



## **Enclosure 1**

### **Determinations of the Performance of Local Programs by State Agencies Under Part B of the Individuals with Disabilities Education Act (IDEA)**

Pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) Section 616(a)(1)(C)(i) and 34 CFR §300.600(a), states are required to make “determinations” annually under Section 616(d) on the performance of LEAs’ programs for students with disabilities. In making such determinations, the state will assign each LEA one of the following determination levels:

- Meets requirements
- Needs assistance
- Needs intervention
- Needs substantial intervention

Enforcement actions for these levels are described in section 616(e) of the IDEA and also in the Part B regulations at 34 CFR §§300.603 and 300.604. States must use appropriate enforcement actions listed at section 616(e) and in the Part B regulations at 34 CFR §300.600(a), that refer to the actions listed in 34 CFR §300.604. The Part B regulations at 34 CFR §300.604(a) specifically designate the enforcement actions that States must apply after an LEA is determined to “need assistance” for two consecutive years, “need intervention” for three or more consecutive years, or immediately when an LEA is determined to be in “need of substantial intervention.” In addition to required actions, states shall also apply enforcement actions determined appropriate to address noncompliance and support continuous improvement.

#### **Determination Criteria**

In making local determinations, OSSE considers indicators of performance, including certain federally required elements, in order to assign a determination level for each LEA. This determination is based on the following 2012-2013 School Year data submitted by LEAs or collected via the Special Education Data System:

- History, nature and length of time of any reported noncompliance; specifically, the LEA’s performance on Indicators 4b, 9, 10, 11, 12 and 13 as outlined in the State Performance Plan (SPP) and FFY2012<sup>1</sup> Annual Performance Report (APR);
- Information regarding timely, valid and reliable data;
- On-site compliance monitoring, focused monitoring and dispute resolution findings;
- Sub-recipient audit findings;
- Other data available to OSSE regarding the LEA’s compliance with the IDEA, including, but not limited to, relevant financial data and compliance with the Funding for Public Schools and Public Charter School Amendment Act of 2011;
- Performance on selected SPP results indicators; and
- Evidence of correction of findings of noncompliance, including progress toward full compliance.

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<sup>1</sup> FFY 2012 is the 2012 Federal Fiscal Year beginning July 1, 2012 and ending June 30, 2013.

### **Determination Ratings**

OSSE reviewed available data for each LEA across all elements, assigned a point value for each element, summed the total, and then divided it by points available for applicable elements in order to establish each LEA's determination rating. Not all metrics are applicable to each LEA; for example, some LEAs will not have data for correction of noncompliance because they were not issued findings of noncompliance during the applicable reporting period. Categories that were not applicable are not accounted for in the denominator of the calculation.

The calculation for rating points is as follows:

$$\% = \frac{\text{Total number of points earned}}{\text{Total point value from applicable elements}}$$

Table 1 below shows the total rating points associated with each determination level.

***Table 1: Determination Level by Rating Points***

<b>Determination Level</b>	<b>Total Rating Points</b>
<b>Meets Requirements</b>	81 – 100% of Points from Applicable Elements
<b>Needs Assistance</b>	61 – 80% of Points from Applicable Elements
<b>Needs Intervention</b>	41 – 60% of Points from Applicable Elements
<b>Needs Substantial Intervention</b>	0 – 40% of Points from Applicable Elements

### **Enforcement Actions**

States must use appropriate enforcement actions as listed at section 616(e) and in the Part B regulations at 34 CFR §300.600(a) that refer to the actions listed in 34 CFR §300.604. In addition to the enforcement actions required below, OSSE may apply enforcement actions to LEAs with determination levels of “needs assistance” or “needs intervention.”

**Table 2: Enforcement Actions**

<b>Determination Level</b>	<b>Enforcement Actions<sup>2</sup></b>
<b>Meets Requirements</b>	None
<b>Needs Assistance</b>	State shall take one or more of the following actions if the LEA receives this determination for 2 or more consecutive years: <ul style="list-style-type: none"><li>• Advise the LEA of available sources of technical assistance and require the LEA to work with appropriate entities</li><li>• Direct the use of funds</li><li>• Impose special conditions</li></ul> In addition, the State must prohibit the LEA from reducing the LEA’s maintenance of effort under 34 CFR §300.203 for any fiscal year
<b>Needs Intervention</b>	If the LEA receives this determination for 3 or more consecutive years, the State may take any of the actions described above, and shall take one or more of the following: <ul style="list-style-type: none"><li>• Require a corrective action plan or improvement plan if the State determines that the LEA should be able to correct the problem within one year</li><li>• Require the LEA to enter into a compliance agreement if the State has reason to believe that the LEA cannot correct the problem within one year</li><li>• Recover funds</li><li>• Withhold further payments</li></ul>
<b>Needs Substantial Intervention</b>	At any time that the State determines that an LEA needs substantial intervention, the State shall take any of the actions described above, and require one or more of the following: <ul style="list-style-type: none"><li>• Recover funds</li><li>• Withhold further payments</li></ul>

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<sup>2</sup> Any withholding of funds will comport with 34 CFR §300.605, which provides for reasonable notice and an opportunity for a hearing.

