

## **Questions and Answers On Monitoring, Technical Assistance and Enforcement**

---

January 2007

The final regulations for the reauthorized Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Since publication of the final regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education has received requests for clarification of some of these regulations. This is one in a series of question and answer documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of IDEA and the regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As are not intended to be a replacement for careful study of IDEA and the regulations. The statute, regulations, and other important documents related to IDEA and the regulations are found at <http://idea.ed.gov>.

Requirements related to monitoring, technical assistance, and enforcement are found at 34 CFR §§300.600 through 300.609 and include: (1) the Secretary's responsibility to establish and implement particular procedures for monitoring, technical assistance, and enforcement actions; and (2) the State's responsibility to monitor and report annually on its performance under IDEA through a State performance plan (SPP) and annual performance reports (APRs). The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) included significant changes related to monitoring that placed an emphasis on improving educational results and functional outcomes for children with disabilities by focusing monitoring activities in certain priority areas and measuring performance using quantifiable indicators and qualitative indicators as are needed to adequately measure performance. The changes in the Secretary's responsibilities include: (1) requiring States to submit SPPs, and approving those plans (20 U.S.C. 1416(b) and (c)); (2) reviewing States' APRs (34 CFR §300.603(a)); (3) determining whether or not the State meets the requirements or needs assistance, intervention or substantial intervention in implementing the requirements of IDEA (34 CFR §300.603(b)); and (4) taking certain enforcement actions (34 CFR §300.604). State responsibilities now include: (1) submitting an SPP to the Secretary that includes measurable and rigorous State-established targets (34 CFR §300.602(a)) for indicators in the following areas: the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE), exercise of effective general supervision (including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services), 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 CFR §300.600(d)); (2) collecting valid and reliable data to report annually to the Secretary and the public on the State's performance on the indicators in the SPP (34 CFR §300.602(b)); (3) reporting to the public on the performance of

each local educational agency (LEA) against the targets in the SPP (34 CFR §300.602(b)(1)(A)); and (4) carrying out enforcement actions against those LEAs not meeting the requirements (34 CFR §300.608).

## **A. State Performance Plan/Annual Performance Report (SPP/APR)**

---

**Authority:** The requirements for the State performance plan and annual performance report are found in the regulations at 34 CFR §§300.601 and 300.602(b)(2).

**Question A-1:** Will the LEA determinations be reported in the State's APR? How would reporting LEA determinations change the requirements under the SPP?

**Answer:** No, LEA determinations are not required to be reported in the State's APR. The State's implementation of the determinations requirements will be reviewed as part of the OSEP verification process. LEA determinations do not affect the State's APR or SPP unless the Department finds that the State is not making determinations about LEA performance in accordance with 34 CFR §§300.600 and 300.604.

---

**Question A-2:** Does the six-year SPP review start on December 2, 2005 or when OSEP approved the SPP?

**Answer:** Under the SPP submitted in December 2005, States must annually report on performance for the years 2005-2006 through 2010-2011. The first APR, due February 1, 2007, is for the 2005-2006 year. Therefore, the six years begins with the 2005-2006 year.

---

**Question A-3:** Must a State monitor the requirements for each indicator that are included in the "Related Requirements" guidance document for each year that a constituent LEA does not meet the SPP target?

**Answer:** No. Although a State is not required to immediately monitor the IDEA requirements relating to an indicator when a constituent LEA does not meet the SPP target for that indicator, such a review is encouraged by OSEP.

---

**Question A-4:** If the State changes or updates its SPP, must the entire document be resubmitted or just the portions of the SPP that have changed?

**Answer:** The decision to resubmit the entire SPP or just those portions that have been changed or updated is left to the State. However, OSEP encourages all States to provide the entire SPP document on the required submission

---

date of February 1, 2007, because at this time all States will be providing information on a number of indicators for the first time.

## B. Public Reporting

---

**Authority:** The requirements for public reporting are found in the regulations at 34 CFR §300.602(b)(1).

**Question B-1:** How does the requirement to report annually relate to the requirement to collect data through monitoring and sampling under the SPP once during the period of the SPP?

**Answer:** If the Secretary permits States to collect data on specific indicators through monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the SPP. States must report annually the most recent data for each LEA and indicate the date those data were collected as required at 34 CFR §300.602(b)(1)(ii).

---

**Question B-2:** Are States required to report (publicly and to the Secretary) performance on those indicators identified as “new indicators” for which States have not yet set targets in the SPP?

**Answer:** No, States are not required to report publicly on the “new indicators,” which are the following for Part B:

- 4B - Suspension/expulsion disaggregated by race/ethnicity;
- 7 - Preschool outcomes;
- 8 - Parent involvement;
- 9 - Disproportionality (special education and related services);
- 10 - Disproportionality (specific disability category);
- 11 - Child find;
- 13 - Post-school transition; and
- 14 - Post-school outcomes.

