



Office of the



State Superintendent of Education

Monitoring & Compliance Manual (IDEA Part C)

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Issued: April 2010

Revised: January 2011

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OSSE Part C Monitoring & Compliance Manual
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1. INTRODUCTION

The District of Columbia Office of the State Superintendent of Education (OSSE), Department of Special Education (DSE), Division of Quality Assurance and Monitoring (QAM) and the DC Early Intervention Program (DC EIP), are pleased to provide this guidance and information regarding its Individuals with Disabilities Education Act (IDEA) Part C Monitoring and Compliance System to assist providers, training and technical staff, the Interagency Coordinating Council (ICC), and other interested parties' understanding of how OSSE monitors for compliance and quality, identifies noncompliance and ensures timely correction of noncompliance.

As the lead agency for the District of Columbia, OSSE's role is to set high expectations, provide resources and support, and exercise accountability to ensure a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention (EI) services for infants and toddlers with disabilities and their families. OSSE's Division of Special Education houses DC EIP, and together with QAM, functions to ensure compliance with the federal requirements of Part C of the IDEA.

The IDEA requires that the lead agency monitor the implementation of IDEA Part C, make annual determinations about the performance of each EI program, enforce compliance with IDEA Part C and report annually on the performance of the lead agency and each EI program. The primary focus of the lead agency's monitoring activities must be on improving outcomes for all infants and toddlers with disabilities and their families while ensuring that EI programs meet the requirements of IDEA Part C. **In exercising its monitoring responsibilities, the lead agency must ensure that when it identifies noncompliance with the requirements of IDEA Part C by EI programs, the noncompliance is corrected as soon as possible, and in no case later than one year after the lead agency's identification of the noncompliance.**

The goal of OSSE's Monitoring and Compliance System is to ensure that EI programs are meeting the requirements of both federal and local regulations. In alignment with federal regulations and OSSE's role as lead agency, OSSE's monitoring approach is outcome oriented. To achieve desired performance results, it is critical that OSSE works collaboratively with EI programs and engages in shared accountability practices that will maximize success for all infants and toddlers with disabilities or developmental delays. Monitoring activities that will enable OSSE to facilitate this collaborative approach to improved performance include: database reviews, on-site compliance monitoring, record reviews, dispute resolution activities, annual review of service provider contract provisions and audit findings reviews. In an effort to ensure separation of State and local functions, OSSE's QAM team is responsible for conducting monitoring activities for the State's Part C program.

Another key feature of OSSE's Monitoring and Compliance System is the direct linkage between monitoring activities and technical assistance and professional development. OSSE's Training and Technical Assistance Division (T&TA) works directly with QAM and the DC EIP to identify specific compliance areas that warrant general and targeted technical assistance. OSSE offers a multitude of training opportunities for EI programs to increase their knowledge of and compliance with IDEA Part C requirements and to discover methods to improve outcomes for infants and toddlers with

disabilities or developmental delays. DC EIP also conducts pre-service and in-service trainings to determine gaps and additional needs for providers, service coordinators and intake specialists. For more information on OSSE's T&TA, please contact osse.tta@dc.gov.

OSSE is committed to a monitoring system that identifies noncompliance with the ultimate goal of improving outcomes for all infants and toddlers with disabilities or developmental delays and their families. While monitoring activities must, by federal law, examine compliance issues, OSSE has very deliberately structured its monitoring approach in such a way that the broader themes of IDEA – inclusivity, improved performance, and teamwork – are emphasized.

2. LEAD AGENCY AUTHORITY

OSSE has statutory authority under both federal and local law to establish, operate and maintain an administrative process to ensure compliance with all federal statutes for the programs under its jurisdiction, including the statewide system of EI services for District infants and toddlers with disabilities or developmental delays and their families.

The IDEA section 635 requires each lead agency to implement a General Supervision System that monitors the implementation of the IDEA Part C and its accompanying regulations. As the lead agency for the District of Columbia for implementation of Part C, OSSE is responsible for the implementation of the General Supervision System for the District, which includes but is not limited to State complaint processes and Due Process adjudication in addition to EI program monitoring. This general supervision system must include a component for the general administration and supervision of program and activities receiving assistance under IDEA section 633, and the monitoring of program and activities used by the state to carry out this part, whether or not such programs or activities are receiving assistance under section 633, to ensure that the state complies with this part.

3. STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT

The IDEA Part C requires the lead agency, as a part of its responsibilities, to use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in priority areas and the indicators established by the Secretary of Education for State Performance Plans (SPP). The Secretary has identified 14 indicators to measure lead agency performance against IDEA regulations. In 2005, each lead agency was required to submit a SPP with annual and six-year targets for each of the 14 indicators. Targets for indicators related to service timelines, evaluation timelines, Part C to Part B (or other appropriate community services) transition, correction of noncompliance, State complaint timelines, due process timelines and data were required to be set at 100%. Each year, lead agencies must submit an Annual Performance Report (APR) to review and report on progress toward and/or compliance with the 14 indicators.

The Secretary's Part C Indicators are as follows:

- **Indicator 1 (Timely Services):** *Percent of infants and toddlers with IFSPs who receive their early intervention services on their IFSPs in a timely manner.*
- **Indicator 2 (Natural Environments):** *Percent of infants and toddlers with IFSPs who primarily receive early intervention services in the home or community-based settings.*
- **Indicator 3 (Improved Outcomes):** *Percent of infants and toddlers with IFSPs who demonstrate improved: (a) positive social-emotional skills (including social relationships); (b) acquisition and use of knowledge and skills (including early language/communication); and (c) use of appropriate behaviors to meet their needs.*
- **Indicator 4 (Family Involvement):** *Percent of families participating in Part C who report that early intervention services have helped the family: (a) know their rights; (b) effectively communicate their children's needs; and (c) help their children develop and learn.*
- **Indicator 5 (Birth to 1 Child Find):** *Percent of infants and toddlers birth to 1 with IFSPs compared to national data.*
- **Indicator 6 (Birth to 3 Child Find):** *Percent of infants and toddlers birth to 3 with IFSPs compared to national data.*
- **Indicator 7 (Initial IFSP Timelines):** *Percent of eligible infants and toddlers with IFSPs for whom an evaluation and assessment and an initial IFSP meeting were conducted within Part C's 45-day timeline.*
- **Indicator 8 (Part C to Part B Transition):** *Percent of all children exiting Part C who received timely transition planning to support the child's transition to preschool and other appropriate community services by their third birthday including: (a) IFSPs with transition steps and services; (b) notification to LEA, if child potentially eligible for Part B; and (c) transition conference, if child potentially eligible for Part B.*
- **Indicator 9 (Correction of Noncompliance):** *General supervision system (including monitoring, complaints, hearings, etc.) identifies and corrects noncompliance as soon as possible but in no case later than one year from identification.*
- **Indicator 10 (State Complaint Timelines):** *Percent of signed written complaints with reports issued that were resolved within 60-day timeline or a timeline extended for exceptional circumstances with respect to a particular complaint.*
- **Indicator 11 (Due Process Timelines):** *Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline.*

- **Indicator 12 (Resolution Sessions):** *Percent of hearing requests that went to resolution sessions that were resolved through resolution session settlement agreements (applicable if Part B due process procedures are adopted). *OSSE has adopted Part B due process procedures.*
- **Indicator 13 (Mediation):** *Percent of mediations held that resulted in mediation agreements.*
- **Indicator 14 (Valid and Reliable Data):** *State reported data (618 and State Performance Plan and Annual Performance Report) are timely and accurate.*

All instances of lead agency data collection regarding the above indicators, however conducted (through database reviews, written data requests, on-site monitoring, etc.), constitute “General Supervision” and thus part of OSSE’s Monitoring and Compliance system. **Any noncompliance identified pertaining to the indicators or related regulatory requirements must be corrected as soon as possible but in no case later than one year after the identification of the noncompliance.**

OSSE and the DC EIP use the SPP as an accountability mechanism to gauge how well the lead agency is performing against targets. The ICC uses the SPP and APR, as well as other fiscal and performance data, to advise and assist OSSE in determining priority areas for the EI system. The ICC also establishes committees to advise and assist the OSSE to develop strategies for improving outcomes in the identified priority areas. OSSE and the DC EIP incorporate the strategies in the development and implementation of APR improvement activities. Activities identified for improvement are reviewed monthly at DC EIP staff meetings and at quarterly ICC meetings.

The SPP and APR are distributed to stakeholders and are posted on the OSSE website www.osse.dc.gov.

4. ANNUAL DETERMINATIONS

The IDEA requires the lead agency to make “determinations” annually about the performance of each EI program based on information provided in the SPP/APR, information obtained through monitoring visits, and any other public information made available.

Noncompliance identified through information collected for SPP/APR reporting, for other U.S. Department of Education reporting, during on-site monitoring visits, during record reviews, during database reviews, for audits, through dispute resolution processes, and from other information available to OSSE will be considered in making EI program determinations. Likewise, OSSE will consider the timely correction of noncompliance identified through these methods in making EI program determinations.

