

IDEA BREAKOUT

FEBRUARY 2025

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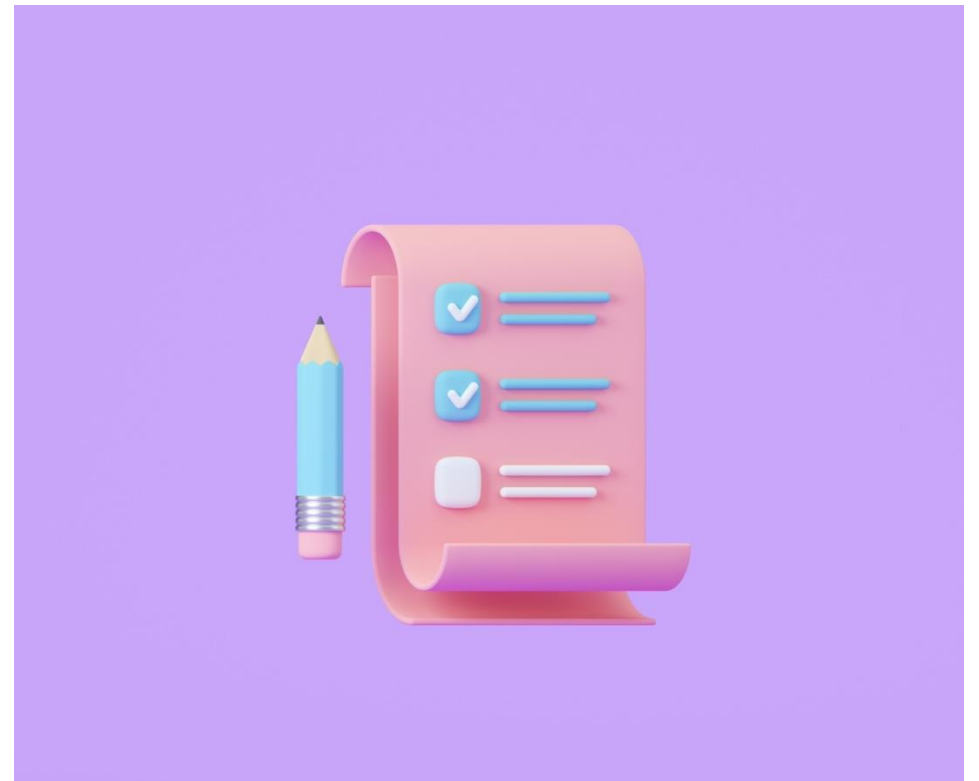
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AGENDA

- Updates from DC
- IDEA and Section 504
- New IDEA Guidance
- IDEA Allowability
- Supplement not Supplant
- Procurement & Inventory under IDEA
- Internal Controls & FERPA
- Maintenance of Effort
- Equitable Services
- General Supervision



Updates from DC



UPDATES FROM DC

- President Trump sworn in on January 20th
- Issued significant number of executive orders during first two weeks in office
- Orders impacting federal agency operations:
 - Federal hiring freeze for 90 days
 - Return to in-person work across federal government
 - Implementation of “Schedule F” to allow some career positions to be filled by political appointments
 - Rescission of Pres. Johnson-era policy to require companies doing business with the federal government to comply with certain equal opportunity, affirmative action requirements, and anti-discrimination laws

EXECUTIVE ORDERS

- “Expanding Educational Freedom and Opportunity for Families”
 - Instructs U.S. Depts of Education, Health and Human Services, Interior, and Defense to prioritize school choice programs and drive funding to private schools
 - ED directed to prioritize school choice programs in competitive grants
 - Requires ED to issue new guidance to States within 60 days about how federal funding allocations to districts and schools may be used to advance this priority
 - HHS directed to issue guidance about using federal funds, including the Child Care and Development Block Grant (CCDBG), for childcare at private and religious institutions.
 - Bound by the scope of existing laws (many restrict use of funds for non-public schools)

EXECUTIVE ORDERS

- “Ending Radical And Wasteful Government DEI Programs And Preferencing”
 - Terminates all Diversity, Equity, Inclusion, and Accessibility (DEIA) initiatives throughout federal government
 - DEIA positions across the federal government placed on administrative leave
- In response, ED:
 - “Removed or archived hundreds of guidance documents, reports, and training materials that include mentions of DEI”
 - Dissolved DEI-related councils and training contracts
 - Withdrew Department’s equity plan

EXECUTIVE ORDERS

- “Additional Measures to Combat Anti-Semitism”
 - Instructs federal agencies to identify allegations of antisemitism stemming from the Israel-Hamas conflict.
 - Agencies must, within 60 days, submit a report to the President identifying all civil and criminal enforcement mechanisms it could use to “curb or combat” antisemitism.
 - The Secretaries of State, Education, and Homeland Security instructed to make recommendations for how to “familiarize[e]” institutions with how to monitor and report students on visas that could impact their immigration status

EXECUTIVE ORDERS

- “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”
 - Says “sex” is defined as only male and female and is an “immutable biological classification”
 - Impacts sex-based discrimination laws, including Title IX
 - Further cements January court decision striking down Biden admin Title IX regulations nationwide
 - Following this order, ED [issued guidance instructing](#) recipients to implement 2020 rule, and “immediately reorient” any investigations that may have begun under the invalidated 2024 rule

EXECUTIVE ORDERS

- “Ending Radical Indoctrination in K-12 Schooling”
 - Prohibits federal funds from being used for programs that include “gender ideology and critical race theory in the classroom” or “subversive, harmful ideologies”
 - Federal agencies are instructed to ensure that all recipients of federal funds providing K-12 education refrain from any use of funds to support “discrimination equity ideology”
 - Defined as any instruction which says that:
 - “an individual’s ... status as privileged, oppressing, or oppressed is primarily determined by the individual’s race, color, sex, or national origin,”
 - “an individual should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion,” or
 - “the United States is fundamentally racist, sexist, or otherwise discriminatory.”

