



# STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA

MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT

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U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES

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## STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA

The U.S. Department of Education’s (Department) Office of Special Education and Rehabilitative Services (OSERS) has received multiple requests from a diverse group of stakeholders asking the Department for updated and consolidated guidance interpreting the general supervision requirements of States<sup>1</sup> under the Individuals with Disabilities Education Act (IDEA). IDEA Part B requires that children with disabilities, ages three through 21,<sup>2</sup> receive a free appropriate public education (FAPE). IDEA Part C requires States to make available early intervention services to infants and toddlers with disabilities and their families. This guidance applies to States (the State educational agency (SEA) under IDEA Part B Sections 611 and 619 and the State lead agency (LA) under IDEA Part C) that are responsible for implementing a general supervision system. State general supervision systems must include local educational agencies (LEAs)<sup>3</sup> under Part B<sup>4</sup> and early intervention service (EIS) programs and providers<sup>5</sup> under Part C.<sup>6</sup> With this guidance, States will have the information necessary to exercise their general supervision responsibilities under IDEA and ensure appropriate monitoring, technical assistance (TA), and enforcement regarding local programs. In addition, this guidance reaffirms the importance of general supervision and the expectation that monitoring the implementation of IDEA will improve early intervention and educational results and functional outcomes for children<sup>7</sup> with disabilities and their families.

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<sup>1</sup> As used in this document, the term “State” under Part B refers to the SEA in each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, each of the outlying areas, the freely associated States, and the Secretary of the Interior responsible for general supervision of LEAs under 20 U.S.C. § 1412(a)(11) and 34 C.F.R. § 300.149. The term “State” under Part C refers to the LA in each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and the Secretary of the Interior responsible for general supervision of EIS providers, programs, and activities under 20 U.S.C. § 1435(a)(10)(A) and 34 C.F.R. § 303.120(a).

<sup>2</sup> The obligation to make FAPE available does not apply to children with disabilities aged 3, 4, 5, 18, 19, 20, or 21 to the extent those ages are outside the public education age limit under State law or practice, or the order of any court. 34 C.F.R. § 300.102(a)(1). The FAPE obligation also does not apply to children with disabilities who have graduated from high school with a regular high school diploma. 34 C.F.R. § 300.102(a)(3).

<sup>3</sup> The term “LEA” is defined in 34 C.F.R. § 300.28. “Public agency” is defined in 34 C.F.R. § 300.33 to include the SEA, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. To make this document more user-friendly, OSEP uses, as appropriate, the term “LEA” in place of “public agency” as referenced in 34 C.F.R. §§ 300.120 and 300.600(b)(2), and in place of “educational program for children with disabilities administered within the State” as referenced in 34 C.F.R. § 300.149(a).

<sup>4</sup> 20 U.S.C. § 1412(a)(11) and 34 C.F.R. § 300.149.

<sup>5</sup> The term “EIS provider” is defined in 34 C.F.R. § 303.12. “EIS provider” is different from the term “EIS program,” which is defined in 34 C.F.R. § 303.11 as the entity designated by the LA for reporting performance in the State Performance Plan/Annual Performance Report (SPP/APR) under 34 C.F.R. §§ 303.700 through 303.702.

<sup>6</sup> 20 U.S.C. § 1435(a)(10)(A) and 34 C.F.R. § 303.120(a).

<sup>7</sup> This document refers to “children” and “children with disabilities” to mean both “infants and toddlers with disabilities” or “infants, toddlers, children and youth with disabilities” under Parts B and C of the IDEA.

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This guidance incorporates longstanding policy and supersedes the following three previously issued guidance documents:

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

In addition, this guidance incorporates other longstanding interpretations reflected in OSEP's monitoring, determinations process, policy letters, and grant documentation to address common questions that OSEP has received from parents, States, local programs, and other stakeholders. OSEP is further clarifying or expanding positions in the following three areas:

- **REASONABLY DESIGNED GENERAL SUPERVISION SYSTEMS** —  
OSEP is clarifying that, as part of a State's general supervision system, a State may not ignore credible allegations about potential noncompliance, to ensure the timely identification of noncompliance. States should ensure all LEAs or EIS programs<sup>8</sup> are monitored at least once within the six-year cycle of the State's SPP/APR, presumptively implementing a reasonable timeframe for monitoring. (See Questions A-11 and B-2.)
- **TIMELINE CONSIDERATIONS FOR IDENTIFICATION OF NONCOMPLIANCE** —  
OSEP is articulating reasonable timelines for identifying noncompliance and issuing a written notification of noncompliance (i.e., a finding).<sup>9</sup> (See Questions B-2 and B-7.)
- **CORRECTION OF CHILD-SPECIFIC NONCOMPLIANCE** —  
OSEP has had a longstanding position on how States demonstrate they have verified correction of individual child-specific noncompliance, including the State's responsibilities to enforce a State complaint or due process hearing decision when a child leaves the jurisdiction of an LEA or EIS program or provider. OSEP is now indicating

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<sup>8</sup> See 34 C.F.R. § 303.11 for the definition of "EIS program," which, as noted above, is defined by the LA for reporting performance in the annual SPP/APR and which is different from the "EIS provider" which more broadly encompasses all entities and individuals that provide Part C services and is defined in 34 C.F.R. § 303.12.

<sup>9</sup> OSEP uses the terms "written notification of noncompliance," "written finding of noncompliance," "identified noncompliance," or "finding" interchangeably within this document to mean the State's "identification of noncompliance" that starts the one-year correction timeline, consistent with 34 C.F.R. §§ 300.600(e) and 303.700(e).

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that States and their LEAs or EIS programs or providers must demonstrate that they verified correction of *each* individual case of the previously noncompliant files or records, rather than using a subset of such records. (See Question B-15.)

Other key topics in this guidance incorporate longstanding policy and include public reporting of State, LEA, and EIS program performance; enforcement actions; and State responsibilities for general supervision during disasters.

OSEP is issuing this guidance to better inform SEAs, LAs, LEAs, and EIS programs and providers of their responsibilities. Parents who want additional support in understanding IDEA's monitoring, TA, and enforcement provisions, or the rights afforded to children with disabilities, may contact the Parent Training and Information Center (PTI) in their area. See <https://www.parentcenterhub.org/find-your-center/>. The Department provides funding to PTIs to ensure that parents and families of children with disabilities receive impartial training and objective information to help improve outcomes and raise expectations for their children. Parents and families may also wish to access the Parents and Families resource page on the IDEA website, which brings together Department-funded centers and programs, and additional information of interest for parents and families. See <https://sites.ed.gov/idea/parents-families/>.

The questions and answers in this document are not intended to be a replacement for careful study of IDEA and its implementing regulations.<sup>10</sup> IDEA, its implementing regulations, and other important documents related to IDEA and the regulations are found at: <https://sites.ed.gov/idea>.

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<sup>10</sup> The Department has determined that this document provides significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). Except for any statutory or regulatory requirements described in this guidance, this significant guidance is nonbinding and does not create or impose new legal requirements. For further information about the Department's guidance processes, please visit: <https://www2.ed.gov/policy/gen/guid/significant-guidance.html>.

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## A. STATE GENERAL SUPERVISION RESPONSIBILITIES

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### Question A-1: What is general supervision?

**Answer:** As a condition of receiving IDEA funds, the State agency (which is the SEA under IDEA Part B Section 611 and Section 619 and the LA under IDEA Part C) must have a general supervision system. This system includes multiple components such as monitoring to — (1) improve educational results and functional outcomes for infants and toddlers with disabilities and their families and children with disabilities; and (2) ensure that LEAs and EIS programs and providers meet the requirements under IDEA. 20 U.S.C. §§ 1412(a)(11), 1416(a), 1435(a)(10) and 1442; 34 C.F.R. §§ 300.149, 300.600 through 300.604, and 300.608; 34 C.F.R. §§ 303.120, and 303.700 through 303.708.

A State's general supervision responsibility over its local programs is a longstanding IDEA requirement and broader than its monitoring responsibilities under IDEA Sections 616 and 642.<sup>11</sup> IDEA's general supervision responsibility must also be read with other Federal monitoring requirements, including those under the Office of Management and Budget (OMB) Uniform Guidance,<sup>12</sup> the General Education Provisions Act (GEPA) in 20 U.S.C. § 1232d(b)(3)(A), and the Education Department General Administrative Regulations (EDGAR) in 34 C.F.R. Part 76.

Under Part B, SEAs must carry out their general supervisory responsibilities to ensure that Part B requirements are implemented and that each educational program for children with disabilities meets the SEA's educational standards (including the Part B requirements). See 34 C.F.R. §§ 300.149, 300.600 through 300.604, and 300.608. Generally, these responsibilities are all assigned to the SEA. However, IDEA permits the Governor, or another individual pursuant to State law, to assign to any public agency in the State the responsibility to ensure that Part B requirements are met for students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. 34 C.F.R. § 300.149(d).

The SEA must monitor implementation of IDEA Part B requirements, with a primary focus on improving educational results and functional outcomes for all children with disabilities and ensuring LEAs meet the Part B program requirements. 34 C.F.R. § 300.600(b). Further, SEAs must make annual determinations about the performance of each of its LEAs and enforce Part B requirements. 34 C.F.R. §§ 300.600(a)(2)-(a)(3).

