

A State Guide on Identifying, Correcting, and Reporting Noncompliance in Accordance with IDEA Requirements

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The Individuals with Disabilities Education Act (IDEA) requires states to monitor and enforce IDEA Part C and Part B requirements, with a primary focus on:

“...Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and ensuring that EIS programs meet the program requirements under part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.” (34 CFR §303.700(b))

“...Improving educational results and functional outcomes for all children with disabilities; and ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.” (34 CFR §300.600(b))

It is recommended that lead agencies (LAs) and state education agencies (SEAs) focus their monitoring activities to be aligned with improving results (e.g., high-quality Individualized Family Service Plan (IFSP) outcomes, meaningful family assessments and engagement, performance on statewide assessments) to be consistent with IDEA and attention of EIS programs and LEAs on quality. This guide specifically addresses compliance monitoring.

This guide for LAs and SEAs is based on the Office of Special Education Programs (OSEP) Memo 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 and the OSEP Frequently Asked Questions on Identifying and Correcting Noncompliance and Reporting on Correction in the SPP/APR.

Identify Noncompliance

Identify IDEA Requirements and State Priorities for Monitoring

Identify which IDEA requirements for which data will be collected through the state’s monitoring and general supervision system, including the requirements for which OSEP requires monitoring data to be reported on a regular basis (e.g., State Performance Plan and Annual Performance Report [SPP/APR] indicators) and other requirements that the state prioritizes for monitoring. In selecting monitoring indicators beyond the SPP/APR indicators, consider:

- Requirements that are most closely related to maintaining compliance and improving results
- Requirements for which EIS programs and LEAs are most often found in need of monitoring and through dispute resolution processes
- Requirements identified as in need of monitoring and correction through other general supervision activities (e.g., policies, procedures and effective practices; effective dispute resolution, data on processes and results, integrated monitoring activities, targeted technical assistance and professional development; improvement, correction, incentives, and sanctions; and fiscal management and accountability)
- State rule or requirement (e.g., established timelines)
- Accountability measures the LA or SEA holds itself accountable to or is held accountable to by the state legislature or governor’s office (e.g., percent of children served, participation of children with disabilities in the general education accountability system)

Adopt, Adapt, or Develop Monitoring

Data Collection Tools

Determine which activity or combination of activities will be used to collect data on the IDEA requirements identified for monitoring. Establish a process, examine existing processes and tools, and then adapt or develop processes and tools to collect data to determine compliance with the identified requirements. The tools should be efficient and effective in gathering necessary data to identify compliance and noncompliance. Consider tools needed to support self-assessment or desk audit monitoring (e.g., a statewide database, processes for collecting and reviewing files submitted by EIS programs/LEAs) and on-site monitoring (interview protocols, file review protocols, observation checklists, etc.).

Collect Data

Use established methods (e.g., record review, self-assessment, database reports, interviews, complaints, due process, fiscal monitoring, other available reports) to collect compliance data for IDEA requirements and state priorities. If using a database for monitoring, states may use a selection of data or data on all children (census), and may define the amount of time, time period, and amount of data for monitoring (e.g., third quarter, one month of data, 5% of child files). If the state is using a selection of the population, consider the generalizability of the data.

Note: For SPP/APR indicators, states should review the requirements in the Instructions for Indicators/Measurement column of the SPP/APR Measurement Tables.

Verify Accuracy of Data

Before using data for decision-making, verify (or require EIS programs or LEAs to verify) data are valid and reliable, especially if using self-assessments or a state database. For a self-assessment, states may request that EIS programs or LEAs submit supporting information from a sample of child records. For a state database or census collection, states may provide EIS programs or LEAs with an opportunity to review and verify the accuracy of the data or to add missing data.

Account for All Instances of Noncompliance

Once data are verified, review the data and determine if the data demonstrates noncompliance with a statutory or regulatory citation. If reviewing data from a database, the state should review data entered after the last time that the state examined data from the database and made compliance decisions (e.g., prior year's monitoring) and within the time period it has established for monitoring data for that particular requirement (e.g., third quarter, one month of data, 5% of child files).

