

Identifying, Correcting, and Reporting Noncompliance: A State Guide

May 2024

State agencies (the state educational agency, SEA under the Individuals with Disabilities Education Act [IDEA] Part B Section 611 and Section 619, and the lead agency, LA under IDEA Part C) must have a general supervision system in place to (1) improve educational results and functional outcomes for infants and toddlers with disabilities and their families and children with disabilities and (2) ensure that local education agencies (LEAs) and early intervening services (EIS) programs and providers meet the requirements under the IDEA. State general supervision systems must be reasonably designed to meet these goals. A key responsibility of state general supervision systems is the identification, correction, and reporting of noncompliance. This guide focuses on the steps involved in these processes and is based on the Office of Special Education Programs (OSEP) QA 23-01: State General Supervision Responsibilities Under Parts B and C of the IDEA.

Identify Noncompliance

IDENTIFY IDEA REQUIREMENTS AND STATE PRIORITIES FOR MONITORING

It is important to note that, as clarified by OSEP in QA 23-01, states may not limit the scope of their monitoring activities solely to the State Performance Plan and Annual Performance Report (SPP/APR) because there are requirements related to the fundamental rights of

children with disabilities and their families that are not represented by the SPP/APR indicators. In selecting monitoring priority areas beyond the SPP/APR indicators, consider the following:

- requirements that are most closely related to maintaining compliance and improving results
- requirements identified as being in need of monitoring and correction through other general supervision activities (e.g., topics or issues identified through technical assistance or professional development, review of dispute resolution data, fiscal or audit findings, other identified instances of noncompliance)
- state rules or requirements (e.g., established timelines)
- accountability measures the LA or SEA holds itself accountable to or is held accountable to by the state legislature or governor's office (e.g., percentage of infants and toddlers or children with disabilities served, participation of children with disabilities in the general education accountability system)

ADOPT, ADAPT, OR DEVELOP MONITORING DATA COLLECTION TOOLS

Determine which activity or combination of activities will be used to collect data on the IDEA requirements identified for monitoring (e.g., a statewide database; processes for collecting and reviewing files submitted by LEAs or EIS programs or providers; onsite monitoring, including interview protocols, file review protocols, observation checklists). Establish a process, examine existing processes and tools, and then adapt or develop processes and tools in order to collect data that can be used to determine compliance with the identified requirements. The tools should be efficient and effective in gathering the necessary data to identify compliance and noncompliance.

COLLECT DATA

Use established methods (e.g., record review, database reports, interviews, state complaint decisions, due process decisions, dispute resolution tracking logs, fiscal monitoring, single audit findings, other available reports) to collect compliance data for IDEA requirements and state priorities. If using a database to report data, determine how the data are reviewed and reported:

- If a state selects to review a selection of data as part of its monitoring, the state should define the collection as “monitoring” in the SPP/APR.
- If a state selects to review data on all children in the database, the state should define the collection as “database” in the SPP/APR.

Note: Findings identified through dispute resolution must not be grouped with other findings and must be counted as individual findings.

VERIFY ACCURACY OF DATA

Before using data for decision-making, verify that data are valid and reliable. For a state database or census collection, states may provide LEAs or EIS programs or providers with an opportunity to review and verify the accuracy of the data or to add missing data.

ACCOUNT FOR ALL INSTANCES OF NONCOMPLIANCE

Once data are verified, review the data and determine whether the data demonstrate noncompliance with a statutory or regulatory citation. If reviewing data from a database, a state should review data entered since the last time the state examined data from the database and made compliance decisions (e.g., the prior year’s monitoring) and within the time period it has established for monitoring data for that particular requirement. It is important to note that states may not establish a threshold of less than 100 percent for determining an LEA’s or EIS program’s or provider’s compliance.