EXECUTIVE ORDERS

- Secretaries of ED, Defense, and HHS, working with the AG, must submit plan to President for “eliminating federal funding or support for illegal and discriminatory treatment and indoctrination in K-12 schools, including based on gender ideology and discriminatory equity ideology” within 90 days

EXECUTIVE ORDERS

- “Ending Radical Indoctrination in K-12 Schooling”
 - AG instructed to work with State/local officials to file actions against K-12 teachers and school officials who “sexually exploit minors” or “unlawfully practice medicine by offering diagnoses or treatment” or “facilitate the social transition of a minor student.”
 - “Social transition” is defined broadly by the order as:
 - “the process of adopting a ‘gender identity’ or ‘gender marker’ that differs from a person’s sex. This process can include psychological or psychiatric counseling or treatment by a school counselor or other provider; modifying a person’s name (e.g., “Jane” to “James”) or pronouns (e.g., “him” to “her”); calling a child “nonbinary”; use of intimate facilities and accommodations such as bathrooms or locker rooms specifically designated for persons of the opposite sex; and participating in school athletic competitions or other extracurricular activities specifically designated for persons of the opposite sex.”

OMB TEMPORARY FEDERAL FUNDING PAUSE (MEMO M-25-13)

- OMB issued memo on Jan. 27th that orders all federal agencies to temporarily pause all “grant, loan, and other financial assistance programs”
- Agencies required to conduct “comprehensive analysis” to determine funding/program consistency with recent EOs, including on DEI, foreign aid, and gender
 - Must report any funding not aligning with EOs to OMB by February 10th
- Was set to go into effect on January 28th at 5pm
 - Judge issued temporary restraining order shortly before implementation time
 - Second judge issued restraining order February 3rd
- In response, administration rescinded the memo on January 29th

The Future of the Freeze



- Agencies likely to continue to review competitive (referred to in some docs as “discretionary”) grants for new priorities where allowed by law
- May require revising proposals/ plans/ position descriptions to remove activities or certain keywords
 - Temporarily freeze grants while this proceeds?
- May require assurances re: certain activities
 - Conflict with State laws?

SECTION 504 LITIGATION – TEXAS V. BECERRA

- Seventeen states filed a lawsuit against the U.S. government. The states in Texas v. Becerra—Alaska, Alabama, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, and West Virginia—argue that Section 504 of the Rehabilitation Act of 1973 is unconstitutional after the previous Administration updated it last year.
- On May 9, 2024, the Biden Administration updated Section 504 to bolster nondiscrimination protections for people with disabilities. These updates added nondiscrimination protections for individuals with gender dysphoria and expanded communication access protections. The states in the lawsuit argue that the update unlawfully changes the express terms of Section 504 and the Americans with Disabilities Act.

SECTION 504 LITIGATION – TEXAS V. BECERRA

- Update: February 21, 2025
- The parties submitted a joint status report, to the District Court that would, if approved, mean that the stay would be continued and they would continue to update on the 21st of each month. The Plaintiffs clarified that they never moved nor plan to move the Court to declare or enjoin Section 504 as unconstitutional on its face. This is an important clarification about their intent because the original demand for relief in the complaint specifically articulates a request to "Declare Section 504, 29 U.S.C. § 794, unconstitutional." The District Court must weigh in as final arbiter of how the case will proceed.

2025 IDEA GUIDANCE

- Dear Colleague Letter on Building and Sustaining Inclusive Educational Practices - [Dear Colleague Letter on Building and Sustaining Inclusive Educational Practices. January 16, 2025 - Individuals with Disabilities Education Act](#)
- Coordinating Transition Services and Postsecondary Access - [Coordinating Transition Services and Postsecondary Access \(January 2025\) - Individuals with Disabilities Education Act](#)
- Dear Colleague Letter on Special Education Personnel Retention - [Dear Colleague Letter on Special Education Personnel Retention. \(Jan. 13, 2025\) - Individuals with Disabilities Education Act](#)
- Secretary Cardona Letter on Restraints and Seclusion in Schools - [Secretary Cardona Letter on Restraints and Seclusion in Schools. January 8, 2025 - Individuals with Disabilities Education Act](#)

WHEN IN DOUBT...

- Follow federal statutes – IDEA, ESEA, Section 504, ADA, Civil Rights Act, etc.
 - Unlikely to be rescinded, and takes years to do so
 - Legally binding
- Follow federal regulations – 2 CFR 200, 34 CFR 300, etc.
 - Could be rescinded or changed, but requires public notice and comment
 - Legally binding
- Follow federal guidance unless rescinded – dear colleague letters, FAQ documents, etc.
 - Not legally binding; can change without notice and comment
- Look for directives from your pass-through entity/state

IDEA and Section 504

- Congressional Research Service Report, May 17, 2024

STUDENTS WITH DISABILITIES PROTECTIONS

- IDEA
 - Federal grants to states, subgrants to districts
 - To receive grant funding, requires range of services and procedural protections
- Section 504 of the Rehabilitation Act
 - Antidiscrimination provision in broader federal law for people with disabilities; ED has implementing regulations
 - Linked to any recipient of federal funding
- Americans with Disabilities Act
 - Broad protections to public (and may private) schools; not education-specific (but generally overlap with Section 504)
 - Linked to gov't services and public accommodations

DEFINING "DISABILITY"

- IDEA:
 - (1) categorical disabilities (13 categories), and
 - (2) educational impact / interference (need for special education and related services)
- Section 504 (ADA):
 - (1) has a physical or mental impairment which substantially limits one or more major life activity;
 - (2) has a record of such an impairment; or
 - (3) is regarded as having such an impairment

SERVICES

- IDEA:
 - Special education and related services necessary to provide a free appropriate public education (FAPE)
- Section 504 (ADA):
 - Reasonable accommodations, modifications and auxiliary aids and services
 - Protections from disparate treatment, harassment, retaliation, and interference

ENFORCEMENT

- IDEA:
 - Private right of action; administrative procedures (due process); may appeal to court (after administrative process)
 - State complaints
- Section 504 (ADA):
 - Private schools/ post-secondary schools, may proceed directly to court; public schools may need to go through IDEA due process/ administrative process first
 - OCR complaints

IDEA Allowability

BASIC FACTORS OF ALLOWABILITY - 200.403

To be allowable, a cost *must*:

- Be **necessary, reasonable** and **allocable**
- Comply with the cost principles and Federal award
- Be consistent with policies and procedures applying uniformly to Federal and non-Federal activities and costs
- Be consistently treated as either direct or indirect costs
- Be determined in accordance with GAAP
- Not be included or used to meet cost sharing / match requirements
- Be adequately **documented**
- **Administrative closeout costs may be incurred until due date of the final reports.** Must be liquidated prior to due date and charged to final budget period. All other costs must be incurred during approved budget period.

