

# OSEP Part B Regulations Regional Implementation Meetings



Building the Legacy: IDEA 2004



## Monitoring, Technical Assistance And Enforcement



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# Introduction

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## Federal and State Responsibilities for Monitoring, Technical Assistance and Enforcement

- Key requirements set forth at:
  - Section 616 of IDEA 2004
  - 34 CFR §§300.600 – 300.609

# Monitoring and Enforcement

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Primary focus of federal and state 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

# Federal and State Responsibilities

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- Monitoring—  
State Performance Plan (SPP)/  
Annual Performance Report (APR)
- Reporting
- Determinations
- Monitoring—On-going oversight

# State Performance Plan

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

# Monitoring Priority Areas

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- Provision of a free appropriate public education (FAPE) in the least restrictive environment (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 §300.43 and in 20 U.S.C. 1437(a)(9) and

# Monitoring Priority Areas

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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

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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

# Performance Measurement

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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 SPPs

# Annual Performance Report

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

# When does six-year review begin?

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States must annually report on performance for the years 2005-2006 through 2010-2011

# SPP years and corresponding APR due dates

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1. 2005-06 – due February 2007
2. 2006-07 – due February 2008
3. 2007-08 – due February 2009
4. 2008-09 – due February 2010
5. 2009-10 – due February 2011
6. 2010-11 – due February 2012

# How should states involve their stakeholders at this time?

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- Stakeholder involvement in targets for new SPP indicators
- Recommended involvement in developing or revising improvement activities
- Recommended involvement in distributing, discussing SPP/APR, especially reporting on local programs

# Reporting to the Secretary

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- Annually report to the Secretary and the public on the state's progress and/or slippage in meeting the 'measurable and rigorous targets' found in the SPP;
- 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

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Make the state's performance plan available through public means, including by posting on the state educational agency's (SEA's) website, distribution to the media, and distribution through public agencies

# Analyzing LEA Performance

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

# When must states begin reporting on LEA Performance?

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Spring 2007–State must report to public on status of LEAs against 2005-06 SPP targets

# Reporting to the Public on LEA Performance

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- Public reporting must ensure broad dissemination such as posting on the agency's website
- The report must be accessible to individuals with disabilities
- Public report must clearly reflect the SPP indicators
- Report must be understandable to the public

# Are states required to report LEA performance on all indicators?

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- States are not required to report LEA data for new indicators for which they have not yet set targets in their SPPs
- States are not required to report LEA data on indicators 15 through 20

# “New” Indicators

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

# When “N” is too small

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When an LEA's N size is too small to report by LEA, it is permissible to report intermediate unit information

# Specific result vs. “Pass/Fail”

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The LEA report must include a specific result (e.g. percent scores)

# Secretary's Determinations

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

# Secretary's Determinations

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

# What will OSEP consider in making the “Determinations?”

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- Department will consider all information available at the time of the determinations including:
  - History, nature and length of time of any reported noncompliance
  - Evidence of correction, including progress toward full compliance
  - Information regarding valid and reliable data

# Determination Considerations

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- Other information:
  - Special conditions
  - Compliance agreements
  - Audit findings
  - OSEP's verification or focused monitoring findings

# Separate Determinations for Each Indicator?

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No – OSEP will make one determination for each State

# What factors will OSEP consider for “meets requirements?”

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- State demonstrates substantial compliance on all compliance indicators
  - Demonstrate through quantitative or qualitative data that state timely corrects for not “new” indicators
  - Have improvement activities to timely correct for “new” indicators
- Valid and reliable data for all indicators
- State timely corrects noncompliance

# What factors will OSEP consider for “needs assistance?”

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- State does not demonstrate substantial compliance on all compliance indicators
- One or more indicators do not include valid and reliable data
- State does not demonstrate that it timely corrects any noncompliance
- After 2 consecutive years the Department will take enforcement action

# Needs Assistance *Enforcement Actions*

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

# Needs Assistance

## *Enforcement Actions*

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- 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

# What factors will OSEP consider for “needs intervention?”

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- State does not demonstrate substantial compliance on all compliance indicators **AND** has not made progress in correcting noncompliance
- One or more indicators do not include valid and reliable data **AND** the state has not made progress in correcting previously identified data problems

# Factors—Needs Intervention

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- State does not demonstrate that it timely corrects any noncompliance **AND** has not made progress in correcting that noncompliance
- After 3 consecutive years the Department will take enforcement action

# Needs Intervention *Enforcement actions*

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The Secretary may take any of the actions available under “Needs Assistance” ...

