



February 2009

Determinations of LEA Compliance with IDEA: Strategies and Resources Used by States

by Eileen Ahearn, Ph.D.

INTRODUCTION

The regulations that accompany the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA) added a new section, Monitoring, Technical Assistance, and Enforcement [CFR 34 §§300.600 to 609], that describes the procedures that the U.S. Department of Education, Office of Special Education Programs (OSEP) and each state education agency (SEA) must adhere to in evaluating and addressing any identified noncompliance in the implementation of IDEA. The requirements of the law and its regulations specify the process to be followed by OSEP in monitoring states and by states in monitoring each of their local education agencies (LEAs). A copy of these regulations is available at <http://projectforum.org/docs/IDEARegulationsRelatedtoDeterminations.pdf>.

As required by IDEA 2004, OSEP makes an annual determination of each state's compliance with IDEA and, in turn, each state makes a similar determination about every one of its LEAs, including charter schools that are considered by their state to be LEAs at least for federal funding purposes. Project Forum surveyed states about their implementation of this new provision. This report, completed as part of the cooperative agreement between Project Forum at the National Association of State Directors of Special Education (NASDSE) and OSEP, examines the results of that survey. It includes the specific information received from responding states and no inferences should be made about compliance with IDEA provisions. States interested in specific strategies followed by others should contact OSEP about these practices.

BACKGROUND

In sections 300.600 and 300.603 of the regulations, there are two major types of requirements related to decisions about the implementation of IDEA:

- 1) The Secretary of Education must make an annual determination as to whether each state is meeting the requirements of the statute. Under IDEA, each state's department of education (SEA) is required to have in place a State Performance Plan (SPP) that evaluates the state's efforts to implement the requirements and purposes of IDEA and sets measurable and rigorous targets for 20 Part B indicators of compliance and performance. SEAs must submit an Annual Performance Report (APR) on the state's progress or slippage in meeting the measurable and rigorous targets established in the SPP. In addition to those documents, OSEP reviews other

information it has gathered about the state to determine the state's status in meeting the requirements of IDEA; and

- 2) IDEA requires each state to make an annual determination as to whether each of its LEAs is meeting the requirements of IDEA and report to the public on those determinations.

The criteria considered for OSEP's determination of state implementation include whether the state:

- demonstrated substantial compliance for each compliance indicator in the APR, either by demonstrating a high level of compliance, generally 95% or above, or demonstrating that it corrected noncompliance in a timely manner;
- provided valid and reliable data for all indicators in the SPP and APR that reflected the measurement for the indicator; and
- had timely corrected other IDEA noncompliance that had been identified during Department monitoring, audit, or other activities.

After its annual review of a state's status in implementing IDEA, the Department assigns one of the following four categories of determination:

- 1) meets the requirements and purposes of the IDEA;
- 2) needs assistance in implementing the requirements of the IDEA;
- 3) needs intervention in implementing the requirements of the IDEA; or
- 4) needs substantial intervention in implementing the requirements of the IDEA. (§300.603)

The SEA must use the same four categories in determining LEA implementation and must use at least the following four considerations in making those LEA determinations:

- each LEA's performance on all compliance indicators in the SPP;
- whether data submitted by the LEA is valid, reliable, and timely;
- any uncorrected noncompliance from other sources; and
- any audit findings.

METHODOLOGY

Project Forum developed a survey to gather information about the experiences states had in carrying out the new requirements related to making determinations for its LEAs.

Respondents had the option to reply by using the Zarca[®] version of the survey (a web-based survey tool) or by faxing or emailing responses to a paper version. A total of 45 states responded during October and November 2008.

FINDINGS

States' Processes for Making Determinations

As mentioned in the background section, there are four considerations states must use in making determinations for their LEAs. States could use other factors in reaching their conclusions, such as a review of the LEA outcomes on performance indicators or other information the state collects. States also have the option of using their own design that includes the four considerations.

- Twenty-four states responded that they used only the four required considerations.

- Eleven states used those considerations plus the LEA's record on performance indicators.
- Nine states responded that they used the four required considerations plus LEA performance indicators and also added other information in making their decisions.
- One state indicated that it has developed its own design for making LEA determinations.¹

States were asked to specify the type of documentation used for LEA determinations by checking one or more of four specific sources and whether they used those sources for all or some of their LEAs. Responses are summarized in Table 1. Almost all states used information from a database for all of their LEAs. Responses also indicate that states used many other sources, selecting specific areas by LEA as needed.

