

# **DIFFERENTIATED MONITORING AND TIERED ENGAGEMENT**

## **Individuals with Disabilities Education Act (IDEA)**

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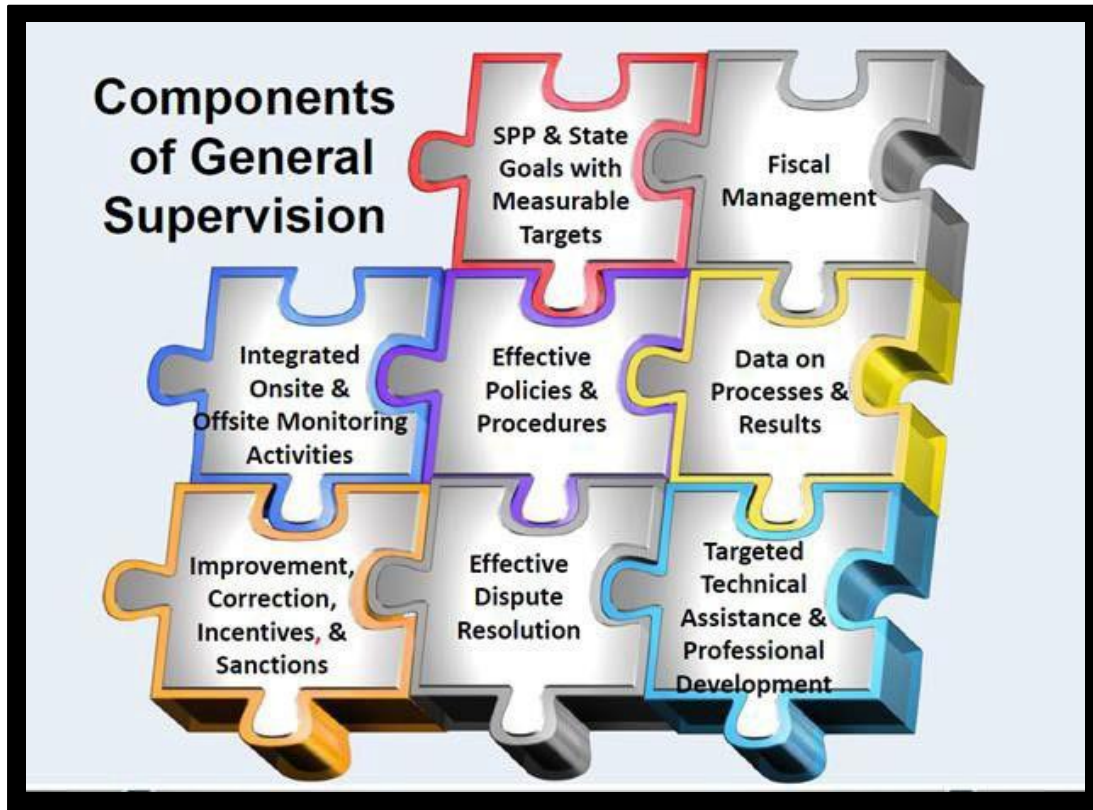
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# SECTION 1

## HISTORY OF MONITORING

### Why Do We Monitor?

The Individuals with Disabilities Education Act (IDEA) requires state educational agencies (SEAs), to oversee IDEA compliance by local educational agencies (LEAs), also referred to as local school districts. The oversight mandate is known as the IDEA “general supervision” requirement. The states’ general supervision authority requires SEAs to ensure that each student with an individualized education program (IEP) within the state receives a free appropriate public education (FAPE). The Kentucky Department of Education (KDE) is the SEA responsible for this work in Kentucky. SEAs provide general supervision through a variety of methods. The model below illustrates the eight components of the general supervision “puzzle”.



## **History of Monitoring for Compliance**

*Does the “old” system of compliance monitoring matter?* Yes, it does. Understanding the changes in the monitoring systems of the Office of Special Education Programs (OSEP) and KDE are important for improving outcomes for students with disabilities.

Until 2004, the United States Department of Education (USED), Office of Special Education Programs (OSEP) oversaw states’ IDEA compliance by conducting periodic on-site monitoring visits. KDE subsequently developed a parallel system for monitoring of local school districts. During the 1990s, KDE’s former Division of Exceptional Children Services (DECS) used 272 data points representing all IDEA regulatory requirements when monitoring districts on-site. Kentucky’s system was time-consuming and costly for the DECS and did not lead to better outcomes for students with IEPs.

In its early efforts at school district oversight, Kentucky’s IDEA monitoring process did not distinguish between major and minor violations of the law, nor did it consider student outcomes. KDE monitored all Kentucky districts within a five-year cycle. An entire branch of the DECS was devoted to the on-site monitoring of local school districts. Large numbers of DECS staff, as well as Regional Exceptional Children Consultants (RECCs), were devoted to traveling to districts and reviewing student due process records for compliance with 272 IDEA requirements. Staff then wrote reports and issued corrective action plans (CAPs).

USED received feedback from Congress about the IDEA monitoring system during the 1990s and early 2000s. The main takeaway was that students with IEPs had not improved their educational performance during the 25-plus years since the IDEA went into effect.

## **History of Monitoring - Focused Monitoring**

The most recent IDEA Reauthorization in 2004 [IDEA 20 USC 1416\(a\)\(2\)](#) emphasized the importance of monitoring and stated the primary focus of federal and state monitoring activities shall be on:

- improving educational results and functional outcomes for all children with disabilities; and
- ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

This is a significant change from the original system of monitoring for strict IDEA compliance. The 2004 Reauthorization completely revised the nature of federal and state monitoring.

During the early 2000s, OSEP initiated a new way of monitoring states that included looking at student outcomes. OSEP developed a self-assessment document for SEAs to complete. The self-assessment was based on areas OSEP recognized as most important in achieving improved outcomes for students with IEPs. Based on OSEP’s changes, DECS revised its method of monitoring and adopted an IDEA self-assessment for local school districts. The focus of monitoring decreased from 272 IDEA requirements to focusing on the areas in the IDEA that make a difference in student outcomes.

We can liken monitoring for compliance only versus student outcomes to building a house representing student results.

Compliance is the basic floor or foundation necessary to lead to better results for students.



OSEP's monitoring system continues to evolve. When the IDEA was reauthorized by Congress in 2004, the statute and subsequent 2006 federal regulations required *focused monitoring*, which included a new requirement: the State Performance Plan (SPP). The SPP is based on key areas or the SPP Indicators and if implemented correctly will lead to improved outcomes for students with IEPs. OSEP checks the accuracy of states' reporting of SPP indicators through a review of the states' Annual Performance Reports (APRs). ([Public Reporting of IDEA Part B Data](#))

KDE reports the SPP Indicator data to OSEP in the APR:

- Indicator 1 – Graduation
- Indicator 2 – Dropout
- Indicator 3 – Assessment
  - 3A – Participation rate for students with IEPs
  - 3B – Proficiency rate for students with IEPs against grade-level academic standards
  - 3C – Proficiency rate for students with IEPs against alternate achievements standards
  - 3D – Gap in proficiency rates for students with IEPs and all students against grade-level academic standards
- Indicator 4 – Suspension/Expulsion
  - 4A – Percent of LEAs with significant discrepancy
  - 4B – Percent of LEAs with significant discrepancy by race/ethnicity
- Indicator 5 – Educational Environments (School Age)
- Indicator 6 – Preschool Environments
- Indicator 7 – Preschool Outcomes
- Indicator 8 – Parent Involvement

- Indicator 9 – Disproportionate Representation
- Indicator 10 – Disproportionate Representation in Specific Disability Categories
- Indicator 11 – Child Find
- Indicator 12 – Early Childhood Transition
- Indicator 13 – Secondary Transition
- Indicator 14 – Post-School Outcomes
- Indicator 15 – Resolution Sessions
- Indicator 16 – Mediation
- Indicator 17 – State Systemic Improvement Plan

Compliance indicators 4B, 9, 10, 11, 12 and 13 require school districts to have zero instances of noncompliance.

In 2014, OSEP revised its accountability system to shift the balance from a system focused primarily on compliance to one with more emphasis on results, known as [Results Driven Accountability \(RDA\)](#).

**RDA's Three Components:**

- **State Performance Plan/Annual Performance Reports (SPP/APR)** which measures results and compliance. Results Indicators are designed to improve outcomes in targeted areas.
- **Annual Determinations** which reflect state performance on results, as well as compliance.
- **Differentiated monitoring and support** for all states, but especially low performing states.