# Needs Intervention

## *Enforcement Actions*

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- 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 (GEPA), if the Secretary has reason to believe that the state cannot correct the problem within one year

# Needs Intervention

## *Enforcement Actions*

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- 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

# Needs Intervention

## *Enforcement Actions*

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- 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

# What factors will OSEP consider for “needs substantial intervention?”

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- Factors to be considered are:
  - Failure to substantially comply that significantly affects core requirements of the program; and/or
  - State has informed the Department that it is unwilling to comply
- Department can take enforcement action at any time

# Needs Substantial Intervention *Enforcement Actions*

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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:

# Needs Substantial Intervention

## *Enforcement Actions*

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- 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

# Other Enforcement Mechanisms

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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

# Timing of Enforcements Actions

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- Are enforcement actions sequential?
- Must OSEP wait two (needs assistance) or three (needs intervention) years before taking enforcement action?

# Notice and Opportunity for Hearing

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- Department provides notice of action pending based on a determination
- State has opportunity to meet with Assistant Secretary

# Public Notice

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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

# Are States required to make “Determinations?”

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- States are required to make “Determinations” under 616(d)
- States will make the “Determinations” Spring 2007 based on LEA program performance on the targets in the SPP

# Reporting LEA Determinations

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- Will the LEA determinations be reported in the state's APR?
- How would reporting LEA determinations change the requirements under the SPP?

# What do states consider in making their “Determinations?”

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- ***MUST*** consider

- Performance on compliance indicators
- Valid, reliable, timely data
- Audit findings
- Uncorrected noncompliance from other sources

- ***COULD*** consider

- Performance on outcomes indicators
- Others?

# What if LEA disagrees with determination?

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Not a Part B requirement, but SEA may want to consider providing LEAs with an opportunity for a hearing

# State Enforcement

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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

# State Enforcement

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## Needs assistance

- Advises LEA of available sources of TA, including
  - Provision of advice by experts
  - Professional development, instructional strategies and methods
  - Designating distinguished educators
  - Collaboration with Institutions of Higher Education (IHEs), national technical assistance (TA) centers, and private TA providers

# State Enforcement

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- Needs assistance (*cont.*)
  - Identifies LEA as a high-risk grantee and imposes “special conditions” on its Part B grant award

# State Enforcement

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- Needs intervention
  - Corrective action or improvement plan
  - Withholds any further payments under Part B

# Compliance Agreements?

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- Does the SEA have option to use a compliance agreement for an LEA which cannot correct in one year?
  - No. Compliance agreements apply only to states
  - If LEA cannot timely correct, state is out of compliance with it general supervisory responsibility
  - SEA can request to enter in compliance agreement with Secretary

# State Enforcement

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- Needs substantial intervention
  - Withholds any further payments under Part B