### **Appeals Process**

Any LEA that believes a specific element reviewed in the determination process is inaccurate may appeal its assigned determination level. The LEA must make an appeal within 30 calendar days of the date of the Determination Level Notification letter. The request for appeal must include the submission of all information necessary for OSSE to reconsider the original determination level. OSSE will acknowledge receipt of the request for appeal and will provide a Determination Level Appeal Response letter when the review is completed. Any appeals received after the 30 calendar day timeframe will not be considered. LEAs that request an appeal must include in their request a contact person's name, email, phone number, and the LEA Leader's name and signature. The completed request should be sent to the following address:

OSSE Division of Specialized Education and Elementary and Secondary Education  
Attn: Amy Maisterra, Assistant Superintendent  
810 First Street, NE, 5th Floor  
Washington, DC 20002

**Table 3: Description, Data Sources, and Determination Rating Scale for FFY 2012 Elements used in Local Determination**

Element 1 <sup>3</sup>	
History, nature and length of time of any reported noncompliance (APR Compliance Indicators 4b, 9, 10, 11, 12, and 13)	
Description	Data Source
<b>Indicator 4b:</b> Districts that have significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards (20 U.S.C. 1416(a)(3)(A); 1412(a)(22))	FFY 2011 Child Count/Environment Certification from LEAs, Discipline Events from School Year 2011-2012, and LEA policies, procedures and practices submitted to OSSE
<b>Indicator 9:</b> Disproportionate representation of racial and ethnic groups <sup>4</sup> in special education and related services that is the result of inappropriate identification (20 U.S.C. 1416(a)(3)(C))	SEDS, the FFY 2012 Child Count/Environment Certification from LEAs, and LEA disproportionality self- assessments for LEAs identified with potential disproportionate representation
<b>Indicator 10:</b> Disproportionate representation of racial and ethnic groups in specific disability categories <sup>5</sup> that is the result of inappropriate identification (20 U.S.C. 1416 (a)(3)(C))	SEDS, the FFY 2012 Child Count/Environment Certification from LEAs, and LEA disproportionality self-assessments for LEAs identified with potential disproportionate representation
<b>Indicator 11:</b> Percent of children with parental consent to evaluate, who were evaluated within 60 days (or State established timeline <sup>6</sup> ) (20 U.S.C. 1416 (a)(3)(B))	SEDS data based on FFY 2012
<b>Indicator 12:</b> Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday (20 U.S.C. 1416 (a)(3)(B))	SEDS data based on FFY2012
<b>Indicator 13:</b> Percent of youth with IEPs aged 16 and above that include appropriate	SEDS and quarterly secondary transition reviews during FFY

<sup>3</sup> Please note that not all data elements are applicable to every LEA

<sup>4</sup> American Indian or Alaska Native, Asian, Black or African-American, Hispanic/Latino, Native Hawaiian or Other Pacific Islander, White, or two or more races.

<sup>5</sup> Autism, Deafness-Blindness, Developmental Delay, Emotional Disability, Hearing Impaired, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech Language Impairment, Traumatic Brain Injury, and Visual Impairment.

<sup>6</sup> The District of Columbia uses 120 days as the established timeline.

postsecondary transition requirements, based on quarterly database reviews (20 U.S.C. 1416 (a)(3)(B))	2012
<b>Element 1 Scoring – 6 points</b>	
<ul style="list-style-type: none"> <li>Indicator 4b in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>
<ul style="list-style-type: none"> <li>Indicator 9 in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>
<ul style="list-style-type: none"> <li>Indicator 10 in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>
<ul style="list-style-type: none"> <li>Indicator 11 in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>
<ul style="list-style-type: none"> <li>Indicator 12 in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>
<ul style="list-style-type: none"> <li>Indicator 13 in compliance</li> </ul>	<ul style="list-style-type: none"> <li>Compliant= 1</li> <li>Noncompliant= 0</li> <li>N/A</li> </ul>

<b>Element 2</b>	
Information regarding timely data submissions.	
<b>Description</b>	<b>Data Source</b>
Data submitted for inclusion in the State’s data submissions and Annual Performance Report are submitted on time and are accurate	FFY 2012 Child Count (December 1, 2012)
<b>Element 2 Scoring – 4 points</b>	
<ul style="list-style-type: none"> <li>All data are submitted timely</li> </ul>	4 points
<ul style="list-style-type: none"> <li>Not all data are submitted timely</li> </ul>	0 points
<ul style="list-style-type: none"> <li>Category not applicable to the LEA</li> </ul>	N/A