In 2016, OSEP began providing [Differentiated Monitoring and Support System \(DMS\)](#) as part of its RDA system. DMS sets new standards for monitoring SEAs. DMS required KDE to switch its focus from monitoring for IDEA compliance to intentionally concentrating on the indicators with the greatest effect on student outcomes. This new type of monitoring is known as *focused monitoring*.

**Focused monitoring versus monitoring for compliance:  
If everything is important, nothing is important!**

In 2021, OSEP changed their process of monitoring based on internal evaluation and feedback from the states. OSEP introduced a phased monitoring system to enhance transparency and collaboration between states and OSEP known as Differentiated Monitoring and Support (DMS)

2.0). The focus on monitoring remained on results but monitoring for each state is conducted in three phases. [\[Overview of the Office of Special Education Programs' \(OSEP\) Differentiated Monitoring and Support \(DMS\) System\]](#)

- Phase 1: Document Request and Protocol Interviews
- Phase 2: On-site/Virtual Visit through issuing of the Monitoring Report: Based on information collected from Phase 1, OSEP will develop a plan for the on-site/virtual visit. The plan will focus on issues requiring clarification or further discussions.
- Phase 3: Close-out and Follow-up: In the year following Phase 2, the OSEP State Lead will work with the state to ensure corrections of any findings and technical assistance as needed.

Through the DMS 2.0 process, OSEP will examine the eight components of general supervision. [\(DMS Framework\).](#)

- State Performance Plan (SPP) and state goals with measurable targets
- Fiscal management
- Integrated on-site and off-site monitoring activities
- Effective policies and procedures
- Data on processes and results
- Improvement, correction, incentives and sanctions
- Effective dispute resolution
- Targeted technical assistance and professional development

## **SECTION 2**

### **KENTUCKY'S SYSTEM OF GENERAL SUPERVISION**

#### **Differentiated Monitoring and Tiered Engagement**

KDE's Office of Special Education and Early Learning (OSEEL) exercises its general supervision responsibilities for all public agencies involved in the provision of special education and related services. The general supervision authority requires OSEEL to ensure that each student with an IEP within the state receives FAPE. To meet this requirement, OSEEL conducts monitoring and tiered engagement activities to identify and correct noncompliance at both the individual student level and the systemic level.

Similar to OSEP's implementation of a continuous improvement process for the monitoring of states, OSEEL evaluates the effectiveness of its processes for monitoring LEAs. In 2022, OSEEL examined all general supervision processes for effectiveness. Based on LEA data, feedback from shareholders including listening sessions with Superintendents and Directors of Special Education (DoSEs), technical service providers, and the monitoring team, OSEEL revised its general supervision processes. To increase transparency, collaboration and effectiveness, OSEEL developed Differentiated Monitoring and Tiered Engagement (DMTE). DMTE encompasses all monitoring activities and includes a tiered support system with universal engagement for every local school district. DMTE differentiates monitoring and support for each LEA based on the LEA's unique strengths and areas for improvement.

Tier 1 – Universal: Statewide resources that are available to all local school districts in Kentucky

- Webinars
- OSEEL communications (e.g., News You Can Use and Dialogues with Directors)
- Online resources
- Guidance documents
- Bi-Annual DoSE Institute

Tier 2 – Targeted: Individualized, targeted assistance for districts with noncompliance discovered in self-assessments, indicator desk reviews and districts with noncompliance within alternate assessment desk reviews, justifications, assurances

- Individualized, targeted technical assistance
- Reviews of student IDEA due process records

Tier 3 – Intensive: In depth, intensive engagement for a small number of districts facilitated through one of the following processes: RFM, Comprehensive Special Education Review,



Kentucky Educational Collaborative for State Agency Children (KECSAC) and Correctional Facilities Monitoring, Management Reviews and Fiscal Reviews.

- Individualized, targeted technical assistance
- Monthly technical assistance calls
- On and off-site visits
- Reviews of student IDEA due process records

## **Differentiated Monitoring**

### ***Risk Focused Monitoring***

During the continuous improvement process, OSEEL considered the effectiveness of [Statewide Consolidated Monitoring](#) for IDEA on-site monitoring. In Statewide Consolidated Monitoring, each year a comprehensive risk assessment was used to identify local school districts for on-site monitoring. The risk assessment includes factors related to all federal programs. The level of risk to the special education program was only a small factor, therefore, local school districts that were at-risk for IDEA noncompliance may not have been identified. Local school districts' staff shared that many Directors of Special Education (DoSEs) fulfill several roles within different federal programs. Consequently, when all federal programs are consolidated into one visit, the DoSE and other staff spent many hours on preparations for the monitoring visit (e.g., gathering documentation, scheduling interviews) taking valuable time from the highest priority of serving children with disabilities. Based on these considerations and feedback, OSEEL developed the RFM process.

RFM is a differentiated monitoring process developed by OSEEL to meet IDEA's general supervision requirement; it is risk-based, cyclical and individualized. RFM includes desk reviews, on-site monitoring and utilizes the CAP process when noncompliance is identified. OSEEL uses data from [LEA Annual Determinations](#) and the [Risk Assessment Rubric](#) to identify local school districts' level of risk.

The *LEA Annual Determinations* data is based on:

- SPP Indicators 1, 2, 4B, 9, 10, 11, 12, 13;
- Participation in the Kentucky Summative Assessment (KSA) for 4th and 8th grade reading and math;
- Findings of noncompliance during an on-site visit; and
- Persistent failure or not able to comply with requirements of the IDEA and its implementing regulations.

The *Risk Assessment Rubric* reviews the following factors to determine the local school districts' levels of risk:

- Percentage of students receiving special education and related services;
- Timely and accurate submission of IDEA data annually;
- IDEA Formal Written Complaints with substantiated noncompliance;
- DoSE experience in the local school district;

- Significant Disproportionality under the IDEA (if a district has multiple findings for significant disproportionality, the highest determination category of those data is the area to which the overall risk score for this category is assigned); and
- Indicators 4A, 5A, 6A, 7, 8 and 14C.

The *Risk Assessment Rubric* also provides bonus points which reduce a local school district's level of risk. The bonus points are in four areas:

- Grant Management Application and Planning (GMAP) application submitted in a timely and substantially approvable form;
- Participation in the 1st Year DoSE Mentorship through OSEEL GUIDES;
- Participation in Transformation Zone (T-Zone) for the State Systemic Improvement Plan (SSIP) – Indicator 17; and
- Receiving a “Meets Requirements” for *LEA Annual Determinations* for the last five years

The data from the *LEA Annual Determinations* and *Risk Assessment Rubric* are combined to determine local school districts for RFM:

- *LEA Annual Determination* of “needs assistance,” “needs intervention” or “needs substantial intervention” and has not been monitored through a focused monitoring visit in the last two years; or
- *LEA Annual Determination* of “meets requirements,” scoring in the top 5% of local school districts on the *Risk Assessment Rubric* who has not been monitored through a focused monitoring visit in the last five years.

Next, OSEEL analyzes data for each local school district identified for RFM to determine the monitoring focus area(s), thus allowing for differentiated monitoring. OSEEL will conduct RFM throughout the school year instead of during a “season.”

#### Prior to the RFM Review

OSEEL will notify the local school districts identified for RFM as early as possible in the school year in which the monitoring visit will occur. Notification letters will be sent to each local school district's superintendent and the DoSE. The notification letter will include the dates of the on-site visit and the focus area(s) for monitoring. The week prior to the on-site visit, OSEEL will conduct desk reviews of student records. At least 14 days prior to the off-site desk reviews, OSEEL will send another letter to the local school district's superintendent and the DoSE notifying the district of specific details of the RFM review including:

- Date and time of arrival
- Schools to be visited
- Interview schedules, including names of individuals to be interviewed
- School visit schedules (if relevant)
- List of student records to be reviewed
- Documents to be made available to the monitoring team prior to the visit and
- Logistical information: The monitoring team will need a private meeting room and access to copy machine.

