

Highlight and Review of OSEP's Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA:
Monitoring, Technical Assistance, and Enforcement



2023 OSEP LEADERSHIP AND PROJECT DIRECTORS' CONFERENCE





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(Authority: 20 U.S.C. 1221e-3 and 3474)

Agenda

General Supervision Overview

- A. State General Supervision Responsibilities
- B. Identification and Correction of Noncompliance
- C. State Performance Plan/Annual Performance Report
- D. State Annual Determinations
- E. State Enforcement through Determinations and Other Methods



What is the purpose of this guidance?

- States will have the information necessary to exercise their general supervision responsibilities under IDEA
- This guidance
 - reaffirms the importance of general supervision and the expectation that **monitoring the implementation of IDEA will improve** early intervention and educational **results** and functional **outcomes** for children with disabilities and their families.
 - incorporates **longstanding policy** and **supersedes** and **consolidates previously issued guidance** documents
 - addresses **common questions** that OSEP has received from parents, States, local programs and other stakeholders.



Authority

- OSEP must monitor States to ensure implementation of IDEA.
- States must monitor all programs and activities used to implement IDEA and make annual determinations.
- States must have a general supervision system that ensures the identification and correction of noncompliance using all the components of the general supervision system.



IDEA Regulations

34 C.F.R. § 300.149

WHO IS RESPONSIBLE: State Educational Agency (SEA)

FOR WHAT: Monitoring all education programs for children and youth with disabilities

WHAT REQUIREMENTS: All requirements for Part B

34 C.F.R. § 303.120

WHO IS RESPONSIBLE: Lead Agency (LA)

FOR WHAT: Monitoring all programs and activities used by the State to carry out Part C

WHAT REQUIREMENTS: Monitoring, enforcing, correcting and providing TA



What are the clarified or expanded positions?

- **Reasonably Designed General Supervision System**
 - States may not ignore credible allegations of noncompliance made outside its formal monitoring visit cycle and must conduct proper due diligence in a timely manner.
- **Timeline Considerations for the Identification of Noncompliance**
 - States must issue a finding of noncompliance, generally within three months of the State's identification of the noncompliance.
- **Correction of Child-Specific Noncompliance**
 - States must verify correction of *each* individual case of identified noncompliance.
- **SPP/APR Reporting**
 - States must monitor each LEA or EIS program at least once within the six-year cycle of the State's SPP/APR and when using "monitoring" as its data source should report on the number of LEAs or EIS programs that data reflects.



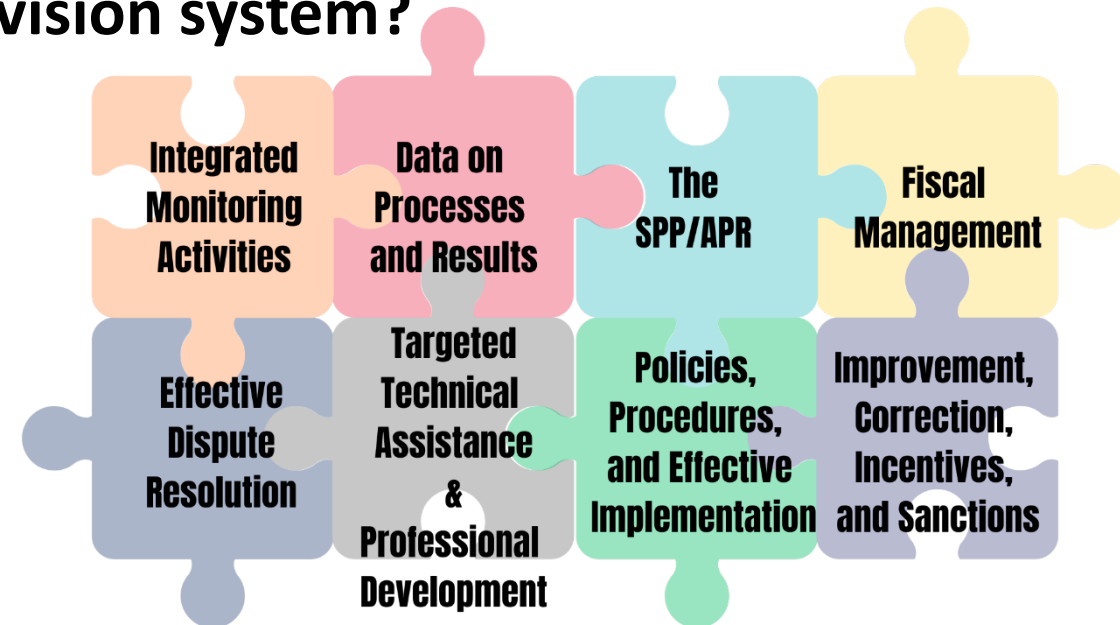
A. State General Supervision Responsibilities



