Federal Special Education Requirements for States

Accurate as of September 2025

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This document provides an overview of federal requirements related to the implementation of the Individuals with Disabilities Education Act (IDEA) as specified in statute, federal regulations, non-regulatory guidance from the US Department of Education's Office of Special Education Programs (OSEP), and related caselaw from issues litigated in district courts or the US Supreme Court. Note: It is not an exhaustive list of IDEA-related requirements but includes those most frequently queried by state education agencies (SEAs) relative to their authority, in the experience of the authors.

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General Supervision

STATUTE

20 U.S.C. § 1412(a)(11) State educational agency responsible for general supervision

(A) The State educational agency is responsible for ensuring that—

(i) the requirements of this part are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency— (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and (II) meet the educational standards of the State educational agency; and

(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(C) authorizes the Governor, or another individual pursuant to State law, to assign to any public agency in the State the responsibility to ensure that Part B requirements are met for students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

20 U.S.C. § 1413(g)(1)

A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

20 U.S.C. § 1411(f)

Subgrants required. Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 1413 of this title for use in accordance with this subchapter.

Procedure for allocations to local educational agencies. For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate

funds under paragraph (1) as follows: (A) Base Payments: The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 1411(d) of this title as section 1411(d) was then in effect. (B) Allocation of remaining funds: After making allocations under subparagraph (A), the State shall—

(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

Reallocation of funds. If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this subchapter that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

20 U.S.C. § 1232d(b)(3)(A) General Education Provisions Act (GEPA)

The State will adopt and use proper methods of administering each applicable program, including—monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.

REGULATIONS

34 C.F.R. § 300.149 Mirrors language from statute

The State educational agency is responsible for ensuring that—

(i) the requirements of this part are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency— (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and (II) meet the educational standards of the State educational agency; and

(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

EDGAR in 34 C.F.R. § 76.50(c) Oversight related to receiving funds from the Department

Grantees are responsible for monitoring subgrantees consistent with 2 C.F.R. § 200.332.

2 C.F.R. § 200.332(e) Subrecipient monitoring requirement for pass-through entities

A pass-through entity must: (e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved.

34 C.F.R. § 300.705 Subgrants to LEAs

(a) Subgrants required. Each State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under 34 C.F.R. § 300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act for use in accordance with Part B of the Act. Effective with funds that become available on the July 1, 2009, each State must distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities.

(b) Allocations to LEAs. For each fiscal year for which funds are allocated to States under 34 C.F.R. § 300.703, each State shall allocate funds as follows:

(1) Base payments. The State first must award each LEA described in paragraph (a) of this section the amount the LEA would have received under section 611 of the Act for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) of the Act, as that section was then in effect.

(2) Base payment adjustments. For any fiscal year after 1999— (i) If a new LEA is created, the State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under 34 C.F.R. § 300.703(b), currently provided special education by each of the LEAs; (ii) If one or more LEAs are combined into a single new LEA, the State must combine the base allocations of the merged LEAs; (iii) If, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change, the base allocations of affected LEAs must be redistributed among affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 if a State has had its payment reduced under 34 C.F.R. § 300.703(b), currently provided special education by each affected LEA; and (iv) If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under paragraph (b)(1) of this section for the LEAs that would have been responsible for serving children with disabilities now

being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21, or ages 6 through 21 currently provided special education by each of the LEAs. This requirement takes effect with funds that become available on July 1, 2009.

(3) Allocation of remaining funds. After making allocations under paragraph (b)(1) of this section, as adjusted by paragraph (b)(2) of this section, the State must— (i) Allocate 85 percent of any remaining funds to those LEAs on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the LEA's jurisdiction; and (ii) Allocate 15 percent of those remaining funds to those LEAs in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(c) Reallocation of LEA funds.

(1) If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 34 C.F.R. § 300.704.

(2) After an SEA distributes funds under this part to an eligible LEA that is not serving any children with disabilities, as provided in paragraph (a) of this section, the SEA must determine, within a reasonable period of time prior to the end of the carryover period in 34 C.F.R. § 76.709, whether the LEA has obligated the funds. The SEA may reallocate any of those funds not obligated by the LEA to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 34 C.F.R. § 300.704.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

Scope of general supervision – Question A-10: Which educational programs, agencies, institutions, organizations, or EIS providers must a State monitor to fulfill its general supervision responsibilities?

Answer: Under Part B of the IDEA, SEAs are responsible for the general supervision of all educational programs for children with disabilities administered within the State, including each educational program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian

children operated or funded by the Secretary of the Interior). This includes Section 619 (preschool) programs, public charter schools, children with disabilities residing in nursing homes, and educational programs in juvenile and adult correctional facilities. Generally, SEAs monitor the subrecipients of IDEA funds, which can include LEAs, public charter school LEAs, and programs operated by other State agencies, such as correctional agencies. 34 C.F.R. § 300.149(d). The subrecipients, in turn, are responsible for the general supervision of schools or programs within their jurisdiction.

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

Answer: A reasonably designed State general supervision system should include eight integrated components. These components include the following: (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 professional development; (7) Policies, procedures, and practices resulting in effective implementation; and (8) Improvement, correction, incentives, and sanctions. While each State has the flexibility to develop its own model of general supervision and may elect to address the underlying Federal requirements in other ways, it is OSEP's longstanding presumption that an effective system of general supervision, used to monitor LEAs and EIS programs and providers, would at a minimum include these eight components. To be effective, these components should operate as an integrated system to connect, interact, articulate, and inform one another. The overall goal is for the State's general supervision system to effectively address — (1) Improving early intervention and educational results and functional outcomes for infants and toddlers with disabilities and their families, and children with disabilities; (2) Ensuring that LEAs or EIS programs or providers meet the program requirements of the IDEA, with a particular emphasis on those requirements and data that are most closely related to improving educational results and functional outcomes for children with disabilities, and early intervention results and functional outcomes for infants and toddlers with disabilities; and (3) Ensuring that the State has a system that collects and reports valid and reliable data.

Related Federal and State Case Law

Department of Education, (SEA CO 2022)

- State-level complaint filed in 2022 by an Attorney at Disability Law CO, not a Federal or State court case.
- Complaint investigator determined that the SEA violated the IDEA when it failed to ensure that incarcerated youths with disabilities ages 18 to 21 received FAPE and failed to adequately monitor county jails.

Gadsby v. Grasmick, 109 F.3d 940, 943 (4th Cir., 1997)

- An SEA may be held responsible for violations of the IDEA when the state agency "[fails] to comply with its duty to assure that the IDEA's substantive requirements are implemented."

Beard v. Teska, 31 F.3d 942 (10th Cir., 1994)

- Section 1412(a)(11)(A)(i) "does not turn every 'local educational agency' under the statute into the agent of the 'State educational agency' as a matter of federal law, so that the latter automatically becomes legally liable for all transgressions of the former."

Morgan Hill Concerned Parents Association v. California Department of Education, (E.D. Cal., 2013)

- Parents have the right to sue SEAs for violations of their monitoring and compliance obligations. In this case, the violations were specific to naming student files that would be reviewed prior to monitoring, inability to ensure timely and accurate compliance data related to Indicator 8, and failure to investigate state complaints.

Monitoring Responsibilities

STATUTE

20 U.S.C. § 1412(a)(11) State educational agency responsible for general supervision

The State educational agency is responsible for ensuring that:

(i) the requirements of this part are met;

(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—
(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and
(II) meet the educational standards of the State educational agency; and

(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

- Generally, these responsibilities are all assigned to the SEA. However, IDEA permits the Governor, or another individual pursuant to State law, to assign to any public agency in the State the responsibility to ensure that Part B requirements are met for students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

20 U.S.C. § 1416(a) Federal and State Monitoring

(1) In General.—The Secretary shall—
(A) monitor implementation of this part through—

(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

(ii) the State performance plans, described in subsection (b);

(B) enforce this part in accordance with subsection (e); and

(C) require States to— (i) monitor implementation of this part by local educational agencies; and (ii) enforce this part in accordance with paragraph (3) and subsection (e).

(2) Focused Monitoring.—The primary focus of Federal and State monitoring activities describe-d in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring Priorities.—The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive Areas of Review.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

GEPA, 20 U.S.C. § 1232d(b)(3)(A) Assurances

(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Secretary—(3) that the State will adopt and use proper methods of administering each applicable program, including—(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.

20 U.S.C § 1411 (e)(2)(b) Other State-level Activities - Required Activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

REGULATIONS

34 C.F.R. § 300.600 State monitoring and enforcement

(a) The State must—

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in 34 C.F.R. § 300.603(b)(1);

(3) Enforce this part, consistent with 34 C.F.R. § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in 34 C.F.R. §§ 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in 34 C.F.R. §§ 300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in 34 C.F.R. § 300.43 and in 20 U.S.C. § 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance

with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

34 C.F.R. § 300.601 State performance plans and data collection

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 C.F.R. § 300.600(d).

(b) Data collection.

(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

34 C.F.R. § 300.602 State use of targets and reporting

(a) General. Each State must use the targets established in the State's performance plan under 34 C.F.R. § 300.601 and the priority areas described in 34 C.F.R. § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy—

(1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must—(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and (B) Make each of the following items available through public means: the State's performance plan, under 34 C.F.R. § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing

so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies. (ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

34 C.F.R. § 300.603 Secretary's review and determination regarding State performance

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to 34 C.F.R. § 300.602(b)(2).

(b) Determination—

(1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—(i) Meets the requirements and purposes of Part B of the Act; (ii) Needs assistance in implementing the requirements of Part B of the Act; (iii) Needs intervention in implementing the requirements of Part B of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part B of the Act.

(2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

34 C.F.R. § 300.604 Enforcement

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under 34 C.F.R. § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and

other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—(i) The provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time; (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under 34 C.F.R. § 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions: (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year. (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year. (iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention. (iv) Seeks to recover funds under section 452 of GEPA. (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.
(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.
(3) Refers the case to the Office of the Inspector General at the Department of Education.
(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

34 C.F.R. § 300.608 State enforcement

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under 34 C.F.R. § 300.203 for any fiscal year.
(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

2 C.F.R. § 200.329 Monitoring and reporting program performance

(a) Monitoring by the recipient and subrecipient. The recipient and subrecipient are responsible for the oversight of the Federal award. The recipient and subrecipient must monitor their activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient and subrecipient must cover each program, function, or activity. See also 34 C.F.R. § 200.332.
(b) Reporting program performance. The Federal agency must use OMB-approved common information collections (for example, Research Performance Progress Reports) when requesting performance reporting information. The Federal agency or pass-through entity may not collect performance reports more frequently than quarterly unless a specific condition has been implemented in accordance with 34 C.F.R. § 200.208. To the extent practicable, the Federal agency or pass-through entity should align the due dates of performance reports and financial reports. When reporting program performance, the recipient or subrecipient must relate financial data and project or program accomplishments to the performance goals and objectives of the Federal award. Also, the recipient or subrecipient must provide cost information to demonstrate cost-effective practices (for example, through unit cost data) when required by the terms and conditions of the Federal award. In some instances (for example, discretionary research awards), this may be limited to the requirement to submit technical performance reports. Reporting requirements must clearly indicate a standard against which the recipient's or subrecipient's performance can be measured. Reporting requirements should not solicit information from the recipient or subrecipient that is not necessary for the effective monitoring or evaluation of the Federal award. Federal agencies should consult monitoring framework documents such as the agency's Evaluation Plan to make that determination. As noted in OMB Circular A-11, Part 6, Section 280, measures of customer

experience are of co-equal importance as traditional measures of financial and operational performance.

(c) Submitting performance reports.

(1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also 34 C.F.R. § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following: (i) A comparison of accomplishments to the objectives of the Federal award established for the reporting period (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement. (ii) Explanations on why established goals or objectives were not met; and (iii) Additional information, analysis, and explanation of cost overruns or higher-than-expected unit costs.

(d) Construction performance reports. Federal agencies or pass-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) Significant developments. When a significant development that could impact the Federal award occurs between performance reporting due dates, the recipient or subrecipient must notify the Federal agency or pass-through entity. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays, or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) Site visits. The Federal agency or pass-through entity may conduct in-person or virtual site visits as warranted.

(g) Performance report requirement waiver. The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

34 C.F.R. § 300.704 (b) Other State-level activities

Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation; and

(ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

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

Answer: 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). However, where LEA or EIS program or provider data or other available information indicates an area of concern, 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. (See Question B-1.) Regardless of when the State monitors its LEAs or EIS programs or providers, States should inform LEAs or EIS programs or providers of when and how data are being used, including the time period it reflects, for the purposes of determining compliance and identifying noncompliance. (See Question A-5.)

Scope of monitoring and description of integrated monitoring activities (A-3, A-4, and B-3)

Question A-3: What are integrated monitoring activities?