The number of student IDEA due process records to be reviewed for each local school district shall be based on the criteria in Table 1:

Table 1

Total District Child Count in Focus Area	Student Records to Review
100 or fewer	minimum of 10 (all files reviewed if there are less than 10)
101 or more	10% up to 100

The IDEA monitoring team will review student records through the Kentucky Student Information System (KSIS), known as Infinite Campus (IC) using the [Compliance Record Review](#) to conduct the review in the areas identified and communicated to the district. The monitoring team will analyze the compliance record review items to look for areas of strengths and noncompliance of the IDEA and its implementing regulations. The results of the analysis will inform the focus for interview questions. Interview questions will be written by the IDEA monitoring team prior to the visit. The lead will provide assignments to the monitoring team regarding interviews and building visits.

#### During the RFM Review

Once on-site for the review, the monitoring team will report to the central office at the scheduled time and will request to see the DoSE and the Superintendent. The monitoring visit lead will ensure introductions are made and will review the purpose of the visit. During the on-site visit, the monitoring team will conduct interviews, visit schools and request additional documentation that may be needed to complete the review.

#### Following the RFM Review

Fifteen business days following an on-site visit, OSEEL will issue a written report addressed to the local school district's superintendent and DoSE. The report will include notification of IDEA noncompliance discovered during the review and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. If noncompliance is found during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district.

The local school district will have the opportunity to submit additional information to verify or clarify issues related to the report, as allowed under [707 KAR 1:380, Section 1 \(4\)](#). The local school district must submit clarifying information within 10 business days from the issuance of the report. If the local school district does not submit additional information during the clarification period, the written report becomes final on day one. If the local school district elects to submit additional information during the clarification period, OSEEL will review the clarifying information and determine if changes to the report are necessary. If changes are

necessary, OSEEL will issue an amended report to the local school district within seven business days. If no changes are necessary, OSEEL will notify the local school district that the report stands as final.

Violations found in a district's due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district to ensure all noncompliance was remedied throughout the local school district. Correction of noncompliance is further addressed in Section 3 of this document.

In addition to RFM, OSEEL may conduct other types of monitoring to exercise the general supervision responsibilities.

- Comprehensive Special Education Reviews
- Management Audits
- Kentucky Educational Collaborative for State Agency Children (KECSAC) and Correctional Facilities Reviews
- SPP/APR Indicator Desk Reviews
- Fiscal Reviews
- LEA Annual Determinations Reviews
- Significant Disproportionality Reviews

### ***Comprehensive Special Education Review***

Comprehensive Special Education Review is a differentiated monitoring process conducted when exceptional concerns arise. Comprehensive Special Education Review includes desk reviews and on-site visits for a holistic review of the implementation of IDEA requirements. If noncompliance is identified, OSEEL will require a CAP and provide technical assistance and support to the local school district. OSEEL may be notified in several ways of allegations of significant IDEA-related concerns within a local school district.

Examples of concerns that might initiate a Comprehensive Special Education Review monitoring visit:

- High number of IDEA formal written complaints
- High number of parent calls
- Allegations concerning denials of FAPE
- Allegations concerning IDEA noncompliance
- Failure to timely comply with CAPs
- Failure to correct noncompliance within one-year
- Inaccurate data submissions
- Complaints submitted by the Office of Education Accountability (OEA)

The OSEEL’s Division of IDEA Monitoring and Results (DIMR) director submits recommendations for Comprehensive Special Education Review monitoring to the associate commissioner of OSEEL for approval. If approved, the DIMR director develops a comprehensive monitoring plan for review and approval by the associate commissioner. The final review and approval are provided by the commissioner of education following information provided by the associate commissioner.

Prior to the Comprehensive Special Education Review

OSEEL will notify a local school district identified for Comprehensive Special Education Review monitoring at least 14 days prior to the visit. Notification letters will be sent to the local school district’s superintendent and DoSE and will include specific details of the review:

- Date and time of arrival
- Schools to be visited
- Interview schedules, including names of individuals to be interviewed
- School visit schedules (if relevant)
- List of student records to be reviewed
- Documents to be made available to the monitoring team prior to the visit and
- Logistical information: The monitoring team will need a private meeting room and access to copy machine.

The number of student IDEA due process records to be reviewed for each local school district shall be based on the criteria in Table 2:

Table 2

Total District Child Count in Focus Area	Student Records to Review
100 or fewer	minimum of 10 (all files reviewed if there are less than 10)
101 or more	10% up to 100

The monitoring team will review student records either prior to the on-site visit through IC or while on-site in the local school district. The monitoring team will use the [Compliance Record Review](#) to conduct the review in the areas identified and will analyze the compliance record review items to look for areas of strengths and noncompliance with the IDEA and its implementing regulations. The results of the analysis will inform the focus for interview questions. Interview questions will be written by the monitoring team. Interview questions will be written by the IDEA monitoring team prior to the visit. The lead will provide assignments to the monitoring team regarding interviews and building visits.

### During the Comprehensive Special Education Review

Once on-site for the review, the monitoring team will report to the central office at the scheduled time and will request to see the DoSE and the Superintendent. The monitoring visit lead will ensure introductions are made and will review the purpose of the visit. During the on-site visit, the monitoring team will conduct interviews, visit schools and request additional documentation that may be needed to complete the review.

### Following the Comprehensive Special Education Review

Following an on-site visit, OSEEL will issue a written report addressed to the local school district's superintendent and DoSE. The report will be issued within three months or less following the visit. The report will include notification of IDEA noncompliance discovered during the review and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. If noncompliance is found during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district.

The local school district will have the opportunity to submit additional information to verify or clarify issues related to the report, as allowed under [707 KAR 1:380, Section 1 \(4\)](#). The local school district must submit clarifying information within 10 business days from the issuance of the report. If the local school district elects to submit additional information during the clarification period, OSEEL will review the clarifying information and determine if changes to the report are necessary. If changes are necessary, OSEEL will issue an amended report to the local school district within seven business days. If no changes are necessary, OSEEL will notify the local school district that the report stands as final.

Violations found in a district's due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district to ensure all noncompliance was remedied throughout the local school district. Correction of noncompliance is further addressed in Section 3 of this document.

### ***Management Audits***

KDE's Office of Continuous Improvement and Support (OCIS) leads management audit based on OCIS's protocols and processes. Consistent with [703 KAR 3:205](#) KDE may initiate a management audit of any school district that shall include an investigation of the district's compliance with state and federal statutes (including the IDEA), administrative regulations and local board policies. OSEEL accompanies OCIS staff to conduct the IDEA portion of the management audit.

Prior to the visit, the DIMR branch manager, in collaboration with the OSEEL data manager, will develop a district data profile based on data from determinations, risk assessment and Infinite Campus.

For new management audits, the DIMR director will use the data profile to propose focused monitoring areas to the associate commissioner for approval. For review management audits, the focus areas will be the same as the previous audit to ensure correction. The DIMR director will assign the audit lead and monitoring team members for the audit.

The OCIS is responsible for providing the notifications of a management audit. The DIMR contact will provide all requested information to the OCIS contact by the timeline OCIS establishes. All information communicated to the local school district must be routed to the OCIS contact. The OCIS associate commissioner or designee will communicate with the local school district regarding any needs.

The overall timeline for releasing the monitoring report for the audit is at the discretion of the OCIS. If OCIS deadlines conflict with IDEA requirements, the IDEA report will be released in accordance with the IDEA. Decisions pertaining to expediting timelines must be proposed by the DIMR director to the OSEEL associate commissioner. The OSEEL associate commissioner and the OCIS associate commissioner will determine a release date for the IDEA report. The report will include notification of IDEA noncompliance found during the review and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. If noncompliance is found during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district.

Violations found in a district's due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district to ensure all noncompliance was remedied throughout the local school district. Correction of noncompliance is further addressed in Section 3 of this document.

### ***Kentucky Educational Collaborative for State Agency Children (KECSAC) and Correctional Facilities Review***

This document uses the terms “public agency” and “public agencies” interchangeably to refer to both the local school districts, KECSAC and correctional facilities.

Through the KECSAC, the Commonwealth of Kentucky annually provides residential and community-based services to approximately 12,000 state agency children. The state agencies include: The Department of Juvenile Justice (DJJ), the Department for Community Based Services and the Department for Behavioral Health, Developmental and Intellectual Disabilities.

These departments operate, fund or contract services from a variety of programs including residential facilities, group homes and day treatment centers. State agency children also reside in private childcare and mental health programs operated by child welfare agencies and organizations.

KECSAC and correctional facilities monitoring is a cyclical monitoring process used by OSEEL to meet IDEA's general supervision requirement. KECSAC and correctional facilities monitoring provides technical assistance and support through desk reviews, on-site monitoring and the CAP process when noncompliance is found.