Components of General Supervision

Question A-2: What does OSEP consider to be the necessary components of a reasonably designed State general supervision system?

1. Integrated Monitoring Activities
2. Data on Processes and Results
3. The SPP/APR
4. Fiscal Management
5. Effective Dispute Resolution
6. Targeted TA and PD
7. Policies, Procedures, and Effective Implementation
8. Improvement, Correction, Incentives, and Sanctions



Integrated Monitoring Activities

Question A-3: What are integrated monitoring activities?

- Integrated monitoring activities are a multifaceted formal process or system designed to examine and evaluate an LEA's or EIS program's or provider's implementation of IDEA with a particular emphasis on educational results, functional outcomes, and compliance with IDEA programmatic requirements.



The SPP\APR

Question A-4: May States limit the scope of their general supervision activities to only the IDEA requirements included in the State's annual SPP/APR submission (i.e., the SPP/APR indicators and data reported to the Department under IDEA Sections 616 and 642)?

- No. As stated in Question A-2, an effective general supervision system should, at a minimum, include the eight components identified above, only one of which is the SPP/APR.
- Solely relying on an LEA or EIS program's performance on the SPP/APR indicators would not constitute a reasonably designed general supervision system.



Data on Processes and Results

Question A-5: How should the State use its data system as a component of an effective general supervision system?

- A State must consider how it will review the information in its data system to determine compliance and reflect in its monitoring policies how that review of data will be used to identify noncompliance.
- States should inform its LEAs or EIS programs or providers of when and how the data system is being used for the purposes of determining compliance.
- The State's general supervision system should be reasonably designed to ensure the State examines data collected through its data system at regular intervals to determine LEA or EIS program or provider compliance with IDEA requirements (e.g., monthly, quarterly, or annually).



Effective Dispute Resolution

Question A-7: What role does the information from the State's dispute resolution system play in a State's reasonably designed general supervision system?

- In reviewing complaints and decisions, a State may be able to identify patterns that suggest systemic noncompliance by one or more LEAs or EIS programs or providers with IDEA requirements or suggest that there may be State-wide patterns of noncompliance.
- Where such patterns are present, the State, as part of its general supervision system, must determine whether systemic noncompliance occurred or is occurring and ensure correction in a timely manner.



General Requirements

Question A-11: How frequently should a State monitor its LEAs or EIS programs or providers?

- A State should monitor all LEAs or EIS programs and providers within a reasonable period of time and **at least once within a six-year period** (which is based on the duration of the SPP/APR).
- A State should consider whether **more frequent or targeted monitoring** (i.e., a monitoring activity that occurs outside of the State's normal cycle to address emerging or new issues, and typically is limited in scope) is necessary, when an LEA's or EIS program's or provider's data or other available information indicates an area of concern.



B. Identification and Correction of Noncompliance



Area of Concern

Question B-1: What is an “area of concern”?

- An “area of concern” means a credible allegation regarding an IDEA policy, procedure, practice, or other requirement that raises one or more potential implementation or compliance issues, if confirmed true.

Question B-2: What actions must a State take when made aware of an area of concern with an LEA’s or EIS program’s or provider’s implementation of IDEA?

- A State must conduct proper due diligence when made aware of an area of concern regarding an LEA’s or EIS program’s or provider’s implementation of IDEA and reach a conclusion in a reasonable amount of time.



Proper Due Diligence Activities

A State's **proper due diligence activities** may include, but are not limited to:

- conducting clarifying legal research,
- interviewing staff, parents of children with disabilities, children with disabilities, and groups that represent the families and communities served by the LEAs or EIS programs or providers, and
- reviewing and analyzing data or information.