In making such determinations, OSSE will assign EI programs one of the following determination levels:

- Meets Requirements
- Needs Assistance
- Needs Intervention
- Needs Substantial Intervention

The criteria for each determination level are set by OSSE according to Office of Special Education Programs (OSEP) guidelines. IDEA specifies different levels of action/intervention depending on the determination level. EI programs will be informed of their annual determination and any required actions/interventions in late summer/early fall.

For more information regarding determinations, refer to Appendix E.

5. MONITORING PROCESS OVERVIEW

The goal of OSSE's Monitoring and Compliance System is to ensure that EI programs are meeting the requirements of both federal and local regulations. In alignment with federal regulations, OSSE's monitoring approach is outcome oriented. However, if noncompliance is identified through any of OSSE's monitoring activities, **OSSE will require the EI program to correct the noncompliance as soon as possible but in no case later than one year after the identification of the noncompliance.**

Contrary to the notion that monitoring is an annual on-site process, OSSE employs a number of monitoring activities to ensure compliance with federal and local regulations and improve outcomes for infants and toddlers with disabilities or developmental delay and their families. Monitoring activities include: database reviews, on-site compliance monitoring, record reviews, dispute resolution activities, annual review of contract provisions, and audit findings reviews.

Database Reviews: In accordance with OSEP Special Conditions and with APR reporting requirements, OSSE will review data in the Early Steps and Stages Tracker (ESST) to identify noncompliance and assess progress toward federal and local targets for special education. **Data for APR indicators will be reviewed one time per year.** Data reports are also generated through database systems for federally required Section 618 data tables that are due each February and November. EI programs will receive findings of noncompliance for noncompliance identified through database reviews.

On-site Compliance Monitoring: Twice per year, OSSE will conduct on-site compliance monitoring for a selection of EI programs. This process will include on-site record reviews and interviews to identify noncompliance and assess progress toward Federal and local targets for early intervention programs. Details regarding on-site compliance monitoring can be found on page 11.

Record Reviews: Record reviews entail an examination of Individualized Family Service Plans (IFSPs), financial and accounting records, or any other record that may contain information necessary for federal or local reporting. The majority of record reviews conducted by OSSE will occur through database reviews, on-site compliance monitoring and required audit activities. Currently, OSSE has not planned additional comprehensive record reviews; however, OSSE reserves the right to review records if information is not available in databases or at any such time that a review may be necessary. Findings of noncompliance identified through record reviews must be corrected as soon as possible but in no case later than one year after the noncompliance was identified.

Dispute Resolution Activities: The State complaint and due process processes are designed to resolve disputes between EI programs and parents (or organization or individual in the case of State complaints). In the fact finding stages of each of these processes, the investigator or hearing officer may identify noncompliance by the EI program. In the case of State complaints, findings of noncompliance are identified in the Letter of Decision. In the case of due process complaints, findings of noncompliance are identified in the Hearing Officer Decision (HOD). Although OSSE may not issue an additional written finding of noncompliance, the Letter of Decision or HOD serves as the written notice of the finding of noncompliance. Findings identified through dispute resolution activities must be corrected in the timeline outlined in the Letter of Decision or HOD but

in no case later than one year after the identification of the noncompliance. Additionally, findings made through these processes and the correction of these findings are tracked by OSSE and reported in OSSE's annual APR.

Annual Contract Provisions and Interagency Agreements: Annual contracts and/or Human Care Agreements signed by EI programs include important assurances stating that the EI program will operate in compliance with IDEA Part C regulations and requirements in addition to District of Columbia Office of Contracts and Procurement regulations and policies. In signing the annual contract and/or Human Care Agreement, EI programs attest that infants and toddlers within the program are receiving appropriate early intervention services and that the EI program is properly using IDEA funds. Should an EI program not adhere to contract and/or Human Care Agreement provisions, OSSE may not be able to timely distribute funds to the EI program or may choose to end the contractual relationship with the EI program.

OSSE, as the Part C lead agency, has entered into agreements with the Department of Health Care Finance (Medicaid), and the Child and Family Services Administration (CAPTA); and is in the process of entering into agreements with the United Planning Organization (Early Head Start), and the Department of Health (Title V). Mechanisms for ensuring adherence to these agreements, as well as dispute resolution procedures, will be built into each agreement.

Audit Findings Review: EI programs that spend \$500,000 or more in federal funds are required to receive an A-133 single audit and submit a copy of the management letter to OSSE within 30 days of receipt. Any noncompliance identified through audits must be corrected in accordance with the audit report. Audit findings will be considered in making annual EI program determinations.

On-site Compliance Monitoring

On-site compliance monitoring is a process by which selected EI programs receive an on-site visit by OSSE's QAM and DC EIP divisions for a comprehensive record review, stakeholder interviews, fiscal examination and follow-up technical assistance. The process is designed to identify noncompliance and assess the EI program's progress toward improving outcomes for all infants and toddlers with disabilities or developmental delay and their families. On-site compliance monitoring also allows OSSE to determine if lead agency implemented strategies have resulted in qualitative and quantitative improvements, and to formulate specific, tailored actions if improved outcomes have not been achieved.

On-site monitoring will follow a series of defined steps, according to the following timelines:

Activity	Timeline
Identification of EI programs for Spring on-site monitoring	April 2010
Letter informing EI programs of selection for on-site monitoring	April 2010
Pre-site visits	April 2010
On-site visits	April 2010
Monitoring reports issued to EI programs	June 2010
Development of any additional corrective actions	July 2010
Verification of correction of noncompliance	Ongoing
Identification of EI programs for Fall on-site monitoring	August 2010
Letter informing EI programs of selection for on-site monitoring	September 2010
Pre-site visits	September/October 2010
On-site visits	October/November 2010
Monitoring reports issued to EI programs	November/December 2010
Development of any additional corrective actions	December 2010
Verification of correction of noncompliance	Ongoing

Step 1: Identification of EI Programs for On-site Compliance Monitoring

EI programs will be selected for an on-site compliance monitoring visit based on the consideration and evaluation of the following factors:

- Level of compliance on FFY 2008 APR Indicators 1, 7 and 8;
- Number of State complaints or due process complaints filed related to the EI program in FFY 2008 and FFY 2009;
- Timely submission of data (programmatic and fiscal) to OSSE;
- Number of invoices not approved by OSSE;
- Number of infants and toddlers served by the EI program;
- Information provided to OSSE regarding the EI program's compliance with Part C requirements;
- Information contained in family surveys;
- Date of last on-site monitoring visit.

Step 2: Notification of On-site Compliance Monitoring Selection

EI program directors will be notified by letter and electronic mail of the scheduled monitoring visit according to the timeline outlined in the table on page 11. The letter will include the:

- Date of the monitoring visit;
- Suggested date for the pre-site visit;
- Purpose of the visit and planned activities;
- Documents and information required for the pre-site and on-site monitoring visits.

EI programs are expected to plan as soon as possible for the on-site monitoring visit. For example, as soon as possible after notification of the visit, EI programs should plan for the accommodations and time needed for staff and family interviews and for OSSE record reviews, consistent with planned activities described in the OSSE's notification. Likewise, EI programs should begin collecting any documents needed for the fiscal monitoring portion of the visit.

OSSE plans to conduct an on-site compliance monitoring visit to every EI program serving infants and toddlers with disabilities within the District within a 5-year cycle.¹ Therefore, selection for an on-site visit should not be construed as a punitive action or as an indication that the EI program is not meeting compliance or performance targets.

Step 3: Pre-site Visit

The pre-site visit is an opportunity for EI program and OSSE staffs to discuss the purpose of the on-site visit, confer about the agenda for the on-site visit, agree on logistics and review EI program data. It is also an occasion for the EI program to ask any questions regarding the visit and for the EI program to provide OSSE with documents needed prior to the visit. The pre-site visit may be conducted via telephone.

At a minimum, documents that should be available for the pre-site visit include:

- A staff roster;
- A list of infants and toddlers with disabilities served by the EI program (if the EI program serves 50 or fewer infants and toddlers with disabilities);
- Written policies and procedures which address items in the fiscal section of the monitoring tool.

The standard pre-site visit agenda is located at Appendix B.

Step 4: On-site Compliance Monitoring Visit and Activities

Following its notification letter to each selected EI program and the subsequent pre-site visits, OSSE will conduct an on-site visit to each selected EI program. The on-site review is designed to determine if the EI program's processes and services are compliant with local and federal regulations. If an EI program has more than one campus or center, OSSE may conduct its on-site visit at multiple locations. Regardless of the number of locations OSSE chooses to visit, only one monitoring report will be issued to the EI program.

¹ The cycle timeline is subject to change based on OSSE monitoring priorities and/or federal requirements.