PERIOD OF PERFORMANCE

- LEAs and SEAs must obligate funds during the 27 months, extending from July 1 of the fiscal year for which the funds were appropriated through September 30 of the second following fiscal year. This maximum period includes a 15-month period of initial availability, plus a 12-month period for carryover.
- When an obligation occurs (is made) depends on the type of property or services that the obligation is for (34 CFR section 76.707).

IDEA - ACTIVITIES ALLOWED OR UNALLOWED

IDEA, Part B – An LEA may only use federal funds under IDEA, Part B for the excess costs of providing special education and related services to children with disabilities.

- “Excess costs are those costs for the education of an elementary school or secondary school student with a disability that are in excess of the average annual per student expenditure in an LEA during the preceding school year.”

A portion of these funds can be used under State-level Activities (§300.704(a)) for:

- (1) for services and aids that also benefit nondisabled children;
- (2) for early intervening services;
- (3) to establish and implement high-cost or risk-sharing funds; and
- (4) for administrative case management.

SUPPLEMENTARY AIDS AND SERVICES

- Supplementary aids and services (§300.42) means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §300.114 through §300.116. (Authority: 20 U.S.C. 1401(33))

HIGH NEEDS/COST OF SPECIAL EDUCATION AND RELATED SERVICES

- A high needs child is a child with a disability whose special education and related services cost more than 3 times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965).
- States may reserve for each fiscal year 10% of the amount of funds the state reserves for state-level activities under §300.704(b)(1) to:
 - Finance and make disbursements from the high cost fund to LEAs in accordance with 34 CFR 300.704(c) during the first and succeeding fiscal years of the high cost fund; and
 - Support innovative and effective ways of cost sharing by the state, by an LEA or among a consortium of LEAs, as determined by the state in coordination with representatives from LEAs. §300.704(c)(2)(ii).

ADMINISTRATIVE CASE MANAGEMENT

- An LEA may use funds received under Part B of IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities that is needed for the implementation of those case management activities. (Authority: 20 U.S.C. 1413(a)(4))

ALLOWABLE COSTS/COST PRINCIPLES

- Cost principles in 2 CFR Part 200, Subpart E (Cost Principles)
- The use of IDEA funds for the acquisition of equipment, or the construction or alteration of facilities, must be approved by ED based on a determination by ED that the program would be improved by allowing funds to be used for these purposes (20 USC 1404).

Questions to consider



How is professional development for special education personnel funded, and what specific initiatives are covered?



How are decisions made regarding the selection and acquisition of specialized instructional materials?



How is the effectiveness of the related services measured, and are there plans for improvement?



How are reasonable administrative costs associated with implementing and overseeing special education programs determined?



Are specific activities or initiatives implemented to encourage parental participation in the special education journey?

Supplement not Supplant

SEA SUPPLEMENT NOT SUPPLANT

- Part B funds must be used to supplement and increase the level of Federal, State, and local funds expended for special education and related services provided to children with disabilities, and in no case supplant those Federal, State and local funds.
- A State may use funds it retains for State admin and other State-level activities without regard to the prohibition on supplanting other funds.

LEA SUPPLEMENT NOT SUPPLANT

300.202

- Amounts provided to LEAs under Part B must be used to **supplement** State, local and other federal funds, **and not** to supplant those funds.

LEA SUPPLEMENT NOT SUPPLANT 300.202

- OSEP issued guidance in 2009 stating that if LEA meets its maintenance of effort requirement, then the LEA also meets the supplement not supplant requirement; there is no specific cost test.
- Incorporated into Compliance Supplement

LEA PERMISSIVE USE OF FUNDS

- Notwithstanding 300.202 (SNS), 300.203 (MOE), and 300.162 (Commingling), funds provided to an LEA may be used for:
 - Services and aids that also benefit nondisabled children
 - Early intervening services
 - High cost special education and related services

34 CFR 300.208

Procurement Standards under the IDEA

PROCUREMENT STANDARDS

- States follow their state procurement rules
- Subrecipients must follow the procurement standards at 2 CFR 200.318 through 200.326.
- Acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

CONFLICTS OF INTEREST – 200.318(C)

- Maintain written standards of conduct covering conflicts of interest actions of employees engaged in the selection, award, and administration of contracts.
- A conflict of interest arises when any of the following has a financial or other interest in the firm selected for award:
 - Employee, officer, agent, or board members
 - Any member of that person's immediate family
 - That person's partner
 - An organization which employs, or is about to employ, any of the above or has a financial interest in the firm selected for award
- Organizational Conflict
 - (applies to non-gov. entities)

CONFLICTS OF INTEREST – 200.318(C) (CONT.)

- No employee, officer, or agent may solicit nor accept gratuities, favors, or anything of monetary value from contractors
- However, recipients and subrecipients may set standards for when the financial interest is not substantial or gift is an unsolicited item of nominal value
 - Must define nominal value
- Standards of conduct must include any discipline actions to be applied in the event of any conflict of interest violations

RESPONSIBLE CONTRACTORS – 200.318(H)

- Must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract.
- Recipients and subrecipients must consider:
 - Contractor integrity
 - Public policy compliance
 - Proper classification of employees (see FLSA)
 - Past performance record
 - Financial and technical resources

COMPETITION – 200.319

- All procurements transactions under the Federal award must be conducted in a manner that provides full and open competition consistent with the standards of this section and § 200.320.
- Competition is the rule; noncompetitive procurements are the exception and only allowable in limited circumstances outlined at 200.320(c).
- Removes the prohibition on using geographic preferences.

METHODS OF PROCUREMENT – 200.320

- Informal procurement methods
 - Micro-purchases
 - Simplified acquisition procedures
- Formal procurement methods
 - Sealed bids
 - Competitive proposals
- Noncompetitive procurements



ASSISTIVE TECHNOLOGY GUIDANCE – JAN 2024

MYTH 19: Buying AT devices takes a long time and won't give timely services to the child as required.

ASSISTIVE TECHNOLOGY GUIDANCE – JAN 2024

- **FACT:** IDEA requires that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. This includes AT devices if they are required as part of the child's special education or related services.
- AT devices vary greatly in their availability, cost, and needed customization prior to their use by a child with a disability. Some AT devices may be downloaded and printed off a computer and shared with the child immediately, such as a graphic organizer. Other devices may be purchased at a local office supply store with minimal customization needed, such as a larger keyboard.
- Regardless of the type of AT device the child needs, IDEA requires that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

What should be
considered when
making technology
purchases?