Document and Report (for SPP/APR Indicators) the Level of Compliance

Document the level of compliance for each requirement being monitored (numerator/denominator = percent). The state should have consistent processes and tools for documenting levels of compliance for tracking and ongoing decision-making. For SPP/APR indicators, report these verified data to OSEP in the SPP/APR, under actual data, and use this data to publicly report each EIS program's or LEA's performance on SPP/APR indicators annually (due 120 days following submission of the SPP/APR).

Make Findings of Noncompliance

Define How the State Will Count Findings of Noncompliance

Define how the state will consistently count and report findings, considering the following:

- Whether to group individual instances, in an EIS program or LEA, involving the same legal requirement or a standard as one finding or to report each of the individual instances of noncompliance as a separate finding
- Whether to count a finding identified through multiple components or from multiple sources as one finding or as multiple findings
- Whether and how to count findings of noncompliance that are corrected prior to written notification as corrected findings

Note: Findings identified through dispute resolution must not be grouped with other findings and must be counted as individual findings.

Allow Correction Prior to Issuing a Written Finding (optional)

A state's general supervision procedures may allow programs to correct noncompliance prior to the state issuing a written notification of a finding of noncompliance. In such an instance, states must still verify correction of each instance of child-specific noncompliance and review updated program data demonstrating 100% compliance with each statutory or regulatory requirement with which noncompliance was identified.

Document Correction (see the following sections)

Note that if states choose to allow an EIS program or LEA to correct noncompliance prior to a written finding being issued, they must still report the actual rate of compliance that was calculated prior to correction in the APR and when reporting to the public on the performance of the EIS program or LEA.

Correct Noncompliance

Issue Written Notification of Findings of Noncompliance

When states identify noncompliance, they must notify the EIS program or LEA in writing of the noncompliance as soon as possible (generally, OSEP expects written findings to be issued less than three months from discovery [OSEP FAQ, Question 7]) after the state concludes that the EIS program or LEA is noncompliant. Written notification must include:

- The citation for the requirement(s) with which the program is noncompliant
- A requirement that the EIS program or LEA correct the noncompliance as soon as possible, and in no case more than one year after the date of the notification

Examine the Extent of Noncompliance

Look at the number of instances of noncompliance in proportion to the size of the EIS program or LEA and the number of files reviewed (e.g., 1 out of 5, 1 out of 50), and consider the following when determining required actions:

- Where and with whom the issue is occurring (one or more service coordinators/providers, teachers, therapists; one or more programs or schools; regionally or statewide)
- Historical or trend data (e.g., repeat offender)
- Contextual factors (e.g., the EIS program or LEA's demonstrated ability to correct prior noncompliance)
- Number of issues/findings of noncompliance

Consider the Root Cause(s) of the Noncompliance

Conduct, or support the EIS program or LEA to conduct, a root cause analysis to determine the contributing factors of the noncompliance, to ensure that meaningful strategies are developed to ensure timely correction. Root cause analysis focuses on the infrastructure issues (e.g., policies and procedures, funding, training and technical assistance, supervision, data, personnel/workforce), as well as provider practices, that are contributing to the noncompliance.

Require Correction

Require the EIS program or LEA to take action to correct the noncompliance as soon as possible, and in no case later than one year, including:

- Revising policies, procedures, and practices that contributed to or resulted in noncompliance
- Developing a corrective action plan addressing root causes of the noncompliance. (Corrective action plans vary based on the amount and type of noncompliance; there is not a required format or content for corrective action plans.)
- Submitting subsequent data to demonstrate correction
- Establishing associated timelines

In determining the steps that the EIS program or LEA must take to correct noncompliance and the amount of data needed to demonstrate correction, the state may consider a variety of factors, including:

- Whether the noncompliance was extensive or found in only a small percentage of files
- Whether the noncompliance showed a denial of a basic right under the IDEA
- Whether the noncompliance represents an isolated instance in the EIS program or LEA or reflects a long-standing failure to meet IDEA requirements

Verify Correction of Noncompliance

Collect and Review Updated Data to Verify Timely Correction of Noncompliance

Verify the following to determine if correction of noncompliance has occurred as soon as possible but no later than one year from the written notification:

- Correction of each child-specific instance of noncompliance, unless the child is no longer in the jurisdiction of the EIS program or LEA. The state may review a sample of the records with noncompliance or each record (see OSEP FAQ, Question 14). For

timeline requirements, verify that the required actions (e.g., evaluation/assessment and initial IFSP or IEP meeting, IFSP services, transition plan, transition notice, transition conference) were completed although late (see OSEP Memo 09-02 – Prong 1).

