



GENERAL SUPERVISION GUIDANCE FOR STATE LEAD AGENCIES UNDER IDEA - SUMMARY

This brief summary of the US Department of Education Office of Special Education Programs; General Supervision Guidance was developed by the National Center for Parent Leadership, Advocacy, and Community Empowerment for use by our members. Please contact Diana Autin, Executive Co-Director and Director of Public Policy, at dautin@parentsatthetable.org with any questions or comments.

Purpose of the guidance

- States will have the info necessary to exercise their IDEA general supervision responsibilities
- OSERS monitoring visits revealed that States have narrowed their focus resulting in missing effective oversight over key pieces of a state system, and noncompliance is not always being identified and identified noncompliance is not always being fully and timely corrected
- This guidance:
 - Reaffirms the importance of general supervision and the expectation that monitoring the implementation of IDEA will improve EI and educational results and functional outcomes for children with disabilities and their families
 - Reaffirms that the primary focus of monitoring must be on improving educational results and functional outcomes for all children with disabilities, and ensuring that public agencies meet the requirements under Part C for EI and Part B for ages 3-21
 - Incorporates longstanding policy and supersedes and consolidates previously issued guidance documents
 - Addresses common questions that OSEP has received from parents, states, local programs, and other stakeholders

Authority

- OSEP must monitor states to ensure IDEA implementation
- States must monitor all programs and activities used to implement IDEA and make annual determinations
- When states/territories apply for their Part C or Part B funding, they provide assurances that they are ensuring full implementation of IDEA for all infants, toddlers, children, and youth with disabilities in their state/territory, and that they have a general supervision system that ensures implementation as well as effective identification and timely correction of non-compliance. States/territories must have a general supervision system that ensures the identification and correction of noncompliance using all the components of the general supervision system including collection and reporting of reliable data; following OSEP's

published interpretations of the law; and having policies, procedures and practices consistent with IDEA including the ones to identify and correct noncompliance. Also, OMB uniform guidance requires grantees to maintain fiscal controls to ensure compliance with terms and conditions of the federal award

IDEA Regulations

- 34 CFR 300/149: SEA is responsible for monitoring all education programs for children and youth with disabilities for all requirements for Part B. States must monitor LEAs on provision of FAPE in LRE; child find; system of transition services; use of resolution meetings; mediation; disproportionate representation of racial and ethnic groups (identification, placement, discipline); and fiscal compliance. SEA must ensure implementation of IDEA in all educational programs including public schools, charter schools, children with disabilities in nursing homes, and CWD in juvenile prisons.
- 34 CFR 303.120: Part C Lead Agency is responsible for monitoring all programs and activities used by the state to carry out Part C including monitoring, enforcing, correcting and providing TA. States must monitor for EI services in natural environments; child find; system of transition services; use of resolution sessions if applicable; mediation; equitable implementation of IDEA, through examination of local policies, procedures, and evidence of implementation; and fiscal compliance. EI Lead Agencies must have a single line of responsibility for implementation.

Clarified/expanded positions in the new guidance

- ***Reasonably designed general supervision systems*** (B1 & B2): states may not ignore credible allegations of noncompliance made outside formal monitoring visit cycle and must conduct proper due diligence in a timely manner
- ***Timeline considerations for the identification of noncompliance***: States must issue a finding, generally within 3 months of the State's ID of noncompliance (B11-12); (B4)
- ***Correction of child-specific noncompliance***: States must verify correction of each individual case of identified noncompliance (B15); state must review each individual case, not a subset or sample, of previously noncompliance records or whatever data source was used to identify the original noncompliance; when a child leaves the jurisdiction of an LEA/provider states must ensure that any corrective action order must be completed even if the child has relocated to another state as long as it can be done and the parent doesn't reject implementation of the order in the new state
- ***SPP/APR reporting***: States must monitor each LEA or EIS program at least once within the 6-year cycle of the State's SPP/APR (and more frequently if necessary), and when using "monitoring" as its data source should report on the # of LEAs or EIS programs that data reflects (A5); must include the # of LEAs/programs included in making the determination of compliance

General supervision overview

- ***State General supervision responsibilities (Section A – 14 questions)***
 - State policies, procedures, and practices must be reasonably designed to consider and address areas of concern, i.e., credible allegations of noncompliance, in a timely

