

OSEP Leadership Conference



Building the Legacy: IDEA 2004



August 28-30, 2006

Washington, D.C.

Monitoring, Technical Assistance and Enforcement



Introduction

- Topics for breakout sessions were selected by OSEP because each highlights critical implementation issues under the *IDEA* 2004 Statute and Regulations
- Presentation will track the Topic Brief

Key Points

- Section 616 of the statute primarily new
- Also applies to Part C (Lead Agency, early intervention services programs)
- Establishes monitoring priority areas; Secretary establishes indicators

Key Points

- State performance plan and annual performance report are critical accountability mechanisms
- Annually the Secretary will determine if states:
 - Meet requirements
 - Need assistance
 - Need intervention
 - Need substantial intervention

State Monitoring and Enforcement

(TB 1-1)

Primary focus of state's monitoring activities must be on:

- Improving education results and functional outcomes
- Ensuring that public agencies meet program requirements, particularly those most closely related to improving educational results

State Monitoring and Enforcement

(TB 1-1)

34 CFR 300.600(a) requires that a state:

- Monitor the implementation of Part B
- Enforce, and
- Report annually on performance

State Monitoring and Enforcement

(TB 3/4/5-6)

Enforce in accordance with 34 CFR
300.604

- (a)(1) Advise LEA of available TA
- (a)(3) Identify LEA as high risk and impose special conditions
- (b)(2)(i) Require LEA to prepare corrective action plan
- (b)(2)(v) and (c)(2) Withhold in whole or in part

Performance Measurement (TB 1-1)

Each state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas, and the indicators established by the Secretary for the state performance plans

State must Monitor LEAs (TB 2-1)

The state must monitor its LEAs, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

Monitoring Priority Areas (TB 2-1)

- Provision of FAPE in the LRE
- State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in 34 CFR 300.43 and in 20 U.S.C. 1437(a)(9) and

Monitoring Priority Areas (TB 2-1)

- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification

State Performance Plan (TB 2-2)

Each state must:

- Submit its performance plan to the Secretary for approval in accordance with the process described in Section 616(c)
- Review its performance plan at least once every six years, and submit any amendments to the Secretary

State Performance Plan (TB 2-2)

As part of the state performance plan, each state must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas

Annual Performance Report (TB 2-3)

- Each state must collect valid and reliable information to report annually to the Secretary on the indicators established by the Secretary for the state performance plans
- If a state collects data on an indicator through state monitoring or sampling, data must be collected for each LEA at least once during the period of the state performance plan

Analyzing LEA Performance (TB 2-4)

Each state must use the targets in its state performance plan to analyze the performance of each LEA

Public Reporting

(TB 3-4)

- Report annually to the public on the performance of each LEA on the targets in the state's performance plan
- If the state collects data using sampling or state monitoring, include the most recently available data on each LEA and the date obtained

Public Reporting

(TB 3-4)

Make the state's performance plan available through public means, including by posting on the SEA's web site, distribution to the media, and distribution through public agencies

Secretary's Determinations (TB 3-5)

Secretary annually reviews the performance report and, based on the information provided in the annual performance report, information obtained through monitoring visits, and any other public information available, the Secretary determines if the state:

Secretary's Determinations (TB 3-5)

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

Enforcement Actions (TB 3/4-6)

The regulations establish enforcement actions that the Secretary shall take with regard to determinations on state performance

Enforcement Actions

(TB 4-6)

If the Secretary determines, for two consecutive years, that a state needs assistance in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

Enforcement Actions

(TB 4-6)

- Advises the state of available technical assistance that may help the state address the areas in which it needs assistance
- Directs the use of state-level funds under Section 611(e) of the Act on the area or areas in which the state needs assistance
- Identifies the state as a high-risk grantee and imposes special conditions on the state's grant under Part B of the Act

Enforcement Actions

(TB 4-6)

If the Secretary determines, for three or more consecutive years, that a state *needs intervention* in implementing the requirements of Part B of the act, the following shall apply:

- The Secretary may take any of the actions described above under “needs assistance” **AND**

Enforcement Actions

(TB 4-6)

- The Secretary also takes one or more of the following actions:
 - Requires the state to prepare a corrective action plan or improvement plan if the Secretary determines that the state should be able to correct the problem within one year
 - Requires the state to enter into a compliance agreement (*General Education Provisions Act (GEPA)*), if the Secretary has reason to believe that the state cannot correct the problem within one year

Enforcement Actions

(TB 4-6)

- For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the state's funds under Section 611(e) of the act [state administration funds], until the Secretary determines the state has sufficiently addressed the areas in which the state needs intervention
- Seeks to recover funds under Section 452 of *GEPA*

Enforcement Actions

(TB 4-6)

- Withholds, in whole or in part, any further payments to the state under Part B of the act

AND/OR

- Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

Enforcement Actions

(TB 5-6)

Any time that the Secretary determines that a state needs substantial intervention or that there is a substantial failure to comply with any condition of an SEA's or LEA's eligibility under Part B, the Secretary takes one or more of the following actions:

Enforcement Actions

(TB 5-6)

- Recovers funds under Section 452 of *GEPA*
- Withholds, in whole or in part, any further payments to the state under Part B of the act
- Refers the case to the Department's Office of the Inspector General
- Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

Report to Congress

(TB 5-6)

The Secretary reports to Congress within 30 days of taking enforcement action (Needs Assistance, Needs Intervention, Needs Substantial Intervention), on the specific action taken and the reasons why enforcement action was taken

Additional Requirements (TB 5-6)

- Opportunity for hearing required prior to withholding
- The Secretary may determine that
 - withholding be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination or

Additional Requirements (TB 5/6-7)

- That the SEA must not make further payments under Part B of the act to specified state agencies or LEAs that caused or were involved in the Secretary's determination

Public Notice

(TB 6-8)

When a state has been determined to need assistance, need intervention, or need substantial intervention, the state must notify the public of the pendency of an enforcement action pursuant to 34 CFR 300.604

When LEA has Not Met Requirements

(TB 6-10)

If an SEA determines that an LEA is not meeting the requirements of Part B of the act, including the targets in the state's performance plan, the SEA must prohibit the LEA from reducing the LEA's maintenance of effort under 34 CFR 300.203 for any fiscal year

Other Enforcement Mechanisms

(TB 6-10)

A state is not restricted from utilizing any other authority available to it to monitor and enforce the requirements of Part B

Other Enforcement Mechanisms

(TB 6/7-11)

Nothing in this subpart shall be construed to restrict the Secretary from utilizing any authority under the *GEPA* to monitor and enforce the requirements of the Act, including the imposition of special conditions under 34 CFR 80.12

Summary

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- Also applies to Part C (Lead Agency, early intervention services program)
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Summary

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- Annually, the Secretary will determine if states:
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Web Resources

- National Center for Special Education Accountability Monitoring
<http://www.monitoringcenter.lsuhsce.edu/>
- Regional Resource and Federal Center Network
<http://www.rrfcnetwork.org>
 - SPP/APR guidance materials
- OSEP Technical Assistance Network

Regional Implementation Planning Meetings

- What implementation issues and challenges on this topic should be addressed at the *IDEA* Regional Implementation Planning Meetings?
 - January 30 and 31, 2007
 - *Washington, D.C.*
 - February 12 and 13, 2007
 - *Los Angeles, California*
 - February 15 and 16, 2007
 - *Kansas City, Missouri*

For More Information

Please go to:

<http://sites.ed.gov/idea>

for resources on *IDEA*
2004 Final Regulations



Monitoring, Technical Assistance and Enforcement

Implementation Challenges?