USED issued guidance in a [December 5, 2014 "Dear Colleague" letter](#) regarding responsibilities of agencies and protections under the IDEA specific to students in juvenile correctional facilities. As a result, the [State Correctional Educational Self-Assessment](#) (SCES), was released to assist SEAs in exercising their general supervision responsibilities to ensure a FAPE for all students within these facilities. Additional information is provided on the [USED website](#).

OSEEL adapted the indicators used for monitoring correctional facilities from the SCES document. The indicators are posed in question form under two headings: General Supervision (GS) and Public Agency (PA). The GS indicators are those for which OSEEL directly bears responsibility through its monitoring of KECSAC and correctional facilities. PA indicators are considered the primary responsibility of the public agencies. OSEEL is responsible for ensuring public agencies comply with these standards.

#### Prior to the KECSAC or Correctional Facilities Review

OSEEL will notify the local school district, KECSAC or correctional facility identified for monitoring at least 14 days prior to the review. Notification letters will be sent to the local school district's superintendent and DoSE and the facility's administrator and will include specific details of the review:

- Date and time of arrival
- Schools or facilities to be visited
- Interview schedules, including names of individuals to be interviewed
- School or facility visit schedules (if relevant)
- List of student records to be reviewed
- Documents to be made available to the monitoring team prior to the visit and
- Logistical information: The monitoring team will need a private meeting room and access to copy machine.

The number of IDEA student due process records to be reviewed for each local school district shall be based on the criteria in Table 3:



Table 3

Total District Child Count in Focus Area	Student Records to Review
100 or fewer	minimum of 10 (all files reviewed if there are less than 10)
101 or more	10% up to 100

The IDEA monitoring team will review student records prior to the on-site visit through IC. The monitoring team will use the [Compliance Record Review](#) and the GS and PA Indicators to conduct the review. The monitoring team will analyze the compliance review items to look for areas of strength and noncompliance of the IDEA and its implementing regulations. The results of the analysis will inform the focus for interview questions.

During the Review

Once on-site for the review, the monitoring team will report to the facility at the scheduled time and will request to see the facility administrator and local school district representative. The monitoring visit lead will ensure introductions are made and will review the reasons for the visit. The lead will answer any questions from staff. During the on-site visit, the monitoring team will conduct interviews, walkthrough the facility and request any additional documentation that may be needed to complete the review.

Following the Review

Thirty business days following the on-site visit, OSEEL will issue a written report addresses to the local school district’s superintendent and DoSE and the facility’s administrator. The report will include notification of IDEA noncompliance discovered during the review and the requirement that the noncompliance be corrected as soon as possible but in no case more than one year from identification. If noncompliance is found during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district and the facility.

The local school district or facility will have the opportunity to submit additional information to verify or clarify issues related to the report, as allowed under [707 KAR 1:380, Section 1 \(4\)](#). The local school district or the facility must submit clarifying information within 10 business days from the issuance of the report. If the local school district or facility do not submit additional information during the clarification period the written report becomes final on day one. If the local school district or facility elects to submit additional information during the clarification period, OSEEL will review the clarifying information and determine if changes to the report are necessary. If changes are necessary, OSEEL will issue an amended report to the local school district and the facility within seven business days. If no changes are necessary, OSEEL will notify the local school district and the facility that the report stands as final.

Violations found in a district’s due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district or facility is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district or facility corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district or facility to ensure all noncompliance was remedied throughout the local school district or facility. Correction of noncompliance is further addressed in Section 3 of this document.

***SPP/APR Indicator Desk Reviews***

Indicator Desk Reviews are used by OSEEL to meet the IDEA’s general supervision requirement to determine if local school districts have met the requirements of the SPP/APR compliance indicators.

Prior to the SPP/APR Indicator 11, 12 or 13 Desk Review

For Indicators 11, 12 and 13, all local school districts review their data for compliance and submit self-reported data to OSEEL. OSEEL randomly reviews student records for 10% of local school districts that report 100% compliance. OSEEL accomplishes randomization using an online randomizer. OSEEL does not conduct desk reviews for local school districts reporting noncompliance with Indicators 11, 12 or 13. Instead, OSEEL issues a report to the local school district based on the self-reported noncompliance, requires a CAP and provides technical assistance and support to the local school district.

OSEEL will notify the local school district’s superintendent and DoSE at least 14 days prior to a desk review for Indicators 11, 12 or 13.

Notification letters for desk reviews will include the following:

- Information specific to the area of review
- List of student records to be reviewed and
- Documents to be made available to the OSEEL prior to the review

The number of student IDEA due process records to be reviewed for each local school district shall be based on the criteria in Table 4:

Table 4

<b>Total District Child Count in Focus Area</b>	<b>Student Records to Review</b>
100 or fewer	minimum of 10 (all files reviewed if there are less than 10)
101 or more	10% up to 100

### During the SPP/APR Indicator 11, 12 or 13 Desk Review

The IDEA monitoring team will review student records through IC using the [Compliance Record Review](#) to conduct the review in the areas identified. The monitoring team will analyze the compliance record review items to determine noncompliance with the IDEA and its implementing regulations.

### Following SPP/APR Indicator 11, 12 or 13 Desk Review

Fifteen business days following a desk review, OSEEL will issue a written report addressed to the local school district's superintendent and DoSE. The report will include notification of IDEA noncompliance discovered during the review and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. If noncompliance is identified during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district.

The local school district will have the opportunity to submit additional information to verify or clarify issues related to the report as allowed under [707 KAR 1:380, Section 1 \(4\)](#). The local school district must submit clarifying information within 10 business days from the issuance of the report. If the local school district elects to submit additional information during the clarification period, OSEEL will review the clarifying information and determine if changes to the report are necessary. If changes are necessary, OSEEL will issue an amended report to the local school district within seven business days. If no changes are necessary, OSEEL will notify the local school district that the report stands as final.

Violations found in a district's due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district to ensure all noncompliance was remedied throughout the local school district. Correction of noncompliance is further addressed in Section 3 of this document.

### Prior to the SPP/APR Indicator 4B, 9 or 10 Desk Review

Section 618 of IDEA requires that each State submit data about children with disabilities, ages 3 to 21, who receive special education and related services under Part B of IDEA.

OSEEL conducts desk reviews for Indicators 4B, 9 and 10 through a two-step review process involving local school districts' Section 618 data under Part B of IDEA.

- The OSEEL data manager analyzes Section 618 discipline data for students with disabilities and IDEA December 1 Child Count to determine if local school districts' data for Indicators 4B, 9 and 10 reveal the following:

- Are local school districts suspending/expelling a disproportionate number of students with IEPs who are in certain racial or ethnic groups? (Significant discrepancy standard - Indicator 4B)
- Are local school districts identifying a disproportionate number of students in certain racial/ethnic groups as eligible for IDEA services? (Disproportionate representation standard - Indicator 9)
- Are local school districts identifying a disproportionate number of students in certain racial/ethnic groups in specific disability categories? (Disproportionate representation standard - Indicator 10)
- Depending on the indicator, the OSEEL data manager calculates each local school district's data for significant discrepancy or disproportionate representation. OSEEL then conducts desk reviews for the local school districts whose data indicate significant discrepancy or disproportionate representation.

During the SPP/APR Indicator 4B, 9 or 10 Desk Review

OSEEL examines records of students in the affected racial or ethnic group to determine whether the district followed applicable IDEA requirements. For Indicator 4B, OSEEL conducts desk reviews to determine if the local school district's policies, procedures, or practices contributed to the significant discrepancy and do not comply with the requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. OSEEL reviews the records of students who may have been over-identified as eligible for IDEA (Indicator 9) or as eligible in specific disability categories (Indicator 10) to determine if the disproportionate representation is the result of inappropriate identification.

The IDEA monitoring team will review IDEA student due process records through IC using the Compliance Record Review to conduct the review in the areas identified. The monitoring team will analyze the compliance record review items to determine noncompliance of the IDEA and its implementing regulations.

Following SPP/APR Indicator 4B, 9 or 10 Desk Review

Fifteen business days following a desk review, OSEEL will issue a written report addressed to the local school district's superintendent and DoSE. The report will include notification of IDEA noncompliance discovered during the review and the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification. If noncompliance is found during the review, OSEEL will require a CAP and provide technical assistance and support to the local school district.