Answer: Integrated monitoring activities are a key component of a State's general supervision system. Specifically, 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. Under IDEA Part B, the SEA must monitor the LEAs located in the State in each of the following priority areas: the provision of FAPE in the least restrictive environment (LRE); general supervision, including effective monitoring; child find; a system of transition services; the use of resolution meetings; mediation; and disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. 34 C.F.R. § 300.600(d). Under IDEA Part C, the LA must monitor each

EIS program or provider located in the State in each of the following priority areas: early intervention services in natural environments; general supervision, including effective monitoring; child find; a system of transition services; the use of resolution sessions (if the State adopts Part B due process hearing procedures under 34 C.F.R. § 303.430(d)(2)); and mediation. 34 C.F.R. § 303.700(d). In addition, State integrated monitoring activities should assess the equitable implementation of IDEA, through examination of local policies, procedures, and evidence of implementation (or practices). Integrated monitoring activities could include the following:

- Interviewing LEA and local program staff, including specialized instructional support personnel, on-site or virtually, and reviewing local policies, procedures, and practices for compliance and improved functional outcomes and results for children with disabilities.
- Conducting interviews and listening sessions with parents of children with disabilities, children with disabilities, and other stakeholders to learn about an LEA's or EIS program's or provider's implementation of IDEA, including functional outcomes and results.
- Analyzing local child find data across the State to determine if there are significant disparities in the groups or communities of children and families who are referred for evaluation or provided services.
- Reviewing information collected through the State's data systems relating to local compliance with IDEA requirements, such as compliance with individualized education program (IEP) and individualized family service plan (IFSP) meeting timelines, evaluation and reevaluation timelines, content of IEPs and IFSPs, early childhood and secondary transition, exiting, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Examining and evaluating performance and results data on specific IDEA requirements, such as early childhood outcomes, family outcomes and involvement, graduation and drop-out, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Analyzing assessment data to determine if the data represent improved results for children with disabilities on regular assessments and alternate assessments aligned with alternate academic achievement standards compared with the achievement of all children.
- Evaluating an LEA's or EIS program's or provider's policies, procedures, and practices for fiscal management, or reviewing local budget and expenditure data for a particular year to ensure that IDEA funds are distributed and expended in accordance with Federal fiscal requirements.
- Examining information gleaned from the State's dispute resolution system, including State complaints and due process complaints. The State's complaint resolution system is a tool for States to identify and correct noncompliance as stated in Question A-7. Facts determined through the State's resolution of State complaints and by impartial hearing officers when

adjudicating due process complaints can provide the State with important information about an LEA's or EIS program's or provider's implementation of IDEA requirements.

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)?

Answer: 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. Thus, solely relying on an LEA's or EIS program's performance on the SPP/APR indicators would not constitute a reasonably designed general supervision system. While the SPP/APR indicators were designed to measure important aspects of State compliance with, and performance under, IDEA, some requirements related to the fundamental rights of children with disabilities and their families are not represented in the indicators. For example, the SPP/APR does not measure the extent to which children with disabilities are receiving the IDEA services as prescribed in their IEPs or IFSPs, or the provision of IDEA services for children with disabilities residing in nursing homes or correctional facilities. Thus, solely relying on an LEA's or EIS program's performance on SPP/APR indicators would not constitute a reasonably designed general supervision system.

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?

Answer: Although IDEA does not specify the type and amount of information the State should review when monitoring LEAs or EIS programs or providers for compliance with IDEA requirements, the OMB Uniform Guidance requires grantees to maintain effective controls that provide a reasonable assurance of compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. 2 C.F.R. § 200.303(a). The State should be able to explain the methodology used to ensure that the type and amount of data accurately reflect the LEA's or EIS program's or provider's level of compliance. The type of information reviewed may vary depending on the specific requirement, but could include data collected as part of a State's data system; information contained in the early intervention record of an infant or toddler with a disability or the education record of a child with a disability; interviews conducted with relevant staff, parents, and others; as well as a review of LEA or EIS program or provider written policies, procedures, and practices (see also Question B-2). Finally, 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.

States may not use a threshold of less than 100% when determining compliance – Question B-8: May a State use a threshold of less than 100 percent compliance when determining an LEA or EIS program's or provider's compliance with IDEA requirements?

Answer: No. A State may not establish a threshold of less than 100 percent for determining an LEA or EIS program's or provider's compliance. If a State determines an LEA's or EIS program's or provider's compliance level is less than 100 percent, the State must issue a finding and require correction of the noncompliance, unless the exceptions set out in Questions B-11 and B-12 apply. This is true for any general supervision component the State uses to evaluate compliance when monitoring, such as integrated monitoring activities, a data system, dispute resolution, fiscal management, or any other mechanisms to determine whether the LEA's or EIS program's or provider's are in compliance with IDEA requirements. For example, if a State, using data from its data system, determines that an LEA's compliance with initial evaluation timelines is 95 percent, the State must make a finding, unless the exceptions set out in Questions B-11 and B-12 apply, because the LEA's compliance level is below 100 percent.

Parameters around SEA's review of self-assessments when LEA submits them to SEA – 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?

Answer: It depends. A State must issue a finding 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, unless the exceptions set out in Questions B-11 and B-12 apply. This includes when the State confirms that the information in a self-assessment or self-review constitutes noncompliance. If a State receives the results of a self-assessment or self-review in which an LEA or EIS program or provider acknowledges noncompliance, the State must first exercise due diligence and confirm in a reasonable amount of time whether the information submitted represents noncompliance. For example, the State should confirm that the information in the self-assessment is accurate, and the LEA's or EIS program's or provider's interpretation of the applicable requirements is correct. If the State, through its due diligence, confirms in a reasonable amount of time that the information is accurate and the LEA's or EIS program's or provider's interpretation is correct, the State must issue a finding and ensure correction, unless the exceptions set out in Questions B-11 and B-12 apply.

Related Federal and State Case Law

Emma C. et al. v. Delaine Eastin et al., C:96-4179 TEH (N.D. Cal, Originally filed in 1996)

- SEAs play an important role in monitoring and oversight of LEAs and can be subject to court involvement in the approval of their statewide monitoring system. The court continues to review the SEA's compliance regarding the consent decree relative to CDE's monitoring system.

Morgan Hill Concerned Parents Association v. California Department of Education, (E.D. Cal., 2013)

- Parents have the right to sue SEAs for violations of their monitoring and compliance obligations. In this case, the violations were specific to naming student files that would be reviewed prior to monitoring, inability to ensure timely and accurate compliance data related to Indicator 8, and failure to investigate state complaints.

Identification of Noncompliance

STATUTE

20 U.S.C. § 1412(a)(11) State educational agency responsible for general supervision

(A) The State educational agency is responsible for ensuring that—
(i) the requirements of this part are met;
(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency— (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and (II) meet the educational standards of the State educational agency; and
(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(C) Generally, these responsibilities are all assigned to the SEA. However, IDEA permits the Governor, or another individual pursuant to State law, to assign to any public agency in the State the responsibility to ensure that Part B requirements are met for students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

20 U.S.C. § 1416(a) Federal and State Monitoring

(1) In general. The Secretary shall—(A) monitor implementation of this subchapter through—(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11) of this title; and (ii) the State performance plans, described in subsection (b); (B) enforce this subchapter in accordance with subsection (e); and (C) require States to— (i) monitor implementation of this subchapter by local educational agencies; and (ii) enforce this subchapter in accordance with paragraph (3) and subsection (e).

(2) Focused monitoring. The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—(A) improving educational results and functional outcomes for all children with disabilities; and (B) ensuring that States meet the program requirements under this subchapter, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring priorities. The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: (A) Provision of a free appropriate public education in the least restrictive environment. (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title. (C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive areas of review. The Secretary shall consider other relevant information and data, including data provided by States under section 1418 of this title.

REGULATIONS

34 C.F.R. § 300.149 SEA responsibility for general supervision

(a) The SEA is responsible for ensuring—(1) That the requirements of this part are carried out; and (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and (ii) Meets the educational standards of the SEA (including the requirements of this part). (3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 C.F.R. §§ 300.600 through 300.602 and 34 C.F.R. §§ 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

Credible allegation/"area of concern" – Question B-1: What is an "area of concern"?

Answer: Although not defined in IDEA and its implementing regulations, as used in this document and reflected in OSEP's longstanding practice, 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. Such credible allegations (e.g., information and awareness) may come from integrated monitoring activities, data reviews, grant reviews, stakeholder calls, media reports, dispute resolution systems, or other mechanisms that relate to IDEA implementation.

Credible allegation/"area of concern" – 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?

Answer: The State must ensure that its general supervision system includes policies, procedures, and practices that are reasonably designed to consider and address areas of concern (i.e., credible allegations of LEA or EIS program or provider noncompliance) in a timely manner. 34 C.F.R. §§ 300.149 and 303.120. 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. As the grantees for IDEA's three formula grants (i.e., Part B Section 611, Part B Section 619, and Part C), States are responsible for monitoring (see Question A-1) and are required to comply with IDEA requirements, and expected to follow OSEP's published interpretations. When applying for IDEA Part B and Part C grant funds, States assure the Department that they have in effect policies, procedures, and practices that are consistent with the IDEA statutory and regulatory requirements. When a State is made aware of an area of concern with an LEA or EIS program's or provider's implementation of IDEA, the State must conduct its due diligence in a timely manner to address the area of concern and reach a conclusion in a reasonable amount of time. 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. 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.) If, through its due diligence, the State determines that the LEA or EIS program or provider is out of compliance with an applicable IDEA requirement, the State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA or EIS program or provider. This finding must be timely issued,

generally within three months of the State exercising due diligence, regarding the area of concern, and reaching a conclusion in a reasonable amount of time 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).

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

Answer: OSEP's longstanding position is that, for a State to ensure proper notice to its LEAs or EIS programs or providers and promote timely correction of noncompliance, the finding should include:

- A description of the identified noncompliance;
- The statutory or regulatory IDEA requirement(s) with which the LEA or EIS program or provider is in noncompliance;
- A description of the quantitative and/or qualitative data (i.e., information, supporting 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 noncompliance;
- Any required corrective action(s); and
- A timeline for submission of a corrective action plan or evidence of correction.

Issue a written identification of noncompliance to LEA generally within three months of identification – 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?

Answer: The State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA or EIS program or provider, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time 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). 34 C.F.R. §§ 300.149 and 303.120.

Pre-finding correction – Question B-11: What is "pre-finding correction"?

Answer: 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. If the State is able to verify prior to issuing a finding that an LEA or EIS program or provider: (1) 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 such as data subsequently collected through monitoring or the State's data system (systemic compliance); and (2) 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 (child-specific compliance) (see Question B-10), then this would be considered "pre-finding correction." A State may not use this flexibility to allow its LEAs or EIS programs or providers an indiscriminate amount of time, generally within three months, to correct any noncompliance prior to a finding being issued (see Question B-7).

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

Answer: It is OSEP's longstanding position that 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 and the State verifies the correction based on a review of updated data and evidence that each individual instance of child-specific noncompliance has been corrected. (See also Question B-15.) As stated in the answer to Question B-11, 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 in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, and before the State has issued the finding. While the State is not required to issue a written notification documenting the opportunity to correct the noncompliance under these circumstances, it should maintain documentation of the nature and extent of the noncompliance. Further, the State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected each individual instance of child-specific noncompliance, if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

Related Federal and State Case Law

None found

Correction of Noncompliance

Statute

20 U.S.C. § 1416(a) Federal and State Monitoring

(1) In general. The Secretary shall—(A) monitor implementation of this subchapter through—(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11) of this title; and (ii) the State performance plans, described in subsection (b); (B) enforce this subchapter in accordance with subsection (e); and (C) require States to—(i) monitor implementation of this subchapter by local educational agencies; and (ii) enforce this subchapter in accordance with paragraph (3) and subsection (e).

(2) Focused monitoring. The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—(A) improving educational results and functional outcomes for all children with disabilities; and (B)

ensuring that States meet the program requirements under this subchapter, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring priorities. The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: (A) Provision of a free appropriate public education in the least restrictive environment. (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 1401(34) and 1437(a)(9) of this title. (C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive areas of review. The Secretary shall consider other relevant information and data, including data provided by States under section 1418 of this title.

20 U.S.C. § 1232d(b)(3)(A) GEPA requires documentation of program implementation for audit purposes

(b) Assurances. An application submitted under subsection (a) shall set forth assurances, satisfactory to the Secretary— (3) that the State will adopt and use proper methods of administering each applicable program, including—(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law.

REGULATIONS

34 C.F.R. § 300.600(e) State monitoring and enforcement

In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

34 C.F.R. § 76.104

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.
(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.
(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.
(8) That the plan is the basis for State operation and administration of the program.

2 C.F.R. § 200.303(a) Internal Controls

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

34 C.F.R. § 76.731 Records related to compliance

A State and a subgrantee shall keep records to show its compliance with program requirements.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

Verification of correction of noncompliance: (1) each individual case and (2) current implementation of regulatory requirements – Question B-10: What is the standard for correction of noncompliance?