Similarly, under Part C, LAs must carry out their general supervisory responsibilities, which are set forth in 34 C.F.R. §§ 303.120, and 303.700 through 303.708. The LA is responsible for the general administration and supervision of all EIS programs and providers as well as activities to

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<sup>11</sup> IDEA Sections 612(a)(11) and 635(a)(10) codified at 20 U.S.C. §§ 1412(a)(11) and 1435(a)(10)(A); 34 C.F.R. §§ 300.149 and 303.120(a).

<sup>12</sup> The OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (commonly called "OMB Uniform Guidance") is codified in 2 C.F.R. Part 200 and applies to all Federal grant recipients, including States receiving IDEA funds.

ensure the State complies with the requirements of IDEA Part C. This includes monitoring the implementation of IDEA Part C requirements by each agency, institution, organization, and EIS program or provider located in the State used to carry out Part C. The primary focus of the State's monitoring activities must be on improving early intervention results and functional outcomes for infants and toddlers with disabilities. 34 C.F.R. § 303.700(b). Additionally, LAs must make annual determinations about the performance of each EIS program and enforce Part C requirements. 34 C.F.R. § 303.700(a)(2) and (3).

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

**Answer:** A reasonably designed State general supervision system should include eight integrated components.<sup>13</sup> These components include the following:

- 1) Integrated monitoring activities;
- 2) Data on processes and results;
- 3) The SPP/APR;
- 4) Fiscal management;
- 5) Effective dispute resolution;
- 6) Targeted TA and professional development;
- 7) Policies, procedures, and practices resulting in effective implementation; and
- 8) Improvement, correction, incentives, and sanctions.

While each State has the flexibility to develop its own model of general supervision and may elect to address the underlying Federal requirements in other ways, it is OSEP's longstanding presumption that an effective system of general supervision, used to monitor LEAs and EIS programs and providers, would at a minimum include these eight components.

To be effective, these components should operate as an integrated system to connect, interact, articulate, and inform one another. The overall goal is for the State's general supervision system to effectively address —

- 1) Improving early intervention and educational results and functional outcomes for infants and toddlers with disabilities and their families, and children with disabilities;

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<sup>13</sup> OSEP first presented the concept of an integrated system of general supervision at its 2004 National Accountability Conference. [Developing and Implementing an Effective System of General Supervision, National Center for Special Education Accountability Monitoring](#) (Jan. 2007). See also [Resources for Grantees — DMS](#) and the [DMS 2.0 Framework with Evidence and Intended Outcomes](#) (2021).

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- 2) Ensuring that LEAs or EIS programs or providers meet the program requirements of the IDEA, with a particular emphasis on those requirements and data that are most closely related to improving educational results and functional outcomes for children with disabilities, and early intervention results and functional outcomes for infants and toddlers with disabilities; and
- 3) Ensuring that the State has a system that collects and reports valid and reliable data.<sup>14</sup>

### ***INTEGRATED MONITORING ACTIVITIES***

#### **Question A-3: What are integrated monitoring activities?**

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

Integrated monitoring activities could include the following:

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

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<sup>14</sup> 20 U.S.C. §§ 1412(a)(11), 1416(a), 1435(a)(10)(A) and 1442; 34 C.F.R. §§ 300.149, 300.600, 303.120(a) and 303.700; 2 C.F.R. §§ 200.329 and 200.332.

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

### ***THE SPP/APR***

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

**Answer:** No. As stated in Question A-2, an effective general supervision system should, at a minimum, include the eight components identified above, only one of which is the SPP/APR. Thus, solely relying on an LEA's or EIS program's performance on the SPP/APR indicators would not constitute a reasonably designed general supervision system. While the SPP/APR

indicators were designed to measure important aspects of State compliance with, and performance under, IDEA, some requirements related to the fundamental rights of children with disabilities and their families are not represented in the indicators. For example, the SPP/APR does not measure the extent to which children with disabilities are receiving the IDEA services as prescribed in their IEPs or IFSPs, or the provision of IDEA services for children with disabilities residing in nursing homes<sup>15</sup> or correctional facilities.<sup>16</sup> Additionally, under Part C, the State is responsible for monitoring all EIS providers as well as activities to implement Part C, and not just EIS programs. Thus, solely relying on an LEA's or EIS program's performance on SPP/APR indicators would not constitute a reasonably designed general supervision system.

### ***DATA ON PROCESSES AND RESULTS***

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

**Answer:** States use data systems for a variety of purposes, including as a component of an effective general supervision system. At a minimum, States must have data systems to collect and report valid and reliable data under IDEA Sections 616, 618, and 642.<sup>17</sup> As part of its general supervision system, a State must also consider how it will review the information in its data system to determine compliance and reflect in its monitoring policies how that review of data will be used to identify noncompliance. 34 C.F.R. §§ 300.600(e) and 303.700(e). The State should ensure that its policies do not delay the identification of noncompliance until the submission of SPP/APR data or the State's annual determination process. The State's general supervision system should be reasonably designed to ensure the State examines data collected through its data system at regular intervals to determine LEA or EIS program or provider compliance with IDEA requirements (e.g., monthly, quarterly, or annually). This includes reviewing data collected to meet the IDEA reporting requirements under the SPP/APR and IDEA Sections 616 and 642. States should inform LEAs or EIS programs or providers of when and how the data system is being used for the purposes of determining compliance and identifying noncompliance. As States use their data systems for integrated monitoring activities (see Question A-3), they may also wish to review how the data system fits into the State's general supervision system, to make it most effective in ensuring compliance and improving functional outcomes and results for children with disabilities.

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<sup>15</sup> See [OSEP's Dear Colleague Letter on Children with Disabilities Residing in Nursing Homes](#) (Apr. 26, 2016).

<sup>16</sup> See [OSEP's Dear Colleague Letter on Children with Disabilities in Correctional Facilities](#) (Dec. 5, 2014).

<sup>17</sup> See IDEA Section 618, 34 C.F.R. §§ 300.640-300.646 and 303.720-303.724. See IDEA Section 618, 34 C.F.R. §§ 300.640 through 300.646 and 303.720 through 303.724. See IDEA Section 616, 34 C.F.R. §§ 300.600 through 300.602 and 303.700 through 303.702. See also 34 C.F.R. §§ 300.157, 300.160, 300.211 and 303.124, and 303.720 through 303.724.

## ***FISCAL MANAGEMENT***

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

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

For programs with subrecipients such as subgrantees, the SEA and those LAs that subgrant Part C funds must, among other activities: (1) evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward (i.e., subgrants) to determine appropriate subrecipient monitoring; (2) monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved; and (3) issue a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. §§ 200.332 and 200.521.

The IDEA general supervision responsibilities under 34 C.F.R. § 300.149 also include fiscal monitoring. Under the IDEA Part C regulations in 34 C.F.R. § 303.120(a), States must include a single line of responsibility in a LA designated or established by the Governor that is responsible for: (1) the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS programs or providers receiving assistance under IDEA Part C; and (2) the monitoring of programs and activities used by the State to carry out IDEA Part C to ensure compliance (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of IDEA). The single line of responsibility includes both fiscal and programmatic requirements of IDEA.

Unlike IDEA Part B, where SEAs must subgrant, IDEA Part C allows States flexibility to either subgrant or contract when implementing the Part C program in accordance with State law and administrative policies, as long as the EIS provider meets Federal statutory and regulatory requirements under 34 C.F.R. § 303.12. As a result, OSEP has observed a wide variety of approaches in how LAs provide funds to or contract with EIS providers. OSEP notes that many LAs utilize complex systems for contracting or otherwise arranging for early intervention services and accessing multiple payor sources to fund those services.

The Consolidated Appropriations Acts of 2021, 2022, and 2023 (Public Laws 116-260, 117-103, and 117-328, respectively) provide LAs with the flexibility to use Federal fiscal year (FFY)

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2021, FFY 2022, and FFY 2023 IDEA Part C funds to “make subgrants to LEAs, institutions of higher education, other public agencies, and private nonprofit organizations to carry out activities authorized by Section 638 of IDEA.” Any Part C State that utilizes this flexibility must meet the same requirements listed above for Part B States with subrecipients. Generally, subrecipients of IDEA Part C grants must meet the OMB Uniform Guidance requirements for procurement in 2 C.F.R. §§ 200.318 through 200.327 and the requirements for equipment in 2 C.F.R. § 200.313.

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

### ***EFFECTIVE DISPUTE RESOLUTION***

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

**Answer:** Due process complaints and the resulting hearing decisions, and State complaints and the SEA’s or LA’s decisions on those complaints, are an important source of compliance information available to the State that should be considered and addressed as part of a reasonably designed general supervision system. In reviewing complaints and decisions, a State may be able to identify patterns that suggest systemic noncompliance by one or more LEAs or EIS programs or providers with IDEA requirements or suggest that there may be State-wide patterns of noncompliance. Where such patterns are present, the State, as part of its general supervision system, must determine whether systemic noncompliance occurred or is occurring and ensure correction in a timely manner. 20 U.S.C. §§ 1412(a)(11) and 1435(a)(10); 34 C.F.R. §§ 300.149 and 303.120.