During the on-site visit, OSSE will engage in the following activities:

- **Record Reviews:** OSSE will examine child records on-site as well as child information included in ESST. Items that will be assessed during the record reviews are outlined in the compliance monitoring tool. EI programs are responsible for having selected child records available on the first day of the on-site visit. For EI programs serving 10 or fewer infants and toddlers with disabilities or developmental delay, **all** child records will be reviewed. For EI programs serving 11 – 40 infants and toddlers with disabilities, 10 child records will be reviewed. For EI programs serving 41 – 70 infants and toddlers with disabilities, 20 child records will be reviewed; for EI programs serving 71+ infants and toddlers with disabilities, 20 child records plus 10% of the number of infants and toddlers served will be reviewed. (For example, if an EI program serves 90 infants and toddlers with disabilities, 29 child records will be reviewed. Twenty standard records and nine additional records that represent 10% of 90.) All records will be reviewed in the areas for which the EI program is responsible (evaluation, initial IFSP, IFSP content, transition and data). OSSE will review additional child records if the EI program has demonstrated longstanding noncompliance.
- **Staff Interviews:** OSSE will interview the EI program's administrators, service coordinators, service providers, teachers and budget director. Interview questions will be used to triangulate data gathered from other monitoring activities. A summary of data collected through staff interviews will be included in the monitoring report.
- **Family Interviews:** OSSE may choose to interview families of infants and toddlers with disabilities or developmental delay to better understand compliance and performance in the EI program. In some cases, OSSE will ask the EI program to choose the family members for the interviews. In some cases, families may be selected by OSSE according to specific information (e.g. families involved in dispute resolution processes or children with noncompliant IFSPs) or based on a random selection. The EI program will be informed in advance of the names of any families selected by OSSE for an interview. In either case, the EI program is responsible for coordinating the interviews with families. Interview questions will be used to triangulate data gathered from other monitoring activities. A summary of data collected through family interviews will be included in the monitoring report.
- **Fiscal Monitoring Activities:** OSSE will conduct fiscal monitoring activities while on-site. Fiscal monitoring may include document and record reviews, interviews and/or a demonstration of financial processes and systems. Items to be assessed can be found in the fiscal section of the monitoring tool. EI programs will be informed in advance of materials that must be provided.

Step 5: Letter of Findings and Monitoring Report

Thirty to 45 days following the on-site visit, OSSE will notify the EI program of any findings of noncompliance identified during the on-site visit. Attached to the Letter of Findings will be a detailed monitoring report that will specifically outline child and EI program level noncompliance. The monitoring report will also delineate child and EI program level corrective actions necessary to

correct identified noncompliance. Monitoring reports are intended to promote the improvement of outcomes for infants and toddlers with disabilities or developmental delay and their families through the identification of noncompliance. These reports will align with items in the monitoring tool. Additionally, monitoring reports will serve as a method for EI programs to certify the correction of identified noncompliance.

For all identified noncompliance, EI programs must correct the noncompliance as soon as possible but in no case later than one year after the identification of the noncompliance. The date of the monitoring report serves as the date of the identification of the noncompliance.

Pursuant to OSEP Memorandum 09-02 dated October 17, 2008 (OSEP Memo 09-02), OSSE must account for all instances of noncompliance. In determining the steps that the EI program must take to correct the noncompliance and document such correction, OSSE may consider a variety of factors. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, OSSE must also ensure that the EI program has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the EI program. In addition, OSSE must ensure that each EI program has completed the required action (e.g. completed the evaluation although late). A copy of OSEP Memo 09-02 can be found in Appendix A.

Thus, OSSE will make both child level and EI program level findings of noncompliance within the monitoring report. Child level noncompliance is corrected when the child's record is compliant with the specific regulatory requirement or when the required action has been completed. EI program level noncompliance is corrected when the EI program can demonstrate that it is correctly implementing the specific regulatory requirement with all infants and toddlers with disabilities or developmental delay. This is demonstrated by the EI Program achieving 100% compliance during the subsequent record review or database review. The monitoring report will detail the required child level and EI program level corrective actions required to correct noncompliance.

Step 6: Corrective Action Plans

Contained within the monitoring report, OSSE will provide a list of required child level and EI program level corrective actions for noncompliance identified through record reviews and certain interviews. If no additional findings of noncompliance are identified through other data collection processes, EI programs will not be required to develop a Corrective Action Plan (CAP). **In that case, the monitoring report will serve as the CAP for the EI program.** In the event of an additional finding of noncompliance identified through other data collection processes, OSSE will require the EI program to develop a CAP specific to the additional area(s) of noncompliance. The CAP will be due to OSSE 30 days after the EI program's receipt of the monitoring report.

Corrective actions, whether generated through the monitoring report or through an EI program CAP, may be relatively uncomplicated and non-time consuming (e.g. correcting a data error) or may be multifaceted and involved (e.g. developing a policy and procedures for ensuring appropriate evaluation processes). More simple corrective actions may be accomplished by one staff member or through a routine IFSP meeting, while more complex corrective actions may require extensive analysis and collaboration with the EI program leadership and/or other agencies.

In either case, the noncompliance must be corrected as soon as possible but in no case later than one year after the identification of the noncompliance.

OSSE is committed to providing technical assistance to EI programs as they formulate CAPs and/or as they complete corrective actions. Assistance from the DC EIP and T&TA team within OSSE will be available to EI programs as they strive toward correction of noncompliance and improvement of outcomes for infants and toddlers with disabilities or developmental delay and their families. Specifically, through a contract with the Georgetown University Center for Child and Human Development (GUCCHD), OSSE ensures that all personnel carrying out the requirements of IDEA Part C are appropriately and adequately trained. For more information on personnel development with GUCCHD, contact Jerri Johnston-Stewart at jerri.johnston-stewart@dc.gov.

Step 7: Verification of Correction of Noncompliance

After the EI program has certified correction of child level and EI program level noncompliance, OSSE will verify the correction of noncompliance. For child level noncompliance, OSSE will select a sample of the original child records reviewed to verify the correction of the noncompliance. For example, OSSE will review the individual child record to verify that the required action has been completed. To verify child level correction of noncompliance, OSSE will review five child records for EI programs serving 40 or fewer infants and toddlers with disabilities; 10 child records for EI programs serving 41 – 70 infants and toddlers with disabilities; and 15 child records for EI programs serving 71+ infants and toddlers with disabilities.

To verify correction of EI program level noncompliance, OSSE will review documents that evidence EI program level corrective actions and select a sample of child records that were not originally reviewed or generate a report from ESST to verify correction of noncompliance. For example, OSSE will select a sample of infants and toddlers that were not included in the original child record review to ensure that the EI program has achieved EI program level correction. To verify EI program level correction of noncompliance, OSSE will review five child records for EI programs serving 20 or fewer infants and toddlers with disabilities; and 10 child records for EI programs serving 21 – 70 infants and toddlers with disabilities. Correction is demonstrated by the EI Program achieving 100% compliance during the subsequent record review.

If during verification activities OSSE finds additional noncompliance, the EI program will be required to correct the noncompliance as soon as possible but in no case later than one year after the identification of the noncompliance. Pursuant to OSEP Memo 09-02, OSSE must verify the correction of noncompliance within one year of the identification of the noncompliance, therefore verification activities will occur before the conclusion of the one-year timeline.

Should an EI program fail to demonstrate correction within the required timeline, OSSE will enforce sanctions based on the level of noncompliance and the duration of the failure to correct the noncompliance. Under the new system of Human Care Agreements, OSSE also has the ability to withhold business to providers who fail to submit a CAP or fail to achieve the required evidence of change in accordance with the plan. The hierarchy of sanctions can be found in Appendix D.

Step 8: Closure of Findings of Noncompliance

After OSSE has verified the correction of the noncompliance, OSSE will inform the EI program in writing that the finding of noncompliance is closed. EI programs should continue to conduct

record review activities to identify any areas of need that may arise before future OSSE monitoring activities. Longstanding noncompliance extending beyond the one -year correction period will result in additional enforcement actions by OSSE and will affect the EI program's annual determination. Likewise, the EI program's timely correction of noncompliance will also be considered in the EI program's annual determination.

6. VERIFICATION OF CORRECTION OF NON-COMPLIANCE

OSEP Memo 09-02, issued on October 17, 2008, provided guidance regarding the correction of previously identified noncompliance. Specifically, OSEP Memo 09-02 established that States must ensure that any noncompliance is corrected as soon as possible, but in no case more than one year from identification. OSEP provided additional guidance regarding the verification of correction of noncompliance at the 2010 OSEP IDEA Part B and Part C Data Meetings, June 22-24, 2010. The data on verification of correction of noncompliance that OSSE submitted in the FFY 2008 APR was based on the most current guidance available at the time of the correction, OSEP Memo 09-02. OSSE has responded to OSEP's additional guidance by changing its policies and practices regarding the verification of correction of noncompliance; however, because this additional guidance was issued at the end of FFY 2009, not all of the data OSSE is reporting in the FFY 2009 APR reflect the additional guidance or amended practices.