Answer: OSEP's longstanding position, first described in OSEP Memo 09-02, is that, in order to demonstrate that noncompliance has been corrected, the State must verify that the LEA or EIS program or provider: (1) 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 (systemic compliance); and (2) 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 (child-specific compliance). The State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected each individual case of the previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance

(child-specific compliance), if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

Pre-finding correction – Question B-11: What is "pre-finding correction"?

Answer: 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. If the State is able to verify prior to issuing a finding that an LEA or EIS program or provider: (1) 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 such as data subsequently collected through monitoring or the State's data system (systemic compliance); and (2) 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 (child-specific compliance) (see Question B-10), then this would be considered "pre-finding correction." A State may not use this flexibility to allow its LEAs or EIS programs or providers an indiscriminate amount of time, generally within three months, to correct any noncompliance prior to a finding being issued (see Question B-7).

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

Answer: It is OSEP's longstanding position that 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 and the State verifies the correction based on a review of updated data and evidence that each individual instance of child-specific noncompliance has been corrected. (See also Question B-15.) As stated in the answer to Question B-11, 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 in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, and before the State has issued the finding. While the State is not required to issue a written notification documenting the opportunity to correct the noncompliance under these circumstances, it should maintain documentation of the nature and extent of the noncompliance. Further, the State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected each individual instance of child-specific noncompliance, if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

Implications of longstanding noncompliance – Question B-17: What factors should a State consider if an LEA or EIS program or provider has longstanding noncompliance with the IDEA requirements?

Answer: If an LEA or EIS program or provider did not correct identified noncompliance in a timely manner (i.e., within one year from the written notification

of noncompliance), the State must still verify that the noncompliance was subsequently corrected. If an LEA or EIS program or provider is not yet correctly implementing the statutory or regulatory requirement(s), the State needs to identify the cause(s) of continuing noncompliance and take steps to address the continued lack of compliance including, as appropriate, enforcement actions outlined in Section E, State Enforcement Through Determinations and Other Methods. When determining what further action is needed to support the LEA or EIS program or provider in achieving compliance, States should evaluate and look for data trends and patterns, which will provide the State information on the root cause of the noncompliance. 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 has not verified that the noncompliance has been corrected within the one-year timeline, the State may not close the original finding and should impose additional corrective actions, if necessary. The failure of an LEA or EIS program or provider to correct noncompliance within IDEA's one-year timeline could have serious implications for ensuring the provision of FAPE to children with disabilities under Part B and the provision of appropriate early intervention services to infants and toddlers with disabilities and their families under Part C. OSEP expects that a State would consider its LEA's or EIS program's or provider's adherence to IDEA's timely correction requirements before making a subgrant award under Part B and in some States, Part C, or before entering into a contract for early intervention services under Part C.

Related Federal and State Case Law

M.H. by K.H. v. Mount Vernon City Sch. Dist. (S.D.N.Y., Mar. 3, 2014)

- SEAs may be added to a case if they fail to impose corrective action or withhold funds from LEAs despite knowledge of ongoing noncompliance.

Corey H. vs. The Board of Education of the City of Chicago and the Illinois Board of Education (Northern District of Illinois, 1998)

- SEA violated the least restrictive environment (LRE) requirement because while it had informed the LEA that it was out of compliance, it failed to monitor and enforce the LRE provision of the IDEA.

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

Statute

20 U.S.C. §§ 1416(a)(3)–(4) Federal and State Monitoring.

(3) Monitoring Priorities —The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using

quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

(A) Provision of a free appropriate public education in the least restrictive environment.

(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive Areas of Review.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

20 U.S.C. § 1416(b) State performance plans

(1) Plan. (A) In general. Not later than 1 year after December 3, 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this subchapter and describes how the State will improve such implementation. (B) Submission for approval. Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c). (C) Review. Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

(2) Targets. (A) In general. As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3). (B) Data collection. (i) In general. Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3). (ii) Rule of construction. Nothing in this chapter shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this subchapter. (C) Public reporting and privacy. (i) In general. The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this subchapter. (ii) Report. (I) Public report. The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies. (II) State performance report. The State shall report annually to the Secretary on the performance of the State under the State's performance plan. (iii) Privacy. The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable

information about individual children or where the available data is insufficient to yield statistically reliable information.

REGULATIONS

34 C.F.R. § 300.601 State performance plans and data collection

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.

(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.

(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.

(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 C.F.R. § 300.600(d).

(b) Data collection.

(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

34 C.F.R. § 300.602 State use of targets and reporting

(a) General. Each State must use the targets established in the State's performance plan under 34 C.F.R. § 300.601 and the priority areas described in 34 C.F.R. § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy—

(1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must—(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and (B) Make each of the following items available through public means: the State's performance plan, under 34 C.F.R. § 300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA

located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies. (ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan. (3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

OSEP Guidance

The specific indicators 1–18 and measurement table to meet the priorities stipulated in IDEA as well as implementing regulations are cleared through OMB information collection package. It is reauthorized every three years for the six-year cycle.

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

An effective general supervision system should, at a minimum, include the eight components identified above, only one of which is the SPP/APR – Question A-2: What does OSEP consider to be the necessary components of a reasonably designed State general supervision system?

Answer: A reasonably designed State general supervision system should include eight integrated components. These components include the following: (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 professional development; (7) Policies, procedures, and practices resulting in effective implementation; and (8) Improvement, correction, incentives, and sanctions. While each State has the flexibility to develop its own model of general supervision and may elect to address the underlying Federal requirements in other ways, it is OSEP's longstanding presumption that an effective system of general supervision, used to monitor LEAs and EIS programs and providers, would at a minimum include these eight components. To be effective, these components should operate as an integrated system to connect, interact, articulate, and inform one another. The overall goal is for the State's general supervision system to effectively address — (1) Improving early intervention and educational results and functional outcomes for infants and toddlers with disabilities and their families, and children with disabilities; (2) Ensuring that LEAs or EIS programs or providers meet the program requirements of the IDEA, with a particular emphasis on those requirements and data that are most closely related to improving educational results and functional outcomes for children with disabilities, and early intervention results and functional outcomes for infants and toddlers with disabilities; and (3) Ensuring that the State has a system that collects and reports valid and reliable data.

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

Answer: "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). OSEP refers to a "database" or "data system" as an electronic system used by the State for collecting, maintaining, and storing LEA or EIS program or provider data. Regardless of the data source (State monitoring or State database), States must collect valid and reliable data for the purpose of meeting Federal IDEA reporting requirements, including those under IDEA Section 618 and under IDEA Sections 616 and 642, such as the SPP/APR. In addition, States must report on data for those indicators for each LEA or EIS program at least once during the six-year period of the SPP/APR package, including the status of correction for any identified noncompliance. 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.

Related Federal and State Case Law

Morgan Hill Concerned Parents Association v. California Department of Education, (E.D. Cal., 2013)

- Parents have the right to sue SEAs for violations of their monitoring and compliance obligations. In this case, the violations were specific to naming student files that would be reviewed prior to monitoring, inability to ensure timely and accurate compliance data related to Indicator 8, and failure to investigate state complaints.

SEA Determinations by OSEP

This requirement was added in 2004 reauthorization; first determinations were made by OSEP in 2007.

Statute

20 U.S.C. § 1416(c) Approval process

(1) Deemed approval. The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

(2) Disapproval. The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

(3) Notification. If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—(A) give the State notice and an opportunity for a hearing; and (B) notify the State of the finding, and in such notification shall—(i) cite the specific provisions in the plan that do not meet the requirements; and (ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

(4) Response. If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or (B) the expiration of the 120-day period described in paragraph (1).

(5) Failure to respond. If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

20 U.S.C. § 1416(d) Secretary's review and determination

(1) Review. The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) Determination. (A) In general. Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—(i) meets the requirements and purposes of this subchapter; (ii) needs assistance in implementing the requirements of this subchapter; (iii) needs intervention in implementing the requirements of this subchapter; or (iv) needs substantial intervention in implementing the requirements of this subchapter. (B) Notice and opportunity for a hearing For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

20 U.S.C. § 1416(e) Enforcement

(1) Needs assistance. If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this subchapter, the Secretary shall take 1 or more of the following actions: (A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—(i) the provision of advice by experts to address the areas in which the State needs

assistance, including explicit plans for addressing the area for concern within a specified period of time; (ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under subchapter IV, and private providers of scientifically based technical assistance. (B) Direct the use of State-level funds under section 1411(e) of this title on the area or areas in which the State needs assistance. (C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this subchapter.

(2) Needs intervention. If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this subchapter, the following shall apply: (A) The Secretary may take any of the actions described in paragraph (1). (B) The Secretary shall take 1 or more of the following actions: (i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year. (ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act [20 U.S.C. 1234f], if the Secretary has reason to believe that the State cannot correct the problem within 1 year. (iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention. (iv) Seek to recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a]. (v) Withhold, in whole or in part, any further payments to the State under this subchapter pursuant to paragraph (5). (vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) Needs substantial intervention. Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this subchapter or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this subchapter, the Secretary shall take 1 or more of the following actions: (A) Recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a]. (B) Withhold, in whole or in part, any further payments to the State under this subchapter. (C) Refer the case to the Office of the Inspector General at the Department of Education. (D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) Opportunity for hearing. (A) Withholding funds. Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved. (B) Suspension. Pending the outcome of any hearing to withhold payments under

subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this subchapter, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this subchapter should not be suspended.

(5) Report to Congress. The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) Nature of withholding. (A) Limitation. If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or (ii) that the State educational agency shall not make further payments under this subchapter to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2). (B) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—(i) payments to the State under this subchapter shall be withheld in whole or in part; and (ii) payments by the State educational agency under this subchapter shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

(7) Public attention. Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) Judicial review. (A) In general. If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 1412 of this title, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28. (B) Jurisdiction; review by United States Supreme Court. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. (C) Standard of review. The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous

action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

Regulations

34 C.F.R. § 300.601 State performance plans and data collection

(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation. (1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act. (2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary. (3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 C.F.R. § 300.600(d).

(b) Data collection.

(1) Each State must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the State performance plans.

(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.

(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.

34 C.F.R. § 300.602 State use of targets and reporting.

(a) General. Each State must use the targets established in the State's performance plan under 34 C.F.R. § 300.601 and the priority areas described in 34 C.F.R. § 300.600(d) to analyze the performance of each LEA.

(b) Public reporting and privacy—

(1) Public report. (i) Subject to paragraph (b)(1)(ii) of this section, the State must—(A) Report annually to the public on the performance of each LEA located in the State on the targets in the State's performance plan as soon as practicable but no later than 120 days following the State's submission of its annual performance report to the Secretary under paragraph (b)(2) of this section; and (B) Make each of the following items available through public means: the State's performance plan, under §300.601(a); annual performance reports, under paragraph (b)(2) of this section; and the State's annual reports on the performance of each LEA located in the State, under paragraph (b)(1)(i)(A) of this section. In doing so, the State

must, at a minimum, post the plan and reports on the SEA's Web site, and distribute the plan and reports to the media and through public agencies. (ii) If the State, in meeting the requirements of paragraph (b)(1)(i) of this section, collects performance data through State monitoring or sampling, the State must include in its report under paragraph (b)(1)(i)(A) of this section the most recently available performance data on each LEA, and the date the data were obtained.

(2) State performance report. The State must report annually to the Secretary on the performance of the State under the State's performance plan.

(3) Privacy. The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

34 C.F.R. § 300.603 Secretary's review and determination regarding State performance.

(a) Review. The Secretary annually reviews the State's performance report submitted pursuant to §300.602(b)(2).

(b) Determination—(1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—(i) Meets the requirements and purposes of Part B of the Act; (ii) Needs assistance in implementing the requirements of Part B of the Act; (iii) Needs intervention in implementing the requirements of Part B of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part B of the Act. (2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

34 C.F.R. § 300.604 Enforcement

(a) Needs assistance. If the Secretary determines, for two consecutive years, that a State needs assistance under 34 C.F.R. § 300.603(b)(1)(ii) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

(1) Advises the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such technical assistance may include—(i) The provision of advice by experts to address the areas in which the State

needs assistance, including explicit plans for addressing the area for concern within a specified period of time; (ii) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

(2) Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.

(3) Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.

(b) Needs intervention. If the Secretary determines, for three or more consecutive years, that a State needs intervention under 34 C.F.R. § 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

(1) The Secretary may take any of the actions described in paragraph (a) of this section.

(2) The Secretary takes one or more of the following actions: (i) Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year. (ii) Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year. (iii) For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention. (iv) Seeks to recover funds under section 452 of GEPA. (v) Withholds, in whole or in part, any further payments to the State under Part B of the Act. (vi) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(c) Needs substantial intervention. Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) Report to Congress. The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

34 C.F.R. § 300.608 State enforcement

(a) If an SEA determines that an LEA is not meeting the requirements of Part B of the Act, including the targets in the State's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under 34 C.F.R. § 300.203 for any fiscal year.

(b) Nothing in this subpart shall be construed to restrict a State from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act.