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

determine if the decision identifies any procedural or substantive<sup>18</sup> violations of IDEA in the LEA. In this example, the State now has information about a pattern of violations, strongly suggesting systemic violations by this LEA. A reasonably designed general supervision system must be designed to collect and analyze this information. The State must determine whether systemic noncompliance is occurring and, if so, issue written findings of noncompliance and ensure correction. Information gathered through a State's dispute resolution system can also help to identify areas of IDEA implementation for which the SEA or LA could decide to provide Statewide guidance, training, or technical assistance, to improve implementation of specific requirements throughout the State.

### ***PRIORITY AREAS***

#### **Question A-8: What are ways States can meet their child find responsibilities, particularly regarding specific populations?**

**Answer:** States must ensure they meet their IDEA child find responsibilities by examining and analyzing data and other information from their child find systems and conducting robust monitoring to ensure compliance with related requirements.

The child find requirements in IDEA Part B<sup>19</sup> and Part C<sup>20</sup> require States to have in effect policies and procedures that ensure all children with disabilities residing in the State who need early intervention, special education and related services are identified, located, and evaluated, regardless of the severity of the disability. The IDEA Part B and Part C statute and regulations specifically identify many subpopulations where coordination with other organizations is critical to an effective child find process. As examples, child find must include children who are experiencing homelessness or are wards of the State; are highly mobile including migrant children; or are English learners.<sup>21</sup> 34 C.F.R. § 300.111(a)-(c). Pursuant to IDEA Part C, the requirements in 34 C.F.R. § 303.302(b) mandate the identification of eligible children, including Native American infants and toddlers residing on reservations; infants and toddlers who are homeless, in foster care, and wards of the State; infants and toddlers identified under the Child Abuse Prevention and Treatment Act (CAPTA) in substantiated cases of abuse or neglect; and at-

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<sup>18</sup> A substantive violation of IDEA occurs where the public agency fails to develop and implement an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County School District Re-1*, 580 U.S. 386, 137 S. Ct. 988 (2017). See also [Questions and Answers on U. S. Supreme Court Case Decision \*Endrew F. v. Douglas County School District Re-1\*](#) (Dec. 7, 2017).

<sup>19</sup> See also [Return to School Roadmap: Child Find Under Part B of the Individuals with Disabilities Education Act](#) (Aug. 24, 2021) and 34 C.F.R. § 300.111.

<sup>20</sup> See also [Return to School Roadmap: Child Find, Referral, and Eligibility Under Part C of the Individuals with Disabilities Education Act](#) (Oct. 29, 2021) and 34 C.F.R. § 303.302.

<sup>21</sup> The child find provisions in 34 C.F.R. § 300.111 also apply to children who have complex medical needs and who reside in nursing homes because of serious health problems, those who are in correctional facilities, and children with disabilities attending private schools. The child find requirements for parentally-placed private school children with disabilities are found in 34 C.F.R. § 300.131.



risk infants and toddlers who have been identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

In carrying out their responsibilities, States should examine equity issues that can exist in the child find system, including significant racial disparities, disparities between children from low-income and high-income families, and geographic disparities such as between urban and rural areas. The State's examination may include analyzing data and other information to determine if there are significant disparities in the groups or communities of children and families who are referred for evaluation or provided services. Based on the analysis of such data and information, States may determine whether targeted monitoring (i.e., a monitoring activity that occurs outside of the State's normal cycle to address emerging or new issues, and typically is limited in scope) is appropriate to ensure that the relevant IDEA requirements are properly implemented. The State also can provide TA which may include identifying outreach strategies to better connect with underserved groups and communities.

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

**Answer:** OSEP previously provided extensive guidance on the implementation of 34 C.F.R. §§ 300.646 and 300.647 in [IDEA Part B Regulations Significant Disproportionality \(Equity in IDEA\) Essential Questions and Answers](#) (Dec. 19, 2016). This response is only intended to summarize but not revise that guidance, which provides more detailed information on these requirements.

Each State that receives assistance under Part B of the IDEA must, consistent with 20 U.S.C. 1418(d) (IDEA Section 618(d)) and 34 C.F.R. § 300.646(a), "provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State" with respect to—

- a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in IDEA Section 602(3);
- b. The placement in particular educational settings of such children; and
- c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Although IDEA does not define "significant disproportionality," the implementing regulations require States to use a standard methodology to determine if significant disproportionality based on race and ethnicity is occurring in the State and its LEAs. 34 C.F.R. §§ 300.646 and 300.647. States must set a threshold above which disproportionality in the identification, placement, or discipline of children with disabilities within an LEA is considered significant.

## STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA

While these regulations only establish a system for identifying significant disproportionality based on overrepresentation, the regulations acknowledge that overrepresentation may be caused by under-identification of one or more racial or ethnic groups. A State's review pursuant to IDEA Section 618(d) can assist LEAs in identifying the factors contributing to any identified over- or under- representation. Among the data States and/or LEAs can review are school-level data, academic achievement data, relevant environmental data that may be correlated with the prevalence of a disability, or other data relevant to the educational needs and circumstances of the specific group of students identified.

An LEA identified with significant disproportionality is not necessarily out of compliance with IDEA requirements. When an LEA is identified with significant disproportionality, the State must require the LEA to set aside a total of 15 percent of its IDEA Part B (Sections 611 and 619) funds to provide comprehensive coordinated early intervening services (CCEIS) to address the factors contributing to the significant disproportionality. Further, when an LEA is identified with significant disproportionality, the regulations require the State to provide for the review and, if appropriate, revision of policies, procedures, and practices it identifies as contributing to the significant disproportionality, including any policy, procedure, or practice that results in a failure to identify, or the inappropriate identification of, members of a racial or ethnic group. 34 C.F.R. § 300.646(d)(1)(iii). If such review identifies noncompliance with an IDEA requirement, the State must ensure, in accordance with 34 C.F.R. § 300.600(e), that the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance (i.e., finding).

States must report annually to OSEP on the number of LEAs identified with significant disproportionality, the area in which significant disproportionality was identified, and the amount of IDEA Part B funds those LEAs reserved for CCEIS. Further, States must monitor those LEAs to ensure the required amount of funds were used to address factors contributing to the significant disproportionality.

In addition, States provide, in their annual IDEA Part B applications, an assurance that they have in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment. As part of implementing these policies and procedures, States should monitor for, and address, any implementation challenges that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity.

## ***GENERAL REQUIREMENTS***

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

**Answer:** Under Part B of the IDEA, SEAs are responsible for the general supervision of all educational programs for children with disabilities administered within the State, including each educational program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior). This includes Section 619 (preschool) programs, public charter schools, children with disabilities residing in nursing homes, and educational programs in juvenile and adult correctional facilities. Generally, SEAs monitor the subrecipients of IDEA funds, which can include LEAs, public charter school LEAs, and programs operated by other State agencies, such as correctional agencies. 34 C.F.R. § 300.149(d). The subrecipients, in turn, are responsible for the general supervision of schools or programs within their jurisdiction.

Under Part C of the IDEA, each State system must include a single line of responsibility in the LA designated or established within the State that is responsible for, among other things, monitoring programs and activities used by the State to carry out IDEA Part C (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under IDEA Part C) to ensure that the State complies with Part C of IDEA. 34 C.F.R. § 303.120(a).

**Question A-11: How frequently should a State monitor its LEAs or EIS programs or providers?**

**Answer:** A State should monitor all LEAs or EIS programs and providers within a reasonable period of time and at least once within a six-year period (which is based on the duration of the SPP/APR). However, where LEA or EIS program or provider data or other available information indicates an area of concern, a State should consider whether more frequent or targeted monitoring (i.e., a monitoring activity that occurs outside of the State's normal cycle to address emerging or new issues, and typically is limited in scope) is necessary. (See Question B-1). Regardless of when the State monitors its LEAs or EIS programs or providers, States should inform LEAs or EIS programs or providers of when and how data are being used, including the time period it reflects, for the purposes of determining compliance and identifying noncompliance. (See Question A-5).

**Question A-12: How should a State make its monitoring cycle and results available to the public?**

**Answer:** A State should inform stakeholders, including parents of children with disabilities and children with disabilities, about its general supervision systems and monitoring activities. This could include making available to the public (e.g., by posting on the State's website) the State's

monitoring schedule, including the names and number of LEAs or EIS programs or providers monitored in a given year, the results of those monitoring activities (e.g., written monitoring reports) and any additional targeted monitoring activities (i.e., a monitoring activity that occurs outside of the State's normal cycle to address emerging or new issues, and typically is limited in scope) that may have occurred.

