UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

August 3, 2026

Mr. Christopher Fisher
Superintendent of Catholic Schools
Archdiocese of San Francisco
Department of Catholic Schools
One Peter Yorke Way
San Francisco, CA 94109

Ms. Leticia Osegura
Superintendent of Schools
Diocese of San Diego
P.O. Box 85728
San Diego, CA 92186-5728

Dear Superintendent Fisher and Superintendent Osegura,

This letter responds to the correspondences you submitted on behalf of the Archdiocese of San Francisco on January 22, 2025, and the Diocese of San Diego on December 18, 2024, to the Secretary of the U.S. Department of Education (Secretary), alleging that the San Francisco Unified School District (SFUSD) and the North Coastal Consortium for Special Education (NCCSE),[1] and its member local educational agencies (LEAs) are in noncompliance with the Individuals with Disabilities Education Act (IDEA). We appreciate your patience as we conducted our review.

The Secretary has delegated authority to respond to these complaints to the Office of Special Education and Rehabilitative Services (OSERS). OSERS has completed its review of the California Department of Education's (CDE) decisions regarding the complaints you filed concerning compliance with IDEA's equitable services provisions for parentally-placed private school children with disabilities. OSERS also consulted with the Department's Office of Non-Public Education and other offices as appropriate throughout the review process. Our decision is the Department's final action in this matter.

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[1] The North Coastal Consortium for Special Education is a special education local plan area (SELPA) with 14 member school districts. Information about NCCSE's structure and responsibilities (which include monitoring compliance with State and Federal mandates) can be found on their website. Based on data submitted by California to the Department, through the IDEA Part B Maintenance of Effort Reduction and Coordinated Early Intervening Services collection, the 14 member districts, and not NCCSE receive IDEA subgrants under 34 C.F.R. § 300.705. Among the member districts the following were included in the complaint: Carlsbad Unified School District, Del Mar Union School District, Encinitas Unified School District, Fallbrook Union Elementary School District, Fallbrook Union High School District, Oceanside Unified School District, San Dieguito Union High School District, Solana Beach Elementary School District. Appendix A includes a summary of all complaint allegations.

Consistent with Section 612(a)(10)(A)(v) of the IDEA and the implementing regulation at 34 Code of Federal Regulations (C.F.R.) § 300.136, a private school official who is dissatisfied with the decision of the State educational agency (SEA) may submit a complaint to the Secretary. Because the complaints submitted by the Archdiocese of San Francisco and the Diocese of San Diego raise related issues concerning the equitable services requirements applicable to parentally-placed private school children with disabilities under IDEA Part B, OSERS has addressed these matters in a single consolidated decision letter.

In conducting this review, OSERS relied on the statutory and regulatory requirements of IDEA, including IDEA Section 612(a)(10)(A) and the implementing regulations at 34 C.F.R. §§ 300.129–300.144. The enclosure to this letter provides relevant background information, describes the procedures OSERS followed in conducting its review, and sets forth the Department's analyses and conclusions based on the information submitted by the parties. The enclosure also identifies the corrective actions that CDE must take to address the issues identified in this decision.

By copy of this letter, we are notifying CDE of the Department's decision on this matter. If you or the SEA have questions or would like to request technical assistance related to implementation of the required corrective actions, please contact Al Jones at Al.Jones@ed.gov.

Sincerely,

Kelly S. Rogers

Kelly Rogers
Deputy Assistant Secretary and Acting
Assistant Secretary for Special Education
and Rehabilitative Services

cc: Tony Thurmond
State Superintendent of Public Instruction
California Department of Education

Decision of the U.S. Department of Education on
IDEA Complaints Submitted by the Archdiocese of San Francisco
and the Diocese of San Diego

BACKGROUND

The Office of Special Education and Rehabilitative Services (OSERS) conducted this review pursuant to Section 612(a)(10)(A)(v) of the Individuals with Disabilities Education Act (IDEA) and the implementing regulations at 34 Code of Regulations (C.F.R.) §§ 300.129–300.144. Under 34 C.F.R. § 300.136, private school officials who are dissatisfied with a State educational agency's (SEA's) complaint decision regarding a local educational agency's (LEA's) implementation of IDEA's consultation requirements and giving due consideration to the views of private school officials may submit a complaint to the Secretary. OSERS also consulted with the U.S. Department of Education's (Department) Office of Non-Public Education and other offices as appropriate in the review of the complaint.