OSEP Guidance

How the Department Made Determinations (June 20, 2025)

OSEP further sets factors that are used to make determinations, including:

- The calculation method used for determinations
- Cutoff scores and applicable determinations

Related Federal and State Case Law

None found

LEA Determinations by State Education Agencies

Statute

20 U.S.C. § 1416(a) Federal and State Monitoring

(1) In General.—The Secretary shall—

(A) monitor implementation of this part through—

(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

(ii) the State performance plans, described in subsection (b);

(B) enforce this part in accordance with subsection (e); and

(C) require States to—

(i) monitor implementation of this part by local educational agencies; and

(ii) enforce this part in accordance with paragraph (3) and subsection (e).

(2) Focused Monitoring.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

(A) improving educational results and functional outcomes for all children with disabilities; and

(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(3) Monitoring Priorities.—The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas: (A) Provision of a free appropriate public education in the least restrictive environment. (B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9). (C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(4) Permissive Areas Of Review.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

20 U.S.C. § 1416(e) Enforcement

(1) Needs assistance. If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this subchapter, the Secretary shall take 1 or more of the following actions: (A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time; (ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research; (iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and (iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under subchapter IV, and private providers of scientifically based technical assistance. (B) Direct the use of State-level funds under section 1411(e) of this title on the area or areas in which the

State needs assistance. (C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this subchapter.

(2) Needs intervention. If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this subchapter, the following shall apply: (A) The Secretary may take any of the actions described in paragraph (1). (B) The Secretary shall take 1 or more of the following actions: (i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year. (ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act [20 U.S.C. 1234f], if the Secretary has reason to believe that the State cannot correct the problem within 1 year. (iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 1411(e) of this title, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention. (iv) Seek to recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a]. (v) Withhold, in whole or in part, any further payments to the State under this subchapter pursuant to paragraph (5). (vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(3) Needs substantial intervention. Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this subchapter or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this subchapter, the Secretary shall take 1 or more of the following actions: (A) Recover funds under section 452 of the General Education Provisions Act [20 U.S.C. 1234a]. (B) Withhold, in whole or in part, any further payments to the State under this subchapter. (C) Refer the case to the Office of the Inspector General at the Department of Education. (D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(4) Opportunity for hearing. (A) Withholding funds. Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved. (B) Suspension. Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this subchapter, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this subchapter should not be suspended.

(5) Report to Congress. The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

(6) Nature of withholding. (A) Limitation. If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or (ii) that the State educational agency shall not make further payments under this subchapter to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2). (B) Withholding until rectified. Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—(i) payments to the State under this subchapter shall be withheld in whole or in part; and (ii) payments by the State educational agency under this subchapter shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

(7) Public attention. Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

(8) Judicial review. (A) In general. If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 1412 of this title, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28. (B) Jurisdiction; review by United States Supreme Court. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. (C) Standard of review. The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

REGULATIONS

34 C.F.R. § 300.600(a)(2)

(a) The State must—(1) Monitor the implementation of this part; (2) Make determinations annually about the performance of each LEA using the categories in §300.603(b)(1); (3) Enforce this part, consistent with 34 C.F.R. § 300.604, using appropriate enforcement mechanisms, which must include, if

applicable, the enforcement mechanisms identified in 34 C.F.R. § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and (4) Report annually on the performance of the State and of each LEA under this part, as provided in 34 C.F.R. §§ 300.602(b)(1)(i)(A) and (b)(2).

34 C.F.R. § 300.603(b) Secretary's review and determination regarding State performance

(b) Determination—(1) General. Based on the information provided by the State in the State's annual performance report, information obtained through monitoring visits, and any other public information made available, the Secretary determines if the State—(i) Meets the requirements and purposes of Part B of the Act; (ii) Needs assistance in implementing the requirements of Part B of the Act; (iii) Needs intervention in implementing the requirements of Part B of the Act; or (iv) Needs substantial intervention in implementing the requirements of Part B of the Act. (2) Notice and opportunity for a hearing. (i) For determinations made under paragraphs (b)(1)(iii) and (b)(1)(iv) of this section, the Secretary provides reasonable notice and an opportunity for a hearing on those determinations. (ii) The hearing described in paragraph (b)(2) of this section consists of an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should not make the determination described in paragraph (b)(1) of this section.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

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?

Answer: Yes. Pursuant to Section 616(a) of IDEA, States must use the same four determination categories that OSEP is required to use with States: meets requirements, needs assistance, needs intervention, and needs substantial intervention, in accordance with 34 C.F.R. §§ 300.603(b) and 303.703(b).

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

Answer: When making an annual determination on the performance of each LEA under Part B, or EIS program under Part C, consistent with IDEA and OSEP's longstanding guidance, 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's or EIS program's compliance with IDEA, including any relevant audit findings. Additionally, in developing its determinations process (including the factors the State will consider

when making annual determinations), the State should consider stakeholder input, including input from parents, children with disabilities, LEAs or EIS programs or providers, local-level staff, teachers, specialized instructional support personnel, Section 619 (preschool) coordinators, related service providers, the SAP established under Part B, the SICC established under Part C, PTI leadership and staff, local and statewide advocacy groups and advisory committees, and others. For example, the SAP as described in 34 C.F.R. §§ 300.167 through 300.169 (Part B) and the SICC as described in 34 C.F.R. §§ 303.600 through 300.605 (Part C) provide States with a mechanism to obtain stakeholder input and feedback on a wide variety of issues related to IDEA implementation, including the State's determinations process.

Question D-3: What other factors may a State consider when making annual determinations of the performance of LEAs or EIS programs?

Answer: The Department encourages States to use results and functional outcomes data when making their annual LEA or EIS program determinations. These data could include information collected and reported under results indicators in the State's SPP/APR or other performance measures (see Question C-1). A State may also want to consider any monitoring findings it has made that are not already included in data submitted under the SPP/APR indicators (e.g., noncompliance identified with an IDEA requirement unrelated to an SPP/APR indicator). Additionally, a State may establish criteria that preclude a "meets requirements" determination for an LEA or EIS program under certain circumstances. Such circumstances could include an LEA or EIS program whose grant award or contract is under Specific Conditions imposed by the State. The State's criteria should be transparent so that stakeholders, including LEAs or EIS programs, are aware of the standards that the State is using to make these critical decisions, which could lead to enforcement actions.

Question D-4: Does IDEA provide LEAs or EIS programs with the opportunity for a hearing regarding the annual determination?

Answer: Although the IDEA affords States the opportunity for a hearing on their annual determinations under Sections 616(d)(2)(B) and 642, the IDEA and its implementing regulations do not explicitly provide that an LEA or EIS program has a right to a hearing regarding its annual determination. Nevertheless, the State may establish a process similar to that in IDEA Sections 616(d)(2)(B) and 642 for its LEAs and EIS programs.

Question D-5: Are States required to issue annual determinations for their LEAs or EIS programs during disasters (e.g., human-made, health-related, or natural)?

Answer: Generally, yes. States should continue to make annual determinations during a disaster. However, States may consider the impact of the disaster in making these determinations. The State may consider a variety of factors when determining any enforcement actions, including the impact of the disaster on the provision of services, and the specific nature and extent of the noncompliance in framing an appropriate corrective action on an LEA's or EIS program's annual determination. In addition, if the State determines that a requirement was not met solely due to the disaster (e.g., a service could not be provided because of public

health restrictions imposed as a result of the disaster), it may determine that no changes to policies, procedures, and practices are required, while ensuring that the appropriate services are provided, including, as appropriate, the consideration and determination of compensatory services.

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

Answer: States must make annual determinations regarding the performance of LEAs or EIS programs. While IDEA does not include a specific timeline, OSEP encourages States to 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 LEA subgrants are issued under Part B or before the LA provides funds under subawards to its EIS programs or signs or renews contracts with its EIS providers under Part C. 34 C.F.R. §§ 300.604(b)(2)(v) and 300.604(c)(2); 303.704(b)(2)(iv) and 303.704(c)(2).

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

Answer: No. IDEA does not require a State to make its annual determinations for LEAs or EIS programs available to the public. However, 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's or EIS program's actual data compare to the State's targets.

Related Federal and State Case Law

None found

Significant Disproportionality

Statute

20 U.S.C. § 1412(a)(24) Overidentification and disproportionality

The State has in effect, consistent with the purposes of this chapter and with section 1418(d) of this title, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 1401 of this title.

20 U.S.C. § 1418(d) Disproportionality

(1) In general. Each State that receives assistance under this subchapter, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—(A) the identification of children as children with disabilities, including the identification of children as children with disabilities

in accordance with a particular impairment described in section 1401(3) of this title; (B) the placement in particular educational settings of such children; and (C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Review and revision of policies, practice, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this chapter; (B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 1413(f) of this title to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and (C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

REGULATIONS

34 C.F.R. § 300.173 -- Overidentification and disproportionality

The State must have in effect, consistent with the purposes of this part and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. § 300.8.

34 C.F.R. § 300.646 – Disproportionality

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, must provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to—(1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; (2) The placement in particular educational settings of these children; and (3) The incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions.

(b) Methodology. The State must apply the methods in 34 C.F.R. § 300.647 to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State under paragraph (a) of this section.

(c) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities or the placement in particular

educational settings, including disciplinary removals of such children, in accordance with paragraphs (a) and (b) of this section, the State or the Secretary of the Interior must—(1) Provide for the annual review and, if appropriate, revision of the policies, practices, and procedures used in identification or placement in particular education settings, including disciplinary removals, to ensure that the policies, practices, and procedures comply with the requirements of the Act. (2) Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph (c)(1) of this section consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 C.F.R. part 99, and Section 618(b)(1) of the Act.

(d) Comprehensive coordinated early intervening services. Except as provided in paragraph (e) of this section, the State or the Secretary of the Interior shall require any LEA identified under paragraphs (a) and (b) of this section to reserve the maximum amount of funds under section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality. (1) In implementing comprehensive coordinated early intervening services an LEA—(i) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports. (ii) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality. (iii) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups). (2) An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly overidentified under paragraph (a) or (b) of this section, including—(i) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and (ii) Children with disabilities. (3) An LEA may not limit the provision of comprehensive coordinated early intervening services under this paragraph to children with disabilities.

(e) Exception to comprehensive coordinated early intervening services. The State or the Secretary of the Interior shall not require any LEA that serves only children with disabilities identified under paragraphs (a) and (b) of this section to reserve funds to provide comprehensive coordinated early intervening services.

(f) Rule of construction. Nothing in this section authorizes a State or an LEA to develop or implement policies, practices, or procedures that result in actions

that violate the requirements of this part, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

34 C.F.R. § 300.647 – Determining significant disproportionality

(a) Definitions. (1) Alternate risk ratio is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the State. (2) Comparison group consists of the children in all other racial or ethnic groups within an LEA or within the State, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality. (3) Minimum cell size is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups. (4) Minimum n-size is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups. (5) Risk is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA. (6) Risk ratio is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA. (7) Risk ratio threshold is a threshold, determined by the State, over which disproportionality based on race or ethnicity is significant under 34 C.F.R. § 300.646(a) and (b).

(b) Significant disproportionality determinations. In determining whether significant disproportionality exists in a State or LEA under 34 C.F.R. § 300.646(a) and (b)—(1)(i) The State must set a: (A) Reasonable risk ratio threshold; (B) Reasonable minimum cell size; (C) Reasonable minimum n-size; and(D) Standard for measuring reasonable progress if a State uses the flexibility described in paragraph (d)(2) of this section. (ii) The State may, but is not required to, set the standards set forth in paragraph (b)(1)(i) of this section at different levels for each of the categories described in paragraphs (b)(3) and (4) of this section. (iii) The standards set forth in paragraph (b)(1)(i) of this section: (A) Must be based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and (B) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act. (iv) When monitoring for reasonableness under paragraph (b)(1)(iii)(B) of this section, the Department finds that the following are presumptively reasonable: (A) A minimum cell size under paragraph (b)(1)(i)(B) of this section no greater than 10; and (B) A minimum n-size under paragraph (b)(1)(i)(C) of this section no greater than

30. (2) The State must apply the risk ratio threshold or thresholds determined in paragraph (b)(1) of this section to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs (b)(3) and (4) of this section and the following racial and ethnic groups: (i) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only; (ii) American Indian or Alaska Native; (iii) Asian; (iv) Black or African American; (v) Native Hawaiian or Other Pacific Islander; (vi) White; and (vii) Two or more races. (3) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to: (i) The identification of children ages 3 through 21 as children with disabilities; and (ii) The identification of children ages 3 through 21 as children with the following impairments: (A) Intellectual disabilities; (B) Specific learning disabilities; (C) Emotional disturbance; (D) Speech or language impairments; (E) Other health impairments; and (F) Autism. (4) Except as provided in paragraphs (b)(5) and (c) of this section, the State must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph (b)(2) of this section with respect to the following placements into particular educational settings, including disciplinary removals: (i) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day; (ii) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools; (iii) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of 10 days or fewer; (iv) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than 10 days; (v) For children with disabilities ages 3 through 21, in-school suspensions of 10 days or fewer; (vi) For children with disabilities ages 3 through 21, in-school suspensions of more than 10 days; and (vii) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer. (5) The State must calculate an alternate risk ratio with respect to the categories described in paragraphs (b)(3) and (4) of this section if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size. (6) Except as provided in paragraph (d) of this section, the State must identify as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs (b)(3) and (4) of this section that exceeds the risk ratio threshold set by the State for that category. (7) The State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs (b)(1)(i)(A) through (D) of this section, and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph (b)(1)(iv) of this section must include a detailed explanation of why the numbers chosen are reasonable and how they ensure

that the State is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

(c) Exception. A State is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs (b)(3), (4), and (5) of this section, to determine significant disproportionality if: (1) The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or (2) In calculating the alternate risk ratio under paragraph (b)(5) of this section, the comparison group in the State does not meet the minimum cell size or minimum n-size.

