

U.S. Department of Education, Office of Special Education Programs (OSEP) General Supervision Guidance July 2023

MONITORING, TECHNICAL ASSISTANCE, AND
ENFORCEMENT

Agenda

- State General Supervision Responsibilities
- State Performance Plan/Annual Performance Report
- Data on Processes and Results
- Fiscal Management
- Effective Dispute Resolution
- Identification and Correction of Noncompliance

OSEP Guidance - July 24, 2023

- State general supervision systems must include local educational agencies (LEAs) under IDEA Part B and early intervention service (EIS) programs and providers under IDEA Part C.
- With this guidance, States will have the information necessary to exercise their general supervision responsibilities under IDEA and ensure appropriate monitoring, technical assistance (TA), and enforcement regarding local programs.
- In addition, this guidance reaffirms the importance of general supervision and the expectation that monitoring the implementation of IDEA will improve early intervention and educational results and functional outcomes for children with disabilities and their families

Previously Issued Guidance Documents

- The General Supervision Guidance includes longstanding policy and supersedes the following three previously issued guidance documents:
 - Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan/Annual Performance Report (SPP/APR) (Sep. 3, 2008);
 - Office of Special Education Programs (OSEP) Memorandum 09-02: Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act (Oct. 17, 2008) (OSEP Memo 09-02); and
 - Questions and Answers on Monitoring, Technical Assistance, and Enforcement (Revised Jun. 2009).

State Educational Agency (SEA) General Supervision Responsibilities

- Section 1412(a)(11)(A) of IDEA establishes that the SEA is responsible for ensuring that all IDEA requirements are met; and that all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency, are under the general supervision of individuals in the State who are responsible for educational programs, improving outcomes for children with disabilities, and meet the educational standards of the SEA.

State Educational Agency (SEA) General Supervision Responsibilities Continued

- The general supervision guidance addresses requirements related to:
 - **State general supervision responsibilities;**
 - **Identification and correction of noncompliance;**
 - **The IDEA State performance plan and annual performance report;**
 - **State annual determinations; and**
 - **State enforcement through determinations and other methods.**

Free Appropriate Public Education (FAPE)

The Georgia Department of Education must **ENSURE** that All children with a disability have available to them a Free Appropriate Public Education (FAPE), that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; and that the rights of children with disabilities and their parents are protected.

Clarifications and Expanding Positions (3 Areas)

- **REASONABLY DESIGNED GENERAL SUPERVISION SYSTEMS** — OSEP is clarifying that, as part of a State's general supervision system, a State *may not ignore credible allegations* about potential noncompliance, to ensure the timely identification of noncompliance. States should *ensure all LEAs are monitored at least once within the six-year cycle of the State's SPP/APR, presumptively implementing a reasonable timeframe for monitoring. (Questions A-11 and B-2)*
- **TIMELINE CONSIDERATIONS FOR IDENTIFICATION OF NONCOMPLIANCE** — OSEP is articulating reasonable timelines for identifying noncompliance and issuing a written notification of noncompliance (i.e., a finding) (See Questions B-2 and B-7.)

Clarifications and Expanding Positions (3 Areas) continued

- **CORRECTION OF CHILD-SPECIFIC NONCOMPLIANCE** — OSEP has had a longstanding position on how States demonstrate they have verified correction of individual child-specific noncompliance, including the State's responsibilities to enforce a State complaint or due process hearing decision when a child leaves the jurisdiction of an LEA or EIS program or provider. ***OSEP is now indicating that States and their LEAs or EIS programs or providers must demonstrate that they verified correction of each individual case of the previously noncompliant files or records, rather than using a subset of such records.*** (See Question B-15.)

What is General Supervision?



Question A-1: What is general supervision?

- As a condition of receiving IDEA funds, the State agency (which is the SEA under IDEA Part B Section 611 and Section 619) must have a general supervision system.
- Under Part B, SEAs must carry out their general supervision responsibilities to ensure that Part B requirements are implemented and that each educational program for children with disabilities meets the SEAs educational standards (including the Part B requirements).

Question A-1: What is general supervision? Continued

- The SEA must monitor implementation of IDEA Part B requirements, with a primary focus on improving educational results and functional outcomes for all children with disabilities and ensuring LEAs meet the Part B program requirements.
- SEAs must make annual determinations about the performance of its LEAs and enforce Part B requirements.

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

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.

Goal of General Supervision System

The overall goal for the State's general supervision system is to effectively address:

1. Improving early intervention and educational results and functional outcomes for children with disabilities;
2. Ensuring that LEAs 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.
3. Ensuring that the State has a system that collects and reports valid and reliable data.

Integrated Monitoring Activities



Question A-3: What are integrated monitoring activities?

- 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 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).

Question A-3 continued

- 1) 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.
- 2) Conducting interviews and listening sessions** with parents of children with disabilities, children with disabilities, and other stakeholders to learn about an LEA's implementation of IDEA, including functional outcomes and results.
- 3) 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.

