Questions and Answers on Monitoring, Technical Assistance, and Enforcement

Revised June 2009

Regulations for Part B of the Individuals with Disabilities Education Act (IDEA) were published in the Federal Register on August 14, 2006, and became effective on October 13, 2006. Additional regulations were published on December 1, 2008 and became effective on December 31, 2008. Since publication of these regulations, the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education (Department) has received requests for clarification of some of these regulations. This is one of a series of question and answer (Q&A) documents prepared by OSERS to address some of the most important issues raised by requests for clarification on a variety of high-interest topics. Each Q&A document will be updated to add new questions and answers as important issues arise or to amend existing questions and answers as needed.

OSERS issues this Q&A document to provide States, State educational agencies (SEAs), and local educational agencies (LEAs) with information regarding the IDEA requirements relating to monitoring, technical assistance, and enforcement. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The 2004 amendments to the IDEA 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 needed to adequately measure performance. These changes affect the responsibilities of the Secretary and States in the area of monitoring, technical assistance, and enforcement under the IDEA.

Requirements related to monitoring, technical assistance, and enforcement are found in 34 CFR §§300.600 through 300.609 and include: (1) the Secretary's responsibility to establish and enforce particular procedures for monitoring, technical assistance, and enforcement actions; and (2) the State's responsibility to monitor including implementing, enforcing, and annually reporting on the performance of LEAs under the IDEA through a State performance plan (SPP) and annual performance reports (APRs) under that SPP.

Changes in the Secretary's responsibilities include the requirements for the Secretary to: (1) review and approve the SPP (34 CFR §300.601(a)(1)); (2) review States' APRs (34 CFR §300.603(a)); (3) determine whether the States meet the requirements and purposes of Part B of the IDEA, need assistance, need intervention, or need substantial invention in implementing the requirements of Part B of the IDEA (34 CFR §300.603(b)); and (4) take certain enforcement actions (34 CFR §300.604).

Changes in the State's responsibilities include the requirements to: (1) submit an SPP to the Secretary that includes measurable and rigorous State-established targets for indicators established by the Secretary (34 CFR §300.601(a)); (2) monitor its LEAs under the priority areas related to the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE), exercise of 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)); (3) collect valid and reliable data to report annually to the Secretary on the State's performance on the indicators in the SPP (34 CFR §300.601(b)); (4) report to the public on the performance of each of its LEAs on the targets in the SPP (34 CFR §300.602(b)(1)(i)(A)); and (5) carry out enforcement actions against those LEAs not meeting the requirements of Part B of the IDEA (34 CFR §§300.600(a) and 300.608).

Generally, the questions and corresponding answers presented in this Q&A document required interpretation of the IDEA and its implementing 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 in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations. The IDEA, its implementing regulations, and other important documents related to the IDEA and the regulations are found at. http://idea.ed.gov.

If you are interested in commenting on this guidance, please email your comments to OSERSguidancecomments@ed.gov and include Monitoring, Technical Assistance, and Enforcement in the subject of your email or write us at the following address: Patricia Guard, U.S. Department of Education, Potomac Center Plaza, 550 12th Street, SW, room 4108, Washington, DC 20202.

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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: Are States required to report their determinations (meets requirements, needs assistance, needs intervention, or needs substantial intervention) of each LEA's performance in their APRs submitted to OSEP?

Answer: No. A State is not required to report in the State's APR the determinations the State made about each LEA.

Question A-2: What years are covered by the SPP submitted in December 2005?

Answer: For the SPP submitted in December 2005, States must annually report on performance for the academic years 2005-2006 through 2010-2011. The first APR, due February 1, 2007, was for the 2005-2006 year. Therefore, the six years began with the data for the 2005-2006 year. Under this schedule, the last APR under this SPP will be for the 2010-2011 academic year and will be due February 1, 2012.

Question A-3: OSEP published a guidance document, entitled *Part B SPP/APR Related Requirements*, which contains a detailed list of statutory and regulatory requirements related to each indicator. (See: http://www.ed.gov/policy/speced/guid/idea/bapr/2008/5relstedrequirements081308.pdf)

Are States required to monitor the requirements related to each indicator included in this document for every year that an LEA fails to meet a target in the SPP?