# Other Enforcement Mechanisms

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

# Maintenance of Effort (MOE)

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

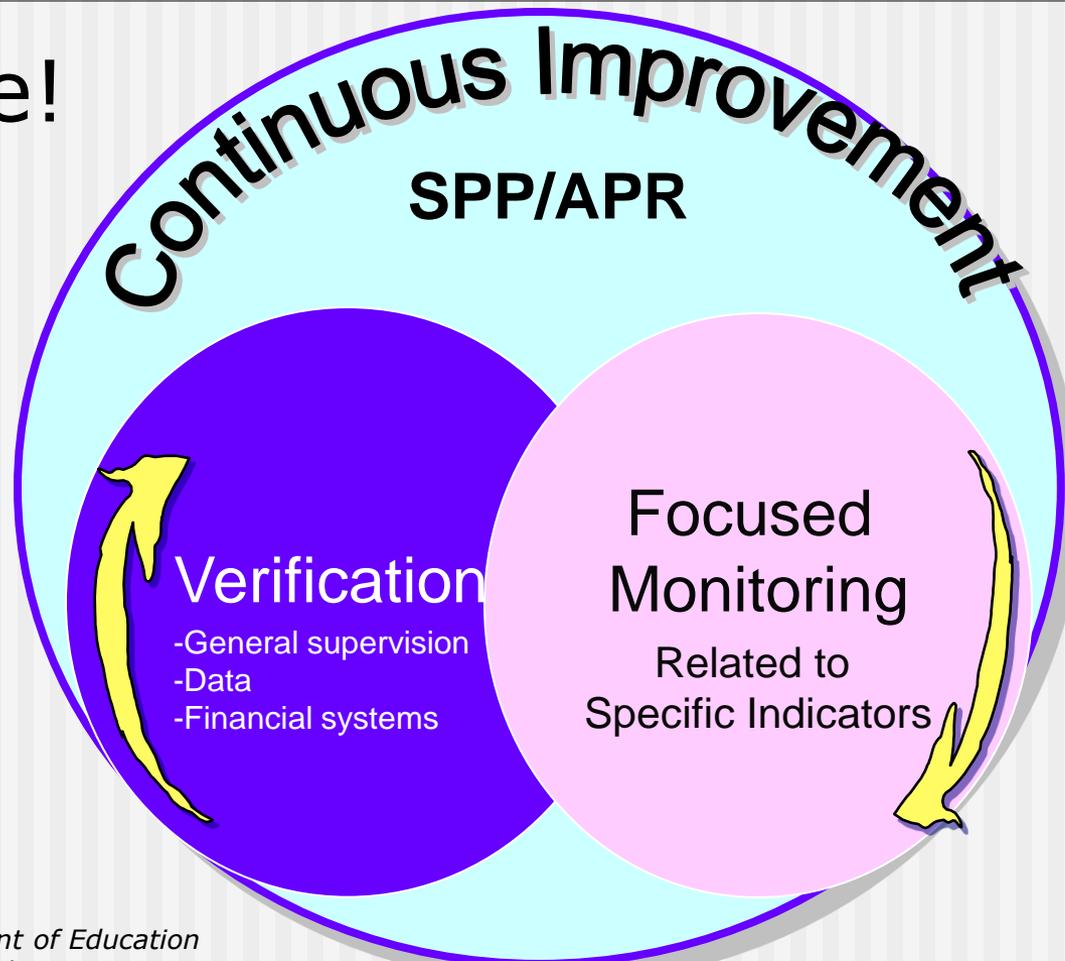
# OSEP On-going Oversight

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- Will focus on performance and compliance
- Will primarily identify states for focused monitoring by looking at their performance against the targets
- Other data sources such as rank orders and audits will also be used

# Is CIFMS going away?

Nope!



# How did OSEP determine the verification topics?

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- Section 616 sets out the Department's responsibility related to states' exercise of general supervision (616(a)(1)(A)(i)) and states' collection and analysis of data (616(I)(1))
- Monitoring finance systems is a Department risk management initiative

# State Monitoring and Enforcement

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- 34 CFR §300.600(a) requires that a state must
  - Monitor the implementation of
  - Part B
  - Enforce requirements; and
  - Report annually on performance

# State must monitor LEAs

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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:

# What are OSEP's expectations for state monitoring?

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## ■ Identification

- Components to identify noncompliance may include
  - Self-assessments
  - Database with unique identifiers
  - Focus on priorities
  - Dispute resolution
  - Onsite visits, application/contract review, etc.

# Expectations of state's monitoring (*cont.*)

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## ■ And correction

### ■ When is it corrected?

- When a CAP is submitted? NO
- When a CAP is approved? NO
- When the CAP activities are completed? Maybe
- When new policies and/or procedures are approved? Maybe
- When the state has documentation that practice has changed and has notified the LEA/EIS provider? YES!!

# How do we “measure” the one year timeline for correction?

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- From timely identification of noncompliance; i.e., when the state notifies the LEA in writing of the noncompliance
- To state closure of the noncompliance; i.e., when the state notifies the LEA and documents in writing that the noncompliance is corrected

# How should I use the “Related Requirements” document?

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- The Related Requirements document is primarily “posting the speed limit” regarding OSEP’s monitoring
- States should consider monitoring the Related Requirements for indicators with poor performance or noncompliance and addressing the results in “Explanation of Progress and Slippage”

# Will Your State be ready?

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- To provide high quality TA to LEAs in need of assistance or intervention?
- Offer incentives/rewards?
- Impose sanctions

# Aligning TA

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OSEP working to align its TA with SPP indicators

- Regional Resource Centers/NECTAC
- Federal Resource Center
- TA Specialty Centers

# Take aways

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IDEA 2004 includes parallel federal and state accountability provisions

- OSEP review of states' APRs
- States' analysis of and reporting on LEA performance against SPP targets

# Take aways

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Primary focus of federal and state monitoring activities are on

- Improving educational results and functional outcomes
- Ensuring requirements of Part B are met

# Take aways

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- OSEP and states are required to make determinations and take specified enforcement actions
- State and local performance must be reported to the public

# Web Resources

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

# Contact Information

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