Question A-3 continued

4) Reviewing information collected through the State's data systems relating to local compliance with IDEA requirements, such as compliance with individualized education program (IEP) meeting timelines, evaluation and reevaluation timelines, content of IEPs, 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.

Question A-3 continued

5) 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.

6) 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.



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

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

No. As stated in Question A-2, an effective general supervision system should, at a minimum, include the eight components identified above, only one of which is the SPP/APR. Thus, solely relying on an LEA'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.

Question A-4 continued

- 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 the provision of IDEA services for children with disabilities residing in nursing homes or correctional facilities. Thus, solely relying on an LEA's program's performance on SPP/APR indicators would not constitute a reasonably designed general supervision system.

Data on Processes and Results



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

- States use data systems for a variety of purposes, including as a component of an effective general supervision system. At a minimum, States must have data systems to collect and report valid and reliable data under IDEA Sections 616, 618, and 642.17. As part of its general supervision system, a State must also consider how it will review the information in its data system to determine compliance and reflect in its monitoring policies how that review of data will be used to identify noncompliance. 34 C.F.R. §§ 300.600(e) and 303.700(e). The State should ensure that its policies do not delay the identification of noncompliance until the submission of SPP/APR data or the State's annual determination process.

Question A-5 continued

- The State's general supervision system should be reasonably designed to ensure the State examines data collected through its data system at regular intervals to determine LEA compliance with IDEA requirements (e.g., monthly, quarterly, or annually). This includes reviewing data collected to meet the IDEA reporting requirements under the SPP/APR and IDEA Sections 616 and 642. States should inform LEAs or of when and how the data system is being used for the purposes of determining compliance and identifying noncompliance. As States use their data systems for integrated monitoring activities (see Question A-3), they may also wish to review how the data system fits into the State's general supervision system, to make it most effective in ensuring compliance and improving functional outcomes and results for children with disabilities.

Fiscal Management



Question A-6: What are State's responsibilities for ensuring compliance with IDEA and OMB Uniform Guidance requirements?

In addition to IDEA's monitoring requirements, the OMB Uniform Guidance requires SEAs and LAs as Federal grantees to conduct monitoring. As the recipient of a Federal grant award, in accordance with 2 C.F.R. § 200.329, SEAs and LAs are responsible for oversight of the operation of Federal award-supported activities. Under that provision, the SEA and LA must monitor activities under the Federal award to ensure compliance with the applicable Federal requirements and achievement of performance expectations, and State monitoring must cover each program, function, or activity.

Question A-6 continued:

- SEAs must monitor IDEA Part B fiscal requirements such as the LEA's compliance with IDEA's maintenance of effort provisions (34 C.F.R. §§ 300.203 through 300.205) and the LEA's expenditure of a proportionate share of IDEA funds to provide equitable services to children with disabilities placed in private schools by their parents consistent with 34 C.F.R. § 300.133. LAs must monitor IDEA Part C fiscal requirements such as the EIS program's or provider's compliance with the payor of last resort and system of payment provisions. 34 C.F.R. §§ 303.501 and 303.521.

Question B-16: What steps must a State take to verify an LEA's correction of a fiscal finding of noncompliance with the OMB Uniform Guidance or IDEA's fiscal requirements?

- Findings of noncompliance related to fiscal requirements may be a result of either a Single State Audit, or of fiscal monitoring, and would not reflect individual child-specific noncompliance. As stated in Question A-6, the State must issue a management decision for applicable audit findings pertaining to the IDEA funds it provides to an LEA and, if applicable,²⁷ EIS program or provider. In doing so, the State must determine whether to sustain the auditor's finding (i.e., confirm identified noncompliance with a fiscal requirement of IDEA and/or the OMB Uniform Guidance) and ensure corrective action is taken. Fiscal findings also may be made through the State's fiscal monitoring process, which is part of the State's overall general supervision system.

Question B-16 Continued

In either case, the steps required to verify correction of noncompliance depend on the nature of the fiscal finding of noncompliance. If, for example, noncompliance with fiscal requirements is due to an LEA or EIS program or provider lacking, or having inappropriate, fiscal policies, procedures, and practices, the State must ensure that appropriate fiscal policies, procedures, and practices are developed, corrected, and implemented, as soon as possible, and in no case later than one year after the State's written notification of noncompliance



Effective Dispute Resolution

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

- Due process complaints and the resulting hearing decisions, and State complaints and the SEA's decisions on those complaints, are an important source of compliance information available to the State that should be considered and addressed as part of a reasonably designed general supervision system.
- In reviewing complaints and decisions, a State may be able to identify patterns that suggest systemic noncompliance by one or more LEAs with IDEA requirements or suggest that there may be State-wide patterns of noncompliance.
- Where such patterns are present, the State, as part of its general supervision system, **must** determine whether systemic noncompliance occurred or is occurring and ensure correction in a timely manner.