(d) Flexibility. A State is not required to identify an LEA as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) until—(1) The LEA has exceeded a risk ratio threshold set by the State for a racial or ethnic group in a category described in paragraph (b)(3) or (4) of this section for up to three prior consecutive years preceding the identification; and (2) The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

OSEP Guidance

OSEP Questions and Answers on IDEA Part B – Significant Disproportionality, Equity in IDEA (2017)

- Follow-up to Equity in IDEA final regulation, which was published in the Federal Register on Dec. 19, 2016, and became effective on Jan. 18, 2017.
- The Q&A is a guidance document that includes questions and answers on the rule, including the standard methodology, remedies, effective and compliance dates, and a glossary of terms. It is intended to be used as a resource for states as they begin engaging with stakeholders around the implementation of the final rule.
- The Department postponed the compliance date of this regulation from July 1, 2018, to July 1, 2020, through 83 FR 31306, published July 3, 2018. The regulation also postponed the compliance date for including children ages three through five in significant disproportionality analysis from July 1, 2020, to July 1, 2022.
- Model state timeline
  - Lays out three different sample timelines to prepare States for compliance by SY 2018–19, based on the 2017 guidance.

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

Integrated monitoring activities include disproportionate representation – Question A-3: What are integrated monitoring activities?

Answer: Integrated monitoring activities are a key component of a State's general supervision system. Specifically, 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. Under IDEA Part B, the SEA must monitor the LEAs located in the State in each of the following priority areas: the provision of FAPE in the least restrictive environment (LRE); general supervision, including effective monitoring; child find; a system of transition services; the use of resolution meetings; mediation; and disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. 34 C.F.R. § 300.600(d). Under IDEA Part C, the LA must monitor each EIS program or provider located in the State in each of the following priority areas: early intervention services in natural environments; general supervision, including effective monitoring; child find; a system of transition services; the use of resolution sessions (if the State adopts Part B due process hearing procedures under 34 C.F.R. § 303.430(d)(2)); and mediation. 34 C.F.R. § 303.700(d). In addition, State integrated monitoring activities should assess the equitable implementation of IDEA, through examination of local policies, procedures, and evidence of implementation (or practices). Integrated monitoring activities could include the following:

- Interviewing LEA and local program staff, including specialized instructional support personnel, on-site or virtually, and reviewing local policies, procedures, and practices for compliance and improved functional outcomes and results for children with disabilities.
- Conducting interviews and listening sessions with parents of children with disabilities, children with disabilities, and other stakeholders to learn about an LEA's or EIS program's or provider's implementation of IDEA, including functional outcomes and results.
- Analyzing local child find data across the State to determine if there are significant disparities in the groups or communities of children and families who are referred for evaluation or provided services.
- Reviewing information collected through the State's data systems relating to local compliance with IDEA requirements, such as compliance with individualized education program (IEP) and individualized family service plan (IFSP) meeting timelines, evaluation and reevaluation timelines, content of IEPs and IFSPs, early childhood and secondary transition, exiting, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Examining and evaluating performance and results data on specific IDEA requirements, such as early childhood outcomes, family outcomes and

involvement, graduation and drop-out, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.

- Analyzing assessment data to determine if the data represent improved results for children with disabilities on regular assessments and alternate assessments aligned with alternate academic achievement standards compared with the achievement of all children.
- Evaluating an LEA's or EIS program's or provider's policies, procedures, and practices for fiscal management, or reviewing local budget and expenditure data for a particular year to ensure that IDEA funds are distributed and expended in accordance with Federal fiscal requirements.
- Examining information gleaned from the State's dispute resolution system, including State complaints and due process complaints. The State's complaint resolution system is a tool for States to identify and correct noncompliance as stated in Question A-7. Facts determined through the State's resolution of State complaints and by impartial hearing officers when adjudicating due process complaints can provide the State with important information about an LEA's or EIS program's or provider's implementation of IDEA requirements.

General supervision responsibilities for addressing significant disproportionality – Question A-9: What are a State's general supervision responsibilities for addressing significant disproportionality under 34 C.F.R. §§ 300.646 and 300.647?

Answer: OSEP previously provided extensive guidance on the implementation of 34 C.F.R. §§ 300.646 and 300.647 in IDEA Part B Regulations Significant Disproportionality (Equity in IDEA) Essential Questions and Answers (Dec. 19, 2016). This response is only intended to summarize but not revise that guidance, which provides more detailed information on these requirements. Each State that receives assistance under Part B of the IDEA must, consistent with 20 U.S.C. 1418(d) (IDEA Section 618(d)) and 34 C.F.R. § 300.646(a), "provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State" with respect to —

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in IDEA Section 602(3);

b. The placement in particular educational settings of such children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Although IDEA does not define "significant disproportionality," the implementing regulations require States to use a standard methodology to determine if significant disproportionality based on race and ethnicity is occurring in the State and its LEAs. 34 C.F.R. §§ 300.646 and 300.647. States must set a threshold above which

disproportionality in the identification, placement, or discipline of children with disabilities within an LEA is considered significant. While these regulations only establish a system for identifying significant disproportionality based on overrepresentation, the regulations acknowledge that overrepresentation may be caused by underidentification of one or more racial or ethnic groups. A State's review pursuant to IDEA Section 618(d) can assist LEAs in identifying the factors contributing to any identified over- or underrepresentation. Among the data States and/or LEAs can review are school-level data, academic achievement data, relevant environmental data that may be correlated with the prevalence of a disability, or other data relevant to the educational needs and circumstances of the specific group of students identified. An LEA identified with significant disproportionality is not necessarily out of compliance with IDEA requirements. When an LEA is identified with significant disproportionality, the State must require the LEA to set aside a total of 15 percent of its IDEA Part B (Sections 611 and 619) funds to provide comprehensive coordinated early intervening services (CCEIS) to address the factors contributing to the significant disproportionality. Further, when an LEA is identified with significant disproportionality, the regulations require the State to provide for the review and, if appropriate, revision of policies, procedures, and practices it identifies as contributing to the significant disproportionality, including any policy, procedure, or practice that results in a failure to identify, or the inappropriate identification of, members of a racial or ethnic group. 34 C.F.R. § 300.646(d)(1)(iii). If such review identifies noncompliance with an IDEA requirement, the State must ensure, in accordance with 34 C.F.R. § 300.600(e), that the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (i.e., finding). States must report annually to OSEP on the number of LEAs identified with significant disproportionality, the area in which significant disproportionality was identified, and the amount of IDEA Part B funds those LEAs reserved for CCEIS. Further, States must monitor those LEAs to ensure the required amount of funds were used to address factors contributing to the significant disproportionality. In addition, States provide, in their annual IDEA Part B applications, an assurance that they have in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment. As part of implementing these policies and procedures, States should monitor for, and address, any implementation challenges that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity.

Data on race/ethnicity in the SPP/APR – Question C-6: What review of data and other information related to race and ethnicity do the SPP/APR indicators require States and their LEAs or EIS programs or providers to conduct?

Answer: SEAs report data on LEAs' performance on three Part B compliance indicators that address race and ethnicity related to children with disabilities: Indicator B-4B (Suspension/Expulsion) required by 34 C.F.R. § 300.170 and Indicators B-9 and B-10 (Disproportionate Representation) required by 34 C.F.R. §

300.600(d)(3). In addition, States are required to report on the representativeness of the data reported for the following results indicators: Part C Indicator C-4 (Family Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1442 and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1416(a)(3)(B), respectively. As part of its general supervision responsibilities in implementing these IDEA requirements, States should monitor for, and address, any implementation challenges that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity.

Compliance Indicator: Part B Indicator B-4B (Suspension/Expulsion): A State must provide an assurance in its annual IDEA Part B grant application that the State has in place policies and procedures to ensure that the SEA examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to such rates for nondisabled children within such agencies. Where such discrepancies are occurring, SEAs are required to review and, if appropriate, revise (or require the affected State agency or LEA to revise) their policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with IDEA. 34 C.F.R. § 300.170(b). For Indicator B-4B, the State must report the percentage of LEAs that were determined to have a significant discrepancy, as defined by the State, by race and ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with an IEP. In addition, for those LEAs determined by the State to have a significant discrepancy, the State must report on its review of the LEA's policies, procedures, or practices to address what has contributed to the significant discrepancy, as defined by the State, and what does not comply with IDEA requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. See Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (Jul. 19, 2022) and other supporting documents for more information related to this topic.

Compliance Indicators: Part B Indicators B-9 and B-10 (Disproportionate Representation) States also must report to OSEP on Indicators B-9 and B-10 (Disproportionate Representation). For Indicator B-9, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. For Indicator B-10, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (see Question A-9). As set out above, a State, in its annual IDEA Part B application, must provide an assurance that it has in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children

as children with disabilities, including children with disabilities with a particular impairment.

Results Indicators: Part C Indicator C-4 (Family Outcomes) and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes): When addressing certain Part B and Part C SPP/APR indicators, States are required to report on the representativeness of the data reported. For Part C SPP/APR Indicator C-4 (Family Outcomes), States must analyze the extent to which the demographics of the families who responded are representative of the demographics of the infants and toddlers receiving Part C services and must include race/ethnicity in this analysis. In addition, the State's analysis must also include at least one of the following demographics: socioeconomic status, parents or guardians whose primary language is other than English or limited English proficiency, maternal education, geographic location, and/or another demographic category approved by their stakeholders. Similarly, for Part B SPP/APR Indicator B-8 (Parent Involvement), States must analyze the extent to which the demographics of the children for whom parents responded are representative of the demographics of children receiving special education services. For Part B SPP/APR Indicator B-14 (Post-School Outcomes), States must analyze the extent to which the response data are representative of the demographics of youth who are no longer in secondary school and had IEPs in effect at the time they left school. For both Indicators B-8 and B-14, States must include race/ethnicity in their analysis. In addition, the State's analysis must also include at least one of the following demographics: age of the student, disability category, gender, geographic location, and/or another demographic category approved through the State's stakeholder input process. In addition, States must include in their annual SPP/APR submissions a report on their stakeholder engagement efforts, including activities carried out to obtain input from a diverse group of parents to support the implementation activities designed to improve outcomes, including target setting, analyzing data, developing improvement strategies, and evaluating progress. In engaging its stakeholders, the State should use this information to identify any trends or patterns within its system related to equity, including ensuring equitable access to high-quality early intervention services (Part C) and special education and related services (Part B) and determine steps to improve outcomes. OSEP requires States to review survey responses for race/ethnicity in the SPP/APR because it will increase the high-quality data necessary for States to improve outcomes. High-quality data includes data that accurately reflect the infants, toddlers, children, and youth with disabilities served.

Identifying and correcting noncompliance related to Indicators 4B, 9, and 10 – Question C-7: How may a State identify and ensure correction of noncompliance with the requirements related to SPP/APR Indicator B-4B (Suspension/Expulsion) and Indicators B-9 and B-10 (Disproportionate Representation)?

Answer: For these indicators, a State may identify noncompliance through a review of policies, procedures, and practices contributing to significant discrepancy (Indicator B-4B) or when determining if the disproportionate representation of racial and ethnic groups in special education and related services (Indicator B-9) or specific disability categories (Indicator B-10) was the result of inappropriate

identification. Noncompliance resulting from policies, procedures, and practices that are inconsistent with IDEA requirements may not always include child-specific noncompliance. To demonstrate it has verified correction of noncompliance under these indicators in its SPP/APR submission if no child-specific noncompliance is identified, States must ensure, as soon as possible, and in no case later than one year after the State's written notification of noncompliance, that the LEA is now correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) through a review of updated data (see Question B-10). If child-specific noncompliance was identified, the SEA must also verify that the LEA has corrected each individual instance of child-specific noncompliance unless the child is no longer within the jurisdiction of the LEA and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (see Question B-10).

Related Federal and State Case Law

None found

Discipline

IDEA does not define "discipline." IDEA section 20 U.S.C. § 1415(k) and the implementing regulations at 34 C.F.R. §§ 300.530 through 300.536 explain the rights of children with disabilities and the authority of school personnel when a child is suspended, expelled, or temporarily placed in an interim alternative educational setting (IAES) for disciplinary purposes.