Pursuant to OSEP Memorandum 09-02 dated October 17, 2008 (OSEP Memo 09-02), OSSE must account for all instances of noncompliance. In determining the steps that the EI Program must take to correct the noncompliance and document such correction, OSSE may consider a variety of factors. For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement, OSSE must also ensure that the EI Program has corrected each individual case of noncompliance, unless the child is no longer enrolled in the Early Intervention Program. In addition, OSSE must ensure that each EI Program has completed the required action (e.g. completed the evaluation although late). A copy of OSEP Memo 09-02 can be found in Appendix A.

Thus, OSSE makes both child level and program level findings of noncompliance within monitoring reports. **Noncompliance is corrected when the program can demonstrate that it is correctly implementing the specific regulatory requirement for all children with developmental delays or disabilities.** This is demonstrated by the EI Program achieving 100% compliance during the subsequent record review or database review. The monitoring report details child level and program level corrective actions required to assist the program in correctly implementing the specific regulatory requirement.

After the Early Intervention Program has certified correction of child level and program level noncompliance, OSSE will verify the correction of noncompliance.

- To verify the correction of child level citations, OSSE will select a sample of the original child files reviewed to verify that the required action has been completed. The number of files sampled will be proportionate to the number of files reviewed. For example, OSSE may review five child files for EI Programs serving 20 or fewer children with delays or disabilities and 10 child files for EI Programs serving 21+children with delays or disabilities. Correction of noncompliance will be complete when the program can demonstrate that it is correctly implementing the specific regulatory requirement. Additionally, OSSE will select a sample of child files that were not originally reviewed or generate a report from the Early Steps and STAGES tracking system to verify correction of noncompliance. The number of files sampled will be proportionate to the number of files reviewed. For example, OSSE may review five child files for programs serving 20 or fewer children with

delays or disabilities and 10 child files for programs serving 21+ children with delays or disabilities. Correction of noncompliance will be complete when the program can demonstrate that it is correctly implementing the specific regulatory requirement. This is demonstrated by the EI Program achieving 100% compliance during the subsequent record review.

- For Early Intervention Program level noncompliance, OSSE will review documents submitted by the program that evidence the completion of required corrective actions and will select a sample of child files that were not originally reviewed or generate a report from Early Steps and STAGES to verify correction of noncompliance. The number of files sampled will be proportionate to the number of files reviewed. For example, OSSE may review five child files for programs serving 20 or fewer children with delays or disabilities and 10 child files for programs serving 21+ children with delays or disabilities. Correction of noncompliance will be complete when the program can demonstrate that it is correctly implementing the specific regulatory requirement (i.e. 100% compliance).

Additionally, OSSE must review data from its database at least once each APR reporting period for the purpose of identifying noncompliance. When conducting database reviews, OSSE will review all data collected from the database review to determine compliance. OSSE annually monitors through database reviews for indicators 1, 7 and 8 which are generated from the Early Steps and STAGES database. OSSE may review data in the database at other times as well, for purposes such as targeting resources, guidance or other technical assistance. Upon identification of noncompliance, OSSE will make a finding immediately or verify that the data shows noncompliance and subsequently make a finding.

OSSE has also taken significant steps to ensure that it will ensure the correction of noncompliance by verifying that each program with noncompliance is correctly implementing the specific regulatory requirements (i.e. 100% compliance) through a review of updated data, which may be from subsequent on-site monitoring or data collected with the database; and that each individual case of noncompliance has been corrected, unless the child is no longer enrolled in the Early Intervention Program.

Monitoring reports outline specific child level and program level corrective actions that must be taken to correct any identified noncompliance. Following the program's submission of documentation of correction of noncompliance, OSSE verifies the correction of noncompliance and notifies the program of the verified correction. OSSE notes that while the program may complete the required actions listed for child level and program level findings of noncompliance, verification of correction requires OSSE to confirm that the program is correctly implementing the specific regulatory requirement related to each finding. This is demonstrated by the EI Program achieving 100% compliance during the subsequent database review. This includes areas for which the program may not have been required to submit additional program level corrective actions. While no additional submissions are required for these areas, should any noncompliance be found during the additional file review, evidence of continued noncompliance will prohibit OSSE from verifying that the program is correctly implementing regulatory requirements.

8. APPENDICES

Appendix A - OSEP Memo 09-02

Appendix B - Monitoring Agendas (Pre-site Monitoring Agenda and On-site Monitoring Agenda)

Appendix C - Compliance Monitoring Tool

Appendix D - Hierarchy of Sanctions Matrix

Appendix E - Determinations Information and Frequently Asked Questions



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 17 2008

Contact Person

Name: Ruth Ryder
Telephone: (202) 245-7513

OSEP 09-02

TO : Chief State School Officers
Lead Agency Directors

FROM : William W. Knudsen *William W. Knudsen*
Acting Director
Office of Special Education Programs

SUBJECT : Reporting on Correction of Noncompliance in the Annual
Performance Report Required under Sections 616 and 642 of the
Individuals with Disabilities Education Act.

Introduction

Pursuant to sections 616(d) and 642 of the Individuals with Disabilities Education Act (IDEA), the Department reviews each State's Annual Performance Report (APR) and, based on data provided in the State's APR, information obtained through monitoring visits, including verification visits, and any other public information, determines if the State: Meets Requirements, Needs Assistance, Needs Intervention, or Needs Substantial Intervention. In making determinations in 2007 and 2008, the Office of Special Education Programs (OSEP) considered, among other factors, whether a State demonstrated substantial compliance on all compliance indicators either through reporting a very high level of performance (generally 95% or better) or correction of noncompliance.¹

The purpose of this memorandum is twofold. First, the memorandum reiterates the steps a State must take in order to report that the previously identified noncompliance has been corrected. Second, the memorandum describes how we will factor evidence of correction into our analysis of whether the State has demonstrated substantial compliance for purposes of determinations under sections 616 and 642 of the IDEA (beginning with the Department's 2010 determinations based on a review of the FFY 2008 APRs). This memorandum also addresses concerns

¹ For Indicators B-15 and C-9, which measure timely correction of noncompliance, the only way for States to demonstrate substantial compliance is by demonstrating timely correction.

identified in our review of States' FFY 2005 and FFY 2006 APRs about identification and correction of noncompliance and low performance in compliance areas.

Issue 1 – Demonstrating Correction

As noted in OSEP's prior monitoring reports and verification visit letters, in order to demonstrate that previously identified noncompliance has been corrected, a State must:

- (1) Account for all instances of noncompliance, including noncompliance identified: (a) through the State's on-site monitoring system or other monitoring procedures such as self-assessment; (b) through the review of data collected by the State, including compliance data collected through a State data system; and (c) by the Department;
- (2) Identify where (in what local educational agencies (LEAs) or early intervention services (EIS) programs) noncompliance occurred, the percentage level of noncompliance in each of those sites, and the root cause(s) of the noncompliance;²
- (3) If needed, change, or require each LEA or EIS program to change, policies, procedures and/or practices that contributed to or resulted in noncompliance; and
- (4) Determine, in each LEA or EIS program with identified noncompliance, that the LEA or EIS program is correctly implementing the specific regulatory requirement(s). This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through a State data system.

If an LEA or EIS program did not correct identified noncompliance in a timely manner (within one year from identification), the State must report on whether the noncompliance was subsequently corrected. Further, if an LEA or EIS program is not yet correctly implementing the statutory/regulatory requirement(s), the State must explain what the State has done to identify the cause(s) of continuing noncompliance, and what the State is doing about the continued lack of compliance including, as appropriate, enforcement actions taken against any LEA or EIS program that continues to show noncompliance.

Regardless of the specific level of noncompliance, if a State finds noncompliance in an LEA or EIS program, the State must notify the LEA or EIS program in writing of the noncompliance, and of the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification (i.e., the date on which the State provided written notification to the LEA or EIS program of the noncompliance). In determining the steps that the LEA or EIS program must take to correct the noncompliance and to document such correction, the State may consider a variety of factors, including whether the noncompliance: (1) was extensive or found in only a small percentage of files; (2) resulted in the denial of a basic right under the IDEA (e.g., an extended delay in an initial evaluation with a corresponding delay in the child's receipt of a free appropriate public education or early intervention services, or a failure to provide services in accordance with the individualized education program or individualized family service plan); and (3) represents an isolated incident in the LEA or EIS program, or reflects a long-standing failure to meet the IDEA requirements. Thus, while a State may

² Please note that while we are not requesting that States provide, in the APR, lists of specific LEAs or EIS programs found out of compliance, we may review documentation of correction that the State required of the LEA or EIS program when we conduct a verification visit or other monitoring activity in a State.

determine the specific nature of the required corrective action, the State must ensure that any noncompliance is corrected as soon as possible, but in no case more than one year from identification.