Example

- In the past school year, an SEA received a large number of due process complaints filed by parents against the same LEA regarding the consistent failure to provide an independent educational evaluation (IEE) at public expense upon the parents' request in accordance with 34 C.F.R. § 300.502. The subsequent hearing decisions found violations of those requirements.
- In addition to ensuring that each due process hearing decision is implemented, and any violations corrected within the timeframe specified by the hearing officer or, if no timeframe is provided, within a reasonable time, **the State must also examine each due process hearing decision to determine if the decision identifies any procedural or substantive violations of IDEA in the LEA.**

Example 2

- In this example, the State now has information about a pattern of violations, strongly suggesting systemic violations by this LEA.
- A reasonably designed general supervision system must be designed to collect and analyze this information. The State must determine whether systemic noncompliance is occurring and, if so, issue written findings of noncompliance and ensure correction.
- Information gathered through a State's dispute resolution system can also help to identify areas of IDEA implementation for which the SEA could decide to provide Statewide guidance, training, or technical assistance, to improve implementation of specific requirements throughout the State.

Priority Areas



Priority Areas

- A state must not ignore credible allegations of noncompliance made outside its formal monitoring visit cycle;
- States must monitor each LEA at least once within the six-year cycle of the state's SPP/APR;
- States must issue a timely finding of noncompliance, generally within three months of the state's identification of the noncompliance;
- States and LEAs must verify the correction of each individual case of child specific identified noncompliance, rather than a subset.



Identification and Correction of Noncompliance

Question A-11: How frequently should a State monitor its LEAs?

- The State should monitor all LEAs 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 data or other available information indicates an area of concern, a State should consider whether more frequent or targeted monitoring is necessary.

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

- 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 implementation of IDEA?

- 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 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 implementation of IDEA and reach a conclusion in a reasonable amount of time.

Question B-2 Continued

- When a State is made aware of an area of concern with an LEA 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 and reviewing and analyzing data or information.

Question B-2 Continued

- 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 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 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. 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 has violated an IDEA requirement,

Question B-3: What type and amount of information should the State review to confirm an LEA's compliance with IDEA requirements?

- Although IDEA does not specify the type and amount of information the State should review when monitoring LEAs.
- Finally, the State should be able to explain the methodology used to ensure that the type and amount of data accurately reflect the LEA'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 education record of a child with a disability;
 - interviews conducted with relevant staff, parents, and others; as well as a review of LEA.

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

- Identification of noncompliance (i.e., a finding) means the determination by a State that an LEA’s program policy, procedure, or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, or another IDEA-related Federal requirement

Question B-5: How must a State notify LEAs of any identified noncompliance?

- The State must inform LEAs in writing of any identified noncompliance to provide notice. 34 C.F.R. §§ 300.149 and 303.120.
- The written notification of noncompliance (i.e., a finding) is from the State to the LEA and should contain the elements described in Question B-6.

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

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

- a) A description of the identified noncompliance;
- b) The statutory or regulatory IDEA requirement(s) with which the LEA or is in noncompliance;
- c) A description of the quantitative and/or qualitative data (i.e., information, supporting the State's conclusion that there is noncompliance);

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

Continued

OSEP's longstanding position...the finding should include:

- a) 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;
- b) Any required corrective action(s); and
- c) A timeline for submission of a corrective action plan or evidence of correction.

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)?

- The State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA, generally **within three months** of the State exercising due diligence and reaching a conclusion in a reasonable amount of time that the LEA has violated an IDEA requirement,

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

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:

- (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

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

OSEP's longstanding position,...the State must verify that the LEA:

- (2) if applicable, has corrected each individual case 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 (child-specific compliance).
- The State must maintain documentation and evidence demonstrating that the LEA 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).

Question B-13: What is the timeline for correcting noncompliance (i.e., demonstrating timely correction) under the IDEA?

- Under the IDEA, there is a longstanding requirement to correct noncompliance as soon as possible, but no later than one year after the State's written notification of noncompliance.

Question B-15: How must a State verify that each individual case of child-specific noncompliance was corrected?

- In order to verify correction of child-specific noncompliance, a State must review each individual case (not a subset or sample) of previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance, to verify correction by the LEA 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.)
- Furthermore, a State's failure to require its LEAs to correct each individual case of child-specific noncompliance could result in denying children with disabilities, and their families, the rights and protections available under IDEA Part B and its implementing regulations in 34 C.F.R. Part 300, or under IDEA Part C and its implementing regulations in 34 C.F.R. Part 303.

Question A-10: Which educational programs, agencies, institutions, organizations, must a State monitor to fulfill its general supervision responsibilities?

- 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).

Question A-10: Which educational programs, agencies, institutions, organizations, must a State monitor to fulfill its general supervision responsibilities? Continued

- 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.**

Summary

OSEP expects States to build robust general supervision systems to ensure Statewide accountability that swiftly identifies and corrects noncompliance; increases accountability through the collection of timely and accurate data; and ensures the full implementation of IDEA to improve functional outcomes, and early intervention and educational results for children with disabilities.

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