- Subsequent data demonstrating the program is correctly implementing the requirement(s) where the program had noncompliance (i.e., 100% compliance) (see OSEP Memo 09-02 – Prong 2). Data may be from subsequent desk reviews, on-site monitoring, or a database.

Document Verification of Correction

Maintain written documentation of the verification of correction. The state should have consistent processes and tools for documenting the verification of correction of noncompliance. For SPP/APR indicators, report on the verification of correction of noncompliance with SPP/APR indicators to OSEP.

Issue Notification of the Status of Correction of Noncompliance

Notify each EIS program or LEA that correction of noncompliance has been verified. Verification of the correction of noncompliance must occur no later than one year from the date of the written notification of findings of noncompliance. A state may issue the notice of correction beyond the one-year timeline.

Take Action on Uncorrected Noncompliance

As needed, impose additional corrective actions, sanctions, or enforcement actions on an EIS program or LEA that did not correct noncompliance in a timely manner (within one year from identification). The state must continue to collect and review updated data to verify subsequent correction (ensuring that child-specific instances of noncompliance have been corrected and that the program is correctly implementing the requirement[s]). If an EIS program or LEA is not yet correctly implementing the statutory/regulatory requirement(s), the state should identify the cause(s) of continuing noncompliance and take

action to ensure correction, including, as appropriate, enforcement actions. Enforcement actions include, but are not limited to, mandatory technical assistance, increased reporting requirements, and requiring use of funds for specific actions. The state does not need to issue another finding, but may continue to work with the EIS program or LEA to correct and verify correction of the noncompliance. Maintain written documentation of subsequent correction, including the date the correction of noncompliance was verified.

For SPP/APR Indicators, Report on Compliance, Correction of Noncompliance, and Verification of Correction

Report Actual Target Data

For SPP/APR compliance indicators, report data under each indicator in the SPP/APR that reflect the level of compliance prior to the EIS program or LEA correcting any identified noncompliance, regardless of whether compliance is corrected prior to or following written notification of noncompliance. Also use these data to publicly report each EIS program's or LEA's performance on SPP/APR indicators annually (due 120 days following submission of the SPP/APR).

Report on Verification of Noncompliance

For compliance indicators, report to OSEP, in the SPP/APR, the number of findings of noncompliance verified as corrected within one year of written notification and findings corrected more than one year after written notification.

Related Resources

OSEP Memo 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

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep09-02timelycorrectionmemo.pdf>

Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan (SPP)/Annual Performance Report (APR)

<https://ectacenter.org/~docs/topics/gensup/OSEPFQAQ-identificationCorrection09-03-08.doc>

OSEP Part C and Part B Indicator Measurement Tables

<https://osep.grads360.org/#program/spp-apr-resources>

Determining the Extent/Level of the Noncompliance and Its Resolution

<https://ectacenter.org/~docs/topics/gensup/11-DeterminingExtentNoncompRes-2011.doc>

National IDEA TA Call and SPP/APR Tool Preview, December 16, 2019

<https://osep.grads360.org/#program/events/6516>

LOCAL CONTRIBUTING FACTOR TOOLS

Local Contributing Factor Tool: SPP/APR Results Indicators: C-2, C-4, C-5, C-6

https://ectacenter.org/~docs/topics/gensup/13-LocalContributingFactor-Compliance_6-2-09Final.doc

Local Contributing Factor Tool for SPP/APR Results Indicators C-2, C-4, C-5, C-6

https://ectacenter.org/~docs/topics/gensup/14-ContributingFactor-Results_Final_28Mar12.doc

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