The specific nature of this matter concerns the application of IDEA's equitable services provisions to parentally-placed children with disabilities in private schools affiliated with the Archdiocese of San Francisco and the Diocese of San Diego. These private schools are located within the geographical boundaries of the San Francisco Unified School District (SFUSD) and the North Coastal Consortium for Special Education (NCCSE). In conducting this review, the Department independently reviewed the complete administrative record, including the complaints submitted to CDE, CDE's investigation reports, documentation submitted by the parties, and other publicly available information.

OSERS also considered the requirements governing the State complaint procedures at 34 C.F.R. §§ 300.151–300.153. In addition, OSERS considered the State's general supervision responsibilities under IDEA Section 612(a)(11) and the implementing regulation at 34 C.F.R. § 300.149 and 34 C.F.R. § 300.600, which require the SEA to ensure that all public agencies meet the requirements of IDEA and that identified noncompliance is corrected.

In this matter, OSERS reviewed the complaint submissions from the Archdiocese of San Francisco; the Diocese of San Diego, and the California Department of Education's (CDE's) investigation reports and supporting documentation, materials submitted by the complainants and the relevant LEAs, and additional documentation contained in the administrative record.

The following sections describe OSERS' analysis and conclusions with respect to each allegation.

STANDING TO FILE COMPLAINT WITH THE SECRETARY

Section 612(a)(10)(A)(v)(I) of the IDEA and 34 C.F.R. § 300.136 authorize a private school official to file a complaint with the SEA against the LEA asserting that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Moreover, IDEA Section 612 (a)(10)(A)(v)(II) permits a private school official dissatisfied with the SEA's decision to file a complaint with the Secretary by providing the basis of the noncompliance with IDEA.

The complainants referenced in this letter operate private schools in California and include private schools located in school districts served by the aforementioned LEAs. The student enrollment in the complainant schools includes parentally-placed private school children with disabilities eligible for equitable services under IDEA.

As detailed below, the complainants disagree with CDE's decisions. After receiving CDE's decisions on those issues, the complainants submitted complaints to the Secretary. The Department finds that the complainants have standing to file a complaint with the Secretary pursuant to IDEA Section 612(a)(10)(A)(v)(II) regarding those issues.

DECISION

The following is the decision of the Department for the consolidated allegations. Consistent with IDEA Section 616(a)(1)(A)(i), the focus of this review is to provide oversight of the State's exercise of general supervision, as required in IDEA Section 612(a)(11).

Consultation

Allegation:

The complainants allege that the LEAs did not engage in timely and meaningful consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities as required by 34 C.F.R. § 300.134, and that CDE's corrective actions were insufficient to address these issues.

Relevant Finding of Facts:

CDE investigated complaints related to consultation requirements involving NCCSE and SFUSD. In its investigation reports, CDE determined that both NCCSE and SFUSD failed to meet certain consultation requirements under 34 C.F.R. § 300.134 and issued corrective actions requiring staff training and revisions to consultation practices.

The complaints submitted to the Secretary allege that the consultation conducted by the LEAs was not meaningful and that CDE did not adequately address the concerns raised by private school representatives. These concerns included requests for direct services, clarification regarding proportionate share calculations, the child find design and process, and concerns regarding the operation of the consultation process.

The record also contains evidence of communications between private school representatives and LEA officials regarding private school requests for consultation meetings and discussion of equitable services.

For example, communications between representatives of the Archdiocese of San Francisco and SFUSD during 2023 and early 2024 indicate that private school representatives repeatedly requested meetings to discuss student rosters, proportionate share expenditures, and equitable services. These communications include multiple requests to schedule follow-up meetings after an initial consultation meeting.

Similarly, communications between representatives of the Diocese of San Diego and NCCSE reflect requests for discussion regarding the provision of direct speech and language services and the service delivery model used by the consortium.

The record also includes documentation related to consultation meetings conducted by NCCSE, including materials presented during an annual consultation meeting held in April 2023, and subsequent written communications explaining the consortium's decision to continue using a consultative service model for equitable services. At the same time, the record reflects that certain concerns raised by private school representatives, including those related to the operation of the consultation process, child find, and the delivery of services, were not fully addressed or were not given due consideration during the consultation process.

OSERS' Analysis and Conclusion:

Under 34 C.F.R. § 300.134, an LEA, or if appropriate, the SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for such children.

The consultation must address specific topics, including:

- the child find process;
- the determination of the proportionate share of funds available to serve parentally-placed private school children with disabilities;
- the consultation process itself and how that process will operate throughout the school year;
- how, where, and by whom special education and related services will be provided; and
- how disagreements regarding services will be addressed.