The local school district will have the opportunity to submit additional information to verify or clarify issues related to the report, as allowed under [707 KAR 1:380, Section 1 \(4\)](#). The local school district must submit clarifying information within 10 business days from the issuance of the report. If the local school district elects to submit additional information during the clarification period, OSEEL will review the clarifying information and determine if changes to the report are necessary. If changes are necessary, OSEEL will issue an amended report to the

local school district within seven business days. If no changes are necessary, OSEEL will notify the local school district that the report stands as final.

Violations found in a district's due process files totaling less than a 95% compliance rate are deemed systemic. In the event that the review of one file yields less than a 95% compliance rate then two or more non-compliant files must be documented to determine systemic noncompliance. OSEEL requires documentation of systemic correction in addition to individual correction of noncompliance, as specified in [OSEP QA 23-01](#).

If a local school district is cited for IDEA noncompliance, OSEEL is charged with ensuring the local school district corrects both individual student noncompliance and systemic noncompliance through the CAP process. OSEEL must also review updated data from the local school district to ensure all noncompliance was remedied throughout the local school district. Correction of noncompliance is further addressed in Section 3 of this document.

### SPP/APR Outcome Indicators

In evaluating the results of SPP outcome indicators, states collect and compile Section 618 data from local school districts. OSEEL uses its Section 618 data in the initial year of the SPP as its baseline data, then it projects annual targets for each SPP indicator. OSEP populates the yearly SPP monitoring report, known as the Annual Performance Report (APR) with each state's Section 618 data.

OSEEL then examines its APR data to determine whether the state met each SPP indicator target. If the target was not met, OSEEL analyzes the data, and reports the reason for not meeting the data in the APR.

### ***Fiscal Reviews***

The process for fiscal reviews is documented in the OSEEL *IDEA Fiscal Monitoring Manual*.

### **LEA Annual Determinations**

Pursuant to [Section 1416 \(d\)\(2\)\(A\)](#) of the IDEA states are required to make determinations annually on the special education performance of local school districts within the state in relation to established targets found in the SPP/APR. States must make determinations consistent with the same levels used by OSEP in reporting state determinations as follows:

- Meets Requirements;
- Needs Assistance;
- Needs Intervention; or
- Needs Substantial Intervention.

The [Kentucky Determinations Process](#) describes how OSEEL establishes *LEA Annual Determinations*.

### **Significant Disproportionality and Comprehensive Coordinated Early Intervening Services (CCEIS)**

#### Significant Disproportionality

Under [34 CFR 300.647](#), each state education agency (SEA) is required to conduct an examination of racial and ethnic data of all seven federal racial and ethnic subgroups individually across 14 separate categories (98 unique categories for possible identification). These categories include:

Identification (seven separate categories)

- Identification as a child with a disability
- Identification in any of six specific disabilities:
  - Functional Mental Disability Mild Mental Disability
  - Emotional Behavioral Disability
  - Other Health Impairment
  - Specific Learning Disability
  - Autism
  - Speech or Language Impairment

Placement (two separate categories)

- Placement in the regular class setting less than 40% of the educational day
- Placement in a separate school or residential facility

Removals of children with disabilities from their educational setting due to a disciplinary event (five separate categories)

- In-School removals totaling up to 10 cumulative days during the school year
- Out-of-School removals totaling up to 10 cumulative days during the school year
- In-School removals totaling more than 10 cumulative days during the school year
- Out-of-School removals totaling more than 10 cumulative days during the school year
- Total of all disciplinary removal events during the school year regardless of type

Examination of racial and ethnic data of all seven federal racial and ethnic subgroups individually across 14 separate categories (98 unique categories for possible identification). These categories include:

Identification (seven separate categories)

- Identification as a child with a disability
- Identification in any of six specific disabilities:
  - Functional Mental Disability Mild Mental Disability

- Emotional Behavioral Disability
- Other Health Impairment
- Specific Learning Disability
- Autism
- Speech or Language Impairment

Placement (two separate categories)

- Placement in the regular class setting less than 40% of the educational day
- Placement in a separate school or residential facility

Removals of children with disabilities from their educational setting due to a disciplinary event (five separate categories)

- In-School removals totaling up to 10 cumulative days during the school year
- Out-of-School removals totaling up to 10 cumulative days during the school year
- In-School removals totaling more than 10 cumulative days during the school year
- Out-of-School removals totaling more than 10 cumulative days during the school year
- Total of all disciplinary removal events during the school year regardless of type

In Kentucky, a calculation for significant disproportionality determination is defined as:

- Minimum cell size of 10 (Cell size refers to the number of students identified in the area examined). Cell size represents the numerator in the risk ratio calculation.
- Minimum N-size of 30 (N-size refers to the number of students who could have been identified in the area examined). N-size represents the denominator in the risk ratio calculation.
- Risk Ratio Threshold 3.0 (The risk of the racial or ethnic group examined must be more than 3.0 times likely to be identified for a particular outcome than students in all other racial or ethnic subgroups).
  - In order to be identified for significant disproportionality, this ratio must exceed the 3.0 threshold for the same category and same race/ethnicity for three-year consecutive years.
  - Once a district is identified, the district may be excluded from identification if, over the three-year period, data collected shows reasonable progress reflected by a 0.05 decrease in the risk ratio for each of the last two years examined.
  - If the LEA's race/ethnicity data being analyzed fails to meet the minimum cell size or N-size significant disproportionality cannot be calculated.

- **Alternate Risk Ratio:** The alternate risk ratio is used when an LEA comparison data for either the cell size or N-size does not meet the minimum requirement. When using an alternate risk ratio, the LEA data for the race/ethnicity being examined is compared to state data for students, not of that race/ethnicity. If statewide data in the comparison group fails to meet either cell size or N-size significant disproportionality cannot be calculated.

### Comprehensive Coordinated Early Intervening Services (CCEIS-Mandatory, 34 CFR 300.646)

CCEIS are for children in those groups that were significantly over-identified from age 3 through grade 12. These set aside funds should focus particularly, but not exclusively, on the children in those groups that were significantly over-identified. These funds may be used to serve children not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment as well as children with disabilities.

The Individuals with Disabilities Education Act (IDEA) and its implementing regulations identify the activities that may be included as: (1) professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software; and (2) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction. 20 U.S.C. §1413(f)(2); 34 C.F.R. §300.226(b).

#### Resources

- [IDEA Data Center \(IDC\) Comparison of CEIS and CCEIS](#)
- [IDC CEIS/CCEIS Practice Guide](#)

### Coordinated Early Intervening Services (CEIS-Voluntary, 34 CFR §300.226)

CEIS are provided to assist students in K-12th grades (with a particular emphasis on students in K-3rd grades) who are not currently identified as needing special education or related services, but who need additional academic and/or behavioral assistance to enable them to be successful in a general education environment. In 2004, Congress authorized the use of a limited amount of a district's federal Individualized Disabilities Education Act (IDEA) funds to be used for the purpose of providing CEIS to reduce academic and behavioral problems in the general education environment, thereby leading to fewer and more appropriate referrals for special education services.

IDEA permits, and in some instances, requires school districts to use a portion of funds provided under Part B of the IDEA for the purpose of CEIS. Federal regulations specify (1) how and on whom CEIS funds may be spent; (2) the reporting requirements for school districts providing CEIS; (3) the requirement for using CEIS funds by a district that is identified as having significant disproportionality; and (4) the relationship of CEIS to maintenance of effort



requirements. Any district may opt to use up to, but not exceeding, 15 percent of the total amount of its 611 and 619 Part B IDEA funds for CEIS. More information can be found on the [Significant Disproportionality and Comprehensive Coordinated Early Intervening Services \(CCEIS\)](#) webpage.

### **Dispute Resolution**

The IDEA and its implementing regulations require states to have a system to resolve disputes between parents of students with disabilities and local school districts. Parties may resolve IDEA disputes through:

- Mediation;
- A Formal Written Complaint; or
- A Due Process Hearing

### ***Mediation***

Mediation is a voluntary and non-adversarial dispute resolution process. The meeting is facilitated by an impartial trained mediator and is focused on the needs of the student. The parent and district meet and work together to settle the dispute and develop a final agreement. Mediation can be requested at any time and does not rule out the use of the formal written complaint or due process hearing.