For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement (State Performance Plan (SPP)/APR Indicators B-9, B-10, B-13, C-8A and C-8B), in addition to the steps above, the State also must ensure that the LEA or EIS program has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program. Similarly, for any noncompliance concerning a child-specific timeline requirement (SPP/APR Indicators B-11, B-12, C-1, C-7, and C-8C), in addition to the steps enumerated above, the State must ensure that the LEA or EIS program has completed the required action (e.g., the evaluation or initiation of services), though late, unless the child is no longer within the jurisdiction of the LEA or EIS program. In ensuring that each individual case of noncompliance has been corrected, the State does not need to review each child's record in the LEAs or EIS programs where the noncompliance occurred, but rather may review a reasonable sample of the previously noncompliant files to verify that the noncompliance was corrected.

Issue 2 – Factoring Correction into Evaluation of Substantial Compliance

For purposes of the Department's IDEA section 616 determinations issued since June 2007, we considered a State to be in substantial compliance relative to a compliance indicator if the State's data indicate a very high level of compliance (generally 95% or above), or if the State nonetheless demonstrated correction of identified noncompliance related to that indicator. In the interest of fairness to all States, we will evaluate whether a State demonstrated correction of identified noncompliance related to an indicator when we make our 2009 determinations based on the FFY 2007 APRs, and will use the same approach we used in 2007 and 2008. However, some States are reporting very low levels of compliance year after year, while also reporting that they have corrected previously identified noncompliance. This concerns us because it indicates that systemic correction of noncompliance did not occur. Thus, in the interest of improving LEA and EIS program performance and ultimately improving results for infants, toddlers, children and youth with disabilities, beginning with our 2010 determinations:

- (1) We will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
- (2) We will credit a State with correction relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report for each compliance indicator whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

For example --

- Reporting correction of noncompliance identified in on-site monitoring findings alone will not be sufficient to demonstrate correction if the data reported in a State's prior year's APR showing noncompliance were collected through the State's data system, and the monitoring findings do not include all of the instances of noncompliance identified through the prior year's data.
- In order to report correction of noncompliance identified in data based on a statewide sample, the State would need to track the noncompliance identified in the sample data reported in its prior year's APR back to the specific LEAs or EIS programs with noncompliance and report correction for those LEAs or EIS programs.

In other words, a State's demonstration of correction needs to be as broad in scope as the noncompliance identified in the prior year's data.

We hope that you find the information in this memorandum helpful in collecting and reporting data for your future SPP/APR submissions. OSEP is committed to supporting your efforts to improve results for infants, toddlers, children and youth with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or would like to request technical assistance, please do not hesitate to call your OSEP State Contact.

cc: Part B State Directors
Part C Coordinators



Department of Special Education
Office of Quality Assurance & Monitoring

Pre-Site Monitoring Visit Agenda

- 8:30 – 8:45** **Welcome/Introductions**
- 8:45 – 9:00** **Purpose of Visit**
- 9:00 – 9:30** **Visit Process/Agenda**
- **Agenda**
 - **Record Review**
 - **Space needed**
 - **Child records**
 - **Interviews**
 - **Space needed**
 - **Focus groups**
 - **List of providers/teachers**
 - **Parent notification**
 - **Debrief**
- 9:30 – 10:00** **Review Data**
- 10:00 – 10:30** **Questions/Next Steps**



Department of Special Education
Office of Quality Assurance & Monitoring

On-Site Monitoring Visit Agenda

8:30 – 9:00 Overview of On Site Monitoring Visit

- A. Introductions
- B. Review agenda
- C. Schedule adjustments

9:00 – 12:00 Interviews

- A. Administrator(s)
- B. Special Education Coordinator
- C. Service Providers
- D. Special Education Teachers (if applicable)
- E. Parents
- F. Budget Administrator/Fiscal Director

12:00 – 1:00 Lunch Break

1:00 – 4:30 Record Reviews & Interviews (cont.)

4:30 – 5:00 Exit Conference

OSSE Part C Monitoring Tool

<div style="border-bottom: 1px solid black; margin-bottom: 10px;">EI Program</div> <div style="border-bottom: 1px solid black;">Child Name</div>	<div style="border-bottom: 1px solid black; margin-bottom: 10px;">Date of Birth</div> <div style="border-bottom: 1px solid black;">Child ID</div>	<div style="border-bottom: 1px solid black; margin-bottom: 10px;">Date of Record Review</div> <div style="border-bottom: 1px solid black;">Record Review Completed By</div>
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Item #	Regulation/ Authority	Item Text	Response Criteria	Y	N	N A	Corrective Actions: Child Level and Program Level
IEV – 1	§303.403(a) <small>Evaluation site</small>	Prior written notice was provided upon initial referral or parent request for evaluation.	Yes = Prior written notice form is in file. No = Prior written notice form is NOT in file.				Child Level = Not correctable at child level. EI Program Level = Review next 5 initial referral files for completed prior notice form. If all files do not contain completed prior notice form, EI program must review policies and procedures regarding issuance of prior notice. Provide documentation of above to OSSE.
IEV – 2	§303.403(b) <small>Evaluation site</small>	Upon initial referral, or parent request for evaluation, parents were provided procedural safeguards.	Yes = Consent form documents family acknowledgement of receipt of procedural safeguards OR file contains documentation of receipt of procedural safeguards. No = File does NOT contain documentation of family acknowledgement or other documentation of receipt of procedural safeguards.				Child Level = Within 10 days of the date of the monitoring report, provide a copy of procedural safeguards to family. EI Program Level = Randomly select 5 files and document that procedural safeguards were provided in all cases. If not, provide copies of procedural safeguards to all families of children who received initial evaluations in last 6 months. Provide documentation of above to OSSE.
IEV – 3	§303.404(a) <small>Evaluation site</small>	Parental consent obtained prior to conducting initial evaluation.	Yes = Signed consent form on file AND signature date was prior to initial evaluation. No = No signed consent form in file OR consent form has signature date after date of initial evaluation.				Child Level = Not correctable at child level. EI Program Level = Conduct root cause analysis as to why timely signed consent forms are not in files and advise OSSE of steps taken to correct noncompliance. Provide documentation of above to OSSE.
IEV – 4		The initial multidisciplinary evaluation was conducted by	Yes = Evaluation report signed by personnel from two different disciplines.				Child Level = Contact family to complete evaluation according to requirements.

§303.322(a) Evaluation site	at least two qualified personnel from two different disciplines (as defined by §303.17).	No = Evaluation report NOT signed by personnel from two different disciplines.			<p>EI Program Level = Conduct training of EI program personnel on evaluation requirements. Review next 5 files for evidence of correct evaluation procedures.</p> <p>Provide documentation of above to OSSE.</p>
IEV – 5 §303.322(c) Evaluation site	Initial evaluation includes the child’s level of functioning in the five developmental areas.	<p>Yes = Evaluation report documents functioning in ALL five developmental areas.</p> <p>No = Evaluation report does NOT document functioning in ALL five developmental areas.</p>			<p>Child Level = Contact family to complete evaluation according to requirements.</p> <p>EI Program Level = Conduct training of EI program personnel on evaluation requirements. Review next 5 files for evidence of correct evaluation procedures.</p> <p>Provide documentation of above to OSSE.</p>
IEV – 6 §303.322(c) Evaluation site	Initial evaluation includes a review of pertinent records related to the child’s current health status and medical history.	<p>Yes = Evaluation report documents the review of pertinent records related to health status and medical history OR evaluation report documents health status and medical history was discussed with family.</p> <p>No = Evaluation report does NOT document the review of pertinent records related to health status and medical history OR a discussion with family.</p>			<p>Child Level = Contact family to obtain information regarding child’s health status and medical history and include information in file.</p> <p>EI Program Level = Conduct training of EI program personnel on evaluation requirements. Review next 5 files for evidence of correct evaluation procedures.</p> <p>Provide documentation of above to OSSE.</p>
IEV – 7 §303.322(d) Evaluation site	A family assessment was completed as a part of the initial evaluation process.	<p>Yes = IFSP contains completed family resources, concerns and priorities section OR file contains documentation that the family declined the family assessment. (Part II)</p> <p>No = IFSP does NOT contain completed family resources, concerns and priorities section OR file does not document that the family declined. (Part II)</p>			<p>Child Level = Contact family to obtain information regarding family resources, concerns and priorities and include information in file OR after contact, document that family declined.</p> <p>EI Program Level = Randomly select 10 files and document that a family assessment was included. If not, contact family to obtain information regarding family resources, concerns and priorities and include information in file OR after contact, document that family declined.</p> <p>Provide documentation of above to OSSE.</p>
IEV – 8 §303.342(d) Evaluation site	Invitation (written notice) was provided to families and other participants prior to the initial IFSP meeting.	<p>Yes = Invitation is in file and date is before the meeting.</p> <p>No = Invitation is NOT in file or date is on or after the meeting.</p>			<p>Child Level = Not correctable at child level.</p> <p>EI Program Level = Review next 10 initial referral files for invitation. If all files do not include invitation, EI program must provide training to service coordinators regarding Part C</p>