The regulation also requires that if the LEA disagrees with the views of private school officials on the provision of services or the types of services to be provided, the LEA must provide a written explanation of the reasons why the LEA chose not to provide services directly or through a contract.

The regulation requires that the consultation process provide private school representatives with a genuine opportunity to provide input regarding the design and development of equitable services, including consultation about how the process will operate throughout the school year, consistent with 34 C.F.R. § 300.134(c). The IDEA regulations establish requirements for consultation and child find while affording LEAs discretion in implementation; however, that discretion must be exercised in a manner that ensures compliance with the comparability and timeliness requirements in 34 C.F.R. § 300.131(c). Meaningful consultation requires that private school representatives have an opportunity to express their views and that LEAs give due consideration to them consistent with 34 C.F.R § 300.136(a)(2), even when those views do not ultimately result in changes to the LEA's decisions.

The consultation processes implemented by NCCSE and SFUSD did not meet the requirements of 34 C.F.R. § 300.134. Although consultation meetings occurred, the record demonstrates that consultation was not conducted in a meaningful manner, did not include all required participants, and did not provide due consideration of the views of private school representatives. For example, prior to and during the consultation meeting on April 20, 2023, private school representatives repeatedly requested that NCCSE consider providing specialized academic instruction and direct speech-language services to their eligible students, including the possibility of using third-party providers. The private school officials described the ineffective nature of providing consultative services for the students as the services were difficult to schedule and rarely occurred more than once a year. Yet following the consultation meeting, NCCSE informed private school representatives that it would continue its consultative service model. The record does not demonstrate that the LEA gave due consideration to the alternative proposal, explored other options, or provided the written explanations if they disagreed with the views of the private school officials as required by 34 C.F.R. § 300.134(e).

OSERS finds that CDE did not adequately investigate material issues raised by private school representatives about timely and meaningful consultation, including concerns regarding the distinction between consultation and consultative services, the scheduling and implementation of services, the responsiveness of professional development services, and concerns related to the child find process. For example, private school representatives from the Archdiocese of San Francisco consistently asserted that certain activities conducted by SFUSD were case management responsibilities at the student level. Examples of these activities included annual services plan meetings and the collection of present levels of educational performance information for parentally-placed children with disabilities. However, SFUSD considered those activities as meeting the timely and meaningful consultation requirements of 34 C.F.R. § 300.134. Another example is that private school officials from the Diocese of San Diego questioned whether the consultative service model was being substituted for the requirement to conduct timely and meaningful consultation. Additionally, the private school representatives expressed concerns about NCCSE's child find and evaluation practices as well as the consultative model of providing services. However, CDE's investigation did not fully address these issues or explain whether they were consistent with IDEA's consultation requirements. This failure is inconsistent with the State's obligation to ensure compliance through its general supervision system under IDEA Section 612(a)(11) and 34 C.F.R. § 300.149.

Specifically, the record reflects that key decisions regarding the equitable services model and service delivery were presented to private school representatives in a manner indicating that those decisions had effectively already been made before the consultation process began. Furthermore, representatives of the Archdiocese of San Francisco repeatedly requested follow-up meetings to discuss student rosters, proportionate share expenditures, and equitable services after the initial consultation meeting, which reflected ongoing concerns about the consultation process. Private school representatives also continued to raise concerns regarding the effectiveness of the consultative service model, child find practices, and the provision of equitable services, demonstrating that significant issues remained unresolved following consultation. The record demonstrates that these concerns were not meaningfully discussed or addressed in a manner consistent with the consultation requirements of IDEA.

While NCCSE and SFUSD provided documentation describing the consultation process and related procedures, the documentation did not demonstrate that consultation was conducted consistent with 34 C.F.R. § 300.134, including that the consultation process included representatives of parents of parentally-placed private school children with disabilities. For example, although the record reflects that consultation meetings were held and presentations were provided, the documentation does not demonstrate that representatives of parents of parentally-placed private school children with disabilities participated in the consultation process as required by 34 C.F.R. § 300.134. In addition, NCCSE and SFUSD did not demonstrate that, where disagreements occurred, timely written explanations were provided consistent with 34 C.F.R. 300.134(e). As the SEA, CDE is responsible for ensuring compliance with these requirements under IDEA Section 612(a)(11) and 34 C.F.R. § 300.149.

These concerns are relevant to whether the LEAs provided meaningful consultation and gave due consideration to the views of private school representatives. They also relate to discussions about the child find process as required by 34 C.F.R. § 300.134(a) and that activities were designed to ensure equitable participation and an accurate count as required by 34 C.F.R. § 300.131(b). The IDEA requires that the procedures used to identify, locate, and evaluate parentally-placed private school children be conducted in a manner that is comparable to those used for public school children.