- manner. When SEAs and State Lead Agencies apply for IDEA Part B or Part C funds, they assure the Department that they have in effect policies, procedures, and practices that are consistent with IDEA statutory and regulatory requirements.
- Components of a reasonably designed system (A-2): Integrated monitoring activities, data on processes and results, SPP/APR, fiscal management, effective dispute resolution, targeted TA and professional development, policies, procedures, and practices resulting in effective implementation, and improvement, correction, incentives, and sanctions
 - Integrated monitoring activities (A-3): Multifaceted formal process or system designed to examine and evaluate an LEA's or EIS program's or provider's implementation of IEA with a particular emphasis on educational results, functional outcomes, and compliance with IDEA programmatic requirements (will develop tools and visuals with TA providers – horizontal and vertical avenues)
 - Data system as a component of effective system (A-5): states should inform LEAs or EIS programs or providers of when and how the data system is being used to determine compliance; must consider how it will use this information
 - Examine at regular intervals (monthly/quarterly/annually) to determine compliance
 - Effective dispute resolution information (A-7): State may be able to identify patterns that suggest systemic noncompliance by one or more LEAs or EIS programs or providers with IDEA requirements or suggest that there may be statewide patterns of noncompliance in reviewing complaints and decisions; if they are present, the state must determine whether systemic noncompliance occurred or is occurring and ensure correction in a timely manner
 - State must monitor or LEAs or EIS programs and providers within a reasonable period of time and at least once within a six-year period; a state should consider whether more frequent or targeted monitoring (an activity that occurs outside of the state's normal cycle to address emerging or new issues, and typically is limited in scope) is necessary, when an LEA or EIS program or provider's data or other available information indicates an area of concern
 - **Identification and correction of noncompliance (Section B-18 questions)**
 - Area of Concern (B-1): An area of concern is 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
 - State must conduct proper due diligence when made aware of an area of concern regarding implementation of IDEA and reach a conclusion in a reasonable amount of time (B-2)
 - Proper due diligence activities may include but are not limited to conducting clarifying legal research, interviewing staff, parents, children, and groups that represent families and communities, reviewing and analyzing data or information that could come from media reports, a parent, an advocacy organization, etc.
 - Due diligence data or information to analyze: fiscal contracts or other relevant financial information, state customer service information, administrative or judicial decisions, media reports, previous self-reviews or assessments, other relevant data

- Type and amount of information (B-3) state should review to confirm compliance: State should be able to explain the methodology used to ensure that the type and amount of data accurately reflects the level of compliance for each LEA/EI provider; state should ensure that the info reviewed when determining compliance is representative of the population served within a given LEA/EIS program/provider to ensure validity and reliability of the data used. State must use 100% compliance as the standard for compliance.
- Identification of noncompliance (B-4): means the determination by a state that an LEA/EIS program/provider's policy, procedure or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, another IDEA-related federal requirement, or any specific IDEA grant award term or condition; OSEP uses the terms written notification of noncompliance, written finding of noncompliance, identified noncompliance or finding
- Elements of written notification of noncompliance (B-6): Description of the identified noncompliance, statutory or regulatory IDEA requirement(s) that the LEA or EIS Program/provider has violated, description of quantitative and/or qualitative data supporting the state's conclusion of noncompliance, a statement that the non-compliance must be corrected ASAP and in no case later than one year from the date of written notice, any required corrective actions, and timeline for correction and submission of a corrective action plan or evidence of correction.
- State must issue a finding within 3 months of identifying noncompliance if the State determines that an LEA or EIS program/provider is in noncompliance.
- Self-assessment and self-reviews (B-9): State should confirm that the information in the self-assessment is accurate and the LEA/EIS program or provider's interpretation of the applicable requirements is correct; if noncompliance is identified and confirmed true, the state must issue a finding and ensure correction unless the exceptions set out in B-11 and B-12 apply (pre-finding correction)
- Correction of noncompliance (B-10): Standard for correction is that each individual child-specific compliance has been confirmed (B-15) Systemic compliance: correctly implementing correction action – evidence required. Must correct as soon as possible but no later than a year
- Pre-finding correction (B-11): State hasn't yet issued a finding despite finding noncompliance, state must ensure that both child-specific and systemic noncompliance has been corrected
- Demonstration of pre-finding correction (B-12): State may choose not to issue a written finding, but must ensure that the noncompliance has been corrected and the documentation must be reported in SPP/APR
- **SPP/APR (Section C)**
 - Can't limit the scope of general supervision activities to only the IDEA requirements included in the SPP/APR indicators and data reported under IDEA Section 616 and 642
 - Solely relying on an LEA or EIS program's performance on the SPP/APR is not allowed
 - Data source (Monitoring or data system) (C-20): State monitoring data are gathered during integrated monitoring activities to examine an LEA or EIS program/provider's