**Question A-13: How should a State involve stakeholders, including parents, children with disabilities, and local-level staff in its monitoring activities?**

**Answer:** OSEP recommends that States involve stakeholders, including parents of children with disabilities, children with disabilities, and groups that represent the families and communities served by the LEAs or EIS programs or providers, as well as engaging OSEP-funded PTIs. States should also involve local-level staff, teachers, specialized instructional support personnel, Section 619 (preschool) coordinators, and related service providers to better understand how their LEAs or EIS programs or providers are applying State and local policies, procedures, and practices in the implementation of IDEA. This engagement can occur through targeted interviews, conversations, and other appropriate means of collecting information (e.g., surveys, public and virtual meetings, State Advisory Panel (SAP) or State Interagency Coordinating Council (SICC) annual convenings). Information gathered from parents, providers, and local personnel can provide valuable insight to States about the LEAs or EIS program's or provider's activities related to the implementation of IDEA at the local level.

**Question A-14: Is a State required to exercise its general supervision authority during disasters (e.g., human-made, health-related, or natural)?**

**Answer:** Yes. Even during disasters, SEAs must ensure the requirements of IDEA Part B are met under 34 C.F.R. § 300.149 (SEA responsibility for general supervision) and ensure the implementation of IDEA Part B. Likewise, even when there is a disaster, LAs must ensure the implementation of IDEA Part C under 34 C.F.R. § 303.120(a) (LA role in general supervision) and ensure the implementation of IDEA Part C. If traditional on-site monitoring activities are not possible during a pandemic or natural disaster, States have the flexibility to collect information needed to ensure the implementation of IDEA by LEAs or EIS programs or providers through other means and by using the multiple components of the State's general supervision system (see Question A-2). See the [Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#) (Jan. 2022), for more information related to this topic.<sup>22</sup>

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<sup>22</sup> In addition to the non-regulatory guidance, see the Department's website for a full listing of policy, guidance, and other resources related to disasters: [https://sites.ed.gov/idea/topic-areas/#Disaster\\_Response](https://sites.ed.gov/idea/topic-areas/#Disaster_Response).

## **B. IDENTIFICATION AND CORRECTION OF NONCOMPLIANCE**

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### *IDENTIFICATION OF NONCOMPLIANCE*

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

**Answer:** Although not defined in IDEA and its implementing regulations, as used in this document and reflected in OSEP’s longstanding practice, an “area of concern” means a credible allegation regarding an IDEA policy, procedure, practice, or other requirement that raises one or more potential implementation or compliance issues, if confirmed true. Such credible allegations (e.g., information and awareness) may come from integrated monitoring activities, data reviews, grant reviews, stakeholder calls, media reports, dispute resolution systems, or other mechanisms that relate to IDEA implementation.

**Question B-2: What actions must a State take when made aware of an area of concern with an LEA’s or EIS program’s or provider’s implementation of IDEA?**

**Answer:** The State must ensure that its general supervision system includes policies, procedures, and practices that are reasonably designed to consider and address areas of concern (i.e., credible allegations of LEA or EIS program or provider noncompliance) in a timely manner.

34 C.F.R. §§ 300.149 and 303.120. A State must conduct proper due diligence when made aware of an area of concern regarding an LEA’s or EIS program’s or provider’s implementation of IDEA and reach a conclusion in a reasonable amount of time. As the grantees for IDEA’s three formula grants (i.e., Part B Section 611, Part B Section 619, and Part C), States are responsible for monitoring (see Question A-1) and are required to comply with IDEA requirements, and expected to follow OSEP’s published interpretations.<sup>23</sup> When applying for IDEA Part B and Part C grant funds, States assure the Department that they have in effect policies, procedures, and practices that are consistent with the IDEA statutory and regulatory requirements.

When a State is made aware of an area of concern with an LEA or EIS program’s or provider’s implementation of IDEA, the State must conduct its due diligence in a timely manner to address the area of concern and reach a conclusion in a reasonable amount of time. A State’s proper due diligence activities may include but are not limited to: conducting clarifying legal research, interviewing staff, parents of children with disabilities, children with disabilities, and groups that represent the families and communities served by the LEAs or EIS programs or providers, and reviewing and analyzing data or information. Examples of data or information a State may analyze could include: fiscal contracts or other relevant financial information, State customer

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<sup>23</sup> IDEA is Spending Clause legislation, commonly referred to as simply, the Spending Clause. Article I, Section 8, Clause 1 of the U.S. Constitution has been widely recognized as providing the Federal government with the legal authority to offer Federal grant funds to States and localities that are contingent on the recipients engaging in, or refraining from, certain activities. See [Congressional Research Service: The Federal Government’s Authority to Impose Conditions on Grant Funds](#) (Mar. 23, 2017).

service information, administrative or judicial decisions, media reports, previous LEA or EIS program or provider self-reviews or self-assessments, document submissions, and any other relevant LEA or EIS program or provider monitoring information. (See also Question B-3).

If, through its due diligence, the State determines that the LEA or EIS program or provider is out of compliance with an applicable IDEA requirement, the State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA or EIS program or provider. This finding must be timely issued, generally within three months of the State exercising due diligence, regarding the area of concern, and reaching a conclusion in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, unless the LEA or EIS program or provider immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction (see Questions B-11 and B-12).

**Question B-3: What type and amount of information should the State review to confirm LEA or EIS program or provider compliance with IDEA requirements?**

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

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

**Answer:** As used in this document and as is OSEP's longstanding practice, identification of noncompliance (i.e., a finding) means the determination by a State that an LEA's or EIS program's or provider's policy, procedure, or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, another IDEA-related Federal requirement, or any specific IDEA grant award terms or conditions (hereafter "IDEA implementation requirement"). Applicable IDEA-related Federal requirements include requirements under GEPA at 20 U.S.C. 1221 et seq., under EDGAR in 34 C.F.R. Parts 76 and 81, and the OMB Uniform Guidance in 2 C.F.R. Part 200. OSEP uses the terms "written notification of noncompliance," "written finding of noncompliance," "identified noncompliance," or "finding" interchangeably

within this document to mean the State’s “identification of noncompliance” with a requirement of IDEA Part B or Part C consistent with 34 C.F.R. §§ 300.600(e) and 303.700(e).

**Question B-5: How must a State notify LEAs or EIS programs or providers of any identified noncompliance?**

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

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

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

- A description of the identified noncompliance;
- The statutory or regulatory IDEA requirement(s) with which the LEA or EIS program or provider is in noncompliance;
- A description of the quantitative and/or qualitative data (i.e., information, supporting the State’s conclusion that there is noncompliance);
- A statement that the noncompliance must be corrected as soon as possible, and in no case later than one year from the date of the State’s written notification of noncompliance;
- Any required corrective action(s); and
- A timeline for submission of a corrective action plan or evidence of correction.

**Question B-7: How soon after a State determines noncompliance must it provide a written notification of noncompliance (i.e., a finding) to the LEA or EIS program or provider?**

**Answer:** The State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA or EIS program or provider, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, unless the LEA or EIS program or provider immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction (see Questions B-11 and B-12). 34 C.F.R. §§ 300.149 and 303.120.

**Question B-8: May a State use a threshold of less than 100 percent compliance when determining an LEA or EIS program's or provider's compliance with IDEA requirements?**

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

For example, if a State, using data from its data system, determines that an LEA's compliance with initial evaluation timelines is 95 percent, the State must make a finding, unless the exceptions set out in Questions B-11 and B-12 apply, because the LEA's compliance level is below 100 percent.

**Question B-9: Must the State issue a finding and require correction if, as part of the State's monitoring system, an LEA or EIS program or provider submits a self-assessment or self-review that reflects noncompliance with an IDEA requirement?**

**Answer:** It depends. A State must issue a finding when the State has exercised due diligence and reached a conclusion, in a reasonable amount of time, that the LEA or EIS program or provider has violated an IDEA requirement, unless the exceptions set out in Questions B-11 and B-12 apply. This includes when the State confirms that the information in a self-assessment or self-review constitutes noncompliance.

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



## ***CORRECTION OF NONCOMPLIANCE***

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

**Answer:** OSEP’s longstanding position, first described in OSEP Memo 09-02, is that, in order to demonstrate that noncompliance has been corrected, the State must verify that the LEA or EIS program or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data and information, such as data and information subsequently collected through integrated monitoring activities or the State’s data system (systemic compliance); and (2) if applicable, has corrected *each* individual case of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider,<sup>24</sup> and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance).<sup>25</sup> The State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected *each* individual case of the previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance (child-specific compliance), if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

### **Question B-11: What is “pre-finding correction?”**

**Answer:** Pre-finding correction may occur when the State has exercised due diligence and reached a conclusion in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, but has not yet issued a finding. If the State is able to verify prior to issuing a finding that an LEA or EIS program or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data such as data subsequently collected through monitoring or the State’s data system (systemic compliance); and (2) if applicable, has corrected *each* individual case of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance) (see Question B-10), then this would be considered “pre-finding correction.” A State may not use this flexibility to allow its LEAs or EIS programs or providers an indiscriminate

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<sup>24</sup> Regardless of the LEAs or EIS program’s or provider’s obligation to ensure correction for a child who is no longer within the jurisdiction of the LEA or EIS program or provider, the State is not relieved of its responsibility to ensure FAPE and appropriate early intervention services for the affected child. 34 C.F.R. §§ 300.101 (FAPE) and 303.112 (Availability of Early Intervention Services).