Due Diligence Data or Information to Analyze

Examples of **data or information a State may analyze** could include:

- fiscal contracts or other relevant financial information,
- State customer service information,
- administrative or judicial decisions,
- media reports,
- previous LEA or EIS program or provider self-reviews or self-assessments,
- document submissions, and
- any other relevant LEA or EIS program or provider monitoring information.
(See also Question B-3).



Type and Amount of Information

Question B-3: What type and amount of information should the State review to confirm LEA or EIS program or provider compliance with IDEA requirements?

- The State should be able to explain the methodology used to ensure that the type and amount of data accurately reflect the LEA or EIS program's or provider's level of compliance.
- The State should ensure that the information reviewed when determining compliance with IDEA requirements is representative of the population served within a given LEA or EIS program or provider to ensure validity and reliability of the data used.



Identification of Noncompliance

Question B-4: What does the State’s “identification of noncompliance” (i.e., a finding) mean as required under 34 C.F.R. §§ 300.600(e) and 303.700(e)?

- Identification of noncompliance (i.e., a finding) means **the determination by a State that an LEA or EIS program’s or provider’s policy, procedure, or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, another IDEA-related Federal requirement, or any specific IDEA grant award terms or conditions.**
- OSEP uses the terms **“written notification of noncompliance,” “written finding of noncompliance,” “identified noncompliance,” or “finding”** interchangeably within this document **to mean the State’s “identification of noncompliance”** with a requirement of IDEA Part B or Part C consistent with 34 C.F.R. §§ 300.600(e) and 303.700(e).



Notification of Noncompliance

Question B-6: What are the elements of a written notification of noncompliance (i.e., a finding)?

- For a State to ensure proper notice to its LEAs or EIS programs or providers and promote timely correction of noncompliance, the written finding should include:
 - A **description**;
 - The **statutory or regulatory IDEA requirement(s)**;
 - A **description of data** supporting the State's **conclusion**;
 - A **statement that the noncompliance must be corrected** as soon as possible, and in no case later than **one year**;
 - Any required **corrective action(s)**; and
 - A **timeline for submission** of evidence of correction.



Timeline to Notify

Question B-7: How soon after a State determines noncompliance must it provide a written notification of noncompliance (i.e., a finding) to the LEA or EIS program or provider?

- The State must issue a written notification of noncompliance (i.e., a finding):
 - **Generally, within three months** of the State exercising due diligence and **reaching a conclusion** that the LEA or EIS program or provider **has violated an IDEA requirement**
 - Unless the LEA or EIS program or provider **immediately (i.e., before the State issues a finding)** corrects the noncompliance and the State is able to verify the correction (see Questions B-11 and B-12) (pre-finding). 34 C.F.R. §§ 300.149 and 303.120.



Self-Assessments and Self-Reviews

Question B-9: Must the State issue a finding and require correction if, as part of the State’s monitoring system, an LEA or EIS program or provider submits a self-assessment or self-review that reflects noncompliance with an IDEA requirement?

- The State should confirm that the information in the self-assessment is accurate, and the LEA or EIS program’s or provider’s interpretation of the applicable requirements is correct.
- If noncompliance is identified and confirmed true, the State must issue a finding and ensure correction, unless the exceptions set out in Questions B-11 and B-12 apply (pre-finding).



Correction of Noncompliance

Question B-10: What is the standard for correction of noncompliance?

- **Child-Specific Compliance:** The LEA or EIS program or provider, if applicable, has **corrected *each* individual case of child-specific noncompliance**, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child; and (See Question B-15)
- **Systemic Compliance:** The LEA or EIS program or provider is **correctly implementing the specific regulatory requirements** (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data and information, such as data and information subsequently collected through integrated monitoring activities or the State's data system.



Evidence of Correction

- **Child-Specific Compliance:**
 - **evidence demonstrating *each* individual case** of the previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance, if applicable, has been corrected.
- **Systemic Compliance:**
 - **evidence demonstrating that the review of updated data** and information from the LEA or EIS program or provider did not reveal any continued noncompliance.



Pre-Finding Correction

Question B-11: What is “pre-finding correction?”

- Pre-finding correction may occur when the **State has exercised due diligence** and **reached a conclusion** in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement **but has not yet issued a finding.**
- The State must ensure that both child-specific and systemic noncompliance has been corrected.