DOCUMENT AND REPORT (FOR SPP/APR INDICATORS) THE LEVEL OF COMPLIANCE

Document the level of compliance for each requirement being monitored (the numerator divided by the denominator equals the percentage). States should have consistent processes and tools for documenting levels of compliance for tracking and ongoing decision-making. For SPP/APR indicators, report these verified data to OSEP in the SPP/APR under actual data, and use these data to publicly report the performance of each LEA or EIS program or provider on SPP/APR indicators annually. (This report is due 120 days following submission of the SPP/APR.)



Make Findings of Noncompliance

DEFINE HOW FINDINGS OF NONCOMPLIANCE WILL BE COUNTED

States should define how they will count and report findings consistently, considering the following:

- whether to group individual instances of noncompliance that involve the same legal requirement or standard as one finding or to report each individual instance as a separate finding
- whether to count a finding identified through multiple components or from multiple sources as one finding or as multiple findings
- whether and how to count findings of noncompliance that are corrected prior to written notification as corrected findings

Note: States must report the number of findings identified through its dispute resolution procedures separately from the noncompliance identified through other activities. Each State complaint or due process complaint where noncompliance was identified, must be counted as an individual finding.

ALLOW CORRECTION PRIOR TO ISSUING A WRITTEN FINDING (PRE-FINDING CORRECTION) (OPTIONAL)

States' general supervision procedures may allow programs to correct noncompliance prior to a state issuing a written notification of a finding of noncompliance. This is referred to as "pre-finding correction." However, in such an instance states must still verify correction of each instance of child-specific noncompliance and review updated program data pulled subsequent to the identification of noncompliance in order to demonstrate 100 percent compliance with each IDEA requirement for which noncompliance was identified.¹

It is also important to note, as clarified in OSEP QA 23-01, that states must still ensure timely correction of noncompliance (generally within 3 months of a state's review) and that the flexibility of pre-finding correction may not allow LEAs or EIS programs or providers an indiscriminate amount of time to correct the identified noncompliance. The state is not required to issue a written notification that documents the opportunity to correct the noncompliance through the use of pre-finding correction, though it should maintain documentation of the nature and extent of the

noncompliance. In addition, the state must maintain documentation and evidence of the correction of each instance of child-specific noncompliance and updated data that show systemic compliance.

DOCUMENT CORRECTION

Note that if states choose to allow an LEA or EIS program or provider to correct noncompliance prior to a written finding being issued, they must still report the actual rate of compliance that was calculated prior to correction in the SPP/APR and when reporting to the public on the performance of the LEA or EIS program or provider. In addition, the state will need to provide an explanation of how they verified the correction of noncompliance through pre-finding correction in the SPP/APR.

¹ As an example, a state analyzed its prior fiscal year data ending June 30 for monitoring purposes on September 30 and identified noncompliance for one program (or LEA). Since the state uses pre-finding correction, the state allowed the program (or LEA) to correct the individual child noncompliance before issuing a written finding. The state then pulled updated data on November 3 to review 1 month of data following identification of noncompliance to verify whether the program (or LEA) was implementing the requirement correctly and at 100 percent compliance. In this case, the state demonstrated correction within 3 months of identification and did not issue a written finding.

Correct Noncompliance

ISSUE WRITTEN NOTIFICATION OF FINDINGS OF NONCOMPLIANCE

When states identify noncompliance, they must notify the LEA or EIS program or provider of the noncompliance in writing as soon as possible. Generally, OSEP expects written findings to be issued no more than 3 months from a state exercising due diligence and reaching a conclusion that the LEA or EIS program or provider is noncompliant with an IDEA requirement. A written notification of findings must include

- a description of the identified noncompliance;
- the IDEA requirement(s) with which the LEA or EIS program or provider is in noncompliance;
- a description of the quantitative and/or qualitative data that support the state's conclusion that there is noncompliance;
- a statement that the noncompliance must be corrected as soon as possible, and in no case later than one year from the date of the state's written notification of findings of noncompliance;
- any required corrective action(s); and
- a timeline for submission of a corrective action plan or evidence of correction.