### ***Formal Written Complaints***

A formal written complaint is a written statement alleging that a school district has violated a requirement of state or federal special education law. The KDE has 60 days from the date a formal complaint is filed to investigate and issue a written decision addressing each allegation in the complaint. A formal written complaint must be filed with OSEEL within one year of the alleged violation and may be filed by a parent of a student with a disability or by any organization or person who believes IDEA has been violated. A formal written complaint must contain all of the following:

- A statement that the LEA or other public agency providing educational services to identified students has violated a requirement of 707 KAR Chapter 1 or IDEA regulations;
- The facts on which the statement is based;
- A signature and contact information for the complainant;
- Name and residence of the child, or contact information, if the child is homeless under the McKinney-Vento Homeless Assistance Act, [42 U.S.C. Section 11431](#);
- Name of the school the child is attending;
- A description of the nature of the problem including facts related to the problem;
- A proposed resolution of the problem to the extent it is known and available to the complainant at the time of the filing; and
- Information indicating that the violation did not occur more than one (1) year prior to the date of the receipt of the complaint.

### ***Due Process Hearing***

A due process hearing is a process in which a hearing officer resolves IDEA disagreements between parents and the school districts. The hearing may be requested on any matter involving:

- Identification;
- Evaluation;
- Educational placement; and
- The provision of a FAPE.

A due process hearing must be requested in writing and must be filed within three years of the date the parent or district knew or should have known about the issue. A due process hearing request must include all of the following:

- The name of the child;
- The address of the residence of the child;
- The name of the school the child is attending;
- A description of the nature of the problem; and
- Facts relating to the problem and a proposed resolution to the extent known and available to the parents at the time.

Before a hearing may be held, the parties are required to hold a Resolution Meeting so the district has an opportunity to resolve the dispute that led to the hearing request. The Resolution Meeting is not held if the parties agree to Mediation or if the parties agree to waive the meeting.

Additional information and forms can be found on the [Dispute Resolution](#) webpage.

## **SECTION 3**

### **CORRECTION OF NONCOMPLIANCE**

#### **Corrective Action Plan Development**

Following any review, OSEEL issues a written report to the local school district. If noncompliance is identified during the review, the school district must develop a CAP for review and approval by OSEEL. The local school district may seek technical assistance with the development of the CAP from its Special Education Regional Technical Assistance Center (SERTAC).

The local school district must submit the CAP to OSEEL no later than 30 business days after receiving the initial written report of noncompliance. The CAP must include a statement of the noncompliance to be corrected, the steps the local school district will take to correct the problem and how compliance will be documented. OSEEL must notify the local school district of the status of the CAP (whether the CAP is approved or needs revisions) within 30 business days of receiving the CAP. If OSEEL rejects the CAP, the local school district will have 15 business days to submit a revised CAP.

#### **Corrective Action Plan Implementation**

The local school district will be assigned a CAP lead from OSEEL. Following the written notification of noncompliance to the local school district, the CAP lead will contact the local school district's DoSE and will provide the DoSE with the CAP template and root cause analysis template. As part of the CAP process, the local school district submits a root cause analysis of all systemic areas of noncompliance.

The local school district must correct any noncompliance **as soon as possible** within 12 months from the date of the notification of the noncompliance. The local school district must make corrections at the individual student and systemic levels and must be able to show it is systemically in compliance for areas originally identified for noncompliance.

The CAP lead will contact the DoSE monthly by phone or e-mail regarding CAP progress. Local school districts must submit documentation of the status of CAP activities to the CAP lead contingent upon CAP requirements. Districts are encouraged to submit documentation as it becomes available instead of waiting for the quarterly updates. The district must submit any requests for amendments to CAPs (after initial CAP approval) for approval by the DIMR director, including amending internal timelines. The DIMR director will not extend any CAP past the one-year timeline. The CAP lead will document CAP progress and communicate to the school district via e-mail on the CAP form, which can be found in [Appendix B](#).

The CAP lead will document all evidence and clarification submitted by the school district in the "District Updates and Evidence" column of the CAP form. The CAP lead will link any documents that are not student specific. This includes but is not limited to, attendance sign in sheets, copies of trainings, updated policies and meeting notes. All feedback from the CAP lead

will be dated and documented in the “DIMR Feedback” section of the CAP. Examples of feedback include but are not limited to:

- 11/23/20—The CAP lead received and reviewed training materials. The CAP lead verified training materials meet compliance standards as it pertains to the CAP.
- 1/04/21—The CAP lead reviewed board meeting minutes and determined the minutes meet the requirements of the CAP.
- 2/15/21—All CAP activities for Issue 1.4 are complete. No further action is needed by the local school district.
- 3/24/21—All CAP activities were completed. The CAP lead is ready to review local school district updated data.
- 4/1/21—The CAP lead reviewed updated data and verified data as 100% compliant. The CAP lead is recommending the CAP for closure.

If the local school district misses a timeline without advance approval from the DIMR director, the CAP lead must report the missed timeline to the DIMR director within two business days. If a local school district fails to respond to communication or requests made by the CAP lead, or misses timelines, The CAP lead will record this in the *Contact Log* found in [Appendix C](#). OSEEL does not require CAP leads to complete the contact log when the local school district demonstrates it is on track for CAP completion. If a local school district misses more than one timeline, the DIMR director will schedule a call with the CAP lead and the DoSE to discuss the status of the CAP, encourage voluntary compliance and provide technical assistance.

### **Corrective Action Plan Closure**

According to [34 CFR § 300.600 State Monitoring and Enforcement](#), “the State must ensure that any noncompliance is corrected *as soon as possible*, but in no case more than one year from identification” (emphasis added). Before OSEEL can conclude and report that noncompliance has been corrected, it must first verify that the local school district:

- has corrected each individual case of noncompliance, and
- is systemically in compliance with the specified regulatory requirements (i.e., subsequently achieved 100% compliance), based on the OSEEL review of updated data.

To document the local school district has corrected student level noncompliance OSEEL reviews corrected student records to ensure compliance. To ensure the local school district has achieved systemic compliance, OSEEL will review additional student records. This is called a review of updated data. The number of additional student records to be reviewed is based on the Table 5. The individual student records will be randomly selected for a review of updated data using an online randomizer.

**Table 5**

<b>Level of Compliance Per Issue</b>	<b>Number of Identified IDEA Students in area reviewed</b>	<b>Number of Updated Data Student Records to Review</b>
100%	N/A	0
90-100%	100 or fewer	5
	101-1,000	10
	1,001 or more	20
0-89%	100 or fewer	10
	101-1000	20
	1,001 or more	30

Note: “Issue” refers to areas of concern and not each individual item marked “NO” during a record review. For example, Blue County School District has:

- Child Count of 595 students; and
- Sixty student IEPs reviewed for the OSEP Related Requirements pertaining to suspensions and expulsions, forty-nine IEPs were found in compliance, resulting in a compliance rate of 49/60 or 82%.
- In this scenario, once corrections were verified for the 11 noncompliant student records, Blue County would have to submit an additional 20 student records and be verified as 100% compliant before the local school district’s CAP could be closed. If any of the 20 records are still not in compliance, the district must ensure each student-specific violation of the IDEA has been corrected. Additional records must then be submitted. This process continues until all records submitted are verified by the CAP lead as 100% compliant in the areas originally cited for noncompliance.

If any student record is found noncompliant during the review of updated data, the district will be required to correct the noncompliance before the CAP can be closed. OSEEL will require the district to submit additional student records. All student records submitted according to the table above must be verified at 100% compliant in the areas originally cited before the CAP can be closed.

Once the CAP lead verifies completion of all CAP activities and the updated data review process is complete, the CAP lead will recommend the CAP for closure to the DIMR branch manager. The DIMR branch manager meets with the CAP lead, reviews the CAP information and approves or disapproves the CAP closure. The CAP lead will notify the district by email the CAP is closed or if additional steps are required.