Element 3a	
On-site compliance monitoring, focused monitoring, or dispute resolution findings (student and/or LEA level)	
Description	Data Source
3a: Identified noncompliance from on-site compliance monitoring (student and/or LEA level)	Quality Assurance and Monitoring Unit data collected during FFY 2012, including but not limited to: School records, and monitoring activities
Element 3a Scoring –2 points	
<ul style="list-style-type: none"> <li>90-100% of areas reviewed in compliance</li> <li>75-89% of areas reviewed in compliance</li> <li>Less than 75% of areas reviewed in compliance</li> </ul>	<ul style="list-style-type: none"> <li>2 points</li> <li>1 point</li> <li>0 points</li> </ul>
LEA did not receive an LEA an on-site visit in FFY 2012.	<ul style="list-style-type: none"> <li>N/A</li> </ul>

Element 3b	
On-site compliance monitoring, focused monitoring, or dispute resolution findings (student and/or LEA level)	
Description	Data Source
3b:Dispute resolution findings (student and/or LEA level)	Quality Assurance and Monitoring Unit data collected during FFY 2012, including but not limited to: State complaints, Student Hearing Office Docketing System Data, and Blackman Jones Database data
Element 3b Scoring – 2 points	
LEA has 0-25 students with IEPs <ul style="list-style-type: none"> <li>0-2 findings of noncompliance, or no complaints were filed against the LEA</li> <li>3-8 findings of noncompliance</li> <li>9 or more findings of noncompliance</li> </ul>	<ul style="list-style-type: none"> <li>2 points</li> <li>1 point</li> <li>0 points</li> </ul>
LEA has 26-50 students with IEPs <ul style="list-style-type: none"> <li>0-4 findings of noncompliance, or no complaints were filed against the LEA</li> <li>5-16 findings of noncompliance</li> <li>17 or more findings of noncompliance</li> </ul>	<ul style="list-style-type: none"> <li>2 points</li> <li>1 point</li> <li>0 points</li> </ul>

LEA has 51-100 students with IEPs <ul style="list-style-type: none"> <li>• 0-8 findings of noncompliance, or no complaints were filed against the LEA</li> <li>• 9-32 findings of noncompliance</li> <li>• 33 or more findings of noncompliance</li> </ul>	<ul style="list-style-type: none"> <li>• 2 points</li> <li>• 1 point</li> <li>• 0 points</li> </ul>
LEA has more than 100 students with IEPs <ul style="list-style-type: none"> <li>• 0-16 findings of noncompliance, or no complaints were filed against the LEA</li> <li>• 17-64 findings of noncompliance</li> <li>• 65 or more findings of noncompliance</li> </ul>	<ul style="list-style-type: none"> <li>• 2 points</li> <li>• 1 point</li> <li>• 0 points</li> </ul>

Element 4	
Outcomes of sub-recipient audit reports <sup>7</sup>	
Description	Data Source
Sub-recipients expending \$500,000 or more of federal funds annually, from all sources, are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations. Sub-recipients should receive an annual financial and/or A-133 Single Audit within 9 months from the end of its fiscal year in accordance with OMB Circular A-133. Additional fiscal audits may also be required by other authorizing entities.	A-133 single audit reports for FFY 2012 and any other fiscal audit results available to OSSE
Element 4 Scoring – 4 points (average score)	
Timely submission of A-133 Report <ul style="list-style-type: none"> <li>• Timely</li> <li>• Untimely</li> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 4 points</li> <li>• 0 points</li> <li>• N/A</li> </ul>
Type of Auditors A-133 Report issued on compliance <ul style="list-style-type: none"> <li>• Unqualified</li> <li>• Qualified</li> <li>• Adverse</li> <li>• Disclaimer</li> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 4 points</li> <li>• 2 points</li> <li>• 1 point</li> <li>• 0 points</li> <li>• N/A</li> </ul>
Significant deficiencies identified by the Auditor that are not a material weakness in the A-	

<sup>7</sup> Points for this element are based on an average of total points achieved.



133 Report <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 2 points</li> <li>• 4 points</li> <li>• N/A</li> </ul>
Material weaknesses identified by the Auditor in the A-133 Report <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 0 points</li> <li>• 4 points</li> <li>• N/A</li> </ul>
Auditor's designation as low-risk sub-recipient in the A-133 Report <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• 4 points</li> <li>• 0 points</li> <li>• N/A</li> </ul>
Significant deficiencies identified by the Auditor that are not a material weakness in the annual independent audit <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• 2 points</li> <li>• 4 points</li> </ul>
Material weaknesses identified by the Auditor in the annual independent audit <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• 0 points</li> <li>• 4 points</li> </ul>
Noncompliance or other matters identified by the Auditor that are required to be reported under Government Auditing Standard <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• 0 points</li> <li>• 4 points</li> </ul>