IS THIS ALLOWABLE?

Technology purchases must follow the general rules for allowability. The LEA must show that the purchase of technology was necessary for the IDEA services and that purchase was reasonable. The LEA should also ensure that it has proper internal controls to adequately safeguard its technology, preventing loss, damage, or theft (e.g. sign-out/sign-in procedures; GPS tracking or other controls on devices; etc.).

2 CFR § 200.302(b)(4).

IS THIS ALLOWABLE?

- A school wants to purchase cameras and other related security devices to protect assistive technology and other equipment purchased with IDEA funds.





May IDEA funds be used to purchase iPads
(a specific brand of electronic tablet)?

- What if the IEP team decides they want a particular provider to provide the services? Do we need to go through procurement?



Inventory Management

EQUIPMENT AND REAL PROPERTY MANAGEMENT

- Non-federal entities other than states must follow 2 CFR sections 200.313(c) through (e)
- Acquisition of equipment and construction or alteration of facilities by the IDEA Part B programs must meet the prior approval requirements in, and be consistent with, the IDEA-specific requirements in 20 USC 1404 and 1412(a)(10)(B); and 34 CFR sections 300.144 and 300.718.

INVENTORY PROCEDURES – 200.313(D)

- Management and inventory 200.313(d)
- Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacing equipment) utilizing procedures that meet the following requirements:

INVENTORY PROCEDURES (CONT.) – 200.313(D)

(1) Property records

- Description, serial number or other ID, source of funding, title, acquisition date and cost, percent of Federal contribution, location, use and condition, and disposition date including sale price. Recipient is responsible for maintaining and updating property records when there is a change in status of the property.

(2) Physical inventory at least every two years (or more often, if required by State or your own policies)

(3) Control system to prevent property loss, damage, theft

- All incidents must be investigated and reported to the Federal agency or pass-through entity

(4) Regular maintenance procedures in place

(5) If authorized or required to sell property, proper sales procedures to ensure highest possible return

DISPOSITION OF SUPPLIES – 200.314

- If there is a residual inventory of unused supplies at the end of the period of performance exceeding \$10,000 in total aggregate value, and the supplies are not needed for any other Federal award, the State or LEA may retain or sell the supplies
- **Unused supplies** means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies

Effective Internal Controls

INTERNAL CONTROLS – 200.303

MUST:

- Establish, document, and maintain internal controls
- Comply with requirements (including U.S. Constitution)
- Evaluate and monitor compliance
- Take prompt action to correct noncompliance
- Take cybersecurity and other measures as appropriate to safeguard information including personally identifiable information (PII)

* Compliance Supplement, Internal Controls: “Control activities are the policies and procedures that help ensure the management’s directives are carried out.”

TIME AND EFFORT – 200.430(G)

Documentation must...

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices; and
6. Support distribution among specific activities or cost objectives.



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) OVERVIEW

Protecting data - not just
Facebook's problem



FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT

Regulations: 34 CFR Part 99

- Protects personal identifiable information in education records.
- Parents hold rights to educational records until rights transfer.
- Transfer occurs at 18 or as soon as the student attends a postsecondary institution 34 CFR 99.5(a)(1).

EDUCATION RECORDS – 99.3

- Records that are:
 1. Directly related to the student; and
 2. Maintained by and educational agency or institution, or a party acting for the agency or institution.
- Notable exceptions
- Health records and services to students with disabilities can count as education records.

FERPA - CONSENT

- Parent or eligible student must provide **signed and dated written consent** before an agency or institution discloses PII from education records.
- Model consent form [here](#).



FERPA CONSENT EXCEPTIONS

- Directory information
- School officials with a legitimate educational interest in the records
- Health and safety exception
- Other exceptions at 34 CFR 99.31

BEST PRACTICES – CONTRACT TERMS

- Security and Data Stewardship
 - Make clear ownership of data collected;
 - Describe each party's responsibility in the event of a breach;
 - Establish minimum security controls; and
 - Retain the right to conduct a security audit
- Detail data the provider will collect (forms, logs, cookies, etc.).

BEST PRACTICES – CONTRACT TERMS

- Data use, retention, disclosure, and destruction:
 - Define specific allowed uses of data for the provider, and bind the provider only to those uses.
 - Specify “direct control” provisions if parental consent not required.
 - Specify rules on sharing and destroying data
 - If the provider can retain de-identified data, explain that process.

BEST PRACTICES – CONTRACT TERMS

- Data access:
 - Specify who may access the student data (school/institution, parents, eligible students, etc.).
 - Specify who authenticates parents of eligible students when education records are shared (best practice – school should act as intermediary).

Maintenance of Effort

WHAT IS THE MFS REQUIREMENT?

Maintenance of State Fiscal Support (MFS):

- State requirement to not reduce the amount of state financial support for special education and related services made available for children with disabilities
 - Includes ALL State funds
 - May calculate per pupil or in the aggregate.
- Subsequent years rule

LEA MAINTENANCE OF EFFORT

The general rule:

- An LEA may not reduce the amount of local, or state and local, funds that it spent for the education of CWDs below the amount it spent for the preceding fiscal year.
- Subsequent years rule

Two components:

- Eligibility standard- 34 CFR 300.203(a)
- Compliance standard - 34 CFR 300.203(b)

LEA MOE: Four Ways to Calculate

Comparison
of total
expenditures
using
local funds
only

Comparison
of total
expenditures
using
State and
local funds

Comparison
of the per
pupil
amount
using
local funds
only

Comparison
of the per
pupil
amount
using
State and
local funds

ALLOWABLE EXCEPTIONS (REDUCTIONS) TO LEA MOE

1. The voluntary departure or departure for just cause, of special education or related services personnel;
2. A decrease in the enrollment of CWDs;
3. A CWD with an exceptionally costly program (as determined by SEA) left the LEA, aged out, or no longer needs the program;
4. The termination of costly expenditures for long-term purchases (equipment, construction, etc.);
5. The assumption of cost by the high-cost fund operated by the SEA

(34 CFR § 300.204)

LEA MOE EXCEPTIONS (REDUCTIONS)

For any fiscal year for which an LEA's IDEA allocation exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures for the education of children with disabilities otherwise required by not more than 50 percent of the amount of that excess