EXAMINE THE EXTENT OF NONCOMPLIANCE

The State should be able to explain the methodology used to ensure that the type and amount of data

reviewed to determine correction accurately reflect the LEA's or EIS program or provider's level of compliance. Look at the number of instances of noncompliance in proportion to the size of the LEA or EIS program or provider and the number of files reviewed (e.g., 1 out of 5, 1 out of 50) and then consider the following when determining required actions:

- where and with whom the issue is occurring (e.g., at the region or state level; one or more service coordinators or providers, teachers, therapists; one or more programs or schools)
- historical or trend data (e.g., repeat offender)
- contextual factors (e.g., the demonstrated ability of an LEA or EIS program or provider to correct prior noncompliance)
- number of issues/findings of noncompliance

CONSIDER THE ROOT CAUSE(S) OF THE NONCOMPLIANCE

Conduct, or support the LEA or EIS program or provider in conducting, a root cause analysis to determine the contributing factors of the noncompliance in order to ensure that meaningful strategies are developed to ensure timely correction. Root cause analysis focuses on infrastructure issues (e.g., policies and procedures, funding, training and technical assistance, supervision, data, personnel and workforce) and provider practices that are contributing to the noncompliance.

REQUIRE CORRECTION

Require the LEA or EIS program or provider to take action to correct the noncompliance as soon as possible and in no case later than one year

from the date of the state's written notification of findings, including

- revising policies, procedures, and practices that contributed to or resulted in noncompliance;
- developing a corrective action plan that addresses the root causes of the noncompliance (corrective action plans vary based on the amount and type of noncompliance; there is no required format or content for corrective action plans);
- submitting subsequent data to demonstrate correction; and
- establishing associated timelines.

Note: When determining the specific timelines for correction of findings within one year, states may determine that appropriate timelines to correct findings of noncompliance are shorter than the one year. Factors to be considered may include the egregiousness of the findings or the ability to correct the finding in a shorter period of time to meet the requirements of the IDEA.

In determining the steps that the LEA or EIS program or provider must take to correct noncompliance and the amount of data needed to demonstrate correction, states may consider a variety of factors, including

- whether the noncompliance was extensive or found in only a small percentage of files;
- whether the noncompliance showed a denial of a basic right under the IDEA; and
- whether the noncompliance represents an isolated instance in the LEA or EIS program or provider or reflects a long-standing failure to meet IDEA requirements.

Verify Correction of Noncompliance

COLLECT AND REVIEW UPDATED DATA TO VERIFY TIMELY CORRECTION OF NONCOMPLIANCE

As previously described, states must verify the following to determine whether each instance(s) of noncompliance has been corrected as soon as possible but no later than one year from the state's written notification of findings:

- Each individual child-specific instance (not a subset or sample) of previously identified noncompliance has been corrected unless the child is no longer in 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 (child-specific compliance).²
- For timeline requirements, verify that the required actions (e.g., evaluation or assessment and initial IFSP or IEP meeting, IFSP services, transition plan, transition notice, transition conference) were completed (even if after the deadline).
- Updated data and information, such as data and information subsequently collected through monitoring activities or the State's data system, demonstrates that the LEA or EIS program or provider is correctly implementing the specific IDEA regulatory requirements (i.e., there is 100 percent compliance reflected in the updated review of data). Data or evidence may be from subsequent desk reviews, onsite monitoring, or a database. If an LEA or EIS program or provider does not have sufficient updated data due to small program size, the state should use other evidence of change (e.g., revised policies, procedures, and practices; documentation of training provided; changes made to supervision and oversight that ensure compliance).

In addition to ensuring child-specific and systemic correction, states should consider a variety of factors (e.g., root cause, extent or level of noncompliance) in determining whether the identified noncompliance has been corrected.

DOCUMENT VERIFICATION OF CORRECTION

Maintain written documentation of the verification of correction. States should have consistent processes and tools for documenting the verification of correction noncompliance and take action to ensure correction.