Answer: No. The "Related Requirements" guidance document, which OSEP distributes to Chief State School Officers, State Directors of Special Education, and State Data Managers, with the Part B SPP/APR materials, includes a list of the Part B monitoring priorities and indicators and the requirements from statutes (Part B of the IDEA and the General Education Provisions Act) and regulations that are related to each priority and indicator. The purpose of this document is to inform States of the statutory and regulatory requirements related to each indicator that will be reviewed by OSEP as part of Focused Monitoring. That is, if OSEP determines that it will do Focused Monitoring in a State because that State is low performing or in noncompliance with a specific indicator, OSEP

will review the related requirements for that indicator as part of the Focused Monitoring. OSEP encourages States to examine their general supervision systems to determine how they address the related requirements, but States are not required to do so.

Question A-4: If a State changes or updates its SPP, must the State resubmit the entire document or just those portions 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.

Question A-5: Where should a State report on correction of noncompliance identified by OSEP in its response to the State's SPP/APR?

Answer: States should report on the correction of any noncompliance identified by OSEP in the same section of the APR for which noncompliance was originally identified in the prior year's SPP/APR response table. For example, if, in its Federal fiscal year (FFY) 2006 APR, OSEP identified noncompliance for Indicator B-12, Early Childhood Transition, the State would report on correction of noncompliance related to early childhood transition in the APR section for Indicator B-12 in its FFY 2007 APR. In addition, the State should provide data in Indicator B-15 in its FFY 2007 APR on the status of timely correction of noncompliance identified in the FFY 2006 APR for Indicator B-15.

Question A-6: When the Department changes an indicator, or the measurement for an indicator, such as Indicator B-7 Preschool Early Childhood Outcomes, is it permissible for a State to change the baseline and targets for that indicator in its SPP?

Answer: Yes. It is permissible for a State to change baseline and targets for an SPP indicator when the Department changes an indicator or measurement, unless the target is for a compliance indicator. Targets for compliance indicators are always 100 percent. Any State that considers revising a baseline or target should involve stakeholders in the process and include a justification for the change in the APR.

B. Public Reporting

Authority: Section 300.602(b)(1) of the regulations requires each State to report annually to the public on the performance of each LEA located in the State on meeting the targets in the SPP.

Question B-1: How does this reporting requirement relate to the requirement, contained in 34 CFR §300.601(b)(2), that any data collected through monitoring or sampling be collected at least once during the period of the SPP?

Answer: For those indicators for which the Secretary permits States to collect data through monitoring or sampling, data must be collected for each LEA at least once during the period of the SPP. States are also required to report to the public annually on the performance of each LEA in meeting the targets in the SPP. In meeting this annual reporting requirement, if a State collects performance data through monitoring or sampling, the State must include the most recently available performance data on each LEA as required under 34 CFR §300.602(b)(1)(i) and the date these data were obtained.

Question B-2: When is a State required to report the status of each LEA regarding indicators in the SPP?

Answer: Following the submission of the APR to OSEP on February 1, 2007, each State was required to report to the public on the status of each of its 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.) Pursuant to 34 CFR §300.602(b)(1)(i)(A) of the Part B regulations published on December 1, 2008 and in effect on December 31, 2008, States must complete this reporting as soon as practicable and no later than 120 days following the State's submission of its APR to the Department.

Question B-3: May States report intermediate unit (or regional) 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 (or regions) rather than for LEAs in situations where the N size is too small to report

results without revealing personally identifiable information.

Question B-4: Must State reports on LEA performance on SPP targets include actual data (i.e., percent scores) or is it permissible for States to simply indicate whether or not the LEA met the State's 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.

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: When making determinations about an LEA's performance, must States use the same determination categories (i.e., meets requirements, needs assistance, needs intervention and needs substantial intervention) that OSEP uses with States?

Answer: Yes. Pursuant to section 616(a) of the IDEA, 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).

Question C-2: Is the implementation of the enforcement actions related to the determinations categories sequential? (That is, must a State be in two years of needs assistance before moving to three years of needs intervention?)

Answer: No. The enforcement actions are not sequential.

Question C-3: Must a State be in needs intervention for three years prior to OSEP implementing enforcement actions (e.g., technical assistance, special conditions) or may OSEP impose enforcement earlier given a State's especially poor performance?

Answer: No. OSEP may impose enforcement earlier given a State's especially poor performance. Under section 616(g) of the IDEA, the Department may use, at any time, any authority under the General Education Provisions Act (GEPA) to monitor and enforce the requirements of the IDEA, regardless of the determinations made of the State's status under section 616(d) of the IDEA.