---

**Question B-3:** When will the State be required to report the status of each constituent LEA regarding indicators in the SPP?

**Answer:** Following the submission of the APR to OSEP on February 1, 2007, each State must report to the public on the status of each of their LEAs in meeting the 2005-2006 targets identified in the State’s SPP for the indicators that apply to LEAs. (Some indicators, such as the indicator regarding timely resolution of State complaints, deal with State functions.) States should do this reporting no later than the spring of each year.

---

---

**Question B-4:** Is it allowable to report intermediate unit information rather than LEA information for LEAs where the N size (total population of children with disabilities measured by the indicator in the LEA) is too small to report results for an LEA? (e.g., the LEA's one high school has two graduates with disabilities.)

**Answer:** Yes, States may report information for intermediate units rather than for LEAs where the N size is too small to report results without revealing personally identifiable information.

---

**Question B-5:** When the State reports the LEA data related to the SPP indicators must it include actual data (i.e., percent scores) or report whether or not the LEA met the State SPP targets?

**Answer:** The State's report for each LEA must include actual LEA data (for example, a specific percentage) that shows whether or not the LEA has met the State's targets for each indicator that applies to LEAs.

---

**Question B-6:** What is the definition of the phrase in 34 CFR §300.602(b)(3), "available data are insufficient to yield statistically reliable information"?

**Answer:** Some estimates based on sampling may not be statistically reliable because of the size of the "sampling error," which relates to the imprecision associated with obtaining information on a subset of the population. As sampling errors decrease, the associated estimate is considered more reliable. The size of sampling error depends on sample size. Some estimates, especially those for very small subgroups, are based on sample sizes too small for the estimate to be considered reliable.

Estimates may be considered unreliable for reasons other than sampling, for example, due to measurement errors or data quality problems. Known bias in the measurements of systematically missing data could cause estimates to be considered unreliable.

## C. Determinations and Enforcement

---

**Authority:** The requirements for determinations and enforcement are found in the regulations at 34 CFR §§300.600(a), 300.603 and 300.604.

**Question C-1:** To what extent should States model determinations about an LEA's performance using designations (i.e., needs assistance, intervention or substantial intervention) that OSEP will use with SEAs?

**Answer:** States must use the same four determination categories that the Department is required to use, which are as follows: Meets Requirements, Needs Assistance, Needs Intervention, and Needs Substantial Intervention as indicated in 34 CFR §300.603(b). This question was also addressed in the OSEP FAQ document regarding determinations (revised 11/23/2006), available on the Federal Resource Center website at [http://www.rfcnetwork.org/images/stories/FRC/spp\\_mat/part%20b%20faq%20chart-spp%20-2005.doc](http://www.rfcnetwork.org/images/stories/FRC/spp_mat/part%20b%20faq%20chart-spp%20-2005.doc).

---

**Question C-2:** Is the implementation of the enforcement actions related to the determinations sequential (e.g., two years of assistance then three years of intervention)?

**Answer:** No, the enforcement actions are not sequential.

---

**Question C-3:** Must OSEP wait two years or three years for "intervention" prior to implementing enforcement activities (e.g., technical assistance, special conditions) or may OSEP require enforcement activities earlier given especially poor performance?

**Answer:** Under section 616(g) of the Act, the Department may at any time utilize any authority under the General Education Provisions Act (GEPA) to monitor and enforce the requirements of IDEA, regardless of the determinations made of the State's status under section 616(d) of the Act.

---

**Question C-4:** Does OSEP intend to develop a guidance document to assist States in understanding the criteria for each of the four levels of determination? (Meets Requirements, Needs Assistance, Needs Intervention, Needs Substantial Intervention)

**Answer:**

Yes, OSEP has developed guidance on the four determinations. The factors the Department will consider in determining whether a State meets the requirements and the purposes of IDEA, include the following:

Meets Requirements

- The State demonstrates substantial compliance on all compliance indicators, which can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not ‘new’ or where noncompliance was previously identified by the Department, and, for ‘new’ indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.
- All indicators, including performance indicators, have valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.).
- The State demonstrates that it timely corrects noncompliance identified by the Department through monitoring or other means.

Needs Assistance

- The State does not demonstrate substantial compliance on one or more of the compliance indicators. Evidence related to substantial compliance can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not ‘new’ or where noncompliance was previously identified by the Department, and, for ‘new’ indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.
- One or more indicators, including performance indicators, do not have valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.).
- The State does not demonstrate that it timely corrects noncompliance identified by the Department through monitoring or other means.

If the Department determines, for two consecutive years, that the State needs assistance, the Department shall take one or more of the following enforcement actions, consistent with section 616(e)(1) of the Act:

- Advise the State of available sources of technical assistance.
- Direct the use of State-level funds under section 611(e) of the Act on area(s) in which the State needs assistance.
- Identify the State as a high-risk grantee and impose special conditions on the State’s grant.