The LEAs also did not comply with 34 C.F.R. § 300.135. The record reflects that, in certain instances, written affirmations were requested prior to the occurrence of consultation, including through RSVP forms, which does not satisfy the requirement that written affirmation follow timely and meaningful consultation.

Although CDE identified consultation noncompliance and required corrective actions, including staff training and revisions to consultation practices, the record does not include evidence regarding the implementation or effectiveness of those corrective actions. For example, the record does not include documentation demonstrating that the required staff training was completed, that revised consultation procedures were implemented by the affected LEAs, or that CDE subsequently verified whether the revised consultation practices resulted in meaningful consultation consistent with 34 C.F.R. § 300.134. Without such information, OSERS does not have evidence that CDE's corrective actions effectively corrected the identified noncompliance. CDE is responsible for ensuring the requirements of IDEA Part B are carried out and that each educational program meets the educational standards of the SEA (including the requirements of IDEA). See IDEA Section 612(a)(11) and 34 C.F.R. § 300.149.

Required Actions:

Within 60 days of the date of this letter, CDE must

1. Submit to OSERS a corrective action plan that identifies the actions it will take, establishes measurable benchmarks, and includes reasonable timelines for completion of each required action. The plan must include meaningful interim milestones, with substantial progress expected within six months of the date of this letter unless OSEP approves an alternative timeline.

Within 90 days of the date of this letter, CDE must:

1. Submit to OSERS for review any revised policies, procedures, guidance, training materials, or other implementation documents necessary to carry out these corrective actions.

Within one year of the date of this letter, CDE must:

1. Ensure that all LEAs and State Education Local Plan Areas (SELPAs) responsible for providing equitable services conduct consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities consistent with the requirements of 34 C.F.R. § 300.134.
2. Ensure that all LEAs provide written explanations when they disagree with the views of private school officials regarding the provision of services as required by 34 C.F.R. § 300.134(e).
3. Ensure that LEAs comply with the requirements in 34 C.F.R. § 300.135 by obtaining written affirmation of consultation after timely and meaningful consultation has occurred.

4. Utilize its general supervision authority under IDEA Section 612(a)(11) and 34 C.F.R. § 300.149 to ensure that the consultation requirements are implemented consistent with IDEA.
5. Ensure that all identified concerns raised by private school officials in complaints files under 34 C.F.R. § 300.136 are investigated.
6. Report on the results of these activities to OSERS, with appropriate documentation to support the results.

Child Find

Allegation:

The complainants allege that the LEAs did not meet the child find requirements applicable to parentally-placed private school children with disabilities and that CDE did not adequately investigate or address those allegations.

Relevant Findings of Fact:

The complaints submitted to the Secretary allege that the child find process used by LEAs created barriers to identifying, locating, and evaluating parentally-placed private school children with disabilities who need special education and related services.

Specifically, the complaints raised concerns regarding:

- the use of documentation requirements that private school representatives believed were burdensome;
- requirements that private school students participate in response to intervention (RTI) processes prior to evaluation;
- language included on referral forms used by the LEAs;
- questions regarding which LEA was responsible for conducting evaluations for private school students; and
- concerns that the number of private school students identified for equitable services was substantially lower than expected and therefore affected the proportionate share calculation. For example, the Archdiocese alleged that although approximately 6,330 students were enrolled in the 31 Catholic schools within SFUSD, only 103 students were identified for special education services, resulting in an alleged undercount that affected the funding available for equitable services.

In its investigation reports, CDE reviewed these allegations and concluded that certain concerns raised by private school representatives did not constitute violations of IDEA's child find requirements.

The complainants contend that CDE did not adequately investigate certain aspects of these allegations and that additional corrective actions should have been required.

California Education Code Referral and Evaluation Framework

Several allegations raised in the complaints concerned referral practices, including the use of RTI, pre-referral procedures, and other requirements that private school representatives believed delayed or discouraged referrals for special education evaluations. Because these allegations implicated both State law and local implementation, the Department reviewed the relevant provision of California law and the manner in which those provisions were incorporated into the policies, procedures, guidance, and training materials used by SFUSD and NCCSE. The Department's analysis of whether those practices are consistent with IDEA is set forth in the Analysis and Conclusion below.