### **Procedures for Sustained Noncompliance**

Should a district go over the required one-year timeline for CAP closure, the DIMR director will refer to [707 KAR 1:380, Sections 3 and 4](#) for next steps for possible sanctions (Appendix F). OSEEL will provide support including consultation, training and technical assistance no less than monthly through a CAP meeting with the local school district. Required attendees will include:

- The DIMR director or assistant director
- The DIMR branch manager
- The CAP lead
- The local school district's DoSE
- The SERTAC director
- Other personnel as determined by the DIMR director or local school district DoSE

### **Virtual Monitoring Considerations**

OSEEL is required to comply with federal monitoring requirements and will put virtual measures in place when appropriate and necessary. The DIMR director will consult with OSEEL's associate commissioner to determine when virtual monitoring steps are appropriate and necessary. These practices will align with traditional monitoring practices listed in this document but utilize offsite and/or virtual methods to accomplish the monitoring goals. The practices will be fluid and based on the current conditions in the local school district but may include:

- Desk reviews of due process, discipline and other student records
- Phone or web-based interviews of school and district staff
- Live video facility walkthroughs
- Hybrid visits including:
  - Limited on-site visits to retrieve or view select records or files
  - Limited on-site visits to view seclusion rooms, alternative schools, conduct live video tours
  - Fully web-based monitoring.

## **APPENDIX A**

### **SUPPORTING DOCUMENTATION**

- [Questions and Answers on Monitoring, Technical Assistance and Enforcement \(June 2009\)](#)
- [Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act](#)
- [SPP / APR Related Requirements](#)
- [Statewide Consolidated Monitoring Process](#)
- [Electronic Code of Federal Regulations - Uniform Grant Regulations](#)
- [2022 Determination Letters on State Implementation Of IDEA](#)
- [§ 300.603\(b\)\(1\)\(ii\) Secretary's review and determination regarding State performance](#)
- [20 U.S.C. 1221 20 U.S. Code § 1221 - Short title; applicability; definitions](#)
- [General Education Provisions Act \(GEPA\) Section 452](#)
- [Compliance Record Review Document](#)
- [IEP Guidance Document](#)
- [Kentucky Department of Education Style Guide](#)  
(Note: Online access to this document requires a KDE email address and login credentials.)
- [707 KAR 1:380 - Monitoring and Recovery of Funds](#)
- [OSEP "Dear Colleague" Letter - December 5, 2014](#)
- [State Correctional Educational Self-Assessment](#)

## APPENDIX B CAP FORM TEMPLATE

### CORRECTIVE ACTION PLAN (CAP) xxxxxxx School District

District must demonstrate correction of all findings of noncompliance as evidenced by written notification from DIMR no later than xxxxx

Area of Noncompliance Identified	
Population Size in Area Reviewed	
Number of Updated Data (Student Records) Required in First Round of Comparison File Reviews	
Percentage Compliant at CAP Onset	% compliant
Percentage Compliant at CAP Closure:	% compliant

Area of Noncompliance	Action Steps	Required Evidence	Due Dates	District Updates and Evidence	DIMR Feedback
<b>Root Cause Analysis</b>	As part of the CAP process, the district (with a team) must first conduct a root cause analysis to discover the source of the problem areas.	Root Cause Analysis	30 business days after preliminary report		
<b>Issue 1</b>	Activity 1.1				
	Activity 1.2				
<b>Issue 2</b>	Activity 2.1				
	Activity 2.2				
<b>Student -specific</b>	Student-specific corrections identified in the Monitoring Report				
<b>Verification of Noncompliance</b>	The district will provide additional updated data for review (additional student records) to	Additional files as determined by KDE/DIMR monitoring manual			



	verify the correction of all noncompliance.				
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*For KDE/DIMR Use Only*

<b>Procedure</b>	<b>Date</b>	<b>Actions Taken</b>
CAP received by Team Lead (1st draft)		
District notified of CAP disposition (i.e. accepted, returned to district)		
CAP disposition (i.e. closed, returned to district for additional information)		

*For KDE/DIMR Use Only*

<b>CAP Approval Signatures Required</b>	<b>Signature</b>	<b>Date</b>
<i>CAP Lead</i>		
<i>Review Lead</i>		
<i>DIMR Director or Designee</i>		

*For KDE/DIMR Use Only*

<b>CAP Closure Signatures Required</b>	<b>Signature</b>	<b>Date</b>
<i>CAP Lead</i>		
<i>Review Lead</i>		
<i>DIMR Director or Designee</i>		

**Status reports to be submitted to DIMR CAP Lead by *quarterly dates* (xxxxxxxxxxxxx)**

**APPENDIX C  
CONTACT LOG TEMPLATE**

Date	Type	Name	School District	Notes
6/8/20	Email	Name of DoSE	Name of local school district	Spoke with DoSE. Gave CAP feedback. Agreed to ...
6/9/10	Phone			

## APPENDIX D CLOSURE LETTER TEMPLATE

*Note: Must be placed on KDE letterhead*

Superintendent **First Name Last Name**  
District Name **Choose an item** School District  
Street Address  
City, Kentucky **Zip Code**

Dear Superintendent **Last Name**,

This letter comes in response to the **enter review type** review conducted by the Division of IDEA Monitoring and Results (DIMR). The DIMR issued a citation of noncompliance to the **District Name** School District on **enter date**.

The **District Name** School District has complied with the requirements of the Corrective Action Plan (CAP). All original findings of noncompliance have been verified by the DIMR as corrected. Additionally, the DIMR verified updated data from the district as 100% compliant in the areas identified. No further action is required.

Thank you for your continued efforts to improve results for students with disabilities in your district.

Sincerely,

**DIMR Director Name**, Director  
Division of IDEA Monitoring and Results

cc: **DoSE Name**, **District Name** School District  
**Name**, Associate Commissioner, Office of Special Education and Early Learning  
**Name**, Assistant Director, DIMR  
**Name**, Branch Manager, DIMR  
**Name**, CAP Lead  
**Name**, Director, **Special Education Regional Cooperative**

## APPENDIX E TYPES OF MONITORING

	<b>Risk Focused Monitoring</b>	<b>Desk Reviews</b>	<b>Comprehensive Special Education Review Monitoring</b>	<b>Management Audits</b>	<b>Corrections Monitoring</b>
<b>Cyclical or Risk?</b>	Cyclical <i>and</i> risk-based	Risk-based	Risk-based	Risk-based	Cyclical
<b>Who conducts the review?</b>	Contracted investigators and OSEEL monitoring staff	OSEEL monitoring staff	OSEEL monitoring staff and contractors as necessary	OSEEL monitoring staff accompany the Office of Continuous Improvement (OCIS) staff	OSEEL monitoring staff and contractors as necessary
<b>Timeline from identification of the noncompliance to the issuance of a written finding</b>	15 business days	15 business days	Considered on a case-by-case basis, within three months or less following the visit consistent with <a href="#">OSEP's Frequently Asked Questions</a>	Considered on a case-by-case basis, within three months or less following the visit consistent with <a href="#">OSEP's Frequently Asked Questions</a>	30 business days

## **APPENDIX F**

### **707 KAR 1:380 MONITORING AND RECOVERY OF FUNDS**

707 KAR 1:380. Monitoring and recovery of funds.

RELATES TO: KRS 157.200, 157.220, 157.224, 157.226, 157.230, 157.250, 157.260, 157.270, 157.280, 157.285, 157.290, 157.360, 158.030, 158.100, 158.150, 160.290, 34 C.F.R. 300.1-300.818, 20 U.S.C. 1400-1419

STATUTORY AUTHORITY: KRS 156.070(1), 156.160, 157.220, 157.224, 157.260, 167.015

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.200 to 157.290 establish the statutory framework for special education programs in local school districts. KRS 157.220 requires the Kentucky Board of Education to adopt rules and administrative regulations for proper administration of these programs. KRS 156.035 authorizes the Kentucky Board of Education to implement any act of Congress appropriating funds to the state and to provide for the proper apportionment and disbursement of these funds in accordance with state and federal laws. 20 U.S.C. 1407 and 1412 and 34 C.F.R. 300.100 require that policies and procedures be adopted to assure the apportionment and disbursement of federal funds for exceptional children programs in accordance with applicable laws. This administrative regulation establishes the procedures that will be followed by the Department of Education in the event it is necessary to take corrective action on behalf of children with disabilities.

#### Section 1. Monitoring.

(1) The Kentucky Department of Education shall conduct monitoring of LEAs and other agencies that provide educational services to children with disabilities on a regular basis to determine compliance with federal and state requirements. Off-site monitoring shall include review of the following:

- (a) LEA'S self-assessment;
- (b) Reports, including count and data tables, and performance reports;
- (c) Complaints and due process hearings;
- (d) Finance reports; and
- (e) Documentation indicating inclusion of children with disabilities in the assessment and accountability system.

(2) Off-site monitoring shall identify any areas of noncompliance that indicate the need for further investigation, including an on-site review.

