

The U.S. Department of Education’s Guidance, “State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement”

What Is It?

On July 24, 2023, the Office of Special Education Programs (OSEP) of the U.S. Department of Education (US ED) released a Dear Colleague letter (DCL) and lengthy guidance related to the responsibilities states have to oversee the education of students with disabilities in their schools and to ensure that those students are afforded all of their rights under the Individuals with Disabilities Act (IDEA).

Why Should It Matter to Districts and Schools?

US ED is clearly signaling an intent to hold states accountable for better oversight over districts and schools as it relates to students with disabilities. In the DCL, they noted that they have “determined that many States have, over the past 15 years, not consistently met IDEA’s requirements. Further, in each of the years between 2014 and 2023, on average only seven Part B States and two Part C States have consistently received the “meets requirements” determination. . . .”

While SEAs are ultimately responsible for ensuring that IDEA is followed in their districts and schools, LEAs are the subrecipients of IDEA funds and are, thus, responsible for ensuring compliance by the schools they oversee. Because of this “trickle down” of responsibility, coupled with US ED’s clear message that states need to be more proactive, districts and schools, including charter schools, can expect more rigorous oversight from the state.

How Does This Impact Charter Schools?

Each state’s law specifies whether charter schools are their own LEAs or part of other LEAs, with some states allowing for both, depending on the authorizer. Charter schools that are their own LEAs will experience these monitoring requirements the same as traditional districts. Charter schools that are part of LEAs will experience these monitoring requirements similar to how any public school would, by and through their LEA.

¹ Nothing in this document should be construed as legal advice. Just as US ED’s interpretation of law in the guidance is not legal advice, our summary here is an interpretation of the guidance and is not intended to be treated as legal advice.

² The guidance addresses the requirements of both Part B (related to school-aged children) and Part C (related to early-childhood services) of IDEA. This document will focus only on the guidance as to Part B.

What Are the Main Points of Emphasis?

Integrated Monitoring Activities (Guidance, pp. 3-4)

SEAs must monitor their LEAs on these priority areas: (1) the provision of FAPE in the LRE; (2) general supervision, including effective monitoring; (3) child find; (4) a system of transition services; (5) use of resolution meetings; (6) mediation; and (7) racial/ethnic disproportionality in special education and related services, where it is a result of inappropriate identification.

State monitoring activities could include interviews with LEA/local program staff and personnel, interviews/listening sessions with parents, and examination of data related to child find, IEP compliance, assessments, and state and due process complaints.

Addressing Significant Disproportionality (Guidance, pp. 9-10)

States are required to collect data to determine if significant disproportionality is occurring at the state or LEA level as it relates to the identification of disabilities, their educational placements, and the discipline imposed upon them. When LEAs are identified with significant disproportionality, there is a process for LEAs to set aside funds to address the issue and for the state to review and, if necessary, revise policies and procedures that appear to be contributing to the issue. States must annually report to US ED on the number of LEAs identified with significant disproportionality and must monitor how the LEAs address the problem.

Stakeholder Involvement (Guidance, p. 12)

US ED recommends that SEAs involve numerous stakeholders in their monitoring activities, including students with disabilities and their parents, disability groups, and local-level staff, teachers and related service providers. The guidance specifically states that “[i]nformation gathered from parents, providers, and local personnel can provide valuable insight to States about the LEAs’ . . . activities related to the implementation of IDEA at the local level.”

Identification of Noncompliance (Guidance, pp. 13-16)

The guidance defines an “area of concern” as “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” and notes that concerns can come from any number of sources, including monitoring, data review, stakeholder calls, and media reports. When states receive information about an area of concern, they are required to exercise due diligence to investigate and reach a conclusion within a reasonable amount of time. When noncompliance is discovered through this due diligence, states must notify the LEA in writing, generally within 3 months.

³ For a full understanding of all of the topics addressed in the guidance, please read the full document. This is intended to highlight portions most relevant to districts/schools and the organizations that support them.

Correction of Noncompliance (Guidance, pp. 17-22)

When evaluating areas of concern, states must hold LEAs to 100% compliance. This means non-compliance for even a single student requires corrective action to remedy the issue. LEAs must correct any noncompliance as soon as possible but in no event later than one year from the date of written notification of noncompliance.

States must verify that the noncompliance has been corrected, both by (1) verifying that the LEA is correctly implementing the specific regulatory requirement and, if applicable, by (2) ensuring that the LEA has corrected EACH individual case of child-specific noncompliance, unless the child is no longer under the LEA's jurisdiction and there is no outstanding corrective action from a state complaint or due process hearing. **This requirement of case-specific proof of correction is new and, according to the guidance, is a result of “insufficient policies and procedures and evidence that States are ensuring overall correction of child-specific noncompliance.”**

The guidance indicates that, where LEAs do not correct noncompliance within the one year timeframe resulting in long standing noncompliance, States should take that into consideration when awarding subgrants of IDEA funds.

State Reporting Requirements (Guidance, pp. 23-30)

States are required to submit an annual State Performance Plan/Annual Performance Report (SPP/APR) that evaluates the State's efforts to implement IDEA and describes how the state plans to improve implementation. There are required indicators that have to be reported on, including data on suspension/expulsion, disproportionality, parent involvement, and post-school outcomes. States must also report on those indicators at the LEA level.

Where a state has reported less than 100% compliance for an indicator in a given year, the state must report on the status of correction in the next year's report. In this reporting, states must also provide sufficient detail about its process for ensuring that both systemic and child-specific noncompliance has been corrected.

At least once every six years, every LEA in the state shall get selected for monitoring by the State, who will evaluate their compliance on the required indicators, including the status of correction for any previously identified noncompliance.

All of this data must be publicly reported, by at least posting the SPP/APR on the state's website and distributing it through public agencies and through local media.

State Annual Determinations (Guidance, pp. 30-33)

States must annually assess performance of LEAs as it relates to their obligations under IDEA, using the same four categories US ED uses to assess states: meets requirements; needs

assistance; needs intervention; and needs substantial intervention. To make this determination, states must consider (1) performance on compliance indicators; (2) valid, reliable and timely data; (3) correction of identified noncompliance; and (4) other available data. States are encouraged, but not required, to make the LEA determinations public.

State Enforcement (Guidance, pp. 34-36)

IDEA specifies required and allowable enforcement mechanisms to address LEAs that are in need of intervention. Enforcement can include providing technical assistance, adding conditions to IDEA grant awards, requiring corrective action plans, or withholding IDEA funds. The level of intervention depends on the length and nature of the need for intervention and is specified in more detail in the guidance document. States can also take over the direct provision of special education from an LEA in extreme circumstances.

What Can I Do to Help Districts and Schools?

First and foremost, you can make sure that LEAs and schools know about this guidance and the fact that US ED has shown an intent to hold States, LEAs and schools more accountable for providing students with disabilities all of their rights under IDEA. Furthermore, you can provide technical assistance to them on the front end, so that they never get to the point where they need technical assistance to remedy state findings of noncompliance. For example, in addition to providing them with supports to build out quality programs for students with disabilities, you can help them with things such as: understanding that US ED considers compliance to be the bare minimum; understanding what compliance looks like and what they can expect from a monitoring visit; offer audits to understand what a visit could surface; solve concerns that the audit or other analysis uncover; and create plans for organizing system-solutions to student-specific findings.

To learn more about how US ED currently ranks your state, [check out their website here](#).