The administrative record reflects that California Education Code § 56303 was incorporated into local policies, procedures, referral guidance, and training materials used by SFUSD and NCCSE in implementing referral practices for parentally-placed private school children with disabilities. These materials generally emphasized consideration of general education resources prior to referral for special education evaluation and, in some instances, referenced RTI or similar general education supports in connection with referral practices. The Department reviewed these materials in light of the allegations raised in the complaints.

The Department recognizes that States and LEAs may implement a range of general education supports, including RTI, Multi-Tiered Systems of Support (MTSS), and other early intervening practices, to address the needs of students. These frameworks can play an important role in supporting students in the general education environment. However, under IDEA, the use of such supports does not replace or delay a public agency's obligation to identify, locate, and evaluate children suspected of having a disability. A State must ensure that these supports are not implemented in a manner that delays or denies the timely referral or evaluation of a child suspected of having a disability, consistent with 34 C.F.R. §§ 300.111, 300.131, and 300.301.

Accordingly, the Department's analysis below does not evaluate the validity of California Education Code § 56303 itself. Rather, it considers whether the manner in which referral and evaluation practices were implemented by SFUSD and NCCSE, and reviewed by CDE through its general supervision responsibilities, was consistent with IDEA's child find and evaluation requirements for parentally-placed private school children with disabilities.

OSERS' Analysis and Conclusion:

Under 34 C.F.R. § 300.131, each LEA must locate, identify, and evaluate children with disabilities who are enrolled by their parents in private elementary and secondary schools located within the LEA's jurisdiction. In addition, 34 C.F.R. § 300.131(b) requires that child find activities for parentally-placed private school children with disabilities be designed to ensure both the equitable participation of those children and an accurate count of children eligible to receive equitable services.

Although IDEA does not require that child find procedures for parentally-placed private school children be identical to those used for children enrolled in public schools, the process must be comparable in timeliness and effectiveness and must satisfy the consultation requirements in 34 C.F.R. § 300.134(a). The record reflects that referrals and evaluations occurred. However, referrals alone do not establish compliance with § 300.131(b). The relevant question is whether the LEAs' child find activities—including their referral procedures, guidance, and implementation practices—were designed to ensure equitable participation and an accurate count of parentally-placed private school children with disabilities.

CDE investigated the child find allegations raised in the complaints and reviewed the practices used by SFUSD and NCCSE. However, the record does not demonstrate that CDE adequately evaluated concerns raised by private school representatives regarding referral practices, confusion over which LEA was responsible for conducting evaluations, and whether implementation of referral procedures delayed the identification of parentally-placed private school children with disabilities. Several allegations focused on California's referral framework under California Education Code § 56303. OSERS finds that California Education Code § 56303 is not, on its face, inconsistent with IDEA's evaluation requirements in 34 C.F.R. §§ 300.301 through 300.311. The issue presented here is not the validity of the State statute itself, but whether CDE, SFUSD, and NCCSE implemented that statute in a manner consistent with IDEA's child find and evaluation requirements.

California Education Code § 56303 provides that the resources of the general education program be considered and, where appropriate, utilized before a referral for a special education evaluation. The administrative record reflects that SFUSD and NCCSE incorporated this requirement into referral guidance, policies, and training materials, including materials advising that general education interventions should be considered before a referral for special education evaluation was initiated. Private school representatives also reported that these practices resulted in referrals being deferred until after general education interventions or RTI-type supports had been considered or implemented.

IDEA, however, does not permit a public agency to delay or deny an initial evaluation when a child is suspected of having a disability. Although LEAs may provide general education interventions, including RTI, MTSS, or other State-developed supports, those interventions may not be required as a prerequisite to accepting a referral or initiating an evaluation. Once a public agency suspects that a child may have a disability and need special education and related services, the agency is obligated to initiate the evaluation process. Accordingly, to the extent that SFUSD and NCCSE implemented policies, procedures, or practices that required the use or consideration of RTI or other general education interventions in a manner that delayed or denied the referral or evaluation of children suspected of having disabilities, those practices are inconsistent with IDEA's child find and evaluation requirements.

The record also demonstrates broader concerns regarding compliance with 34 C.F.R. § 300.131(b). While SFUSD and NCCSE conducted child find activities, the record does not demonstrate that their referral procedures, informational materials, and implementation practices were designed to ensure equitable participation and an accurate count of parentally-placed private school children with disabilities. For example, private school representatives reported that referral materials and guidance emphasizing general education interventions before making a referral actually discouraged or delayed referrals of parentally-placed private school children suspected of having disabilities. They also asserted that these referral practices contributed to the under-identification of eligible private school children, resulting in a child count that was lower than expected and potentially affecting the calculation of the proportionate share of IDEA Part B funds available for equitable services.