Question C-4: Will OSEP provide an overall determination on each State's performance, or will there be separate determinations for each indicator?

Answer: OSEP makes 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.

Question C-5: What action, if any, will OSEP take when a State's determination status fluctuates between the categories of needs assistance and needs intervention, but never remains in either category for two or more consecutive years?

Answer: In such a situation, OSEP would be required to take the actions outlined in 34 CFR §300.604 based on the most recent determination category assigned by OSEP. For example, if in year 1, a State is in "needs assistance," and in year 2 is in "needs intervention," and in year 3, is in "needs assistance," OSEP would not be required to take any of the enforcement actions listed in 34 CFR §300.604(a) under "needs assistance" because the State would not have been in "needs assistance" for two consecutive years. Moreover, OSEP would not be required to take any of the enforcement actions listed in 34 CFR §300.604(b) under "needs intervention" because the State would not have been in "needs intervention" for three or more consecutive years.

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

Question C-6: If a State determines that an LEA cannot correct a monitoring finding within one year, may that State take the same action available to the Secretary under section 457 of the GEPA (i.e., enter into a compliance agreement between the State and the LEA)?

Answer: The authority to enter into a compliance agreement provided for under section 457 of the GEPA applies only to agreements between the Department and States. The authority of a State to enter into a compliance agreement with an LEA is controlled by State law.

Question C-7: States and LEAs may be in or out of compliance on specific compliance indicators throughout the year. How will this process ensure that the determinations reflect the actual compliance status of LEAs within a State?

Answer: The Secretary's determinations are based on the totality of the State's data

in its APR and other publicly available information, including any compliance issues. The Department considers a variety of factors, including whether the State has provided valid and reliable data, and for compliance indicators, whether the State demonstrated compliance or timely correction of noncompliance. In instances where the State did not demonstrate compliance, the Department considers whether the State had nonetheless made progress in ensuring compliance over prior performance in that area. The Department considers whether the State has prior IDEA compliance issues, the State's progress in resolving those issues, and whether the State provided any additional information requested by the Department in the prior year's response to the State's APR. In addition, the Department considers whether the State has publicly reported on the performance of each LEA on the State's SPP targets.

Determinations are made annually; therefore the determination about the State's status is reviewed each year. As part of the APR, each State submits data for the past fiscal year and may also choose to submit additional, more recent data if such data would provide a better representation of the State's current status.

Question C-8: What are the opportunities for public input in the SPP/APR process?

Answer: As noted in the conference report to HR 1350, it is Congress' expectation that SPPs, indicators and targets will be developed with broad stakeholder input. As part of States' SPP and APR submissions, OSEP requires States to provide information in the overview section of the SPP, clarifying how the State obtained broad input from stakeholders on the SPP.

Question C-9: What factors must a State consider in making LEA determinations?

Answer: When making an annual determination on the performance of each LEA under Part B of the IDEA, consistent with sections 616(a) and (e) of the IDEA, a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with the IDEA, including relevant audit findings. In addition, States may consider results on performance indicators and other information. States must utilize the four categories in section 616(d) of the IDEA. OSEP's guidance to States regarding how to make LEA determinations can be found at the following Web site: **http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/417/?1#category1**

Question C-10: What sanctions may be imposed and what enforcement actions may be taken by SEAs under Part B of the IDEA or the Education Department General Administrative Regulations (EDGAR)?

Answer: A State may impose sanctions and enforcement actions consistent with the regulations in 34 CFR §§300.600(a) and 300.608. Specifically: (1) the State must enforce Part B of the IDEA in accordance with 34 CFR §§300.604(a)(1) and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2); and (2) if a State determines that an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the SPP, the State must prohibit the LEA from reducing its maintenance of effort under 34 CFR §300.203 for any fiscal year; and (3) a State is not restricted from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the IDEA.

Question C-11: Is a determination that the State makes about an LEA's performance subject to appeal by the LEA?

Answer: Whether a State's determination about an LEA's performance may be appealed is a State decision.

Question C-12: What are examples of special conditions?

Answer: Special conditions are authorized in 34 CFR §80.12 of EDGAR and are restrictions placed on a grant or subgrant. The regulations specify a number of examples of special conditions, such as payment on a reimbursement basis; requiring additional, more detailed reporting; requiring the grantee to obtain technical or management assistance; or requiring additional project monitoring.