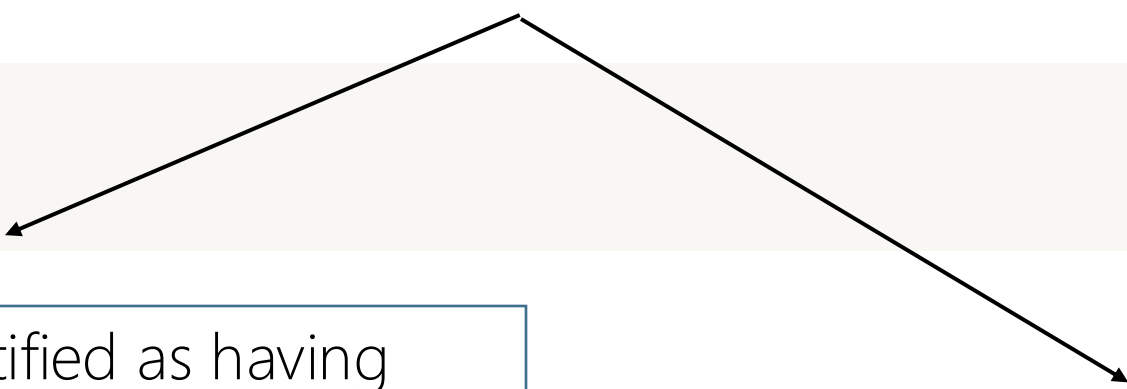
- Must use the reduction on ESSA allowable activities

(34 CFR § 300.205(d) & 300.226(a))

LIMITATIONS ON REDUCING LEA MOE

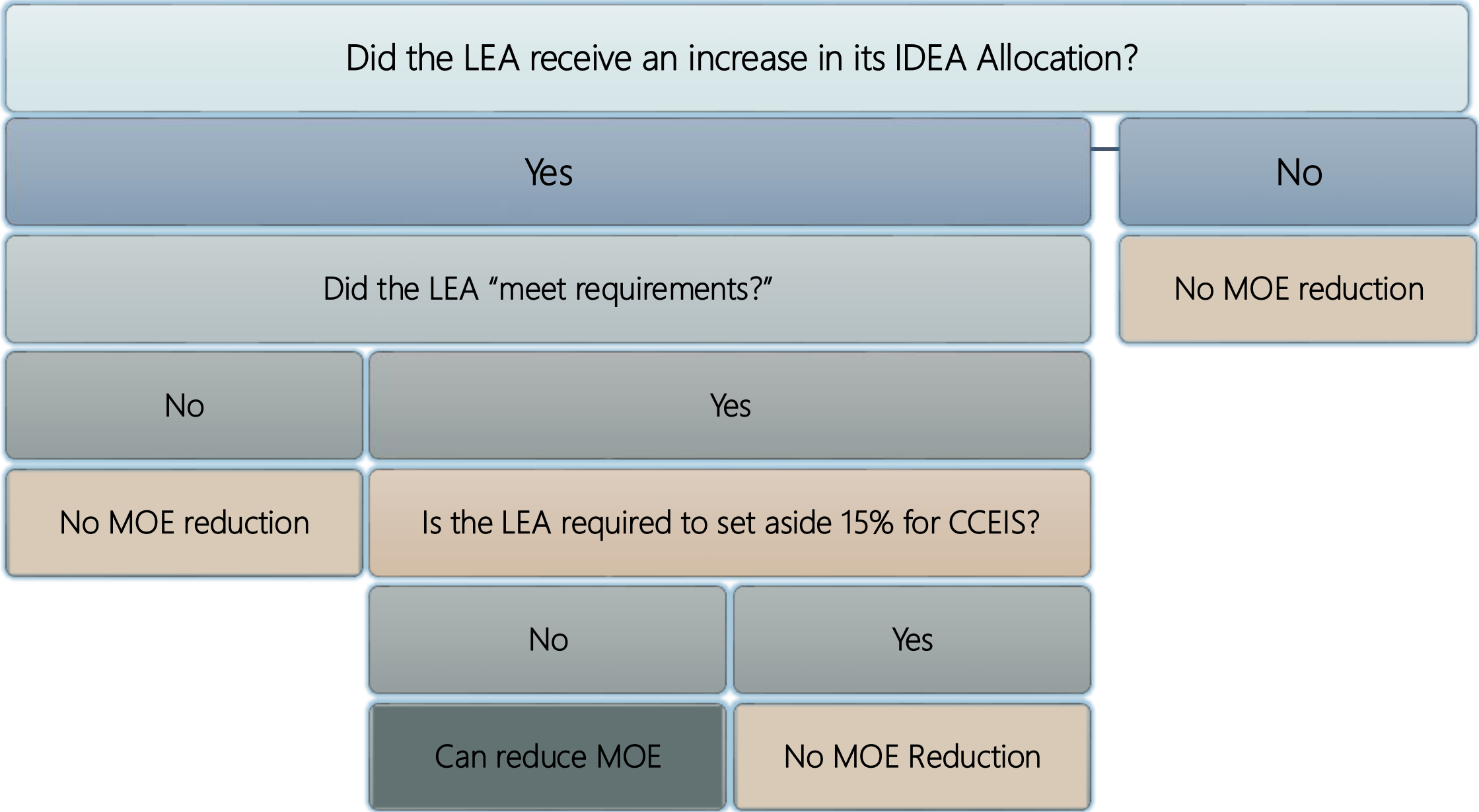
- If an LEA elects to set-aside funds for voluntary CEIS, the LEA must subtract any CEIS set-aside from the LEA MOE reduction amount.
- 34 CFR § 300.205(d) & 300.226(a))

THE LEA, HOWEVER, IS PREVENTED FROM REDUCING ITS MOE,
IF:

- 
1. The LEA is identified as having significant disproportionality
 - The LEA must set aside 15% of the IDEA funds for comprehensive CEIS (CCEIS) to address factors contributing to significant disproportionality.