Accordingly, OSERS finds that NCCSE and SFUSD did not comply with the child find requirements in 34 C.F.R. § 300.131(b). OSERS further finds that CDE did not ensure, through its general supervision system, that LEAs were implementing child find activities consistent with the requirements of 34 C.F.R. § 300.131(b).

Required Actions:

Within 60 days of the date of this letter, CDE must:

1. Submit to OSERS a corrective action plan that identifies the actions it will take, establishes measurable benchmarks, and includes reasonable timelines for completion of each required action. The plan must include meaningful interim milestones, with substantial progress expected within six months of the date of this letter unless OSEP approves an alternative timeline.

Within 90 days of the date of this letter, CDE must:

1. Submit to OSERS for review any revised policies, procedures, guidance, training materials, or other implementation documents necessary to carry out the following corrective actions.

Within one year of the date of this letter, CDE must:

1. Ensure, through its general supervision activities, that all LEAs and SELPAs responsible for implementing child find activities for parentally-placed private school children with disabilities do so consistent with 34 C.F.R. § 300.131(b), including ensuring equitable participation and an accurate count of children who are evaluated and identified.
2. Revise, as necessary, its policies, procedures, and guidance to ensure that LEAs do not implement referral or evaluation practices in a manner that delays or denies an evaluation of a child suspected of having a disability, including by requiring completion of RTI, MTSS, or other general education interventions before initiating an evaluation under IDEA.
3. Communicate and disseminate this revised guidance to all LEAs and SELPAs, provide any necessary training regarding the revised guidance, and submit documentation to OSERS demonstrating completion of these activities.
4. Report the results of these activities to OSERS, with appropriate documentation to support the results.

Proportionate Share

Allegation:

The complainants allege that the LEAs failed to properly calculate and expend the proportionate share of IDEA Part B funds for parentally-placed private school children with disabilities and that the CDE did not sufficiently investigate or remedy those issues.

The complainants also allege that CDE's corrective actions related to proportionate share expenditures were limited to preschool students and a two-year period and therefore did not fully address the alleged noncompliance.

Relevant Findings of Fact:

The complaints submitted to the Secretary include allegations that the LEAs participating in NCCSE and the SFUSD did not properly expend the proportionate share of IDEA Part B funds for equitable services.

The record reflects that CDE investigated allegations related to the calculation and expenditure of proportionate share funds and issued findings requiring corrective actions in certain areas. These corrective actions included requirements related to staff training and clarification of the inclusion of children aged three through five in proportionate share calculations.

The complaints submitted to the Secretary allege that the corrective actions were insufficient because they were limited in scope and did not address prior years in which proportionate share funds may not have been fully expended.

The record also contains communications between private school representatives and LEA officials regarding the expenditure of proportionate share funds and requests for additional information regarding the calculation of those funds.

OSERS' Analysis and Conclusion:

Under IDEA Section 612(a)(10)(A)(i) and the implementing regulations at 34 C.F.R. § 300.133, LEAs must expend a proportionate share of IDEA Part B funds to provide special education and related services to parentally-placed private school children with disabilities.

The proportionate share must be calculated annually based on the number of eligible parentally-placed private school children with disabilities compared to the total number of eligible children with disabilities served by the LEA. OSERS notes that under 34 C.F.R. § 300.133(c), proportionate share calculations must be based on an accurate count of parentally-placed private school children with disabilities. Accordingly, deficiencies in child find design and implementation may directly affect the accuracy of proportionate share calculations.

Under IDEA, parentally-placed private school children with disabilities do not have an individual entitlement to services. Instead, in consultation with private school representatives and representatives of parents of parentally-placed private school students, the LEA must determine how the proportionate share of funds will be used to provide equitable services under 34 C.F.R. § 300.134. See 34 C.F.R. §§ 300.137(a) and (b).

Based on the information reviewed, CDE investigated the proportionate share allegations raised in the complaints and issued corrective actions related to certain aspects of the calculation and expenditure of proportionate share funds.

However, the record indicates that CDE's corrective actions focused primarily on prospective corrective measures and did not require verification that any prior failures to expend proportionate share funds were addressed.

Under IDEA's general supervision requirements in Section 612(a)(11) and the implementing regulation at 34 C.F.R. § 300.149, the State educational agency is responsible for ensuring that LEAs comply with IDEA requirements and that identified noncompliance is corrected.