<sup>25</sup> OSEP clarified in its October 23, 2019, [Letter to Anonymous](#) that generally, any outstanding corrective action ordered through a State complaint or due process hearing to remedy the denial of appropriate services must be completed, notwithstanding the child’s relocation to another State, if the ordered relief can reasonably be implemented in the new State and the parent does not reject the remaining services under the ordered relief.

amount of time, generally within three months, to correct any noncompliance prior to a finding being issued (see Question B-7).

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

**Answer:** It is OSEP’s longstanding position that a State may choose not to issue a written finding if the LEA or EIS program or provider immediately (i.e., before the State issues a written notification of noncompliance) corrects the noncompliance and the State verifies the correction based on a review of updated data and evidence that *each* individual instance of child-specific noncompliance has been corrected. (See also Question B-15.) As stated in the answer to Question B-11, if a State chooses to use this flexibility, it must ensure that the LEA or EIS program or provider has corrected the noncompliance, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time that the LEA or EIS program or provider has violated an IDEA requirement, and before the State has issued the finding.

While the State is not required to issue a written notification documenting the opportunity to correct the noncompliance under these circumstances, it should maintain documentation of the nature and extent of the noncompliance. Further, the State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected *each* individual instance of child-specific noncompliance, if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).

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

**Answer:** Under the IDEA, there is a longstanding requirement to correct noncompliance as soon as possible, but no later than one year after the State’s written notification of noncompliance. This is codified in the IDEA regulations in 34 C.F.R. §§ 300.600(e) and 303.700(e). Furthermore, each State annually certifies under 34 C.F.R. § 76.104 that the State will operate throughout the period of this grant award consistently with the requirements of the IDEA. The State must ensure that when it identifies noncompliance with IDEA requirements, the noncompliance is corrected as soon as possible, and in no case later than one year after the State’s written notification of noncompliance.

**Question B-14: What should the State consider when verifying the correction of noncompliance?**

**Answer:** When verifying the correction of noncompliance, States must ensure that they have internal controls and documentation consistent with other applicable Federal laws – GEPA, EDGAR, and the OMB Uniform Guidance, in addition to the IDEA implementation requirements. The OMB Uniform Guidance requires grantees to maintain effective internal controls that provide a reasonable assurance of compliance with Federal statutes, regulations, and

the terms and conditions of the Federal award. 2 C.F.R. § 200.303(a). GEPA and EDGAR require documentation of program implementation for audit purposes. 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. § 76.731.

Under these laws, States should consider a variety of factors in determining whether an LEA or EIS program or provider has corrected identified noncompliance. These considerations include ensuring that the correction of noncompliance addresses the extent and root cause of the identified noncompliance, in addition to ensuring child-specific and systemic correction. For example, States should consider the extent of the identified noncompliance — whether it was across the entire LEA or EIS program or provider or only in a small percentage of files concentrated within the LEA or EIS program or provider (e.g., one school, one service provider, or one teacher). The State should also consider whether the identified noncompliance was an isolated incident or a longstanding issue that was the subject of repeated corrective action plans, and whether the noncompliance showed a denial of a basic right under the IDEA (e.g., a long delay in an initial evaluation beyond applicable timelines with a corresponding delay in the child’s receipt of FAPE or early intervention services, or a failure to provide services in accordance with the IEP or IFSP). In addition, when verifying the correction of noncompliance, the State should ensure that the information reviewed to determine correction represents the population served within a given LEA or EIS program or provider.

In situations where an extremely small LEA or EIS program or provider does not have sufficient updated data to demonstrate systemic compliance (i.e., is correctly implementing the specific regulatory requirements and has achieved 100 percent compliance with the relevant IDEA requirements based on a review of updated data), States should use other evidence of change. In this instance, States could review revised policies, procedures, and practices; documentation of training provided; and changes made to supervision and oversight that demonstrates systems are in place to ensure systemic compliance. Regardless of the size of an LEA or EIS program or provider, *any* child-specific noncompliance must be corrected, even if late, including any remedy determined necessary to address a denial of services in accordance with the IEP or IFSP. Finally, when ensuring correction, States are encouraged to promote the use of evidence-based activities that are designed, not only to improve the LEA’s or EIS program’s or provider’s compliance with the IDEA requirements, but to also achieve and sustain compliance.

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

**Answer:** In order to verify correction of child-specific noncompliance, a State must review *each* individual case (not a subset or sample) of previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance, to verify correction by the LEA or EIS program or provider of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (see Question B-10.)

This standard is a change from OSEP's previous guidance because OSEP's monitoring has found insufficient policies and procedures and evidence that States are ensuring overall correction of child-specific noncompliance (whether through file review or their data systems). With States' expanded use of data systems that provide access to local level data, OSEP is making this change to ensure the consistent and timely correction of *all* noncompliance, as required by 34 C.F.R. §§ 300.600(e) and 303.700(e).

Furthermore, a State's failure to require its LEAs or EIS programs or providers to correct *each* individual case of child-specific noncompliance could result in denying children with disabilities, and their families, the rights and protections available under IDEA Part B and its implementing regulations in 34 C.F.R. Part 300, or under IDEA Part C and its implementing regulations in 34 C.F.R. Part 303.<sup>26</sup>

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

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

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

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<sup>26</sup> See [OSEP Policy Letter: Letter to Copenhaver](#) (Oct. 31, 2008).

<sup>27</sup> Federal awards expended as a recipient or a subrecipient are subject to audit under the OMB Uniform Guidance. The payments received for goods or services provided as a contractor are not Federal awards and are not subject to a single audit as a result. 2 C.F.R. § 200.501(f).

### ***LONGSTANDING NONCOMPLIANCE***

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

**Answer:** If an LEA or EIS program or provider did not correct identified noncompliance in a timely manner (i.e., within one year from the written notification of noncompliance), the State must still verify that the noncompliance was subsequently corrected. If an LEA or EIS program or provider is not yet correctly implementing the statutory or regulatory requirement(s), the State needs to identify the cause(s) of continuing noncompliance and take steps to address the continued lack of compliance including, as appropriate, enforcement actions outlined in Section E, State Enforcement Through Determinations and Other Methods. When determining what further action is needed to support the LEA or EIS program or provider in achieving compliance, States should evaluate and look for data trends and patterns, which will provide the State information on the root cause of the noncompliance.<sup>28</sup>

If the State determines the noncompliance has not been corrected within the one-year timeline, the State may, but is not required to, issue a new finding of noncompliance to the LEA or EIS program or provider even if the State has already issued a finding to that same LEA or EIS program or provider in the prior year. Ultimately, if the State has not verified that the noncompliance has been corrected within the one-year timeline, the State may not close the original finding and should impose additional corrective actions, if necessary.

The failure of an LEA or EIS program or provider to correct noncompliance within IDEA's one-year timeline could have serious implications for ensuring the provision of FAPE to children with disabilities under Part B and the provision of appropriate early intervention services to infants and toddlers with disabilities and their families under Part C. OSEP expects that a State would consider its LEA's or EIS program's or provider's adherence to IDEA's timely correction requirements before making a subgrant award under Part B and in some States, Part C, or before entering into a contract for early intervention services under Part C.

### ***RECORD KEEPING***

**Question B-18: How should States count and track written notifications of noncompliance identified through the State's system of general supervision?**

**Answer:** Each State may determine how it will count and track written notifications of noncompliance in order to demonstrate its effectiveness in monitoring its LEAs or EIS programs

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<sup>28</sup> See [OSEP's IDEAs That Work](#) website for a wide range of research-based products, publications, and other resources to assist States, local district personnel, children and families to improve results for children with disabilities.

## STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA

or providers and ensuring the timely correction of noncompliance. A State may choose to group individual instances in an LEA or EIS program or provider involving the same legal requirement or standard together as one finding, or it may choose to count and track each of the individual instances of noncompliance as separate findings. Regardless of how the State tracks its findings, it cannot consider a finding to be corrected until the State verifies that the LEA or EIS program or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on the State's review of updated data (systemic compliance); and (2) has corrected *each* individual case of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance) (see Question B-10). Ultimately, States should have a mechanism in place for tracking the results of their monitoring activities to ensure: (1) timely and full correction of any identified noncompliance; and (2) that valid and reliable data are reported in the State's SPP/APR regarding the identification and correction of noncompliance.

## **C. STATE PERFORMANCE PLAN/ANNUAL PERFORMANCE REPORT**

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### **Question C-1: What must a State include in its annual SPP/APR submission related to its system of general supervision?**

**Answer:** IDEA requires each State to develop an SPP/APR that evaluates the State’s efforts to implement the requirements and purposes of the IDEA and describes how the State will improve its implementation. The Part B SPP/APRs and Part C SPP/APRs include results indicators that measure child and family outcomes, and other indicators that measure compliance with certain requirements of the IDEA. Since 2015, the Part B SPP/APR and Part C SPP/APR have included a State Systemic Improvement Plan (SSIP) through which each State focuses its efforts on improving a State-selected child or family outcome.