Table 1: Information Sources and Number of LEAs

Source of Other Information	All LEAs	Some LEAs	Did Not Use	Total
Information from a database	42	—	3	45
Information from LEA self-assessments, LEA performance reports or desk audits	28	10	7	45
Information from complaints, hearings, mediations and/or resolutions sessions	26	12	7	45
Information from onsite monitoring visits	13	22	10	45

Staff Resources Used by States for Determinations

Number of SEA staff involved

The number of SEA staff involved in the LEA determinations process ranged from two to 27 with some of the states reporting data as a range, (e.g., one state reported 12-15). Twenty-six states reported between two and eight; 14 responded nine to 18; and five involved between 22 and 27. The responses did not seem to be associated consistently with either the population or geographic size of the state. For example, two populous states had widely different responses. Similarly, geographic area did not relate to the number states reported as involved in this process: among the smallest states responding, *one* answered two and another answered 15-18. In totaling up those involved, some states may have included all of their monitoring staff, while others included only selected individuals from that group.

Number of SEA staff hours used:

A similar range was presented by the responses to the survey question on the number of staff hours used in the determinations process. The responses by number ranged from 15 to 20,000, and some states responded with a range of numbers or comments such as 'unknown,' 'difficult to determine' or descriptions such as 'hundreds of hours' or 'well in excess of 100.'

Other resources used

Many states indicated that they did not use resources other than SEA staff in making LEA determinations. However, some states cited specific sources of additional assistance. The type of resource and the number of states accessing each one are summarized as follows:

- State technology assistance 10
- Regional Resource Center 7
- Contract consultants 6
- Data Accountability Center² 4
- Stakeholder group 4

State Enforcement Actions

Enforcement actions for an LEA that receives a determination that is less than “meets requirements” are stated in the IDEA regulations at §300.604. The options differ for each type of finding. An LEA that “Needs Assistance” for two consecutive years or “Needs Intervention” for three consecutive years is subject to the enforcement actions specified in §§300.604(a) and (b), respectively. An LEA that “Needs Substantial Intervention” at any time is subject to the enforcement actions specified in §300.604(c). The survey asked states to indicate their decisions about enforcement based on each level of violation. The findings are presented for each survey item.

State actions when an LEA is in “needs assistance” for ONE year

There is no federally mandated enforcement action when a determination for “needs assistance” has occurred for only one year. However, 17 states have chosen to prescribe some specific action in this situation. Almost all mentioned participation in technical assistance/training, a few require implementation of a corrective action plan (CAP) and one cited accreditation action as the consequence imposed.

State actions when an LEA is in “needs assistance” for TWO consecutive years

For LEAs found to need assistance for two consecutive years, the state must apply one or more of the following actions and may also apply other consequences. States were asked to indicate which of the actions they would impose and whether they would add other consequences. Those choices were as follows:

1. Advise programs of available resources of technical assistance to address areas in which the program needs assistance.
2. Identify programs as high risk grantees and impose conditions on the use of funds.
3. Other (specified).

State responses were as follows:

- A total of 18 states opted to advise LEAs of available sources of technical assistance;
- Three states chose ‘other’ as follows:
 - attention to the relevant sections of the state annual performance plan;
 - focused data analysis with quarterly reporting to the SEA; and
 - reports from the LEA on technical assistance activities;³

- Ten states both advised the LEAs about sources of technical assistance and imposed conditions on their use of funds;
- Another 10 states advised about available technical assistance and added 'other' requirements such as the following: a CAP, an onsite visit, participation in focused monitoring, accreditation action, or following a specific assistance rubric;
- Three states chose all three responses. The additional action they specified are:
 - Make information resources available including electronic resources and national information and technical assistance centers.
 - Submit a CAP.
 - Onsite monitoring visit, technical assistance and professional development.

State actions when an LEA is in "needs intervention" for THREE consecutive years

For LEAs found to need intervention for three consecutive years, the state must apply one or more actions and may also choose to apply other consequences. States were asked to indicate which of the actions they would impose and whether they would add other consequences. Those survey response choices were as follows:

1. Require the LEA to prepare or implement a CAP to correct the identified area(s).
2. Withhold, in whole or in part, further payments to programs.
3. No final decision yet made on what actions would be taken.
4. Other (specified).