Where noncompliance is identified, the SEA must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the identification of the noncompliance. Given the record of recurring concerns regarding child count and expenditure over multiple years, OSERS finds that CDE must verify and if necessary correct proportionate share calculations and reservations for the prior five years to ensure full correction of the identified noncompliance.[2]

Based on the information reviewed, OSERS finds that CDE did not ensure that the identified noncompliance regarding proportionate share was fully corrected in accordance with the State's general supervision responsibilities under IDEA Section 612(a)(11) and 34 C.F.R. § 300.149.

Although CDE identified issues related to the calculation and expenditure of proportionate share funds and required certain corrective actions, the corrective actions did not ensure that the LEAs addressed the full scope of the identified noncompliance.

Accordingly, deficiencies in child find design and implementation may directly affect the accuracy of proportionate share calculations.

Consistent with the Department's prior determinations, when an LEA has not expended the full amount of IDEA Part B funds required for equitable services, the LEA must determine the amount of any shortfall by comparing the required proportionate share with the actual expenditures and must take steps to remedy that shortfall.

Where IDEA Part B funds associated with a given fiscal year are no longer available (e.g., funds awarded prior to July 1, 2024, that are no longer accessible for obligation), the LEA remains responsible for ensuring that the full amount required for equitable services is provided. In such circumstances, the LEA may use IDEA Part B funds that remain available for obligation and State and local funds to make up any identified shortfall.

Accordingly, OSERS expects the State to ensure that its LEAs recalculate the proportionate share for the prior five-year period from FFY 2021 through FFY 2025 using accurate child count data and funding amounts, determine whether such shortfall exists, and ensure that any such shortfall is remedied using allowable funding sources, including State-level IDEA funds where appropriate.

Required Actions:

Within 60 days of the date of this letter, CDE must:

1. Submit to OSERS a corrective action plan that identifies the actions it will take, establishes measurable benchmarks, and includes reasonable timelines for completion of each required action. The plan must include meaningful interim milestones, with substantial progress expected within six months of the date of this letter unless OSEP approves an alternative timeline.

Within 90 days of the date of this letter, CDE must:

1. Submit a corrective action plan describing how it will carry out the following actions, including proposed timelines, revised procedures, and the methodology it will use to recalculate proportionate share amounts and identify any funding shortfalls.

[2] The five-year period is based on the Department's statute of limitations regarding unallowable expenditures. See 34 C.F.R. § 81.31(c). In this matter the LEA spent funds for children with disabilities enrolled in the LEAs instead of reserving or expending the required amount of funds for parentally-placed children with disabilities.

Within one year of the date of this letter, CDE must:

1. Ensure that LEAs and SELPAs responsible for providing equitable services are correctly calculating the proportionate share of IDEA Part B funds in accordance with 34 C.F.R. § 300.133.
2. Recalculate the proportionate share of IDEA Part B funds for FFY 2021 and through FFY 2025 using accurate child count data and total IDEA Section 611 and 619 allocations.
3. Determine the amount of IDEA Part B funds actually expended for equitable services for each applicable fiscal year.
4. Identify any shortfall between the required proportionate share and the amount expended; and remedy any identified shortfall using available funding sources, including:
    - Remaining IDEA Part B funds, where available for obligation; and
    - State and local funds, including, as appropriate, State-level IDEA funds reserved for other State-level activities under 34 C.F.R. §§ 300.704(b) and 300.814.
5. Utilize its general supervision authority under IDEA Section 612(a)(11) and 34 C.F.R. § 300.149 to verify that any identified noncompliance related to proportionate share calculations and expenditures has been corrected for the past five years.
6. Report on the results of these activities to OSERS, with appropriate documentation to support the results.

State Complaint Procedures

Allegation:

The complainants allege that the CDE did not properly investigate and resolve all allegations raised in the State complaints. Specifically, the complainants assert that certain allegations were not addressed in CDE's written decisions and that CDE did not consistently communicate determinations as to whether the LEA complied with IDEA requirements.

Relevant Findings of Fact:

The complaints submitted to the Secretary reflect concerns that CDE did not address all allegations raised by the complainants. In multiple instances, the complainants assert that specific issues included in their State complaints were not investigated or were omitted from CDE's written decisions, resulting in those issues remaining unresolved. The record demonstrated that CDE conducted investigations and issued written decisions addressing a number of allegations, including findings of noncompliance and the identification of corrective actions. These decisions reflect that CDE reviewed documentation submitted by the parties and made determinations based on the information available during the investigation process.

However, the record also reflects that CDE's written complaint decisions do not consistently demonstrate that each allegation raised in the complaint was explicitly addressed and resolved. In particular, the decisions do not consistently include findings of fact, conclusions, and the reasons for those conclusions, for each allegation raised.