OR

2. The LEA does not "meet requirements"



FAILING THE COMPLIANCE STANDARD

- SEA payback to ED with nonfederal funds:
 - Lesser of the amount of the failure, or the LEA's entire Part B subgrant for that fiscal year
 - Can use most favorable method
- SEA can use State procedures to recover funds from LEA

LEA MOE SUBSEQUENT YEARS RULE

If LEA **FAILS** to meet MOE requirements →

- the level of expenditures required of the LEA for the fiscal year **subsequent to the year of the failure is the amount** that would have been required in the absence of that failure
- **NOT** the LEA's reduced level of expenditures

(34 CFR § 300.203(c))

Equitable Services

EQUITABLE SERVICES & CHILD FIND

- “Each LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in nonpublic, including religious, elementary and secondary schools located in the school district served by the LEA.”
- LEA must identify all “parentally placed nonpublic school children” with disabilities

34 CFR § 300.131(a)

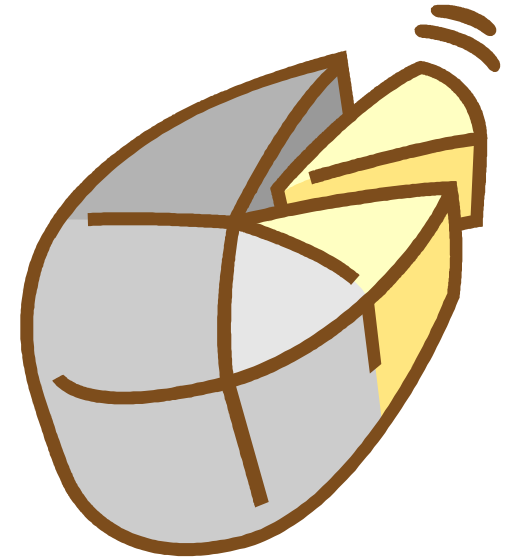
PARENTALLY-PLACED NONPUBLIC SCHOOL CHILDREN WITH DISABILITIES

- Who are these children?
 - Voluntarily enrolled by their parents in nonpublic schools
 - Not referred to nonpublic schools to receive FAPE
- Right to “equitable participation services” in IDEA, Part B
 - NO individual right to services, not entitled to FAPE
- Must spend proportionate share of Part B subgrant funds on providing special education and related services
 - LEA makes final decisions on services – type, how, where, by whom
 - “Services Plan” vs. IEP

34 CFR §§ 300.130 – 300.144

THE PROPORTIONATE SHARE SET ASIDE

- LEA must calculate the proportionate share for parentally-placed non-public school children with disabilities before earmarking funds for any early intervening activities in § 300.226. (Appendix B to regulations)
- How are numbers of parentally-placed non-public school children with disabilities derived?
 - **LEA** determines the number, after consultation requirements

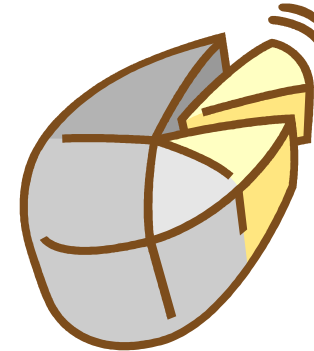


CALCULATING THE PROPORTIONATE SHARE

Number of **eligible
parentally-placed private
school CWDs
Total number of eligible
CWDs in the LEA (public
and private)**

=

**% of LEA IDEA Part B Grant
for Equitable Services to
Parentally-Placed CWDs**



CALCULATE THE PROPORTIONATE SHARE

- LEA Child Find Results:
 - A total of 20,000 SWDs
 - Of those, 2,000 are parentally placed SWDs
 - Half of the eligible parentally placed SWDs participate in equitable services
- What % of the LEA's IDEA, Part B Grant for Equitable Services should be used for providing equitable services to Parentally-Placed CWDs?

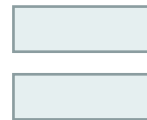


Applying the Calculation...

REMEMBER: Calculation based on students eligible, not just those participating.

**Number of eligible
parentally-placed private
school CWDs**
2,000

**Total number of eligible
CWDs in the LEA (public
and private)**
20,000



**% of LEA IDEA Part B
Grant for Equitable
Services to Parentally-
Placed CWDs**

0.1 = 10%

PROPORTIONATE SHARE CALCULATION (Q&A)

Question N-4: Can other Federal funds, including reimbursement that an LEA receives from a Federal funding source, be used to offset the proportionate share amount that the LEA must expend under IDEA Part B?

- No. Other Federal funding or reimbursements available from Federal funding sources may not be used to offset or reduce the proportionate amount of IDEA Part B funds that the LEA is required to expend on equitable services. See 34 C.F.R. § 300.133

PROPORTIONATE SHARE CALCULATION (Q&A)

Question O-1: May an LEA include administrative costs to meet the requirement to spend a proportionate share of IDEA Part B funds on children with disabilities placed by their parents in private schools?

- No. As stated in 34 C.F.R. § 300.133(a), each LEA is required to spend a proportionate share of IDEA Part B funds on providing special education and related services
- Administrative costs could not be included in the amount each LEA must spend to meet this requirement.
- Thus, an LEA may not expend the proportionate share of IDEA Part B funds on administrative costs.

PROPORTIONATE SHARE CALCULATION (Q&A)

Question O-4: May an LEA expend more than the amount of its IDEA Part B funds designated to be spent on equitable services for children with disabilities placed by their parents in private schools?

- Yes. Nothing in the IDEA prohibits an LEA from expending more than the proportionate amount of IDEA Part B funds designated to be spent on equitable services.
- As long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for an LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools.

LEA MAINTAINS CONTROL

Question O-2: May an LEA use IDEA Part B funds that are required to be expended on equitable services to make payments directly to a private school?

- No. IDEA Part B funds for equitable services may not be paid directly to a private school.
- Under 34 C.F.R. § 300.144(a), a public agency must control and administer the funds used to provide special education and related services to parentally-placed private school children with disabilities.
- Under 34 C.F.R. § 300.141, an LEA may not use IDEA Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school.

LEA MAINTAINS CONTROL

- LEA plans, designs, and implements program (through timely and meaningful consultation)
- LEA controls all finances
 - *Includes maintaining title to materials, equipment, and property purchased with those funds

DELIVERY AND PROVISION OF SERVICES

- Requirement is to provide “special education and related services (including direct services)”
 - Not required to provide direct services exclusively
 - Possibilities: consultative services, equipment or materials for eligible parentally placed CWDs, training for non-public school teachers and other non-public school personnel
 - No individual right to services
 - Does NOT include Child Find activities or administrative costs
- Provided directly by LEA or through non-public company
- May be on-site at non-public school, with safeguards

PERSONNEL QUALIFICATIONS (20 USC 1412(A)(14))

- Do NOT apply to:
 - Non-public school teachers or paraprofessionals
 - Third party contractor teachers or paraprofessionals
- DO apply to:
 - LEA teachers teaching non-public school students
 - LEA paraprofessionals
- G-3. States may exceed IDEA requirements and require teachers in non-public schools hold certain credentials or certifications if consistent with State law.