Statute

20 U.S.C. § 1412(a)(22) – Suspension and expulsion rates

(A) The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—
(i) among local educational agencies in the State; or
(ii) compared to such rates for nondisabled children within such agencies.

(B) Review and revision of policies - If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this chapter.

20 U.S.C. § 1415(k) Placement in alternative educational setting

(1) Authority of school personnel

(A) Case-by-case determination – School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

(B) Authority – School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

(C) Additional authority – If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 1412(a)(1) of this title although it may be provided in an interim alternative educational setting.

(D) Services – A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

(i) continue to receive educational services, as provided in section 1412(a)(1) of this title, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(E) Manifestation determination

(i) In general – Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation – If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

(G) Special circumstances – School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

(H) Notification – Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) Determination of setting – The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) Appeal

(A) In general – The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer

(i) In general – A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

(ii) Change of placement order – In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—
(I) return a child with a disability to the placement from which the child was removed; or (II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals – When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services

(A) In general – A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge – A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—
(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
(ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or
(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception – A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this

title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge

(i) In general – If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations – If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities

(A) Rule of construction – Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records – An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions – In this subsection:

(A) Controlled substance – The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. § 812(c)).

(B) Illegal drug – The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon – The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18.

(D) Serious bodily injury – The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18.

REGULATIONS

34 C.F.R. § 300.170 Suspension and expulsion rates

(a) *General.* The SEA must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—(1) Among LEAs in the State; or (2) Compared to the rates for nondisabled children within those agencies.

(b) *Review and revision of policies.* If the discrepancies described in paragraph (a) of this section are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures, and practices comply with the Act.

34 C.F.R. § 300.530 Authority of school personnel

(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

(b) General.

(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) Services.

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must—

(i) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—
(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section

was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

34 C.F.R. § 300.531 Determination of setting

The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

34 C.F.R. § 300.532 Appeal (Expedited Due Process)

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R. §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 C.F.R. §§ 300.507 and 300.508(a) and (b).

(b) Authority of hearing officer. (1) A hearing officer under 34 C.F.R. § 300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 C.F.R. § 300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 C.F.R. §§ 300.507 and 300.508(a) through (c) and 34 C.F.R. §§ 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in 34 C.F.R. § 300.506—(i) A resolution meeting must occur within seven days of receiving notice of the due

process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in 34 C.F.R. §§ 300.510 through 300.514 are met. (5) The decisions on expedited due process hearings are appealable consistent with 34 C.F.R. § 300.514.

34 C.F.R. § 300.533 Placement during appeals

When an appeal under 34 C.F.R. § 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 C.F.R. § 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

34 C.F.R. § 300.534 Protections for children not determined eligible for special education and related services

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) Exception. A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to 34 C.F.R. §§ 300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with 34 C.F.R. §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.

(d) Conditions that apply if no basis of knowledge.

(1) If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section.

(2)(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under 34 C.F.R. § 300.530, the evaluation must be conducted in an expedited manner.
(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of 34 C.F.R. §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

34 C.F.R. § 300.535 Referral to and action by law enforcement and judicial authorities

(a) Rule of construction. Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) Transmittal of records.

(1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

34 C.F.R. § 300.536 Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under 34 C.F.R. §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—
(i) Because the series of removals total more than 10 school days in a school year;
(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

(2) This determination is subject to review through due process and judicial proceedings.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

Integrated monitoring activities includes disproportionate representation – Question A-3: What are integrated monitoring activities?

Answer: Integrated monitoring activities are a key component of a State's general supervision system. Specifically, 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. Under IDEA Part B, the SEA must monitor the LEAs located in the State in each of the following priority areas: the provision of FAPE in the least restrictive environment (LRE); general supervision, including effective monitoring; child find; a system of transition services; the use of resolution meetings; mediation; and disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. 34 C.F.R. § 300.600(d). Under IDEA Part C, the LA must monitor each EIS program or provider located in the State in each of the following priority areas: early intervention services in natural environments; general supervision, including effective monitoring; child find; a system of transition services; the use of resolution sessions (if the State adopts Part B due process hearing procedures under 34 C.F.R. § 303.430(d)(2)); and mediation. 34 C.F.R. § 303.700(d). In addition, State integrated monitoring activities should assess the equitable implementation of IDEA, through examination of local policies, procedures, and evidence of implementation (or practices). Integrated monitoring activities could include the following:

- Interviewing LEA and local program staff, including specialized instructional support personnel, on-site or virtually, and reviewing local policies, procedures, and practices for compliance and improved functional outcomes and results for children with disabilities.
- Conducting interviews and listening sessions with parents of children with disabilities, children with disabilities, and other stakeholders to learn about an

LEA's or EIS program's or provider's implementation of IDEA, including functional outcomes and results.

- Analyzing local child find data across the State to determine if there are significant disparities in the groups or communities of children and families who are referred for evaluation or provided services.
- Reviewing information collected through the State's data systems relating to local compliance with IDEA requirements, such as compliance with individualized education program (IEP) and individualized family service plan (IFSP) meeting timelines, evaluation and reevaluation timelines, content of IEPs and IFSPs, early childhood and secondary transition, exiting, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Examining and evaluating performance and results data on specific IDEA requirements, such as early childhood outcomes, family outcomes and involvement, graduation and drop-out, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Analyzing assessment data to determine if the data represent improved results for children with disabilities on regular assessments and alternate assessments aligned with alternate academic achievement standards compared with the achievement of all children.
- Evaluating an LEA's or EIS program's or provider's policies, procedures, and practices for fiscal management, or reviewing local budget and expenditure data for a particular year to ensure that IDEA funds are distributed and expended in accordance with Federal fiscal requirements.
- Examining information gleaned from the State's dispute resolution system, including State complaints and due process complaints. The State's complaint resolution system is a tool for States to identify and correct noncompliance as stated in Question A-7. Facts determined through the State's resolution of State complaints and by impartial hearing officers when adjudicating due process complaints can provide the State with important information about an LEA's or EIS program's or provider's implementation of IDEA requirements.

General supervision responsibilities for addressing significant disproportionality – Question A-9: What are a State's general supervision responsibilities for addressing significant disproportionality under 34 C.F.R. §§ 300.646 and 300.647?

Answer: OSEP previously provided extensive guidance on the implementation of 34 C.F.R. §§ 300.646 and 300.647 in IDEA Part B Regulations Significant Disproportionality (Equity in IDEA) Essential Questions and Answers (Dec. 19, 2016). This response is only intended to summarize but not revise that guidance, which provides more detailed information on these requirements. Each State that receives assistance under Part B of the IDEA must, consistent with 20 U.S.C. 1418(d) (IDEA Section 618(d)) and 34 C.F.R. § 300.646(a), "provide for the

collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State" with respect to — a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in IDEA Section 602(3); b. The placement in particular educational settings of such children; and c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions. Although IDEA does not define "significant disproportionality," the implementing regulations require States to use a standard methodology to determine if significant disproportionality based on race and ethnicity is occurring in the State and its LEAs. 34 C.F.R. §§ 300.646 and 300.647. States must set a threshold above which disproportionality in the identification, placement, or discipline of children with disabilities within an LEA is considered significant. While these regulations only establish a system for identifying significant disproportionality based on overrepresentation, the regulations acknowledge that overrepresentation may be caused by underidentification of one or more racial or ethnic groups. A State's review pursuant to IDEA Section 618(d) can assist LEAs in identifying the factors contributing to any identified over- or underrepresentation. Among the data States and/or LEAs can review are school-level data, academic achievement data, relevant environmental data that may be correlated with the prevalence of a disability, or other data relevant to the educational needs and circumstances of the specific group of students identified. An LEA identified with significant disproportionality is not necessarily out of compliance with IDEA requirements. When an LEA is identified with significant disproportionality, the State must require the LEA to set aside a total of 15 percent of its IDEA Part B (Sections 611 and 619) funds to provide comprehensive coordinated early intervening services (CCEIS) to address the factors contributing to the significant disproportionality. Further, when an LEA is identified with significant disproportionality, the regulations require the State to provide for the review and, if appropriate, revision of policies, procedures, and practices it identifies as contributing to the significant disproportionality, including any policy, procedure, or practice that results in a failure to identify, or the inappropriate identification of, members of a racial or ethnic group. 34 C.F.R. § 300.646(d)(1)(iii). If such review identifies noncompliance with an IDEA requirement, the State must ensure, in accordance with 34 C.F.R. § 300.600(e), that the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (i.e., finding). States must report annually to OSEP on the number of LEAs identified with significant disproportionality, the area in which significant disproportionality was identified, and the amount of IDEA Part B funds those LEAs reserved for CCEIS. Further, States must monitor those LEAs to ensure the required amount of funds were used to address factors contributing to the significant disproportionality. In addition, States provide, in their annual IDEA Part B applications, an assurance that they have in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment. As part of implementing these policies and procedures, States should monitor for, and address, any implementation challenges

that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity.

Data on race/ethnicity in the SPP/APR – Question C-6: What review of data and other information related to race and ethnicity do the SPP/APR indicators require States and their LEAs or EIS programs or providers to conduct?

Answer: SEAs report data on LEAs' performance on three Part B compliance indicators that address race and ethnicity related to children with disabilities: Indicator B-4B (Suspension/Expulsion) required by 34 C.F.R. § 300.170 and Indicators B-9 and B-10 (Disproportionate Representation) required by 34 C.F.R. § 300.600(d)(3). In addition, States are required to report on the representativeness of the data reported for the following results indicators: Part C Indicator C-4 (Family Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1442 and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1416(a)(3)(B), respectively. As part of its general supervision responsibilities in implementing these IDEA requirements, States should monitor for, and address, any implementation challenges that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity. A State must provide an assurance in its annual IDEA Part B grant application that the State has in place policies and procedures to ensure that the SEA examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to such rates for nondisabled children within such agencies. Where such discrepancies are occurring, SEAs are required to review and, if appropriate, revise (or require the affected State agency or LEA to revise) their policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with IDEA. 34 C.F.R. § 300.170(b). For Indicator B-4B, the State must report the percentage of LEAs that were determined to have a significant discrepancy, as defined by the State, by race and ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with an IEP. In addition, for those LEAs determined by the State to have a significant discrepancy, the State must report on its review of the LEA's policies, procedures, or practices to address what has contributed to the significant discrepancy, as defined by the State, and what does not comply with IDEA requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. See Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (Jul. 19, 2022) and other supporting documents for more information related to this topic. Compliance Indicators: Part B Indicators B-9 and B-10 (Disproportionate Representation) States also must report to OSEP on Indicators B-9 and B-10 (Disproportionate Representation). For Indicator B-9, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of

inappropriate identification. For Indicator B-10, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (see Question A-9). As set out above, a State, in its annual IDEA Part B application, must provide an assurance that it has in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment. Results Indicators: Part C Indicator C-4 (Family Outcomes) and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes) When addressing certain Part B and Part C SPP/APR indicators, States are required to report on the representativeness of the data reported. For Part C SPP/APR Indicator C-4 (Family Outcomes), States must analyze the extent to which the demographics of the families who responded are representative of the demographics of the infants and toddlers receiving Part C services and must include race/ethnicity in this analysis. In addition, the State's analysis must also include at least one of the following demographics: socioeconomic status, parents or guardians whose primary language is other than English or limited English proficiency, maternal education, geographic location, and/or another demographic category approved by their stakeholders. Similarly, for Part B SPP/APR Indicator B-8 (Parent Involvement), States must analyze the extent to which the demographics of the children for whom parents responded are representative of the demographics of children receiving special education services. For Part B SPP/APR Indicator B-14 (Post-School Outcomes), States must analyze the extent to which the response data are representative of the demographics of youth who are no longer in secondary school and had IEPs in effect at the time they left school. For both Indicators B-8 and B-14, States must include race/ethnicity in their analysis. In addition, the State's analysis must also include at least one of the following demographics: age of the student, disability category, gender, geographic location, and/or another demographic category approved through the State's stakeholder input process. In addition, States must include in their annual SPP/APR submissions a report on their stakeholder engagement efforts, including activities carried out to obtain input from a diverse group of parents to support the implementation activities designed to improve outcomes, including target setting, analyzing data, developing improvement strategies, and evaluating progress. In engaging its stakeholders, the State should use this information to identify any trends or patterns within its system related to equity, including ensuring equitable access to high-quality early intervention services (Part C) and special education and related services (Part B) and determine steps to improve outcomes. OSEP requires States to review survey responses for race/ethnicity in the SPP/APR because it will increase the high-quality data necessary for States to improve outcomes. High-quality data includes data that accurately reflect the infants, toddlers, children, and youth with disabilities served.

Identifying and correcting noncompliance related to Indicators 4B, 9, and 10 – Question C-7: How may a State identify and ensure correction of noncompliance with the requirements related to SPP/APR Indicator B-4B (Suspension/Expulsion) and Indicators B-9 and B-10 (Disproportionate Representation)?