Posted annually, the Part B and Part C Indicator Measurement Tables<sup>29</sup> list the monitoring priorities, indicators, required data sources, measurement, and instructions for providing the required information for each indicator. In the introduction to the SPP/APR, a State must include a description of its general supervision system in sufficient detail to ensure that the Department and the public are informed about the State’s various systems designed to improve results for infants, toddlers, children, and youth with disabilities, and to ensure that the SEAs, LEAs, LAs, and EIS programs and providers meet the requirements of IDEA Part B and Part C. The introduction should include a description of the general supervision system components that are in place to ensure that the respective IDEA Part B and Part C requirements are met (e.g., integrated monitoring activities, the State data system, review of processes and results, fiscal management, dispute resolution). In addition, for any indicator where the State has selected “State monitoring” as its data source, the State must “describe the method used to select the LEAs or EIS programs for monitoring.”<sup>30</sup>

### **Question C-2: How does OSEP distinguish “State monitoring” from “State database” when used as the data source for specific SPP/APR compliance indicators?**

**Answer:** “State monitoring” data are those data gathered during the State’s integrated monitoring activities to examine an LEA or EIS program’s or provider’s compliance with IDEA requirements (see Question A-5). OSEP refers to a “database” or “data system” as an electronic system used by the State for collecting, maintaining, and storing LEA or EIS program or provider data. Regardless of the data source (State monitoring or State database), States must collect valid and reliable data for the purpose of meeting Federal IDEA reporting requirements, including those under IDEA Section 618 and under IDEA Sections 616 and 642, such as the SPP/APR.

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<sup>29</sup> See the Part B and Part C SPP/APR Indicator Measurement Tables posted annually on the [Resources for Grantees – SPP/APR](#) page under the heading “Federal Fiscal Years SPP/APR Package.”

<sup>30</sup> See the Part B SPP/APR Indicators 11, 12, and 13, and the Part C SPP/APR Indicators 1, 7, 8A, 8B, and 8C.

In addition, States must report on data for those indicators for each LEA or EIS program<sup>31</sup> at least once during the six-year period of the SPP/APR package, including the status of correction for any identified noncompliance. States must identify the data source and should be clear about what the data reflect, including the number of local programs (i.e., all LEAs or EIS programs in the State or a subset), the number of children, the time period (Part C only), and the compliance requirement.

**Question C-3: Which year’s data must the State use when reporting on the correction of findings of noncompliance in the SPP/APR?**

**Answer:** The State must report on the number of “findings of noncompliance identified,” “findings of noncompliance verified as corrected within one year,” “findings of noncompliance subsequently corrected,” and “findings not yet verified as corrected” during the previous FFY SPP/APR reporting period.<sup>32</sup> In addition, the State must report on the correction of any remaining findings of noncompliance identified prior to the FFY SPP/APR reporting period that were not yet verified as corrected in the prior year’s SPP/APR.

**Question C-4: How should the State report on the identification and timely correction of findings of noncompliance in its SPP/APR?**

**Answer:** If the State reported less than 100 percent compliance for an indicator in a given year, the State must report, in the next year’s FFY SPP/APR, on the status of correction of noncompliance under that indicator (see Question C-3). When reporting on the correction of noncompliance, the State must report in the following year’s SPP/APR that it has verified that each LEA or EIS program or provider with noncompliance identified for that indicator and data source: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data, such as data subsequently collected through on-site monitoring or a State data system (systemic compliance); and (2) has corrected *each* individual case of child-specific noncompliance,<sup>33</sup> unless the child is no longer within the jurisdiction of the LEA or EIS program or provider and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance) (see Question B-10).

When reporting in the SPP/APR, the State must describe in sufficient detail its process for ensuring child-specific and systemic noncompliance has been corrected. The descriptions of the actions taken to verify the correction of noncompliance should be specific to the indicator and its

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<sup>31</sup> See 34 C.F.R. § 303.11 for the definition of “EIS programs,” which are defined by the State LA when reporting Part C annual SPP/APR performance data.

<sup>32</sup> See the Part B and Part C SPP/APR Indicator Measurement Tables posted annually on the [Resources for Grantees – SPP/APR](#) page.

<sup>33</sup> Specifically, States will no longer be allowed to report on the correction of individual child-specific noncompliance by reviewing a subset or sample of previously noncompliance files as a method to verify the correction, beginning with the FFY 2024 SPP/APR, submitted February 1, 2026.



requirement. For verification of child-specific noncompliance, this description could include what the State reviewed to determine if the noncompliance had been corrected such as individual child files or records, or how the State used its data system to verify child-specific correction. In explaining how the State verified correction of noncompliance with the specific regulatory requirement(s) (systemic compliance), the State is encouraged to describe the time period covered by the subsequent data reviewed, how many records were reviewed, any trainings provided, and how the State determined these specific actions demonstrated correction. Generally, the State should not use standardized, or boilerplate, language when describing the State's actions to ensure correction of noncompliance.

**Question C-5: How does the State report in its SPP/APR on any subsequent correction of noncompliance by LEAs and EIS programs or providers?**

**Answer:** If an LEA or EIS program or provider did not correct identified noncompliance in a timely manner (within one year from the written notification of noncompliance), the State must continue to report in the SPP/APR on whether the noncompliance was subsequently corrected. If an LEA or EIS program or provider is not yet correctly implementing the specific regulatory requirement(s), the State must provide information regarding the nature of any continuing noncompliance, actions taken to support the LEA or EIS program or provider in achieving compliance (e.g., review of policies, procedures, and practices, TA, training), and any enforcement actions taken against any LEA or EIS program or provider that is continuing to demonstrate noncompliance.

The State must ensure subsequent correction by verifying that the LEA or EIS program or provider: (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data, such as data subsequently collected through on-site monitoring or the State's data system (systemic compliance); and (2) has ensured that *each* individual case of child-specific noncompliance has been corrected, unless the child is no longer within the jurisdiction of the LEA or EIS program or provider, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance) (see Question B-10).

The State must maintain written documentation of the verification of subsequent correction of the noncompliance. See Section E for the specific enforcement actions the State may utilize when an LEA or EIS program or provider has received certain annual determinations that reflect longstanding noncompliance with an IDEA requirement.

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

**Answer:** SEAs report data on LEAs' performance on three Part B compliance indicators that address race and ethnicity related to children with disabilities: Indicator B-4B

(Suspension/Expulsion) required by 34 C.F.R. § 300.170 and Indicators B-9 and B-10 (Disproportionate Representation) required by 34 C.F.R. § 300.600(d)(3). In addition, States are required to report on the representativeness of the data reported for the following results indicators: Part C Indicator C-4 (Family Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1442 and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes) required by 20 U.S.C. §§ 1416(a)(3)(A) and 1416(a)(3)(B), respectively. As part of its general supervision responsibilities in implementing these IDEA requirements, States should monitor for, and address, any implementation challenges that may result from confusion about the interplay between Federal and State laws, including those challenges that may arise from the examination of data disaggregated by race and ethnicity.

Compliance Indicator: Part B Indicator B-4B (Suspension/Expulsion)

A State must provide an assurance in its annual IDEA Part B grant application that the State has in place policies and procedures to ensure that the SEA examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among LEAs in the State or compared to such rates for nondisabled children within such agencies. Where such discrepancies are occurring, SEAs are required to review and, if appropriate, revise (or require the affected State agency or LEA to revise) their policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with IDEA. 34 C.F.R. § 300.170(b).

For Indicator B-4B, the State must report the percentage of LEAs that were determined to have a significant discrepancy, as defined by the State, by race and ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with an IEP. In addition, for those LEAs determined by the State to have a significant discrepancy, the State must report on its review of the LEA's policies, procedures, or practices to address what has contributed to the significant discrepancy, as defined by the State, and what does not comply with IDEA requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.<sup>34</sup>

See [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#) (Jul. 19, 2022) and [other supporting documents](#) for more information related to this topic.<sup>35</sup>

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<sup>34</sup> See the Part B and Part C SPP/APR Indicator Measurement Tables posted annually on the [Resources for Grantees – SPP/APR](#) page.

<sup>35</sup> For additional information on these requirements, see OSERS [Dear Colleague Letter on Ensuring Equity and Providing Behavioral Supports to Students with Disabilities](#) (Dec. 1, 2016), pp. 5–7.

Compliance Indicators: Part B Indicators B-9 and B-10 (Disproportionate Representation)

States also must report to OSEP on Indicators B-9 and B-10 (Disproportionate Representation). For Indicator B-9, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. For Indicator B-10, the State must report on the percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (see Question A-9).<sup>36</sup>

As set out above, a State, in its annual IDEA Part B application, must provide an assurance that it has in effect, consistent with the purposes of the IDEA and with Section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

Results Indicators: Part C Indicator C-4 (Family Outcomes) and Part B Indicators B-8 (Parent Involvement) and B-14 (Post-School Outcomes)

When addressing certain Part B and Part C SPP/APR indicators, States are required to report on the representativeness of the data reported.

For Part C SPP/APR Indicator C-4 (Family Outcomes), States must analyze the extent to which the demographics of the families who responded are representative of the demographics of the infants and toddlers receiving Part C services and must include race/ethnicity in this analysis. In addition, the State's analysis must also include at least one of the following demographics: socioeconomic status, parents or guardians whose primary language is other than English or limited English proficiency, maternal education, geographic location, and/or another demographic category approved by their stakeholders.