State responses were as follows:

- two states indicated that they will only require the LEA to prepare or implement a CAP to correct identified area(s);
- fifteen states have not yet made a final decision on what actions would be taken;
- one state indicated it will take 'other' action in the same manner as when it is in need of assistance, that is, attend to the relevant sections of the state annual performance plan;³
- five states have chosen to both require a CAP and withhold payments to programs;
- eight states have combined the first and third options—they will require the LEA to prepare a CAP, but they have not yet made a decision as to other consequences that may be adopted;
- one state indicated it will require a CAP and withhold payments, but may yet adopt other actions for this category;
- eight states will require a CAP plus specific 'other' action. The 'other' actions these states will implement are:
 - direct use of funds and budgeting prior to approving LEA Consolidated Applications for funds and impose conditions for receipt of funds;
 - direct use of funds, possibly withheld until some contingent actions are met.
 - designate the LEA as a high risk grantee and impose conditions on the use of funds;
 - redirect resources to areas of need, require TA, onsite visits and consider the possibility of an at-risk grantee designation;
 - redirect the use of funds to correct noncompliance;
 - impose increased oversight by the state, specifically, weekly or monthly onsite visits to determine progress regarding the correction of noncompliance and to determine whether specific activities are needed to ensure progress in correcting noncompliance;

- actions for Needs Intervention year one will make corrections for the LEA through the Educational Plan for Student Success supported through the State Professional Development Grant (SPDG). LEAs determined to be Needs Intervention for a second year must submit a CAP and a special education technical assistance team is assigned to the district in conjunction with the Regional Resource Center (RRC); and
 - one state may also consider requiring the LEA to re-direct funds to support corrective action(s) and/or improvement plan(s) as recommended by the SEA.⁴
- Five states have decided to require a CAP, withhold funds and impose additional action. Examples of those 'added actions' are as follows:
- move district to "needs substantial intervention" status.
 - will require that these LEAs direct funds to focus on corrective actions identified in their plan.⁴
 - will direct use of district IDEA funds to specific areas⁴ (i.e. improvement plan), require participation in training, identify as high risk and conduct a fiscal audit.
 - will direct the use of funds.⁴
 - will consider the district's accreditation status to have deficiencies and it will be reviewed by the State Board of Education.

State actions when an LEA is in "needs intervention" for less than THREE consecutive years

Thirty out of the 45 responding states indicated that they do plan to take action when an LEA is found to be in need of intervention for less than three years, even though specific actions are not mandated at that point. The types of actions fell into five types: require a CAP; provide technical assistance; direct the use of the LEA's funds⁴; apply additional monitoring strategies; and apply the same strategies as when an LEA is in need of assistance for two years.

Actions a state will immediately take when an LEA is determined to be in need of substantial intervention

When a state finds that an LEA is in need of substantial intervention, it is mandatory that Part B funds be immediately withheld in whole or in part. A state may also take other actions. For example, twenty-five states commented about additional actions they will or may take. While similar to the actions to be taken when an LEA is in need of substantial intervention for less than three years, the actions adopted or being considered were more intense and immediate such as directing and recovering funds and more intensive monitoring actions. Two states mentioned that they are currently meeting with stakeholders to decide.

Other Items Related to LEA Determinations

Non-traditional LEAs

States were asked if they encountered any unique situations with non-traditional LEAs in their state, such as charter schools, vocational districts or others. Fourteen states

noted that they treat their charter schools the same as any other district. Some states commented about applying the determinations process to charter schools as follows:

- “The volume of non-traditional LEAs has resulted in a huge data management issue. For example, the charter schools frequently change Charter Holders and names making data difficult to track from year to year. In addition, [our state] has Elementary School Districts, High School Districts and Unified School Districts. Not all components apply to every LEA.”
- “The determinations have caused us to question how the process will intersect with the unit that already monitors charter schools and the level of special education monitoring that is/should be involved.”
- “Very small N counts make it difficult to measure progress.”
- “N size may be too small to make a fair assessment of compliance. The LEA may not be applicable for the particular indicator(s)—this could result in the LEA not being applicable to ANY indicator that is used to make determinations.”
- “Charter schools that are independent present a challenge due to the small numbers of students and concern about the accuracy of data.”
- Charter schools that operate as individual LEAs pose some unique problems. By state law, charter schools are not permitted to have preschools. As a result, that indicator is not available as a source of data. Many of the charters do not serve high schools making indicator 13 (secondary transition) unavailable as a source of data. As we move towards using the outcome indicators in making determinations, it will be a challenge with the charter schools since many of them do not serve high school students.”
- “Charter schools present issues in that they typically don't have adequate subgroup size and/or lack the data needed to evaluate.”
- “If a charter school is a charter high school then, for example, indicator 12 (IEPs by the third birthday) is not applicable to them. Being aware of those types of situations is relevant.”