Answer: For these indicators, a State may identify noncompliance through a review of policies, procedures, and practices contributing to significant discrepancy (Indicator B-4B) or when determining if the disproportionate representation of racial and ethnic groups in special education and related services (Indicator B-9) or specific disability categories (Indicator B-10) was the result of inappropriate identification. Noncompliance resulting from policies, procedures, and practices that are inconsistent with IDEA requirements may not always include child-specific noncompliance. To demonstrate it has verified correction of noncompliance under these indicators in its SPP/APR submission if no child-specific noncompliance is identified, States must ensure, as soon as possible, and in no case later than one year after the State's written notification of noncompliance, that the LEA is now correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) through a review of updated data (see Question B-10). If child-specific noncompliance was identified, the SEA must also verify that the LEA has corrected each individual instance of child-specific noncompliance unless the child is no longer within the jurisdiction of the LEA and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (see Question B-10).

OSEP Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions (2022)

This document updates and supersedes the Office of Special Education and Rehabilitative Services guidance titled *Questions and Answers on Discipline Procedures*, issued in June 2009, and includes additional questions and answers that address topics that have arisen as the field continues to carry out the discipline provisions of IDEA and its implementing regulations.

OSEP's Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders (2022)

This document provides information about resources, strategies, and evidence-based practices that (while not required by law) can help States, LEAs, schools, early childhood programs, educators, and families in their efforts to meet IDEA requirements and, in doing so, improve outcomes for children with disabilities.

OSEP Letter to Woolsey (2012)

A state may not incorporate into its definition a consideration of whether the state's LEAs conducted appropriate evaluations or otherwise complied procedurally with the IDEA and state law in identifying, placing, and disciplining students.

Related Federal and State Case Law

None found

Procedural Safeguards

STATUTE

20 U.S.C. § 1412(a)(6) Procedural safeguards

(a) In general. Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.

(b) Additional procedural safeguards. Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this chapter will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

20 U.S.C. § 1415 Procedural safeguards

(1)(a) Establishment of procedures. Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

(b) Types of procedures. The procedures required by this section shall include the following: (1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child. (2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and(ii) an unaccompanied homeless youth as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph. (B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate. (3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—(A) proposes to initiate or change; or (B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education

to the child. (4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so. (5) An opportunity for mediation, in accordance with subsection (e). (6) An opportunity for any party to present a complaint— (A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and (B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph. (7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and (ii) that shall include—(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending; (II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending; (III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and (IV) a proposed resolution of the problem to the extent known and available to the party at the time. (B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii). (8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

(c) Notification requirements. (1) Content of prior written notice. The notice required by subsection (b)(3) shall include—(A) a description of the action proposed or refused by the agency; (B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (D) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter; (E) a description of other options considered by the IEP Team and the reason why those options were rejected; and (F) a description of the factors that are relevant to the agency's proposal or refusal. (2) Due process complaint notice. (A) Complaint. The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient

unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A). (B) Response to complaint. (i) Local educational agency response. (I) In general. If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint; (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected; (cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (dd) a description of the factors that are relevant to the agency's proposal or refusal. (II) Sufficiency. A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate. (ii) Other party response. Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint. (C) Timing. The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint. (D) Determination. Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination. (E) Amended complaint notice. (i) In general. A party may amend its due process complaint notice only if—(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or (II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs. (ii) Applicable timeline The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

(d) Procedural safeguards notice. (1) In general. (A) Copy to parents. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—(i) upon initial referral or parental request for evaluation; (ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and (iii) upon request by a parent. (B) Internet website. A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists. (2) Contents. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable

manner, available under this section and under regulations promulgated by the Secretary relating to—(A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) the opportunity to present and resolve complaints, including—(i) the time period in which to make a complaint; (ii) the opportunity for the agency to resolve the complaint; and (iii) the availability of mediation; (F) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) due process hearings, including requirements for disclosure of evaluation results and recommendations; (J) State-level appeals (if applicable in that State);(K) civil actions, including the time period in which to file such actions; and (L) attorneys' fees.

REGULATIONS

34 C.F.R. § 300.150 SEA implementation of procedural safeguards

The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.

34 C.F.R. § 300.500 Responsibility of SEA and other public agencies

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of 34 C.F.R. §§ 300.500 through 300.536.

34 C.F.R. § 300.503 Prior notice by the public agency; content of notice

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include—(1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be—(i) Written in language understandable to the general public; and (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (ii) That the parent understands the content of the notice; and(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

OSEP Guidance

OSEP Letter to Clayton (2007)

The model procedural safeguards notice may be tailored for a state's unique system.

Related Federal and State Case Law

None found

Dispute Resolution

Statute

20 U.S.C. §§ 1415(b)(5)–(8) Types of procedures

(5) An opportunity for mediation, in accordance with subsection 1415(e).

(6) An opportunity for any party to present a complaint— (A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and (B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this subchapter, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and (ii) that shall include—(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending; (II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending; (III) a description of the nature of the problem of the child relating to such proposed initiation or change, including

facts relating to such problem; and (IV) a proposed resolution of the problem to the extent known and available to the party at the time. (B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

20 U.S.C. § 1415(c)(2) Due process complaint notice.

(A) Complaint. The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

(B) Response to complaint. (i) Local educational agency response. (I) In general. If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint; (bb) a description of other options that the IEP Team considered and the reasons why those options were rejected; (cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (dd) a description of the factors that are relevant to the agency's proposal or refusal. (II) Sufficiency. A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate. (ii) Other party response. Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

(C) Timing. The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

(D) Determination. Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

(E) Amended complaint notice. (i) In general. A party may amend its due process complaint notice only if—(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or (II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs. (ii)

Applicable timeline –The applicable timeline for a due process hearing under this subchapter shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

20 U.S.C. § 1415(e) Mediation

(1) In general. Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

(2) Requirements. Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process—(i) is voluntary on the part of the parties; (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this subchapter; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) Opportunity to meet with a disinterested party.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—(i) a parent training and information center or community parent resource center in the State established under section 1471 or 1472 of this title; or (ii) an appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) List of qualified mediators.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) Costs.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Scheduling and location.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) Written agreement.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; (ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and (iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(G) Mediation discussions. —Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

20 U.S.C. § 1415(f) Impartial due process hearing

(1) In general.

(A) Hearing. Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(B) Resolution session. (i) Preliminary meeting. Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—(I) within 15 days of receiving notice of the parents' complaint; (II) which shall include a representative of the agency who has decision-making authority on behalf of such agency; (III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and (IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e). (ii) Hearing. If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this subchapter shall commence. (iii) Written settlement agreement. In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and (II) enforceable in any State court of competent jurisdiction or in a district court of the United States. (iv) Review period. If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

(2) Disclosure of evaluations and recommendations. (A) In general. Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing. (B) Failure to disclose. A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitations on hearing.

(A) Person conducting hearing. A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—(i) not be—(I) an

employee of the State educational agency or the local educational agency involved in the education or care of the child; or (II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) possess knowledge of, and the ability to understand, the provisions of this chapter, Federal and State regulations pertaining to this chapter, and legal interpretations of this chapter by Federal and State courts; (iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(B) Subject matter of hearing. The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

(C) Timeline for requesting hearing. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this subchapter, in such time as the State law allows.

(D) Exceptions to the timeline. The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or (ii) the local educational agency's withholding of information from the parent that was required under this subchapter to be provided to the parent.

(E) Decision of hearing officer. (i) In general. Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. (ii) Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits. (iii) Rule of construction. Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

(F) Rule of construction. Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

20 U.S.C. § 1415(g) Appeal

(1) In general. If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

(2) Impartial review and independent decision. The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

20 U.S.C. § 1415(h) Safeguards

Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—(A) shall be made available to the public consistent with the requirements of section 1417(b) of this title (relating to the confidentiality of data, information, and records); and (B) shall be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title.

20 U.S.C. § 1415(i) Administrative procedures

(1) In general.

(A) Decision made in hearing. A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

(B) Decision made at appeal. A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

(2) Right to bring civil action.

(A) In general. Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

(B) Limitation. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the

State has an explicit time limitation for bringing such action under this subchapter, in such time as the State law allows.

(C) Additional requirements. In any action brought under this paragraph, the court—(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees.

(A) In general. The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees. (i) In general. In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—(I) to a prevailing party who is the parent of a child with a disability; (II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or (III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. (ii) Rule of construction. Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

(C) Determination of amount of attorneys' fees. Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services. (i) In general. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (II) the offer is not accepted within 10 days; and (III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. (ii) IEP Team meetings. Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e). (iii) Opportunity to

resolve complaints. A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—(I) a meeting convened as a result of an administrative hearing or judicial action; or (II) an administrative hearing or judicial action for purposes of this paragraph.

(E) Exception to prohibition on attorneys' fees and related costs. Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees. Except as provided in subparagraph (G), whenever the court finds that—(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees. The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

20 U.S.C. § 1415(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

20 U.S.C. § 1415(k)(3)–(7) Expedited Due Process

(3)

(A) The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

(B) Authority of hearing officer. (i) In general. A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A). (ii) Change of placement order. In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer

may—(I) return a child with a disability to the placement from which the child was removed; or (II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

(4) Placement during appeals. When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

(5) Protections for children not yet eligible for special education and related services.

(A) In general. A child who has not been determined to be eligible for special education and related services under this subchapter and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this subchapter if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (ii) the parent of the child has requested an evaluation of the child pursuant to section 1414(a)(1)(B) of this title; or (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

(C) Exception. A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 1414 of this title or has refused services under this subchapter or the child has been evaluated and it was determined that the child was not a child with a disability under this subchapter.

(D) Conditions that apply if no basis of knowledge. (i) In general. If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking

disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii). (ii) Limitations. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this subchapter, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

(6) Referral to and action by law enforcement and judicial authorities.

(A) Rule of construction. Nothing in this subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) Transmittal of records. An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

(7) Definitions. In this subsection:

(A) Controlled substance. The term “controlled substance” means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug. The term “illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act [21 U.S.C. 801 et seq.] or under any other provision of Federal law.

(C) Weapon. The term “weapon” has the meaning given the term “dangerous weapon” under section 930(g)(2) of title 18.

(D) Serious bodily injury. The term “serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18.

20 U.S.C § 1411 (e)(2)(b) Other State-level Activities-- Required Activities

Funds reserved under subparagraph (A) shall be used to carry out the following activities:

(i) For monitoring, enforcement, and complaint investigation.

(ii) To establish and implement the mediation process required by section 1415(e) of this title, including providing for the cost of mediators and support personnel.

REGULATIONS

34 C.F.R. § 300.506 Mediation

(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements. The procedures must meet the following requirements:

(1) The procedures must ensure that the mediation process—(i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(2) A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(3)(i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (ii) The SEA must select mediators on a random, rotational, or other impartial basis.

(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that—(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part—(i) May not be an employee of the SEA or the LEA that is involved in

the education or care of the child; and (ii) Must not have a personal or professional interest that conflicts with the person's objectivity. (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

34 C.F.R. §§ 300.151–300.153 State Complaints

Please note as described in 71 F.R. 46600 (2006): Congress did not specifically detail a State complaint process in the Act, we believe that the State complaint process is fully supported by the Act and necessary for the proper implementation of the Act and these regulations. We believe a strong State complaint system provides parents and other individuals an opportunity to resolve disputes early without having to file a due process complaint and without having to go to a due process hearing. The State complaint procedures are referenced in the following three separate sections of the Act: (1) Section 611(e)(2)(B)(i) of the Act, which requires that States spend a portion of the amount of Part B funds that they can use for State-level activities on complaint investigations; (2) Section 612(a)(14)(E) of the Act, which provides that nothing in that paragraph creates a private right of action for the failure of an SEA or LEA staff person to be highly qualified or prevents a parent from filing a complaint about staff qualifications with the SEA, as provided for under this part; and (3) Section 615(f)(3)(F) of the Act, which states that ''[n]othing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.'' Paragraph (f)(3) is titled ''Limitations on Hearing'' and addresses issues such as the statute of limitations and that hearing issues are limited to the issues that the parent has raised in their due process notice. The Senate Report explains that this provision clarifies that ''nothing in section 615 shall be construed to affect a parent's right to file a complaint with the State educational agency, including complaints of procedural violations' (S. Rpt. No. 108–185, p. 41). Furthermore, the State complaint procedures were a part of the initial Part B regulations in 1977 (45 C.F.R. 121a.602). These regulations were moved into part 76 of the Education Department General Administrative Regulations (EDGAR) in the early 1980s, and were returned to the Part B regulations in 1992 (after the Department decided to move the regulations out of EDGAR and place them in program regulations for the major formula grant programs). Although the State complaint procedures have changed in some respects in the years since 1977, the basic right of any individual or organization to file a complaint with the SEA alleging any violation of program requirements has remained the same. For these reasons, we believe the State complaint procedures should be retained in the regulations.

34 C.F.R. § 300.151 Adoption of State complaint procedures

(a) General. Each SEA must adopt written procedures for—(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by—(i) Providing for the filing of a complaint with the SEA; and (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.