Similarly, for Part B SPP/APR Indicator B-8 (Parent Involvement), States must analyze the extent to which the demographics of the children for whom parents responded are representative of the demographics of children receiving special education services. For Part B SPP/APR Indicator B-14 (Post-School Outcomes), States must analyze the extent to which the response data are representative of the demographics of youth who are no longer in secondary school and had IEPs in effect at the time they left school. For both Indicators B-8 and B-14, States must include race/ethnicity in their analysis. In addition, the State's analysis must also include at least one of the following demographics: age of the student, disability category, gender, geographic

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<sup>36</sup> The Secretary of the Interior (or the Bureau of Indian Education, which administers the IDEA for the Secretary of the Interior), the freely associated States, and the outlying areas are not required to report on Indicators B-4B, B-9, and B-10 due to their racial/ethnic makeup.

location, and/or another demographic category approved through the State's stakeholder input process.<sup>37</sup>

In addition, States must include in their annual SPP/APR submissions a report on their stakeholder engagement efforts, including activities carried out to obtain input from a diverse group of parents to support the implementation activities designed to improve outcomes, including target setting, analyzing data, developing improvement strategies, and evaluating progress. In engaging its stakeholders, the State should use this information to identify any trends or patterns within its system related to equity, including ensuring equitable access to high-quality early intervention services (Part C) and special education and related services (Part B) and determine steps to improve outcomes. OSEP requires States to review survey responses for race/ethnicity in the SPP/APR because it will increase the high-quality data necessary for States to improve outcomes. High-quality data includes data that accurately reflect the infants, toddlers, children, and youth with disabilities served.

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

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

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<sup>37</sup> See the Part B and Part C SPP/APR Indicator Measurement Tables posted annually on the [Resources for Grantees – SPP/APR](#) page respectively.

**Question C-8: What are OSEP’s minimum expectations for States in reporting annually to the public on the performance of each LEA or EIS program located in the State on the targets in the State’s SPP/APR?**

**Answer:** Each year, States must publicly report on the performance of each LEA or EIS program in the State on the targets in the State’s SPP/APR, as soon as practicable but no later than 120 days following the submission of the SPP/APR to OSEP. Sections 616(b)(2)(C)(ii)(I) and 642 and 34 C.F.R. §§ 300.602(b)(1)(i)(A) and 303.702(b)(1)(i)(A). In meeting this annual reporting requirement, if a State collects performance data through monitoring or sampling, the State must include the most recently available performance data on each LEA or EIS program as required under 34 C.F.R. §§ 300.602(b)(1)(ii) and 303.702(b)(1)(ii), the date these data were obtained, and the time period covered by the data.

Under 34 C.F.R. §§ 300.601(b)(2) and 303.701(c)(2), States are permitted to collect data on specific indicators through State monitoring or sampling. For those indicators that allow States to collect data through monitoring or sampling, data must be collected for each LEA or EIS program at least once during the period of the SPP/APR. OSEP understands that some LEAs or EIS programs will have a small “n” size for particular indicators (see Question C-9). In these circumstances, OSEP expects the State to apply appropriate privacy protections to the LEA or EIS program’s actual data but still indicate whether the LEA or EIS program met the State-established target. The State’s report for the LEA or EIS program must compare their performance against the State’s SPP/APR targets, using actual data that show whether the LEA or EIS program has met the State’s targets for each indicator that applies to LEA’s or EIS program’s, unless the specific measurement for an indicator dictates otherwise. For example, when reporting an LEA’s performance data for conducting initial evaluations within the required timeline (Indicator B-11 (Timely Initial Evaluations)), the State must indicate the percent of evaluations that were completed within the 60-day timeline (or State-established timeline). The State’s report must include the LEA’s actual performance data (i.e., a specific percentage), and not simply report that the LEA “met” or “did not meet” the State’s target of 100 percent.

States are also required to annually report current data collected pursuant to Section 618 of the IDEA, under 34 C.F.R. §§ 300.640 through 300.646 (for Part B) and 303.124 (which incorporates the data reporting requirements in 34 C.F.R. §§ 303.720 through 303.724 (for Part C)). These data include State-level data on the number and percentage of infants, toddlers, children, and youth with disabilities by race, gender, and ethnicity on a number of measures, including child count, educational and service setting environments, exiting, and discipline. The State must ensure that its report to the public on the performance of its LEAs or EIS programs is accessible and complies with Section 508 of the Rehabilitation Act.

**Question C-9: May States report intermediate unit (or regional) information rather than LEA or EIS program information where the “n” size (total population of children with disabilities/infants and toddlers with disabilities measured by the indicator in the LEA or EIS program) is too small to report data for an LEA or EIS program (e.g., the LEA’s one high school has two graduates with disabilities)?**

**Answer:** Yes. Under IDEA Sections 616(b)(2)(C)(iii) and 642, States must ensure that they report information for LEAs or EIS programs in a manner that protects personally identifiable information about individual children. Thus, a State may report data for intermediate units (or regions) in situations where the “n” size for the individual LEA or EIS program is too small to report.

**Question C-10: What are the requirements for making the State’s SPP/APR available to the public?**

**Answer:** The State must, at a minimum, post the SPP/APR on the State’s website and distribute the SPP/APR to the media and through public agencies. 34 C.F.R §§ 300.602(b)(1)(i)(B) and 303.702(b)(1)(i)(B). Additionally, a State may elect to retain hard copies of its annual SPP/APR to make available to the public. States may not rely on the Department’s posting of State SPP/APRs on the Department’s website to meet the requirements in 34 C.F.R §§ 300.602(b)(1)(i)(B) and 303.702(b)(1)(i)(B).

**Question C-11: How long must a State retain its current SPP/APR on its website?**

**Answer:** States must retain copies of, and make available to the public, its annual SPP/APR. As stated in Question C-10, the State must post its most recent SPP/APR on the State’s website during the year in which it was submitted. 34 C.F.R §§ 300.602(b)(1)(i)(B) and 303.702(b)(1)(i)(B). The State should maintain, for the duration of the six-year SPP/APR cycle, each year’s SPP/APR on the State’s website.

## D. STATE ANNUAL DETERMINATIONS

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**Question D-1: When making determinations about the annual performance of an LEA or EIS program, must States use the same determination categories that OSEP uses with States?**

**Answer:** Yes. Pursuant to Sections 616(a) and 642 of IDEA, States must use the same four determination categories that OSEP is required to use with States: meets requirements, needs assistance, needs intervention, and needs substantial intervention, in accordance with 34 C.F.R. §§ 300.603(b) and 303.703(b).<sup>38</sup>

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

**Answer:** When making an annual determination on the performance of each LEA under Part B, or EIS program under Part C, consistent with IDEA and OSEP's longstanding guidance, a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's or EIS program's compliance with IDEA, including any relevant audit findings.<sup>39</sup>

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

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<sup>38</sup> See [OSEP's determination letters on State implementation of IDEA](#).

<sup>39</sup> IDEA Sections 616(a)(1)(C)(ii) and 642 require States to monitor using Section 616(a)(3) and enforce using Section 616(e). Under IDEA Section 616(a)(3), the Department must monitor priority areas and States must follow the Department. The Department issued its first annual IDEA determinations in 2007 for Parts B and C based on compliance data. Since 2014 for Part B States (and 2018 for Part B entities) and 2015 for all Part C States and entities, the Department made IDEA determinations using both compliance and results data. Beginning in 2006, OSEP communicated the required use of the four factors in training and technical assistance activities.

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

**Answer:** The Department encourages States to use results and functional outcomes data when making their annual LEA or EIS program determinations. These data could include information collected and reported under results indicators in the State’s SPP/APR or other performance measures (see Question C-1). A State may also want to consider any monitoring findings it has made that are not already included in data submitted under the SPP/APR indicators (e.g., noncompliance identified with an IDEA requirement unrelated to an SPP/APR indicator).

Additionally, a State may establish criteria that preclude a “meets requirements” determination for an LEA or EIS program under certain circumstances. Such circumstances could include an LEA or EIS program whose grant award or contract is under Specific Conditions imposed by the State. The State’s criteria should be transparent so that stakeholders, including LEAs or EIS programs, are aware of the standards that the State is using to make these critical decisions, which could lead to enforcement actions.

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

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

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

**Answer:** Generally, yes. States should continue to make annual determinations during a disaster. However, States may consider the impact of the disaster in making these determinations. The State may consider a variety of factors when determining any enforcement actions, including the impact of the disaster on the provision of services, and the specific nature and extent of the noncompliance in framing an appropriate corrective action on an LEA’s or EIS program’s annual determination. In addition, if the State determines that a requirement was not met solely due to the disaster (e.g., a service could not be provided because of public health restrictions imposed as a result of the disaster), it may determine that no changes to policies, procedures and practices, are required, while ensuring that the appropriate services are provided, including, as appropriate, the consideration and determination of compensatory services.