Demonstration of Pre-Finding Correction

Question B-12: Must the State issue a finding if the LEA or EIS program or provider demonstrates “pre-finding correction?”

- A State may choose not to issue a written finding if the LEA or EIS program or provider immediately (i.e., before the State issues a written notification of noncompliance) corrects the noncompliance
- If a State chooses to use this flexibility, it must ensure that the LEA or EIS program or provider has corrected the noncompliance, **generally within three months of the State exercising due diligence and reaching a conclusion** that the LEA or EIS program or provider has violated an IDEA requirement



C. State Performance Plan/Annual Performance Report (SPP/APR)



Data Sources: Monitoring or Data System

Question C-2: How does OSEP distinguish “State monitoring” from “State database” when used as the data source for specific SPP/APR compliance indicators?

- “State monitoring” data are those data gathered during the State’s integrated monitoring activities to examine an LEA or EIS program’s or provider’s compliance with IDEA requirements (see Question A-5).
- A “database” or “data system” is an electronic system used by the State for collecting, maintaining, and storing LEA or EIS programs or provider data.
- States must identify the data source and should be clear about what the data reflect, including the number of local programs (i.e., all LEAs or EIS programs in the State or a subset), the number of children, the time period (Part C only), and the compliance requirement.



Reporting Timely Correction

Question C-4: How should the State report on the identification and timely correction of findings of noncompliance in its SPP/APR?

- States must describe in sufficient detail its process for ensuring child-specific and systemic noncompliance has been corrected.
- For child-specific noncompliance, this could include what the State reviewed such as individual child files or records, or how the State used its data system to verify child-specific correction.
- For systemic noncompliance, the State is encouraged to describe the time period covered by the subsequent data reviewed, how many records were reviewed, any trainings provided, and how the State determined these specific actions demonstrated correction.



D. State Annual Determinations



Determination Categories

Question D-1: When making determinations about the annual performance of an LEA or EIS program, must States use the same determination categories that OSEP uses with States?

- States must use the same four determination categories that OSEP is required to use with States:
 - meets requirements
 - needs assistance
 - needs intervention
 - needs substantial intervention
- 34 C.F.R. §§ 300.603(b) and 303.703(b).



Annual Determination Considerations

Question D-2: What factors must a State consider when making annual determinations of the performance of LEAs or EIS programs?

- When making an annual determinations a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA or EIS program's compliance with IDEA, including any relevant audit findings.
- In developing its determinations process (including the factors the State will consider when making annual determinations), the State should consider stakeholder input.



Issuing Annual Determinations

Question D-6: How and when must a State inform an LEA or EIS program of the State's determination?

- States should notify their LEAs or EIS programs of their specific determinations in a timely manner so that they may begin to plan for and take any actions necessary for improvement as soon as possible.
- To the extent that the State's determinations and resulting enforcement actions impact funds for LEAs or EIS programs the State should share its determinations before funds are issued or contracts are renewed or signed



Publicly Available Annual Determinations

Question D-7: Must a State make its annual determinations for each LEA or EIS program available to the public?

- States are encouraged to make these annual determinations publicly available to promote accountability and transparency.
- Annual determinations provide valuable information on the extent to which LEAs or EIS programs are meeting IDEA requirements and how the LEA or EIS program's actual data compare to the State's targets.



E. State Enforcement through Determinations and Other Methods



Enforcement Actions

Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA or EIS program does not meet the requirements of IDEA?

- IDEA requires States to make an annual determination of the extent to which each LEA or EIS program meets the requirements and purposes of IDEA based on the information in the SPP/APR, information obtained through monitoring visits, and any other publicly available information.
- The State is then required to take certain enforcement action(s) if an LEA or EIS program needs assistance for two consecutive years, needs intervention for three or more consecutive years, or anytime the State determines that an LEA or EIS program needs substantial intervention or that there is a substantial failure to comply with any Part B eligibility condition or Part C requirement.



Needs Assistance for Two Consecutive Years

If the State determines that an LEA or EIS program needs assistance for two consecutive years, the State must take one or more of the following actions:

- 1) Access and require TA that may help the LEA or EIS program address the areas in which the LEA or EIS program needs assistance
 - 2) Identify the LEA or EIS program as a high-risk grantee and impose Specific Conditions on the LEA's IDEA Part B grant award or the EIS program's Part C grant award.
- For Part B, if a State determines that an LEA is not meeting the requirements of Part B, including the targets for compliance indicators in the SPP/APR, the State must prohibit the LEA from reducing its maintenance of effort under 34 C.F.R. § 300.203 for any fiscal year.