PROPORTIONATE SHARE CARRYOVER

Question O-5: If an LEA does not expend the entire proportionate share of IDEA Part B funds on children with disabilities placed by their parents in a private school that closes, what must the LEA do with those unexpended funds?

- As provided in 34 C.F.R. § 300.133(a)(3), if an LEA has not expended all of the proportionate share funds by the end of the fiscal year, the LEA must obligate the remaining funds for special education and related services to children with disabilities placed by their parents in private schools during a carry-over period of one additional year.
- A reduction in the number of children, for example, when a school closes after the start of the school year, does not excuse the LEA from spending its proportionate share 34 C.F.R. § 300.133(c)(2).

PROPORTIONATE SHARE CARRYOVER

Question O-6: If an LEA does not expend its entire proportionate share of IDEA Part B funds on children with disabilities placed by their parents in private schools by the end of the carry-over period, may the LEA return the unexpended funds to the SEA to be spent by the SEA or reallocated to another LEA?

- No. If, after the carry-over period, the LEA is unable to expend the entire proportionate share and assuming the LEA is in compliance with the child find, consultation, and other requirements related to parentally-placed private school children with disabilities in 34 C.F.R. §§ 300.129 through 300.144, the LEA may use the unexpended funds—at the end of the period during which the funds may be spent on parentally-placed private school children—to pay for other allowable IDEA Part B expenditures for that same LEA.

PROPORTIONATE SHARE CARRYOVER (CONT.)

Question O-6 (cont.):

- This situation should be the exception. We emphasize that it is the clear intent of the Act that LEAs spend these funds on providing special education and related services to parentally-placed private school children with disabilities, as provided in 34 C.F.R. §§ 300.129 through 300.144.
- Therefore, if the LEA is not in compliance with these requirements and has not expended the funds on parentally-placed private school children, the LEA must return the funds to the Department.
- The SEA is responsible for ensuring that LEAs comply with these requirements.
- In any event, there is no authority that permits the LEA to return the funds to the SEA to be spent by the SEA or reallocated to another LEA.

Carryover

“...LEA must spend” the proportionate share

- If fails to spend entire proportionate share for the given year → LEA must obligate remaining funds for equitable services for a carry-over period of one additional year.

At end of carry-over year?

- Assuming LEA is in compliance with Child Find, consultation, and other IDEA equitable services requirements → LEA may use the unexpended funds to pay for other allowable Part B expenditures for that same LEA.

MONITORING

Question O-8: Are States required to monitor an LEA's expenditures of IDEA Part B funds to meet the requirements for equitable services?

- Yes. As required by 34 C.F.R. §§ 300.149(a) and 300.600(b)(2), the SEA is responsible for ensuring that LEAs meet all program requirements under Part B of the IDEA.
- This includes the requirement that an LEA expend the proportionate share of IDEA Part B funds on providing special education and related services to parentally-placed private school children with disabilities in accordance with 34 C.F.R. §§ 300.129 through 300.144.

IDEA State Complaints: A Case Study on Equitable Services

REQUIREMENTS FOR STATE COMPLAINT PROCEDURES - 34 CFR 300.152(A)

SEAs must include in complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR 300.153 to:

- Carry out an independent investigation, if necessary;
- Give complainant opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide public agency with the opportunity to respond to the complaint, including, at a minimum: at the discretion of the public agency, a proposal to resolve the complaint; and an opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 CFR 300.506

REQUIREMENTS FOR STATE COMPLAINT PROCEDURES (CONT.)

- Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of Part 300; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the SEA's final decision.

REQUIREMENTS FOR STATE COMPLAINT PROCEDURES (CONT.)

- The SEA's procedures described in 34 CFR 300.151(a) must permit an extension of the 60-day time limit only if:
- Exceptional circumstances exist with respect to a particular complaint; or
- The parent (or individual or organization) and the public agency involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution, if available in the State.
- The SEA's procedures described in 34 CFR 300.152(a) must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

REQUIREMENTS FOR STATE COMPLAINT PROCEDURES (CONT.)

- The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.151.
- Each SEA must develop model forms to assist parents and...other parties in filing a State complaint under 34 CFR 300.151 through 300.153.
However, the SEA or LEA may not require the use of these model forms.
Parents, public agencies, and other parties may use the appropriate model form described in 34 CFR 300.509(a) or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements...in 34 CFR 300.153(b) for filing a State complaint. U.S. Department of Education Office of Special Education Programs.

IDEA STATE COMPLAINTS: A CASE STUDY

- 22 IDEA State complaints filed against 16 different districts, all related to the districts' provision of equitable services.
- State responsible for investigations and publishing reports with findings
- Allegations around:
 - Child Find
 - Consultation
 - Proportionate Share
 - Carryover Tracking and Spending

CHILD FIND

- Allegations
 - Child find info not posted online
 - District fails to adhere to statutory and State timelines for evaluations and eligibility determinations
 - LEA requires extensive data to proceed with an evaluation (burdensome paperwork, RTI data, MTSS data)
 - Inaccurately low child find count

CONSULTATION

- Allegations
 - Consultation was not timely or meaningful
 - Consultation did not occur throughout the year
 - Services were predetermined prior to consultation
 - Lack of opportunity for private school feedback
 - No written explanation of disagreement with private school requests
 - Proportionate share calculation and budget not shared during consultation

PROPORTIONATE SHARE

- Allegations
 - Proportionate share calculations were incorrect
 - Preschool children not counted in proportionate share calculation
 - Proportionate share calculation not communicated to private schools
 - Proportionate share spent on unallowable costs, including child find costs and administrative expenses

CARRYOVER

- Allegations
 - LEA is not expending the full proportionate share; high carryover year to year
 - LEA is not expending carryover during carryover period
 - LEA is returning most or all proportionate share carryover funds back to IDEA general budget after carryover period

THE INVESTIGATION

- Gather evidence from districts and from complainants
- Conduct interviews with districts and complainants
- Review and evaluate evidence against the allegations and IDEA requirements
- Draft report with factual background, findings, and corrective actions

THE INVESTIGATION (CONT.)