See the [Non-Regulatory Guidance on Flexibility and Waivers for Grantees and Program Participants Impacted by Federally Declared Disasters](#) (Jan. 2022), for more information related to this topic.<sup>40</sup>

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

**Answer:** States must make annual determinations regarding the performance of LEAs or EIS programs. While IDEA does not include a specific timeline, OSEP encourages States to notify their LEAs or EIS programs of their specific determinations in a timely manner so that they may begin to plan for and take any actions necessary for improvement as soon as possible. To the extent that the State’s determinations and resulting enforcement actions impact funds for LEAs or EIS programs, the State should share its determinations before LEA subgrants are issued under Part B or before the LA provides funds under subawards to its EIS programs or signs or renews contracts with its EIS providers under Part C. 34 C.F.R. §§ 300.604(b)(2)(v) and 300.604(c)(2); 303.704(b)(2)(iv) and 303.704(c)(2).

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

**Answer:** No. IDEA does not require a State to make its annual determinations for LEAs or EIS programs available to the public. However, States are encouraged to make these annual determinations publicly available to promote accountability and transparency. Annual determinations provide valuable information on the extent to which LEAs or EIS programs are meeting IDEA requirements and how the LEA’s or EIS program’s actual data compare to the State’s targets.

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<sup>40</sup> See OSEP’s website for information on policy, guidance, and other resources related to disasters: [https://sites.ed.gov/idea/topic-areas/#Disaster\\_Response](https://sites.ed.gov/idea/topic-areas/#Disaster_Response).

## **E. STATE ENFORCEMENT THROUGH DETERMINATIONS AND OTHER METHODS**

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**Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA or EIS program does not meet the requirements of IDEA?**

**Answer:** As described above, IDEA requires States to make an annual determination of the extent to which each LEA or EIS program meets the requirements and purposes of IDEA based on the information in the SPP/APR, information obtained through monitoring visits, and any other publicly available information. 34 C.F.R. §§ 300.603(b) and 303.703(b). The State is then required to take certain enforcement action(s) if an LEA or EIS program needs assistance for two consecutive years, needs intervention for three or more consecutive years, or at any time the State determines that an LEA or EIS program needs substantial intervention or that there is a substantial failure to comply with any Part B eligibility condition or Part C requirement. 34 C.F.R. §§ 300.604 and 303.704.

Under 34 C.F.R. §§ 300.604 and 303.704, State enforcement actions are applicable as follows:

### Needs Assistance for Two Consecutive Years

If the State determines that an LEA or EIS program needs assistance for two consecutive years, the State must take one or more of the following actions:

- 1) Advise the LEA or EIS program of available sources of TA that may help the LEA or EIS program address the areas in which the LEA or EIS program needs assistance and require the LEA or EIS program to work with the appropriate sources of TA.  
34 C.F.R. §§ 300.604(a)(1) and 303.704(a)(1).
- 2) Identify the LEA or EIS program as a high-risk grantee and impose Specific Conditions on the LEA's IDEA Part B grant award or the EIS program's Part C grant award.  
34 C.F.R. §§ 300.604(a)(3) and 303.704(a)(2).

For Part B, if a State determines that an LEA is not meeting the requirements of Part B, including the targets for compliance indicators in the SPP/APR, the State must prohibit the LEA from reducing its maintenance of effort under 34 C.F.R. § 300.203 for any fiscal year.  
34 C.F.R. § 300.608(a).

### Needs Intervention for Three or More Consecutive Years

If the State determines that an LEA or EIS program needs intervention for three or more consecutive years, the State may take any of the actions described above for "Needs Assistance." In addition, the State must take one or more of the following enforcement actions:

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- 1) Require the LEA or EIS program to prepare a corrective action plan or improvement plan to correct the identified area(s). 34 C.F.R. §§ 300.604(b)(2)(i) and 303.704(b)(2)(i).
- 2) Withhold, in whole or in part, further payments under Part B to the LEA or under Part C to the EIS program. 34 C.F.R. §§ 300.604(b)(2)(v) and 303.704(b)(2)(iv).

### Needs Substantial Intervention

A State's determination that an LEA or EIS program "needs substantial intervention," at any time, must result in the State's withholding (after reasonable notice and opportunity for a hearing, consistent with 34 C.F.R. §§ 300.155, 300.221, and 76.401(d)), in whole or in part, any further payments under Part B to the LEA or under Part C to the EIS program. 34 C.F.R. §§ 300.604(c)(2) and 303.704(c)(2).

For all three of these determination categories, the State may take additional enforcement actions that it identifies as appropriate under its determination's policy. See 34 C.F.R. §§ 300.608(b) and 303.708. Please see Questions E-4 and E-5 below regarding the notice and opportunity for hearing requirements when a State proposes to withhold IDEA Part B funds from an LEA or Part C funds from an EIS program.

### **Question E-2: Under what circumstances must a State propose to withhold IDEA funds from an LEA or EIS program after making an annual determination?**

**Answer:** As stated in Question E-1, a State's determination under Section 616 (Part B) or Section 642 (Part C) that an LEA or EIS program needs substantial intervention, at any time, must result in the State's withholding, in whole or in part, any further payments under Part B to the LEA or under Part C to the EIS program. 34 C.F.R. §§ 300.604(c)(2) and 303.704(c)(2). States should have policies and procedures which describe how any IDEA funds withheld from an LEA or EIS program would be managed. See Questions E-4 and E-5 below regarding the notice and opportunity for hearing requirements when a State proposes to withhold IDEA Part B funds from an LEA or Part C funds from an EIS program.

### **Question E-3: May a State take enforcement action unrelated to the annual determination for an LEA or EIS program?**

**Answer:** Yes, if the State has such authority. Under 34 C.F.R. §§ 300.608 and 303.708, there is nothing in IDEA that restricts a State from utilizing any other authority available to it to monitor and enforce IDEA requirements.

### **Question E-4: What steps must an SEA take when proposing to withhold IDEA funds from an LEA's IDEA Part B grant?**

**Answer:** If the SEA determines that withholding, in whole or in part, an LEA's IDEA Part B grant is an appropriate enforcement action, this would be considered a determination on LEA eligibility, and the SEA must notify the LEA of that determination and provide the LEA with

reasonable notice and an opportunity for a hearing under 34 C.F.R. §§ 76.401(a) and (d). See 34 C.F.R. §§ 300.155 and 300.221.

**Question E-5: What steps must the LA take before withholding IDEA Part C funds?**

**Answer:** In most States, the LA contracts with EIS providers to use IDEA Part C funds for the provision of early intervention services within the State. These contracts are governed by State contract law and should include provisions that clearly describe the actions the LA will take if the EIS provider fails to perform consistent with the terms of the contract, including compliance with IDEA requirements. Under the State’s determination authority as part of the framework under IDEA Sections 616 and 642, withholding funds from an EIS program is available as an enforcement action under Part C when a State determines that an EIS program either “needs intervention” or “needs substantial intervention.” See 34 C.F.R. §§ 303.700(a)(3), 303.704(b)(2)(iv) and (c)(2), and 303.708. In addition, when the LA subgrants funds to an EIS program, the LA may take enforcement actions through the subrecipient monitoring procedures available under the OMB Uniform Guidance. The LA may apply any of the remedies for noncompliance outlined in 2 C.F.R. § 200.339, including withholding. 2 C.F.R. § 200.332.

**Question E-6: What are other enforcement actions a State could consider when previous enforcement actions have been unsuccessful in ensuring correction of noncompliance?**

**Answer:** States have used a variety of additional actions to facilitate improved compliance by their LEAs or EIS programs, including those that are available to them and described under IDEA (e.g., corrective action plans or Specific Conditions). In addition to the enforcement actions described in IDEA, a State’s system of progressive sanctions and enforcement provisions could include placing a State-designated management team at the local level to develop and implement the policies, procedures, and practices necessary to bring the agency into compliance. This model can include training, TA, and coaching new or existing local staff so they can re-assume operations and the State can gradually reduce its on-site support. Although not defined in IDEA or its implementing regulations, in this context, sanctions are generally understood to be the adverse actions that the State uses to ensure that the requirements of the IDEA and the applicable regulations are met. 34 C.F.R. §§ 300.626 and 303.417. The State should have written policies, procedures, and practices that explain the State’s system of progressive sanctions and enforcement provisions.

Under IDEA Part B, the SEA may take over the direct provision of special education and related services from an LEA in certain circumstances. In one such circumstance, if an SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet Part B requirements, the SEA must use the payments that would otherwise have been available to the LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA. 34 C.F.R. § 300.227(a)(1)(ii).

***SUMMARY***

OSEP appreciates States' continued efforts to improve the implementation of IDEA and recognizes the challenges in developing a reasonably designed general supervision system which balances ensuring compliance and improving results. Using the information in this document, and continued guidance, support, and TA, OSEP expects States to build robust general supervision systems to ensure Statewide accountability that swiftly identifies and corrects noncompliance; increases accountability through the collection of timely and accurate data; and ensures the full implementation of IDEA to improve functional outcomes, and early intervention and educational results for children with disabilities. A State's investment in establishing and implementing a robust general supervision system should result in infants and toddlers having access to developmental opportunities and children with disabilities receiving appropriate education services that are necessary to prepare them for further education, employment, and independent living.