- compliance (A-5); database or data system is an electronic system used by the state to collect, maintain and store data; states must identify the data source and should be clear about what the data reflect, including the number of local programs, the number of children, the time period (Part C only), and the compliance requirement
- Reporting on ID and timely correction of noncompliance (C-4): states must describe in sufficient detail its process for ensuring child-specific and systemic noncompliance has been corrected; this could include what the state reviewed such as individual child files or records, or how the state used its data system to verify child-specific correction; for systemic noncompliance, the state is encouraged to describe the time period covered by the subsequent data reviewed, how many records were reviewed, any trainings provided, and how the state determined these specific actions demonstrated correction (C-4) – standard must be 100% compliance
 - **State Annual Determinations (Section D)**
 - What are the categories of determination that states must use: meets requirements, needs assistance, needs intervention, needs substantial intervention (300.603 b)
 - States must consider (1) performance on compliance indicators, (2) valid and reliable data, (3) correction of identified noncompliance, and (4) any other data available to the state about compliance including any relevant audit findings (D-2); in developing its determination process including factors to consider in making annual determinations, the state should consider stakeholder input (parents, children with disabilities, local level staff, teachers, support personnel, providers, PTI leadership and staff, local and statewide advocacy groups, SAP/SICC provide a mechanism for states to gather this information from stakeholders)(D-2)
 - Informing LEA/EIS program or provider of determination: Must issue annual determinations; States should notify LEA/EIS program/provider in a timely manner so they can begin to plan for and take necessary improvement actions; if it impacts funds for LEAs/EIS programs the state should share its determinations before funds are issued or contracts are renewed
 - States are encouraged to publicly report annual determinations (D-7), and must report on the performance of each LEA/EIS program/provider
 - **State Enforcement through Determinations and Other Methods (E-6 questions)**
 - Enforcement actions to be taken (E-1): states must make an annual determination; for needs assistance (2 years), needs intervention (3 or more years), or anytime the state determines need intensive intervention
 - Needs assistance 2 or more consecutive years: State must access TA that may help the LEA/EIS program address the areas where they need assistance, OR identify them as a high risk grantee and impose specific conditions; for Part B, the LEA may not reduce its maintenance of effort
 - Needs intervention 3 or more consecutive years: State may take any of the actions from needs assistance above, and must take at least one of the following: correction action/improvement plan, or withhold, in full or in part, further payments under Part B to the LEA or under Part C to the EIS program
 - Withholding funds (E-1): Must propose to withhold funds after making an annual determination if the state determines need for

substantial intervention, and states must have policies and procedures which describe how any IDEA funds withheld from an LEA or EIS would be managed (additional guidance to come)

- Steps to take (E-4) for Part B; (E-5) for Part C: must notify the LEA of their determination and provide the LEA with reasonable notice and an opportunity for a hearing; Part C: contracts are governed by state contract law and should include provisions that clearly describe the actions the lead agency will take if the EIS provider fails to perform consistent with contract terms, including compliance with IDEA requirements (616 and 642 withholding funds under Part C); also sub-recipient requirements under OMB Uniform Guidance (2 CFR 200)
- Additional enforcement actions if previous enforcement has not resulted in compliance (E-6): Corrective Action Plan or specific conditions; state-managed team may work at the local level to develop and implement needed policies/procedures/practices; training, TA and coaching new/existing local staff so they can re-assume operations and state can gradually reduce on-site support
- Sanctions: adverse actions the state uses to ensure compliance (34 CFR 300.626 and 303.417): written policies, procedures and practices that explain the state's system of progressive sanctions and enforcement provisions; under Part B, the state may take over the direct provision of special education and related services from an LEA in certain circumstances (227(a)i(3))

Summary

- OSEP appreciates states' continued efforts to improve implementation of IDEA and recognizes the challenges in developing reasonably designed general supervision system which balances ensuring compliance with improving results; a state's investment in establishing and implementing a robust general supervision system should result in infants and toddlers having access to developmental opportunities, and children with disabilities receive appropriate education services needed to prepare them for further education, etc.

Next steps

- Work sessions and meetings with TA providers to develop additional TA resources (specific examples and tools); meetings and roundtable events with stakeholder groups; presentations, webinars, and participation at additional national conferences such as NASDSE, DEC, CADRE, CIFR, CIPR, CEC
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- Read the guidance at <https://sites.ed.gov/idea/osep-releases-updated-guidance-to-strengthen-states-general-supervision-requirements/>.