Needs Intervention for Three or More Consecutive Years

If the State determines that an LEA or EIS program needs intervention for three or more consecutive years, the State **may** take any of the actions described above for “Needs Assistance.” In addition, the State **must** take one or more of the following enforcement actions:

- 1) Require the LEA or EIS program to prepare a corrective action plan or improvement plan to correct the identified area(s).
- 2) Withhold, in whole or in part, further payments under Part B to the LEA or under Part C to the EIS program.



Withholding: Needs Substantial Intervention

Question E-2: Under what circumstances must a State propose to withhold IDEA funds from an LEA or EIS program after making an annual determination?

- A State's determination under Section 616 (Part B) or Section 642 (Part C) that an LEA or EIS program needs substantial intervention, at any time, must result in the State's withholding, in whole or in part, any further payments under Part B to the LEA or under Part C to the EIS program.
- States should have policies and procedures which describe how any IDEA funds withheld from an LEA or EIS program would be managed.



Steps for Withholding

Question E-4: What steps must an SEA take when proposing to withhold IDEA funds from an LEA's IDEA Part B grant?

- Must notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing.

Question E-5: What steps must the LA take before withholding IDEA Part C funds?

- Contracts are governed by State contract law and should include provisions that clearly describe the actions the LA will take if the EIS provider fails to perform consistent with the terms of the contract, including compliance with IDEA requirements.



Additional Enforcement Actions

Question E-6: What are other enforcement actions a State could consider when previous enforcement actions have been unsuccessful in ensuring correction of noncompliance?

- IDEA enforcement actions: Corrective Action Plans or Specific Conditions
- Placing a State-designated management team at the local level to develop and implement the policies, procedures, and practices necessary to bring the agency into compliance.
- Training, TA, and coaching new or existing local staff so they can re-assume operations and the State can gradually reduce its on-site support.



Sanctions

- Sanctions are generally understood to be the adverse actions that the State uses to ensure that the requirements of the IDEA and the applicable regulations are met. 34 C.F.R §§ 300.626 and 303.417.
- The State should have written policies, procedures and practices that explain the State's system of progressive sanctions and enforcement provisions.
- Under IDEA Part B, the SEA may take over the direct provision of special education and related services from an LEA in certain circumstances.



Summary

- OSEP appreciates States' continued efforts to improve the implementation of IDEA and recognizes the challenges in developing a reasonably designed general supervision system which balances ensuring compliance and improving results.
- A State's investment in establishing and implementing a robust general supervision system should result in infants and toddlers having access to developmental opportunities and children with disabilities receiving appropriate education services that are necessary to prepare them for further education, employment, and independent living.



Next Steps

- Work Sessions and meetings with our OSEP funded TA providers to develop additional technical assistance resources such as specific examples and tools to support the implementation of this guidance
- Meetings and roundtable events with various stakeholder groups including States, parent groups, advocacy groups and more
- Presentations, webinars, and participation at additional National Conferences such as: NASDE, DEC, CADRE, CIFR, CPIR, and CEC
- National TA Call and recording of this General Supervision Guidance presentation



Current Resources Spotlight

IDEA Department of Education Page

- [Monitoring and Enforcement Topic Area](#)

National Center for Systemic Improvement (NCSI)

- [NCSI's Differentiated Monitoring and Support \(DMS\) 2.0 page](#) and [Toolkit](#)

Early Childhood Technical Assistance Center (ECTA)

- [ECTA Differentiated Monitoring and Support \(DMS\) 2.0 page](#)

The IDEA Data Center (IDC)

- [IDC Tools and Toolkits](#)

The Center for IDEA Early Childhood Data Systems (DaSY)

- [DaSy Differentiated Monitoring and Support \(DMS\) 2.0 page](#)

Center for Appropriate Dispute Resolution in Special Education (CADRE)

- [CADRE website](#) and [Self-Assessments](#)

Center for IDEA Fiscal Reporting (CIFR)

- [CIFR website and resources](#)



Questions

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