. § 300.28. This letter used the term LEA instead of ISD.

⁴ A copy of OSEP's 2020 monitoring report is available at <https://www2.ed.gov/fund/data/report/idea/partbdmsrpts/tx-b-2020-dmsletter.pdf>

OSEP had received from stakeholders. The 2020 monitoring report concluded that TEA had only implemented one of the items included in its April 23, 2018 CAR and that TEA also had failed to implement the additional required actions specified in OSEP's October 19, 2018 response to the CAR. As a result, following the release of our 2020 monitoring report, TEA submitted numerous documents which TEA believed would demonstrate that it had fully corrected the previous findings of noncompliance.⁵

OSEP's analysis of TEA's most recent document submissions is contained in the enclosed chart. The chart identifies: (a) the specific CAR item; (b) the documents that TEA submitted in response to OSEP's required actions contained in the 2020 monitoring report; (c) OSEP's analysis of TEA's document submissions; and, (d) the required actions/next steps that TEA must take to address the noncompliance.

As explained in the enclosed chart, despite TEA's submissions, OSEP has determined that TEA still has not satisfied: (1) the majority of the items TEA identified in its April 23, 2018 CAR to address the findings of noncompliance contained in OSEP's 2018 monitoring report; (2) the required actions identified in OSEP's letter dated October 19, 2018; and (3) the required actions identified in OSEP's 2020 monitoring report. Therefore, OSEP requests that TEA take additional actions and provide the required documentation that are identified in the enclosed chart as soon as possible, but no later than 30 days from the date of this letter. Please note that the required actions and documentation include items that represent longstanding noncompliance. TEA's failure to take all the required actions necessary to address the longstanding noncompliance identified in OSEP's January 11, 2018 monitoring report could result in the imposition of specific conditions on TEA's IDEA Part B grant funds and could affect TEA's determination under section 616(d) of IDEA.

My office will follow-up in the next week to schedule a call to further discuss this letter. If you have any questions, please contact Ms. Jennifer Finch, your OSEP State Lead, at 202-245-6610 or Jennifer.finch@ed.gov.

Sincerely,



David Cantrell, Ph.D.
Acting Director
Office of Special Education Programs

⁵ Specifically, TEA submitted documents to OSEP on October 22, 2020; October 27, 2020; November 1, 2020; November 19, 2020; December 3, 2020; and December 12, 2020. TEA also participated in telephone calls with OSEP on October 21, 2020; November 16, 2020; and November 19, 2020.