Respondent comments related to other unique types of district structures were as follows:

- “We have multiple cross-jurisdiction school systems that require significant manipulation to assign data to LEAs. Additionally, the legislative consolidation requirement in the state is building super-LEAs that will combine many current LEAs with incomparable performance. Data correlation, statistical significance and improvement direction will all be impacted.”
- “Our initial determinations process essentially ignored their unique situations. We are currently ‘tweaking’ our determinations process to look at variations we wish to address.”
- “We have used ‘not applicable’ when calculating the score for the determinations label for those unique agencies like our state-operated School for the Deaf, School for the Blind and Schools for the Severely Disabled, as well as Department of Corrections, Division of Youth Services [and] Department of Mental Health.”¹

Benefits derived from the process of making determinations

Five states indicated that there were no benefits attached to the implementation of the determinations process. The remaining states identified the following types of benefits derived from the determinations process:

- focused the attention of LEAs on the importance of data accuracy and management and supported their ownership of their data;

- more people within and outside the system are now aware and paying attention to what is going on in special education;
- improved collaboration—forced us to make a stronger and clearer message about how important it is for general education and special education colleagues to be working together;
- LEA improvement in targeted compliance areas such as transitions;
- helped LEAs understand their role in the SPP/APR process;
- gives LEAs an impetus to create change after comparison with other LEAs in the state;
- encourages LEAs to take the self-assessment process more seriously;
- ensures that sanctions imposed on LEAs are in line with IDEA;
- provides the SEA with better understanding of the data for planning professional development and technical assistance and helps to focus discretionary dollars on particular issues;
- superintendents more aware of and attuned to the requirements of IDEA;
- provides leverage for the SEA to use in requiring LEAs that need the most assistance to engage in school improvement; and
- the determinations process has brought the seriousness of NCLB sanctions to IDEA.

Challenges encountered in making determinations

Over half of the respondents cited a burden on time and staff resources as the biggest challenge, specifying the process as excessively time consuming, duplicative of, or in conflict with, other monitoring activity and a strain on limited budgets.

Other aspects of the determinations process that posed challenges to states were as follows:

- Determining appropriate criteria, applying them fairly and consistently and matching them to consequence options is difficult.
- LEAs are confused over the variations in terminology among NCLB, IDEA and state legislation.
- Determinations provide an additional point of conflict between the SEA and LEAs that strain an already tenuous relationship.
- The apparent benefits may not have derived from making determinations because there is already an accountability process in place.
- Data are not current by the time the determinations are made. Generally, the noncompliance is already corrected prior to the determination being made.
- Public relations efforts in terms of 'yet another' compliance process and convincing LEAs that this is not just a 'gotcha' activity are challenging.
- There is still incompatibility of data systems among LEAs and determinations highlight this problem, but will not resolve it.
- Many small districts felt they were unfairly classified on what happened in the case of one or two children relative to compliance areas.
- OSEP requirements change frequently causing significant shifts in resources and emphasis that disable progress.
- The process does not seem to translate into measurable improvement in student outcomes.

Additional Comments

Only a few states added comments and most were expansions on the areas of benefits and challenges already described. One respondent characterized the determinations process as 'more trouble than it is worth' and the IDEA's directive nature as 'too prescriptive.' Finally, one respondent commented that it is not clear that the benefit of this process is equal to the cost.

DISCUSSION

The survey on SEA implementation of the new LEA compliance determinations process provides an initial picture of the way states went about fulfilling this new requirement and their reactions to the process. Respondents cited strong benefits available as a result of the activity, but also described challenging problems. While it was difficult for states to be precise about the resources needed for the process, over half of the respondents noted that staff time to complete this new activity was a major challenge. Respondents noted other significant challenges as well, such as establishing appropriate criteria for making determinations, a lag time between when the determinations need to be made and the availability of reliable data upon which such determinations are made and several other significant challenges. Such comments suggest that the determinations process could be further enhanced through continued ongoing discussion among policymakers at state and federal levels to address the challenges and enhance the positive aspects.

Endnotes

1. OSEP staff commented that this may be inconsistent with IDEA.
2. The Data Accountability Center, widely known as DAC, is funded by OSEP to provide information and technical assistance to improve the quality of all state-reported data required by the IDEA. Their website is www.ideadata.org.
3. OSEP staff commented that only doing the 'other' actions may be inconsistent with the requirements of IDEA.
4. Under certain circumstances directing the use of IDEA funds may be consistent with the IDEA.

This report was supported by the U.S. Department of Education (Cooperative Agreement No. H326F050001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education and no official endorsement by the Department should be inferred.

Note: There are no copyright restrictions on this document; however, please credit the source and support of federal funds when copying all or part of this material.



This document, along with many other Forum publications, can be downloaded from the Project Forum at NASDSE:

<http://www.projectforum.org>

To order a hard copy of this document or any other Forum publications, please contact Nancy Tucker at NASDSE, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314
Ph: 703-519-3800 ext. 326 or Email: nancy.tucker@nasde.org