					requirements. Provide documentation of above to OSSE.
IEV – 9 §303.343(a) Evaluation site	Initial IFSP meeting included the required team members.	Yes = IFSP meeting included parent and service coordinator; and involvement from evaluator and if appropriate, service providers. No = IFSP meeting did NOT include parent, service coordinator AND involvement from evaluator.			Child Level = Reconvene IFSP meeting and include all required participants. EI Program Level = Conduct training of EI program personnel on IFSP meeting requirements. Provide documentation of above to OSSE.
IFSP – 10 §303.344(d) Evaluation site SC Agencies	IFSP contains a statement of the natural environments in which EI services will be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment.	Yes = Natural environment location is included in Part IV of IFSP OR appropriate justification included in explanation box in Part IV of IFSP. No = Setting location is NOT completed in Part IV OR the justification box is not completed for setting other than the natural environment.			Child Level = Reconvene IFSP meeting and include natural environment location OR justification. EI Program Level = Review next 5 IFSPs for completed natural environment section. For any IFSP without required content, reconvene IFSP meeting and include natural environment location OR justification. Provide documentation of above to OSSE.
IFSP – 11 §303.344(a) Evaluation site SC Agencies	IFSP includes a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development and adaptive development.	Yes = IFSP contains statement of present levels in all required areas. (Part I) No = IFSP does NOT contain statement of present levels in ALL required areas. (Part I)			Child Level = Reconvene IFSP meeting and include present levels of development in ALL areas. EI Program Level = Review next 5 IFSPs for statements of present levels of development. For any IFSP without required content, reconvene IFSP meeting and include present levels of development in ALL areas. Provide documentation of above to OSSE.
IFSP – 12 §303.344(c) Evaluation site SC Agencies	IFSP includes a statement of the major outcomes expected to be achieved for the child and family.	Yes = IFSP contains statement of major outcomes. (Part III) No = IFSP does NOT contains statement of major outcomes. (Part III)			Child Level = Reconvene IFSP meeting and include statement of major outcomes. EI Program Level = Review next 5 IFSPs for statements of major outcomes. For any IFSP without required content, reconvene IFSP meeting and include statement of major outcomes. Provide documentation of above to OSSE.
IFSP – 13 §303.344(d)	IFSP contains a statement of EI services including the frequency, intensity and method of delivering	Yes = IFSP contains statement of EI services including frequency, intensity and method. (Part IV) No = IFSP does NOT contain statement of EI services			Child Level = Reconvene IFSP meeting and include statement of EI services including frequency, intensity and method.

Evaluation site SC Agencies	services.	including ALL required information (frequency, intensity and method). (Part IV)			<p>EI Program Level = Review next 5 IFSPs for statements EI services including frequency, intensity and method. For any IFSP without required content, reconvene IFSP meeting and include statement of EI services including frequency, intensity and method.</p> <p>Provide documentation of above to OSSE.</p>
<p>IFSP – 14</p> <p>§303.342(b)</p> <p>SC Agencies</p>	IFSP is reviewed and revised, if necessary, at least every 6 months.	<p>Yes = The file contains documentation that an IFSP meeting was held at least 6 months from the date of the prior meeting.</p> <p>No = The file does NOT contain documentation that an IFSP meeting was held at least 6 months from the date of the prior meeting.</p>			<p>Child Level = Within 15 days of the date of this report, reconvene IFSP meeting for review.</p> <p>EI Program Level = Conduct root cause analysis as to why reviews are not timely and advise OSSE of steps taken to correct noncompliance.</p> <p>Provide documentation of above to OSSE.</p>
<p>IFSP – 15</p> <p>§§303.342(b) & 303.344(c)</p> <p>SC Agencies</p>	At the 6-month review, the IFSP team documented the degree to which progress toward achieving outcomes is being measured.	<p>Yes = Progress report OR documentation of progress in Part III in IFSP.</p> <p>No = Progress report OR documentation of progress in Part III NOT in IFSP.</p>			<p>Child Level = Include progress report or update progress in file.</p> <p>EI Program Level = Submit monthly progress reports to lead agency on progress of all children served by program.</p>
<p>IFSP – 16</p> <p>§303.342(c)</p> <p>SC Agencies</p>	IFSP meeting is conducted at least on an annual basis.	<p>Yes = The file contains documentation that an IFSP meeting was held at least one year from the date of the prior annual meeting (or from initial meeting).</p> <p>No = The file does NOT contain documentation that an IFSP meeting was held at least one year from the date of the prior annual meeting (or initial meeting).</p>			<p>Child Level = Within 15 days of the date of this report, reconvene IFSP meeting.</p> <p>EI Program Level = Conduct root cause analysis as to why meetings are not timely and advise OSSE of steps taken to correct noncompliance.</p> <p>Provide documentation of above to OSSE.</p>
<p>C2B – 17</p> <p>§303.148(b)</p> <p>Evaluation site SC Agencies</p>	LEA representative was invited to participate in the transition conference for children who are potentially eligible for Part B.	<p>Yes = The transition IFSP meeting invitation includes an LEA representative.</p> <p>No = The transition IFSP meeting invitation does NOT include an LEA representative.</p> <p>NA = The file contains documentation that the family did not want a transition IFSP meeting.</p>			<p>Child Level = Reconvene IFSP meeting and invite LEA representative.</p> <p>EI Program Level = Review next 5 IFSPs for invitation to LEA representative. For any IFSP without invitation to LEA representative, reconvene IFSP meeting and invite LEA representative.</p> <p>Provide documentation of above to OSSE.</p>
<p>C2B – 18</p> <p>§303.344(h)</p> <p>Evaluation site SC Agencies</p>	IFSP includes steps to be taken to support the transition of the child to Part B or other services.	<p>Yes = Steps to support transition are included in boxes 1 AND 4 in Part VI of the IFSP.</p> <p>No = Steps to support transition are NOT included in Part VI of the IFSP.</p>			<p>Child Level = Reconvene IFSP meeting and include transition steps and services.</p> <p>EI Program Level = Conduct training of EI program personnel on transition IFSP requirements.</p>

		NA = The child is younger than 2 years 6 months.			Provide documentation of above to OSSE.
DAT – 19 <small>Intake unit</small>	Date of initial referral in file is same as date of initial referral in ESST.	Yes = Date of initial referral in file is same as date of initial referral in ESST. No = Date of initial referral in file is NOT same as date of initial referral in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
DAT – 20 <small>Intake unit</small>	Date of initial IFSP meeting in file is same as date of initial IFSP meeting in ESST.	Yes = Date of initial IFSP meeting in file is same as date of initial IFSP meeting in ESST. No = Date of initial IFSP meeting in file is NOT same as date of initial IFSP meeting in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
DAT – 21 <small>Intake unit SC agencies</small>	Date of signed IFSP in file is same as date of signed IFSP in ESST.	Yes = Date of signed IFSP in file is same as date of signed IFSP in ESST. No = Date of signed IFSP in file is NOT same as date of signed IFSP in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
DAT – 22 <small>SC agencies</small>	Date of initiation of services in file is same as date of date of initiation of services in ESST.	Yes = Date of initiation of services in file is same as date of date of initiation of services in ESST. No = Date of initiation of services in file is NOT same as date of date of initiation of services in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
DAT – 23 <small>Intake unit</small>	Date of birth in file is same as date of birth reported in ESST.	Yes = Date of birth in file is same as date of birth reported in ESST. No = Date of birth in file is NOT same as date of birth reported in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
DAT – 24 <small>Intake unit SC agencies</small>	Date of transition conference in file is same as date of transition conference in ESST.	Yes = Date of transition conference in file is same as date of transition conference in ESST. No = Date of transition conference in file is NOT same as date of transition conference in ESST.			Child Level = Correct data in file or in ESST. EI Program Level = Train personnel responsible for data entry. Provide documentation of above to OSSE.
EI Program Level Questions					
FIS – 25	The program submits invoices for services rendered and items purchased within the previous month by the 10 th day of the subsequent	Yes = Invoices for past two months are date stamped as received by the 10 th of the month AND date of service of items purchased is within the previous month. No = Invoices for past two months were NOT date stamped as received by the 10 th of the month OR date			EI Program Level = Provide documentation to OSSE that next 6 monthly invoices are timely submitted and are for services or items that were purchased within the month previous to the submission.