Element 5	
Other data available to OSSE regarding the LEA's compliance with the IDEA, including but not limited to, relevant financial data	
Description	Data Source
Compliance with the IDEA's grant application requirements and LEA grant expenditure data	Timely submission of FFY 2012 Phase I and Phase II applications; and evidence that LEA sought valid reimbursement for a minimum of 45% of its IDEA, Section 611 funds within the first fifteen (15) months of the FFY 2012 grant cycle
<b>Element 5 Scoring – 4 points</b>	

Timely LEA submission of Phase I and Phase II applications and reimbursement for a minimum of 45% of its IDEA, Section 611 funds within the first 15 months of the FFY 2012 grants cycle	4 points
Either timely LEA submission of Phase I and Phase II applications, or reimbursement for a minimum of 45% of its IDEA, Section 611 funds within the first 15 months of the FFY 2012 grant cycle	2 points
Neither element was met	0 points

Element 6	
Compliance with the IDEA Maintenance of Effort requirements	
Description	Data Source
Maintenance of Effort (MOE) is a federal requirement under IDEA that requires local education agencies (LEAs) to spend the same amount of state and/or local money on the education of children with IEPs from year-to-year (34 CFR §§ 300.203-300.205)	Evidence that LEA is in compliance with the IDEA MOE requirement; and timely submission of the IDEA MOE spreadsheet for FY 13 (October 1, 2012 to September 30, 2013)
Element 6 Scoring – 2 points	
LEA in compliance with the IDEA MOE requirement and LEA reported on MOE to OSSE timely	2 points
LEA <u>not</u> in compliance with the IDEA MOE requirement; however, LEA reported on MOE to OSSE timely	1 point
LEA did not report on MOE timely to OSSE	0 points

Element 7	
Performance on selected District of Columbia State Performance Plan (SPP) indicators	
Description	Data Source
<b>Indicator 3:</b> Participation and performance of children with IEPs on statewide assessments: a) Percent of districts with a disability subgroup that meets the State’s minimum “n” size that meet the State’s AMO targets for the disability subgroup.	FFY 2012 District of Columbia Comprehensive Assessment System (DC CAS) data
Element 7 – 2 points	
LEA met District of Columbia FFY 2012 AMO math targets for the disability subgroup	

<ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• LEA did not meet minimum “n” size for disability subgroup</li> </ul>	<ul style="list-style-type: none"> <li>• 1 point</li> <li>• 0 points</li> <li>• N/A</li> </ul>
LEA met District of Columbia FFY 2012 AMO reading targets for the disability subgroup <ul style="list-style-type: none"> <li>• Yes</li> <li>• No</li> <li>• LEA did not meet minimum “n” size for disability subgroup</li> </ul>	<ul style="list-style-type: none"> <li>• 1 point</li> <li>• 0 points</li> <li>• N/A</li> </ul>

Element 8	
Evidence of correction of findings of noncompliance, including progress toward full compliance	
Description	Data Source
A finding is a written notification from OSSE to an LEA that contains OSSE’s conclusion that the LEA is in noncompliance, and that includes the citation of the statute or regulation and a description of the quantitative and/or qualitative data supporting OSSE’s conclusion that there is noncompliance with that statute or regulation. Following the issuance of findings of noncompliance, an LEA must correct the noncompliance as soon as possible, but in no case later than one year after the identification of the noncompliance. Correction of noncompliance is achieved when the LEA provides evidence that it is correctly implementing the specific regulatory requirement and that for any noncompliance concerning a child-specific requirement that the LEA has corrected each individual case of noncompliance.	OSSE Division of Quality Assurance and Monitoring data gathered during FFY 2012
Element 8 – 2 points	
100% of noncompliance corrected as soon as possible, but in no case later than one year after the identification of the noncompliance	2 points
90-99% of noncompliance corrected as soon as possible, but in no case later than one year after the identification of the noncompliance	1 point
Less than 90% of noncompliance corrected within one year after the identification of the noncompliance	0 points
The LEA was not issued any findings of noncompliance from FFY 2012 that were due for	N/A

correction in FFY 2013.	
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BONUS POINT	
Correction of long standing noncompliance	
Description	Data Source
Longstanding student-level noncompliance is a student-level finding of noncompliance that remains uncorrected by the LEA for more than one year from the date of issuance. This analysis took into account noncompliance from the following years: FFY 2009, 2010 and 2011.	OSSE Division of Quality Assurance and Monitoring data gathered during FFY 2009, 2010 and 2011
Bonus points	
The LEA does not have any uncorrected student noncompliance from FFYs 2011, 2010, 2009	1 points
The LEA has uncorrected student noncompliance from FFYs 2011, 2010, 2009	0 point
The LEA was not open in FFYs 2011, 2010, and/or 2009	N/A