(b) Remedies for denial of appropriate services. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address—(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities.

34 C.F.R. § 300.152 Minimum State complaint procedures

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—(i) At the discretion of the public agency, a proposal to resolve the complaint; and (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506; (4) 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 of this part; and (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—(i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision.

(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must—(1) Permit an extension of the time limit under paragraph (a) of this section only if—(i) Exceptional circumstances exist with respect to a particular complaint; or (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and (2) Include procedures for effective implementation of the SEA's final decision, if needed, including—(i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532. (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process

action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section. (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—(i) The due process hearing decision is binding on that issue; and(ii) The SEA must inform the complainant to that effect. (3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

34 C.F.R. § 300.153 Filing a complaint

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.

(b) The complaint must include—(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child—(i) The name and address of the residence of the child; (ii) The name of the school the child is attending; (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (iv) A description of the nature of the problem of the child, including facts relating to the problem; and (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.

(d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.

34 C.F.R. § 300.507 Filing a due process complaint

(a) General. (1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child). (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if—(1) The parent requests the information; or (2) The parent or the agency files a due process complaint under this section.

34 C.F.R. § 300.508 Due process complaint

(a) General. (1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.

(b) Content of complaint. The due process complaint required in paragraph (a)(1) of this section must include—(1) The name of the child; (2) The address of the residence of the child;(3) The name of the school the child is attending; (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and (6) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.

(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section. (2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination. (3) A party may amend its due process complaint only if—(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins. (4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

(e) LEA response to a due process complaint. (1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint; (ii) A description of other options that the IEP Team considered and the reasons why those options

were rejected; (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and (iv) A description of the other factors that are relevant to the agency's proposed or refused action. (2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

34 C.F.R. § 300.509 Model Forms

(a) Each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under §§300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms.

(b) Parents, public agencies, and other parties may use the appropriate model form described in paragraph (a) of this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in §300.508(b) for filing a due process complaint, or the requirements in §300.153(b) for filing a State complaint.

34 C.F.R. § 300.510 Resolution process

(a) Resolution meeting. (1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that—(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and (ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if—(i) The parent and the LEA agree in writing to waive the meeting; or (ii) The parent and the LEA agree to use the mediation process described in §300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in §300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in §300.515(a) starts the day after one of the following events: (1) Both parties agree in writing to waive the resolution meeting; (2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process.

(d) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is—(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to §300.537.

(e) Agreement review period. If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution.

34 C.F.R. § 300.511 Impartial due process hearing

(a) General. Whenever a due process complaint is received under §300.507 or §300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507, 300.508, and 300.510.

(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Impartial hearing officer. (1) At a minimum, a hearing officer—(i) Must not be—(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing; (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. (3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(d) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

(e) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.

(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to—(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.

34 C.F.R. § 300.512 Hearing rights

(a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to—(1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; and (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.

34 C.F.R. § 300.513 Hearing decisions

(a) Decision of hearing officer on the provision of FAPE.

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies—(i) Impeded the child's right to a FAPE; (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must—(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State

advisory panel established under §300.167; and (2) Make those findings and decisions available to the public.

34 C.F.R. § 300.514 Finality of decision; appeal; impartial review

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review. (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA. (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must—(i) Examine the entire hearing record; (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process; (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must—(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and (2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.

34 C.F.R. § 300.515 Timelines and convenience of hearings and reviews

(a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c)—(1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.

(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review—(1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

34 C.F.R. § 300.532 Appeal (Expedited Due Process)

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the

manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer. (1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section. (2) In making the determination under paragraph (b)(1) of this section, the hearing officer may—(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing. (1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in 34 C.F.R. § 300.506—(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met. (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

34 C.F.R. § 300.533 Placement during appeals

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in

§300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

34 C.F.R. § 300.704 (b) Other State-level activities

Some portion of the funds reserved under paragraph (b)(1) of this section must be used to carry out the following activities: (i) For monitoring, enforcement, and complaint investigation; and (ii) To establish and implement the mediation process required by section 615(e) of the Act, including providing for the costs of mediators and support personnel.

OSEP Guidance

State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (OSEP QA 23-01)

OSEP established the construct of making findings based on "areas of concern"/credible allegations – Question B-1: What is an "area of concern"?

Answer: Although not defined in IDEA and its implementing regulations, as used in this document and reflected in OSEP's longstanding practice, 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. Such credible allegations (e.g., information and awareness) may come from integrated monitoring activities, data reviews, grant reviews, stakeholder calls, media reports, dispute resolution systems, or other mechanisms that relate to IDEA implementation.

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?

Answer: The State must ensure that its general supervision system includes policies, procedures, and practices that are reasonably designed to consider and address areas of concern (i.e., credible allegations of LEA or EIS program or provider noncompliance) in a timely manner. 34 C.F.R. §§ 300.149 and 303.120. 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. As the grantees for IDEA's three formula grants (i.e., Part B Section 611, Part B Section 619, and Part C), States are responsible for monitoring (see Question A-1) and are required to comply with IDEA requirements, and expected to follow OSEP's published interpretations. When applying for IDEA Part B and Part C grant funds, States assure the Department that they have in effect policies, procedures, and practices that are consistent with the IDEA statutory and regulatory requirements. When a State is made aware of an area of concern with an LEA or EIS program's or provider's implementation of IDEA, the State must conduct its due diligence in a timely manner to address the area of concern and reach a conclusion in a reasonable amount of time. 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. 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.) If, through its due diligence, the State determines that the LEA or EIS program or provider is out of compliance with an applicable IDEA requirement, the State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA or EIS program or provider. This finding must be timely issued, generally within three months of the State exercising due diligence, regarding the area of concern, and reaching a conclusion in a reasonable amount of time 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).

Applies correction of noncompliance guidance to dispute resolution – Question B-10: What is the standard for correction of noncompliance?

Answer: OSEP's longstanding position, first described in OSEP Memo 09-02, is that, in order to demonstrate that noncompliance has been corrected, the State must verify that the LEA or EIS program or provider: (1) 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 (systemic compliance); and (2) 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 (child-specific compliance). The State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected each individual case of the previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance (child-specific compliance), if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

Q&A on IDEA Part B Dispute Resolution Procedures (2013)

OSERS issued this Q&A document to provide parents, parent training and information centers, school personnel, SEAs, LEAs, advocacy organizations, and other interested parties with information to facilitate appropriate implementation of the IDEA dispute resolution procedures, including mediation, state complaint procedures, and due process complaint and due process hearing procedures. There are questions and answers on many topics in this area, including:

- Mediation
- State complaint procedures
- Due process complaints and due process hearing procedures
- Resolution process

- Expedited due process hearings

Q&A on IDEA Part B Dispute Resolution Procedures During COVID-19 (2020)

This Q&A document addresses inquiries concerning the implementation of the Individuals with Disabilities Education Act (IDEA) Part B dispute resolution procedures in the current COVID-19 environment.

Related Federal and State Case Law

C.P. v. New Jersey Dep't of Educ., No. 1:2019cv12807 (D.N.J., 2020)

- Significant delays in IDEA due process proceedings can amount to a denial of FAPE.

Larach-Cohen v. Porter (S.D.N.Y., 2021)

- 2nd Circuit courts have considered the question and determined that the IDEA does not allow parents to sue SEAs for alleged violations of their monitoring and enforcement responsibilities.
- "[T]he IDEA did not create a private right of action to remedy violations of [the state's monitoring and enforcement duties]."

Fairfield-Suisun Unified Sch. Dist. v. State of California Dep't of Educ. (9th Cir., 2015)

- LEAs do not have a right to sue the SEA for procedural violations of the IDEA in complaint investigations.

Lake Wash. Sch. Dist. No. 414 v. Office of Superintendent of Pub. Instruction, 634 F.3d 1065, 1067–68 (9th Cir. 2011)

- LEAs do not have a right to sue the SEA for procedural violations of the IDEA in due process hearings.

Allen by Bailey v. Altheimer Unified Sch. Dist. (Eastern District of Arkansas 2007)

- While LEAs are responsible for evaluating students suspected of having disabilities and for providing special education services, SEAs are responsible for ensuring that districts comply with the IDEA. An SEA was not eligible for summary judgment when an issue of material fact remained as to whether the SEA enforced the decision of the IHO. Resolved in a settlement agreement.

Maintenance of State Financial Support

Statute

20 U.S.C. § 1412(a)(18)

(A) In general. The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(B) Reduction of funds for failure to maintain support. The Secretary shall reduce the allocation of funds under section 1411 of this title for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

(C) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this subchapter.

(D) Subsequent years. If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

Regulations

34 C.F.R. § 300.163 Maintenance of State financial support

(a) General. A State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

(b) Reduction of funds for failure to maintain support. The Secretary reduces the allocation of funds under section 611 of the Act for any fiscal year following the fiscal year in which the State fails to comply with the requirement of paragraph (a) of this section by the same amount by which the State fails to meet the requirement.

(c) Waivers for exceptional or uncontrollable circumstances. The Secretary may waive the requirement of paragraph (a) of this section for a State, for one fiscal year at a time, if the Secretary determines that—

(1) Granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

(2) The State meets the standard in 34 C.F.R. § 300.164 for a waiver of the requirement to supplement, and not to supplant, funds received under Part B of the Act.

(d) Subsequent years. If, for any fiscal year, a State fails to meet the requirement of paragraph (a) of this section, including any year for which the State is granted a waiver under paragraph (c) of this section, the financial support required of the State in future years under paragraph (a) of this section shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

OSEP Guidance

OSEP Memo 10-5

Clarifies the term "State financial support."

Related Federal and State Case Law

None found

Private School Proportionate Share

Statute

20 U.S.C. § 1412(a)(10)(A)(i) Children enrolled in private schools by their parents

(i) In general. To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this subchapter by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this subchapter.

(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

20 U.S.C.§ 1412(a)(10)(A)(iii)(III) Consultation

To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall 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 the children, including regarding—

(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

REGULATIONS

34 C.F.R. § 300.129 State responsibility regarding children in private schools

The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§300.130 through 300.148.

34 C.F.R. § 300.131 Child find for parentally-placed private school children with disabilities

(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§300.111 and 300.201.

(b) Child find design. The child find process must be designed to ensure—

(1) The equitable participation of parentally-placed private school children; and

(2) An accurate count of those children.

(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.

(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under §300.133.

34 C.F.R. § 300.133 Expenditures

(a) Formula. To meet the requirement of §300.132(a), each LEA must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

(1) For children aged 3 through 21, an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged three through five, an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five. (ii) As described in paragraph (a)(2)(i) of this section, children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school in §300.13.

(3) If an LEA has not expended for equitable services all of the funds described in paragraphs (a)(1) and (a)(2) of this section by the end of the fiscal year for which Congress appropriated the funds, the LEA must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

(b) Calculating proportionate amount. In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the LEA, after timely and meaningful consultation with representatives of private schools under §300.134, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the LEA. (See appendix B for an example of how proportionate share is calculated).

(c) Annual count of the number of parentally-placed private school children with disabilities.

(1) Each LEA must— (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities (consistent with §300.134), determine the number of parentally-placed private school children with disabilities attending private

schools located in the LEA; and (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year. (2) The count must be used to determine the amount that the LEA must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

(d) Supplement, not supplant. State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part.

34 C.F.R. § 300.134(b) Consultation

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an 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 the children regarding the following:

(b) Proportionate share of funds. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under §300.133(b), including the determination of how the proportionate share of those funds was calculated.

34 C.F.R. § 300.141 Requirement that funds not benefit a private school

(a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting—

(1) The needs of a private school; or

(2) The general needs of the students enrolled in the private school.

34 C.F.R. § 300.142 Use of personnel

(a) Use of public school personnel. An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities—

(1) To the extent necessary to provide services under §§300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school.

(b) Use of private school personnel. An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under §§300.130 through 300.144 if—

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control.

34 C.F.R. § 300.144 Property, equipment, and supplies

(a) A public agency must control and administer the funds used to provide special education and related services under §§300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

(c) The public agency must ensure that the equipment and supplies placed in a private school—

(1) Are used only for Part B purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency must remove equipment and supplies from a private school if—

(1) The equipment and supplies are no longer needed for Part B purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

Appendix B to Part 300 Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.

Consistent with section 612(a)(10)(A)(i) of the Act and §300.133 of these regulations, annual expenditures for parentally-placed private school children with disabilities are calculated based on the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA eligible to receive special education and related services under Part B, as

compared with the total number of eligible parentally-placed private school children with disabilities enrolled in private elementary schools located in the LEA. This ratio is used to determine the proportion of the LEA's total Part B subgrants under section 611(f) of the Act for children aged 3 through 21, and under section 619(g) of the Act for children aged 3 through 5, that is to be expended on services for parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA.

The following is an example of how the proportionate share is calculated: There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives $152,500 in Federal flow through funds. Therefore, the LEA must spend $9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in §300.226).

OSEP Guidance

Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools (rev. Feb. 2022)

Related Federal and State Case Law

None found

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