	month.	of service of items purchased is NOT within the previous month.				
FIS – 26	Appropriate documentation for services rendered is included with invoice submission.	<p>Yes = OSSE Contracting Officer Technical Representative affirms that ALL documentation for services rendered is included with invoice submission.</p> <p>No = OSSE Contracting Officer Technical Representative does NOT affirm that ALL documentation for services rendered is included with invoice submission.</p> <p>NA = The program has not paid for services with federal funds.</p>				EI Program Level = For next 6 months, include documentation for services rendered with invoice submission.
FIS – 27	Appropriate documentation for transportation costs is included with invoice submission.	<p>Yes = OSSE Contracting Officer Technical Representative affirms that ALL documentation for transportation costs is included with invoice submission.</p> <p>No = OSSE Contracting Officer Technical Representative does NOT affirm that ALL documentation for transportation costs is included with invoice submission.</p> <p>NA = The program has not paid for transportation costs with federal funds.</p>				EI Program Level = For next 6 months, include documentation to for transportation costs with invoice submission.
FIS – 28	Appropriate documentation for items purchased is included with invoice submission.	<p>Yes = OSSE Contracting Officer Technical Representative affirms that ALL documentation for items purchased is included with invoice submission.</p> <p>No = OSSE Contracting Officer Technical Representative does NOT affirm that ALL documentation for items purchased is included with invoice submission.</p> <p>NA = The program has not purchased items with federal funds.</p>				EI Program Level = For next 6 months, include documentation for items purchased with invoice submission.
FIS – 29 §80.42 & DC Standard Contract Provisions	The program retains financial records and relevant supporting documentation for the required time period, which is 5 years.	<p>Yes = Program has demonstrated that it has a records retention policy that ensures that records are retained for 5 years.</p> <p>No = Program has NOT demonstrated that it has a records retention policy that ensures that records are retained for 5 years.</p>				<p>EI Program Level = Program must develop policy/procedures that ensures that financial records are retained for at least 5 years.</p> <p>Provide documentation of above to OSSE.</p>
FIS – 30 §80.20(3) &	The program has controls in place to protect track and return assets acquired with	Yes = The program maintains an inventory list of assets acquired with federal funds.				EI Program Level = Program must develop policy/procedure that ensures assts procured with federal funds are protected, particularly those

OSSE Contract	federal funds costing more than \$300.	<p>No = The program does NOT maintain an inventory list of assets acquired with federal funds.</p> <p>NA = The program has not purchased assets with federal funds costing more than \$300.</p>			<p>assets costing more than \$300.</p> <p>Provide documentation of the above to OSSE.</p>
FIS – 31 OMB Circular A-133	If the program received an A-133 audit in the last federal fiscal year, the program submitted a copy of the management letter from the A-133 audit to OSSE.	<p>Yes = OSSE received a copy of the program's A-133 audit.</p> <p>No = OSSE did NOT receive a copy of the program's A-133 audit.</p> <p>NA = The program did not receive an A-133 audit.</p>			<p>EI Program Level = Within 30 days of this report, submit a copy of the program's A-133 audit to OSSE.</p>

SANCTIONS MATRIX

Hierarchy of sanctions - from least to most severe. (OSSE may choose to utilize the sanction deemed most appropriate to ensure compliance)	Sanction	Examples of when sanction may be used
	1. Corrective Action Plan (CAP): <ul style="list-style-type: none"> Completed by the provider and includes actions steps, timelines and resources needed. 	As a result of a finding(s) from: <ul style="list-style-type: none"> Data; Dispute Resolution; Self Assessment; or Finding made on a related requirement (e.g. as part of Focused Monitoring)
	2. Directed Corrective Action Plan (CAP): <ul style="list-style-type: none"> Developed by ITDD/OSSE staff with the provider agency; Includes required action steps that may include required technical assistance. 	As a result of receiving a: <ul style="list-style-type: none"> Focused Monitoring on one of the priority indicators; Determination of “needs intervention”.
	3. Compliance Agreement: <ul style="list-style-type: none"> Includes a Directed Corrective Action Plan with quarterly reporting requirements. 	As a result of receiving a: <ul style="list-style-type: none"> Determination of “Needs Substantial Intervention”.
	4. Withhold payment: <ul style="list-style-type: none"> Payments may be withheld until the provider agency follows through. 	As a result of: <ul style="list-style-type: none"> Not implementing action items on a CAP or providing requested information.
	5. Recoup funds: <ul style="list-style-type: none"> Funds may be recouped for a specified period of time. 	As a result of: <ul style="list-style-type: none"> An Office of Inspector General (OIG) report. Fraud Substantive failure to meet provider agreement requirements.
	6. Civil Monetary Penalty (fines): <ul style="list-style-type: none"> Made in accordance with written OCP/OSSE guidelines. 	As the result of: <ul style="list-style-type: none"> Significant non-compliance; Substantial failure to correct.
	7. Community Monitor assigned: <ul style="list-style-type: none"> Onsite consultant selected by OSSE, that the provider agency is required to fund for a specified period of time. 	As a result of: <ul style="list-style-type: none"> Widespread non-compliance; Determination of “Substantial Needs intervention” for 2 years.
	8. Provider Agreement modification: e.g. <ul style="list-style-type: none"> Reduction in term. 	As the result of: <ul style="list-style-type: none"> Pattern of non-compliance; Pattern of failure to correct.
	10. Termination of Provider Agreement: <ul style="list-style-type: none"> Provider agreements can be ended with 30 days notice. 	As a result of: <ul style="list-style-type: none"> Substantial and longstanding failure to correct. Determination of “Substantial Needs intervention” for 3 years.

Determinations of the Status of Local Programs by State Agencies Under Parts B and C of the Individuals with Disabilities Education Act (IDEA)

It will be necessary for States to consider a number of factors when establishing their “Determinations” process under IDEA sections 616 and 642. Certainly, the most important of these is to ensure that the process includes all of the required components. As discussed below, States *must* consider performance on compliance indicators, data integrity, uncorrected noncompliance issues and relevant audit findings. Developing a process that ensures consideration of all of these factors will likely involve a multi-faceted approach. Because each State is expected to develop a process that reflects their unique context, it is clear that a variety of strategies will be used to meet this federal requirement. However, despite anticipated differences in approach, there will also be some commonality with regard to the entire range of issues that States will address as well.

Purpose

The purpose of this document is to provide guidance on the annual determinations that must be made under IDEA of local programs performance in meeting the requirements and purposes of the IDEA. This document addresses:

- OSEP requirements of States;
- Determination categories and state enforcement;
- Issues and challenges for States to consider in the decision making process now and in the future;
- Involving stakeholders in developing a determination process; and
- Resources and references.

OSEP Requirements of States

OSEP provided guidance to States on how they are to make determinations of status of local programs. These are in the FAQ document of 10/19/2006 (http://www.rfcnetwork.org/images/stories/FRC/spp_mat/determinations%20faqs.doc).

Below are OSEP requirements of states as stated in the FAQ document:

- States are required to enforce the IDEA by making “determinations annually under IDEA section 616(e) on the performance of each LEA under Part B and each EIS program under Part C.
- States must use the same four categories in IDEA section 616(d) as OSEP in making determinations of the status of LEAs/EIS programs. These categories are:
 - Meets Requirements;
 - Needs Assistance;
 - Needs Intervention; and
 - Needs Substantial Intervention.
- States MUST consider:
 - Performance on compliance indicators;

- Whether data submitted by LEAs/EIS programs are valid, reliable, and timely;
- Uncorrected noncompliance from other sources; and
- Any audit findings.
- In addition, States could also consider:
 - Performance on performance indicators; and
 - Other information.

There is nothing in the IDEA statute or regulations that addresses a timeline for when States must make their annual determinations regarding the performance of the LEAs/EIS programs in their States. However, States need to make the determinations as soon as possible after making their annual report to the public on the performance of each LEA/EIS program.

States must inform each LEA/EIS program of the State's determination regarding that LEA/EIS program. However, the IDEA does not require States to report to the Department or to the public the determinations the State makes regarding the performance of each LEA/EIS program, although States may choose to do so.

The State's public reports of LEA/EIS program performance and its determinations provide valuable data and information to these local programs on how their program compares to the State's targets. States will want to be timely in informing LEAs/EIS programs of their determinations so programs can take actions necessary for improvement. In addition, there may be implications under the State's determinations for the State's award of funds to LEAs/EIS programs so the State would ideally make its determinations before LEA subgrants are issued or funds under subawards or contracts are signed or renewed to EIS programs.

Determinations and Enforcement

As noted above, States must use the same four categories as OSEP in making determinations of the status of local programs. These categories are

- Meets Requirements;
- Needs Assistance;
- Needs Intervention; and
- Needs Substantial Intervention.

Enforcement actions for these categories are described in section 616(e) of the IDEA and also in the Part B regulations at §§300.603 and 300.604. States must use appropriate enforcement actions listed at section 616(e) and in the Part B regulations at §300.600(a) that refers to the actions listed in §300.604. Not all of the enforcement actions included in section 616(e) and §300.604 may be applicable or appropriate for a State in determining the appropriate enforcement actions against specific LEAs/EIS programs. The Part B regulations at §300.600(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 other words, when a State determines that an LEA:

- Needs Assistance for two consecutive years, the State must take one or more of the following enforcement actions in §300.604:
 - (a)(1): Advise programs of available sources of technical assistance to address areas on which the program needs assistance; or
 - (a)(3): Identify programs as high risk grantee and imposing conditions on use of funds.
- Needs Intervention for three or more consecutive years, the State must take one or more of the following actions in §300.604:
 - (b)(2)(i): Require the program to prepare or implement a corrective action plan to correct the identified area(s); or
 - (b)(2)(v): Withhold, in whole or in part, further payments to programs.
- Needs Substantial Intervention at any time, the State must take the following enforcement action in §300.604:
 - (c)(2): Withhold, in whole or in part, any Part B funds.