- Child find – collect data regarding dates of when evaluation requests and parental consent were received, when evaluations conducted, if/when eligibility was determined; collect data re specific child find activities.
- Assess whether LEAs met the 30-day State mandated timeline between when an evaluation is requested and when consent is received, and whether LEAs met the 60-day timeline between consent and evaluations.
- Assess whether LEAs conducted appropriate child find activities

THE INVESTIGATION (CONT.)

- Consultation – Gather data related to if/when consultation meetings were held, agendas, needs assessments for private school feedback, written explanation of services and of disagreements, email correspondence between LEA and private schools
- Evaluate whether consultation was timely and ongoing throughout the year; whether private school reps had meaningful opportunities to provide feedback or make requests; whether all required topics were discussed, whether LEA provided explanation of services and of disagreements, etc.

THE INVESTIGATION (CONT.)

- Proportionate Share – gather data related to proportionate share calculation, GANs, proportionate share budgets and expenditures, etc.
- Evaluate whether proportionate share was calculated correctly, including whether preschool children were counted; whether LEAs track the child count using eligibility or service plans, whether proportionate share was spent on allowable uses.

THE INVESTIGATION (CONT.)

- Carryover – gather data related to method of calculating, tracking, communicating, and spending carryover funds.
- Evaluate how LEA treats carryover funds; whether proportionate share is being properly expended; whether carryover funds are being expended first; when and how proportionate share funds are returned to IDEA budget.

DRAFTING REPORTS AND FINDINGS

- After gathering data and interviewing districts and complainants, State is responsible for drafting reports with findings and corrective actions.
- Ex. Finding on proportionate share might require LEA to recalculate proportionate share and add funds to the next year's proportionate share budget.
- Ex. Finding on consultation could require more frequent consultation meetings, written explanations of services and disagreements, needs assessment for private schools.
- Complainant may appeal to ED if unsatisfied with findings.

Differentiated Monitoring and Common OSEP Findings

DMS REPORTS

- OSEP monitors all IDEA Part C and B programs through its Differentiated Monitoring and Support 2.0 system (DMS.2.0), which is a cyclical monitoring process that focuses on states' general supervision systems.
- General supervision encompasses each state's responsibility to ensure that the state and its subgrantees and contractors meet the requirements of IDEA which includes:
 - Improving educational results and functional outcomes for all children with disabilities (and early intervention results); and
 - Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements related to improving early intervention results for infants and toddlers with disabilities and educational results for children and youth with disabilities.

DMS REPORTS (CONT.)

- DMS Framework: [DMS Framework with Intended Outcome, 2021 \(PDF\)](#)
- OSEP will examine the state's policies and procedures and state-level implementation of these policies and procedures regarding the following components of general supervision:
 - Monitoring and Improvement
 - Data, including the State Performance Plan/Annual Performance Report (SPP/APR)
 - Fiscal Management
 - Dispute Resolution

RECENT FINDINGS: STATE COMPLAINTS

- Virginia - [Differentiated Monitoring and Support Report: Virginia, Part B, March 13, 2024 \(PDF\)](#)
- State complaint procedures inconsistent with 34 C.F.R. §§ 300.33 and 300.153(b); 34 C.F.R. § 300.153(b); 34 C.F.R. § 300.152(a)(5); 34 C.F.R. §§ 300.11 and 300.152(a).
- State's model form for State complaints is inconsistent with 34 C.F.R. § 300.509(a) in that it requires information beyond what is required by the IDEA regulation at 34 C.F.R. § 300.153(b) without designating the additional information requested as optional.

RECENT FINDINGS: PRIOR WRITTEN NOTICE

- Virginia - [Differentiated Monitoring and Support Report: Virginia, Part B, March 13, 2024 \(PDF\)](#)
- OSEP finds that the State's guidance indicating that prior written notice is not required after an individualized education program (IEP) team meeting if the child's IEP has not been finalized is inconsistent with the requirements in 34 C.F.R. § 300.503(a).

RECENT FINDINGS: MONITORING AND IMPROVEMENT

- South Carolina - [2024 South Carolina Part B DMS Report \(PDF\)](#)
- State does not have a general supervision system that is reasonably designed to identify noncompliance with all IDEA Part B requirements in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600-300.602.
- State is not verifying that each LEA identified with noncompliance is correctly implementing the specific regulatory requirements based on a review of updated data and information.

RECENT FINDINGS: SIGNIFICANT DISPROPORTIONALITY

- South Carolina - [2024 South Carolina Part B DMS Report \(PDF\)](#)
- OSEP finds that the State's policies and procedures regarding the reasonable progress flexibility in identifying LEAs with significant disproportionality are not consistent with the requirement under 34 C.F.R. § 300.647(d)(2), which allows States to adopt the flexibility for an LEA that has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the State, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

RECENT FINDINGS: DISPUTE RESOLUTION

- New York - [New York, Part B, 2023 Report, September 21, 2023 \(PDF\)](#)
- NYSED does not ensure that public agencies issue timely due process hearing decisions as required in 34 C.F.R. § 300.515.
- NYSED does not provide adequate written notice to parents regarding the differences in the rights afforded to parents in IDEA due process hearings as compared to the rights afforded to parents who elect to participate in the accelerated review process. 34 C.F.R. § 300.504(c).
- NYSED does not have mechanisms in place to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable time set by the State as required under IDEA.

RECENT FINDINGS: FISCAL MANAGEMENT

- Colorado - [Colorado Part B DMS Report - May 16, 2024 \(PDF\)](#)
- State's GANs do not include the required information consistent with the requirements under 2 C.F.R. § 200.332(a)(1)(xi).
- State does not have a reasonably designed general supervision system, including policies and procedures, for subrecipient monitoring and fiscal management consistent with 2 C.F.R. §§ 200.332, 200.339 and 34 C.F.R. §§ 300.149, 300.600-602, 300.604.

FISCAL MANAGEMENT (CONT.)

- State does not ensure that its LEAs are correctly calculating the proportionate share for parentally-placed private school children with disabilities ages three through five for IDEA Section 619 and three through 21 for IDEA Section 611 in accordance with 34 C.F.R. § 300.133(a)(1) and (2).
- State has not established effective internal controls that provide a reasonable assurance that the SEA is managing those awards in compliance with Federal statutes, regulations, and the terms and conditions of those IDEA Part B awards consistent with 2 C.F.R. § 200.303(a).
- State does not have a mechanism in place for ensuring the correction of noncompliance identified in a management decision letter to determine whether an auditee has completed any required corrective action. 34 C.F.R. §§ 300.149, 300.600- 602, 300.604.

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