Needs Intervention

- The State does not demonstrate substantial compliance on one or more of the compliance indicators and has not made significant

progress in correcting noncompliance previously identified by the Department on those indicators. Evidence related to substantial compliance can include, as appropriate, a demonstration through quantitative and qualitative data that the State timely corrects identified noncompliance for indicators that are not 'new' or where noncompliance was previously identified by the Department, and, for 'new' indicators for which noncompliance was not previously identified by the Department, that the State has improvement activities to timely correct identified noncompliance.

- One or more indicators, including performance indicators, are missing valid and reliable data as required by the SPP/APR (actual target data, baseline data, etc.), and the State has not made significant progress in correcting previously identified data problems.
- The State does not demonstrate that it corrects noncompliance identified by the Department through monitoring or other means, and has not made significant progress in correcting that noncompliance.

If, the Department determines, for three consecutive years that the State needs intervention, the Department may take any of the actions described under needs assistance and shall take one or more of the following enforcement actions, consistent with section 616(e)(2) of the Act:

- Require the State to prepare a corrective action plan or improvement plan, if the Department determines that the State should be able to correct the problem within one year.
- Require the State to enter into a compliance agreement, if the Department has reason to believe that the State cannot correct the problem within one year.
- Withhold a percentage of the State's funds under section 611(e) of the Act, for each year of the determination.
- Seek to recover funds.
- Withhold any further payments to the State.
- Refer the matter for appropriate enforcement action.

#### Needs Substantial Intervention

If the Department determines, at any time, that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's, lead agency's, or local educational agency's eligibility under this part, the Department will designate the State as in need of substantial intervention. Among the factors that the Department will consider are:

- The failure to substantially comply significantly affects the core requirements of the program, such as the delivery of services to children with disabilities or State exercise of general supervision;

and/or

- The State has informed the Department that it is unwilling to comply.

If the Department determines, at any time, that the State needs substantial intervention, the Department shall take one or more of the following enforcement actions, consistent with section 616(e)(3) of the Act and provide an opportunity for a hearing:

- Recover funds.
- Withhold any further payments to the State.
- Refer the case to the Office of the Inspector General.
- Refer the matter for appropriate enforcement action.

Note that under section 616(g) of the Act, the Department may at any time utilize authority under the GEPA to monitor and enforce the requirements of IDEA, regardless of the determination of the State's status under section 616(d) of the Act.

---

**Question C-5:** Will OSEP's determination about a State be an overall determination on the State's performance or will there be separate determinations for each indicator?

**Answer:** OSEP will make a single determination about the State's performance in implementing the requirements of Part B of the IDEA based on the State's performance on all of the indicators, information obtained through monitoring visits, and any other public information. A State will get one determination.

---

**Question C-6:** What happens to a State with a determination that fluctuates between needs assistance and needs intervention, but may not be in either category for two or more consecutive years?

**Answer:** Under section 616(g) of the Act, the Department may at any time utilize authority under GEPA to monitor and enforce the requirements of IDEA, regardless of its determination of the State's status. The Department may use this authority to implement an enforcement action, as it determines appropriate.

---

**Question C-7:** If a State determines an LEA cannot correct a monitoring finding within one year, does a State have the option to use the same language and action available to the Secretary under section 457 of the GEPA, as amended, 20 U.S.C. 1221 et seq. (i.e., enter into a compliance agreement between the State and the LEA)?

**Answer:** The compliance agreement option applies only to States. If an LEA cannot correct a monitoring finding within one year, the State would be out of compliance with regard to its general supervision responsibility. A State in this situation could request to enter into a compliance agreement with the U.S. Department of Education, which would then allow the State the time needed to correct the violation in the LEA.

---

**Question C-8:** State and local agencies may be in or out of compliance on specific compliance indicators throughout the year. Determinations appear to be fixed for a particular amount of time. How will this process ensure that the determinations are authentic and not just labels that do not reflect the compliance status within a State?

**Answer:** Determinations are made annually; therefore the determination about the State's status will be reviewed each year. As part of the APR, each State will submit data for the past fiscal year and could also choose to submit additional, more recent data if it is a better representation of the State's current status.

---

**Question C-9:** What are the opportunities for public comment and input as the monitoring process is implemented?

**Answer:** There is nothing in the statute or the regulations that requires public comment on OSEP's or the State's monitoring and enforcement. OSEP Memo 05-12 (<http://www.ed.gov/policy/speced/guid/idea/bapr/2004/ptbtable2.pdf>) requires States to provide information in the overview section of the State performance plan, clarifying how the State obtained broad input from stakeholders on the State performance plan.

---

**Question C-10:** Is the determination that the State makes about an LEA's status relative to the State targets subject to appeal by the LEA?

**Answer:** The determination that the State makes about an LEA's status relative to the State' targets is a State decision, determined under State law.