In addition to the minimum enforcement actions noted above, a State also may use any other enforcement mechanisms and actions available to it (such as those included in State rules, regulations, or policies) to enforce the IDEA. For example, a State might advise an LEA/EIS program of available technical assistance on areas on which the program needs assistance after the first year the program is identified as needing assistance, or require more rigorous reporting on the area needing improvement.

Issues and Challenges for the State

States need to consider a number of issues in preparation for making determinations of the status of local programs.

- How can we ensure that the process for making determinations is perceived as fair and equitable?
- How can we develop a determinations process that can be clearly articulated and understood by LEAs/EIS programs?
- Will the decision making process be strictly internal – State staff – or involve stakeholders?
- What is the relationship of the public report and program determination?
- What will serve as the criteria to assign each LEA/EIS program in one of the four determinations categories?
- How will the State take into consideration data that are more recent than the last report to the public? How will the State take into consideration improvement even when programs do not meet the State target?
- How many compliance and results indicators should our State include to achieve a comprehensive process for making determinations?
- What standards are set by the State for determining whether local program data are valid, reliable, and timely?
- What specific criteria will be used, if any, besides those the State must use?

- Whether some outcome indicators have more importance in the State at a particular time?
- Does the State want to inform LEAs/EIS programs of their draft determinations to request feedback?
- Will the State have an appeals process by local programs?
- Should our State include student or system results indicators as well as the required compliance indicators?
- What is the message the State sends to the public if the criteria for making determinations relies solely on program's performance on procedural compliance indicators?
- Will the State consider data from dispute resolutions – complaints, hearings or appeals - as part of the State's criteria?
- How will the State incorporate new indicators into the decision making process in future years?
- To what extent can a State automate the determinations task?
- Does the State intend to report the determinations to the public (recognizing that the State's correspondence informing the LEA/EIS program is likely available to the public through State freedom of information laws)?
- How will the State use the determinations of LEAs/EIS programs to guide or inform the State in whether to revise its SPP improvement activities?
- How are State resources to be allocated for each of the determination levels? For example, how will the State allocate resources for LEAs/EIS programs identified in the needs assistance category?
- States are required to enforce the IDEA by making "determinations annually under IDEA section 616(e) on the performance of each LEA under Part B and each EIS program under Part C.
- What implications will making determinations have on current resources and allocation of resources?

Involving Stakeholders: State Advisory Panels and State Interagency Coordinating Councils

State leadership—along with meaningful stakeholder involvement—are integral components in developing a determinations process that will be perceived as fair and equitable by LEAs/EIS programs. The functions of the State Advisory Panel (SAP) as described in section 1412(a)(21) of IDEA (Part B) and the State Interagency Coordinating Council (SICC) as described in section 635(a)(10) of IDEA (Part C) provide States with some mechanisms for obtaining stakeholder input and feedback on a wide variety of issues related to establishing a determinations process. As many well know, the role of the State Advisory Panel (SAP) is to advise on rules or regulations proposed by the State in such matters as evaluation and reporting data, the development of corrective action plans, and in policies related to coordinating Part B services provided to children and youth with disabilities. A similar advisory role is shared by the SICC, which must, under IDEA section 641(e)(1)(D), also prepare and submit an annual report to the Governor and the Secretary on the status of early intervention programs operated within the State. As such, both the SAP and the SICC can serve important roles in helping the State identify appropriate criteria in the determinations process.

In some instances, States may have a stakeholder group other than the SAP or SICC that has also assisted in the development of the State Performance Plan (SPP) and Annual Performance Report (APR) and States may wish to continue the involvement of these stakeholders in developing the State's determinations process under Parts B and C of the IDEA. Even while acknowledging that States will likely involve various types of stakeholder groups to one extent or another, issues will need to be addressed regarding the general nature of their involvement. However, for those States seeking to more actively engage their SAPs and SICC in decision-making activities, the task of establishing a determinations process appears to be an ideal opportunity for this to occur.

Advantages in obtaining stakeholder input include:

- Involving stakeholders helps to diminish the burden of having only a relative few make decisions that will have widespread impact.
- Involving stakeholders helps to secure “buy-in,” particularly from constituencies most likely to question the accuracy and efficacy of the determinations process.
- Involving stakeholders adds “transparency” to the decision-making process.

Nature of Stakeholder Involvement

States will need to consider various issues related to *how* stakeholders will be involved in the development of the determinations process. As indicated previously, one very important thing to consider is the *extent* to which stakeholders will be involved. For example, some States may choose to deliberate internally and perhaps even “field test” various strategies before presenting these options a stakeholder group. In this capacity, the involvement of stakeholders will be largely advisory. In contrast, other States may wish to include stakeholders more directly in the development of the determinations process. In this case, stakeholders are involved from the very beginning in helping with decisions about the “nuts and bolts” of the determinations process. In any event, it is likely that States will select an option most consistent with their historical relationships in working with stakeholders. Irrespective of what approach to involving stakeholders is selected—States will need to consider questions related to the stakeholder process. Several of these questions are indicated below:

- *“To what extent will LEAs/EIS programs be represented as stakeholders?”*—A critical question since LEAs/EIS programs will be most directly impacted by the process the State uses to make determinations.
- *What process will be used to establish a consensus among stakeholders?*—Much of the work involved in setting criteria for determinations will be contingent upon agreement of “decision rules.”
- *How will the stakeholder group be facilitated?*—Some States may consider using external facilitation by a person or entity perceived as “fair.”

Stakeholders can play an important role in helping the State to develop strategies for the determinations process. As such, it is important for the State to recognize their potential contributions and begin the process of establishing a determinations process by

approaching it as a “stakeholders first” attitude. One of the “latest” performance-based methods to support this way of thinking is reflected in the “Performance Prism,” a model entirely predicated on the assumption, *Start with stakeholders—not strategies*.” Research from Neely, Adams, and Kennerly (2002), for example, points out that strategies represent the “route” you take—the *how* to reach the “final destination”—which, in this case, is developing a fair and equitable approach to making determinations on the performance of LEAs/EIS programs.

Resources and References

- SPP/APR Part C Indicator Overview
(http://www.rrfcnetwork.org/images/stories/FRC/spp_mat/nac_materials/c%20indicator%20overview.doc)
- SPP/APR Part B Indicator Overview
(http://www.rrfcnetwork.org/images/stories/FRC/spp_mat/nac_materials/b%20indicator%20overview.doc)
- Determinations Summary Report – Part C
- Determinations Summary Report – Part B

Determination FAQs (10/19/06)

What are the Secretary's "Determinations?"

Based on information provided in the SPP, information obtained through monitoring visits and other public information, the Secretary will determine if the State--

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

What will OSEP consider in making the "Determinations?"

Department will consider all information available at the time of the determinations including:

- History, nature and length of time of any reported noncompliance
- Evidence of correction, including progress toward full compliance
- Information regarding valid and reliable data
- Special conditions
- Compliance agreements
- Audit findings
- Verification or focused monitoring findings

Are States required to make "Determinations?"

Pursuant to 616(a)(1)(C)(i) and 300.600(a), States are required to make "Determinations" annually under 616(d) on the performance of LEAs/EIS programs.

What should States consider in making their "Determinations?"

States **MUST** consider

- Performance on compliance indicators;
- Whether data submitted by LEAs/EIS programs is valid, reliable, and timely;
- Uncorrected noncompliance from other sources; and
- Any audit findings.

In addition, States could also consider:

- Performance on performance indicators; and
- Other information.

Must States use the same four categories as the Department will use?

- Yes, States must use "Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention."

Is there a deadline for States to make the Determinations for their LEAs or EIS Programs?

- There is nothing in the statute or regulations that addresses a timeline for when States must make Determinations regarding the performance of the LEAs or EIS programs in their States. However, States need to make the Determinations as soon as possible after making their annual report to the public on the performance of each LEA or EIS program. It is important to ensure that LEAs and EIS Programs have time to improve performance prior to the next reporting to the State by each LEA or EIS program and the State's next

Determinations point. In addition, there may be implications for the State's award of funds to LEAs or EIS programs so the State would ideally make its Determinations before grants are issued or contracts are signed or renewed.

Must States report the Determinations of each LEA or EIS Program to the Department and/or the public?

- IDEA does not require States to report to the Department or to the public the Determinations the State makes regarding the performance of each LEA or EIS Program. States, of course, must inform each LEA or EIS Program of the State's Determination regarding that LEA or EIS program.