If the state determines the noncompliance has not been corrected within the one-year timeline, the state may, but is not required to, issue a new finding of noncompliance to the LEA or EIS program or provider even if the state has already issued a finding to that same LEA or EIS program or provider in the prior year. Ultimately, if the state is unable to verify correction of the noncompliance



² Per OSEP QA 23-01, regardless of an LEA's or EIS program's or provider's obligation to ensure correction for a child who is no longer within the jurisdiction of the LEA or EIS program or provider, states are not relieved of their responsibility to ensure a free and appropriate public education (FAPE) and appropriate early intervention services for the affected child (34 C.F.R. §§ 300.101 (FAPE) and 303.112 (Availability of Early Intervention Services)).

within the one-year timeline, the state may not close the original finding and should impose necessary enforcement actions to ensure correction.

States are required to take certain enforcement action(s) if an LEA or EIS program receives a specific annual determination, which is based on, among other factors, the status of correction of noncompliance. Enforcement actions include, but are not limited to, mandatory technical assistance, increased reporting requirements, requirement of use of funds for specific actions, and a requirement to withhold, in whole or in part, further payments from the IDEA grant. The state must maintain written documentation of subsequent correction, including the date the correction of noncompliance was verified.

For SPP/APR Indicators, Report on Compliance, Correction of Noncompliance, and Verification of Correction of noncompliance.

For SPP/APR indicators, report to OSEP on the verification of correction of noncompliance with SPP/ APR indicators.

ISSUE NOTIFICATION OF THE STATUS OF CORRECTION OF NONCOMPLIANCE

Notify each LEA or EIS program or provider that correction of noncompliance has been verified. Verification of the correction of noncompliance must occur no later than one year from the date of the state's written notification of findings of noncompliance. States may issue the notice of correction beyond the one-year timeline.

TAKE ACTION ON UNCORRECTED NONCOMPLIANCE

As needed, impose additional corrective actions, sanctions, or enforcement actions on an LEA or EIS program or provider that does not correct noncompliance in a timely manner (within one year of identification). States must continue to collect and review updated data to verify subsequent correction (i.e., ensuring that each child-specific instance[s] of noncompliance has been corrected and that the program is implementing IDEA requirement[s] correctly). If an LEA or EIS program or provider is not yet implementing the IDEA requirement(s) correctly, states should identify the cause(s) of continuing noncompliance and take steps to address the continued noncompliance including necessary enforcement actions.

REPORT ACTUAL TARGET DATA

For SPP/APR compliance indicators, report under each indicator in the SPP/APR data that reflect the level of compliance prior to the LEA or EIS program or provider correcting any identified noncompliance, regardless of whether

noncompliance is corrected prior to or following written notification of noncompliance. Also use these data to publicly report the performance of each LEA or EIS program or provider on SPP/APR indicators annually. (This report is due 120 days following submission of the SPP/APR.)

REPORT ON VERIFICATION OF NONCOMPLIANCE

For SPP/APR compliance indicators, report to OSEP on the number of findings of noncompliance verified as corrected within one year of written notification, findings of noncompliance subsequently corrected, and findings not yet verified as corrected.

The content of this product was developed by the National Center for Systemic Improvement (NCSI), the Center for IDEA Fiscal Reporting (CIFR), the IDEA Data Center (IDC), the Center for IDEA Early Childhood Data Systems (DaSy), and the Early Childhood Technical Assistance Center (ECTA) under grants from the US Department of Education, Grant Nos. #H326R190001, #H373F200001, #H373Y190001, #H373Z190002, and H326P220002. However, those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement by the Federal Government. Project Officers: Perry Williams (NCSI), Charles Kniseley and Susan Murray (CIFR), Richelle Davis (IDC), Meredith Miceli and Amy Bae (DaSy). And Julia Martin Eile (ECTA). (March 2024) WestEd is the lead organization for NCSI. For more information about the work of WestEd, NCSI, and their partners, please visit www.ncsi.wested.org and www.wested.org.