OSEP recognized that a State may, where appropriate, address related allegations together in a single analysis or response. However, when allegations are combined for purposes of analysis or disposition, the State's written decision must, consistent with 34 C.F.R. § 300.152(a)(5), clearly indicate that the allegations have been grouped and ensure that each allegation is addressed and resolved within the decision, including findings, conclusions, and the reasons for the State's determination. Although, IDEA does not prescribe the specific terminology a State must use, the written decision must clearly convey its determinations, and the basis for those determinations for each allegation raised in the complaint.

OSERS' Analysis and Conclusion:

This review is limited to the complaint investigations that are the subject of this Secretarial Review. Accordingly, the issue before the Department is whether CDE's investigation and resolution of those complaints complied with the requirements of 34 C.F.R. §§ 300.151 through 300.153, including whether CDE reviewed all relevant information, resolved the material allegations presented, and issued determinations consistent with IDEA.

The requirements in 34 C.F.R. § 300.152(a)(4) note that in resolving a State complaint, the SEA *must* review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or its implementing regulations.

Based on the information reviewed, OSERS finds that CDE made findings of noncompliance in several areas addressed in the complaint decisions. However, OSERS also finds that CDE did not consistently review and resolve each material issue raised in the complaint that was necessary to determine compliance with IDEA. For example, the record reflects that private school representatives raised concerns regarding whether consultation was being substituted for consultative services, whether referral practices improperly required general education interventions before evaluation, and whether child find practices resulted in an undercount of parentally-placed private school children used to calculate the proportionate share of IDEA funds, including confusion regarding preschool students. Although CDE investigated portions of these concerns, its written decisions did not consistently explain whether each material allegation had been resolved or how the evidence supported its conclusions.

IDEA requires that the State complaint process result in a determination as to whether the public agency complied with IDEA requirements based on a review of all relevant information. While the scope and type of evidence considered may vary, the SEA must ensure that its investigation is sufficiently comprehensive to resolve the allegations raised and support an independent determination of compliance.

Accordingly, OSERS finds that CDE did not fully meet the requirements of 34 C.F.R. § 300.152(a)(4) because its investigations did not consistently address all aspects of the allegations necessary to determine whether the LEAs complied with IDEA requirements.

Required Actions:

Within 60 days of the date of this letter, CDE must:

1. Submit to OSERS a corrective action plan that identifies the actions it will take, establishes measurable benchmarks, and includes reasonable timelines for completion of each required action. The plan must include meaningful interim milestones, with substantial progress expected within six months of the date of this letter unless OSEP approves an alternative timeline.

Within 90 days of the date of this letter, CDE must:

1. Submit to OSERS for review any proposed revisions to its State complaint procedures, guidance, training materials, and other implementation documents necessary to carry out the following corrective actions.

Within one year of the date of this letter, CDE must:

1. Provide written assurance to OSERS that it will revise its State complaint procedures to ensure that complaint investigation decisions include a determination regarding whether the public agency complied with IDEA requirements consistent with 34 C.F.R. § 300.152(a)(4).
2. Review, as appropriate, recent State complaint decisions and ensure that those complaint investigations as well as future complaint investigations fully address all material allegations and result in a determination regarding whether the public agency complied with IDEA requirements based on a review of all relevant information, consistent with 34 C.F.R. §§ 300.151-300.153.
3. Report on the results of these activities to OSERS, with appropriate documentation to support the results.

Appendix A
Complaint Allegations Concerning the San Francisco Unified School District and the North Coastal Consortium for Special Education

San Francisco Unified School District

Complainant: Archdiocese of San Francisco

- The child find challenges were not sufficiently identified;
- The corrective actions relating to child find are not sufficient;
- The corrective actions relating to consultation were not sufficient;
- The allegation relating to the calculation of proportionate share was not investigated or addressed;
- The corrective actions for the LEA’s failure to expend the proportionate share funds related to preschool students; and
- Allegations relating to preschool students were not sufficiently addressed.

North Coastal Consortium for Special Education (NCCSE)

Complainant: Diocese of San Diego

- CDE failed to investigate many of the child find allegations;
- CDE did not identify the fundamental failures in consultation and failed to provide guidance on the request for specialized academic instruction;
- CDE did not investigate allegations regarding NCCSE’s expenditure of the proportionate share funds;
- The recount for preschool students does not require consultation with private school representatives before a plan is developed;
- The corrective actions for NCCSE’s failure to expend the proportionate share funds relate only to preschool students and was limited to a two-year period; and
- Confusion in the field regarding preschool students remains.