(3) On-site monitoring may include:

- (a) Review of individual children's records, including records of children served by private or state-operated schools;
- (b) Interviews with staff;
- (c) A survey of parents;
- (d) Visits in schools and classrooms; and
- (e) Other activities, including review of financial records.

(4) Following an off-site or on-site review, the Kentucky Department of Education shall issue a written report. Deficiencies specified in the report shall be the basis for the LEA to develop a corrective action plan (CAP) for review and approval by the Kentucky Department of Education. Prior to the development of the CAP, the LEA shall have the opportunity to submit additional information to verify or clarify issues related to the report. Each CAP shall be monitored and enforced by the Kentucky Department of Education.

(5) A CAP shall be submitted to the Kentucky Department of Education no later than thirty (30) business days after the LEA receives the report of noncompliance. The CAP shall include:

- (a) A statement of the matter to be corrected; and
- (b) The steps the LEA shall take to correct the problem and document compliance.

(6) Within thirty (30) business days of receiving the CAP, the Kentucky Department of Education shall notify the LEA of the status of the CAP. If the Kentucky Department of Education rejects the CAP, the LEA shall have fifteen (15) business days to submit a new CAP.

(7) A CAP approved by the Kentucky Department of Education shall be monitored and shall be an official document requiring the LEA to meet the specified activities. The Kentucky Department of Education shall not initiate further sanctions during the time period specified in the CAP unless requested by the LEA.

(8) Any noncompliance verified by monitoring shall be corrected within twelve (12) months from the date of the notification to the LEA of the noncompliance.

## Section 2. Special Education Program Found Noncompliant.

(1) The Kentucky Department of Education shall ensure that each LEA or other state agency responsible for providing the child's education complies with the LEA eligibility requirements contained in IDEA, 34 C.F.R. Part 300. To fulfill this obligation, the Kentucky Department of Education may implement the procedures established in this administrative regulation.

(2) A special education program may be found noncompliant through deficiencies identified in:

- (a) Off-site or on-site monitoring that were not corrected by a corrective action plan;
- (b) A final decision issued in complaint investigations after appeals have been exhausted;

(c) Decisions issued in due process hearings or by the Exceptional Children Appeals Board that have become final after the appeal rights have been exhausted; or

(d) Review of other data routinely collected by the Kentucky Department of Education.

### Section 3. Causes for Imposing Sanctions.

(1) The Kentucky Department of Education shall employ progressive sanctions until compliance is achieved, if an LEA:

(a) Fails to comply with a CAP, including not implementing the activities in an approved CAP;

(b) Fails to comply with the final decision in a complaint investigation after appeals have been exhausted, or the decision of a due process hearing officer or the Exceptional Children Appeals Board that has become final after appeal rights have been exhausted;

(c) Fails to manage the special education program in compliance with state and federal law;

(d) Fails to manage funds in compliance with state and federal law;

(e) Obtains funds through deception including falsifying application information for the purpose of obtaining funds; or

(f) Has been brought before a court of competent jurisdiction and found in noncompliance with state and federal special education requirements after appeal rights have been exhausted.

(2) Sanctions may be imposed if an LEA fails or refuses to correct an identified deficiency. The Kentucky Department of Education shall give notice at least ten (10) school days prior to initiating actions related to sanctions. The Kentucky Department of Education shall remain in contact with the appropriate LEA staff during the imposition of sanctions until the deficiencies are remedied.

### Section 4. Sanctions.

(1) The Kentucky Department of Education shall employ intensive assistance for at least a two (2) year period, including providing consultation, training, and technical assistance, or assigning a special education mentor, to remedy deficiencies and obtain voluntary compliance before imposing sanctions beyond a corrective action plan (CAP).

(2) The Kentucky Department of Education shall employ less severe sanctions before more severe sanctions until the LEA is in compliance. Progressive sanctions may include the following:

(a) Conditional approval of IDEA funds. If verifiable progress is not made in implementing a CAP, conditional funding shall be imposed. Conditions and timelines for continuing to receive IDEA funds shall be stated in the application approval letter or an attachment. Conditional funding may be employed for more than one year before imposing the next sanction, unless the LEA fails or refuses to meet the conditions or timelines. This sanction shall be lifted when the Kentucky Department of Education verifies compliance;

(b) Withholding of payments of IDEA funds. If an LEA fails or refuses to meet the conditions or timelines in the conditional approval letter, IDEA funds may be withheld by the Kentucky Department of Education. The Kentucky Department of Education shall make no further payments to the LEA until the Kentucky Department of Education verifies that compliance has been achieved. If the LEA makes no effort to correct the deficiency within sixty (60) calendar days of withholding of IDEA funds, further sanctions may be imposed pursuant to appropriate provisions in KRS 156.132. Withholding shall remain in effect during the pendency of any additional sanctions;

(c) Withholding of Support Education Excellence in Kentucky (SEEK) add-on funds. SEEK add-on funds for exceptional children shall be withheld in trust as required in KRS 157.224. This sanction shall be lifted when the Kentucky Department of Education verifies compliance with substantive special education requirements; or

(d) Other actions available under state and federal law shall be employed as circumstances warrant.

(3) The Kentucky Department of Education may conduct an off-site or on-site review to validate compliance.

Section 5. Opportunity for a Hearing. Prior to the withholding of IDEA or SEEK add-on funds, the LEA shall be provided notice and an opportunity for an administrative hearing in accordance with KRS Chapter 13B.

Section 6. Child Count Audit.

(1) Child count figures submitted to the Kentucky Department of Education for the purpose of receiving funds under IDEA shall be subject to an audit validating the count. The Kentucky Department of Education shall conduct the child count audits prior to withholding funds pursuant to Section 4(2)(b) of this administrative regulation.

(2) If an LEA counts more children on its December 1 child count than are actually being served, or counts children who are ineligible to be counted for funding, the LEA shall reduce its child count or return the funds received for each misclassified child.

(3) The reduction may be initiated by:

(a) The LEA upon recognizing an error exists; or

(b) The Kentucky Department of Education through an on-site or off-site validation of the child count figures.

(4) Notice and an opportunity for a hearing under KRS Chapter 13B shall be provided before recovery of funds.

(5) Annually, the Kentucky Department of Education shall review and, as needed, select LEAs for a child count audit. An LEA may be selected for audit based on the following:

(a) Recurring noncompliances identified through off-site or on-site monitoring;



- (b) Recurring substantiated complaints or final decisions from due process hearings or the Exceptional Children Appeals Board on similar issues;
  - (c) Failure to comply with a CAP within the specified timelines, or with the final decision in a complaint investigation after appeals have been exhausted, or with a hearing or appeal decision after appeals rights have been exhausted within specified timelines;
  - (d) Increases or decreases of total child counts, changes in categorical areas, or amendments to the original IDEA-B child count report that cannot be justified by district-supplied data like annual child count data and districtwide enrollment data or other district-supplied sources of data;
  - (e) Unusual child count data, such as, more than fifteen (15) percent of the total school population reported as having disabilities, no change in numbers from year to year, high numbers of low incidence populations, or unusually low percentages of children with disabilities when compared to similar LEAs; or
  - (f) Previous audits resulting in reductions in addition to the presence of any of the items listed in paragraphs (a) through (e) of this subsection.
- (6) Prior to initiating a child count audit, the Kentucky Department of Education shall:
- (a) Notify the LEA in writing of the pending audit and request a roster of children by school, teacher, age, and individual disability category as reported on the specific count being audited;
  - (b) Verify the number of children on the roster with the number reported on the LEA's child count; and
  - (c) Randomly select from the roster the educational records to be audited.
- (7) The Kentucky Department of Education shall conduct an on-site record review based on the standards in 707 KAR Chapter 1 and analyze the data collected to determine the number of records out of compliance.
- (8) The Kentucky Department of Education shall prepare a draft audit report which includes:
- (a) The reason for the child count audit;
  - (b) The date the audit was conducted;
  - (c) The total number of records reviewed;
  - (d) An analysis of the data obtained during the audit;
  - (e) The specific reductions by disability; and
  - (f) Notice that the LEA has thirty (30) business days from the date of the report to submit additional information for each child to demonstrate compliance.
- (9) The LEA may request copies of the data collected and used to produce the findings in the audit report and submit additional information for each child to demonstrate compliance. If the

LEA submits additional information to demonstrate compliance, the Kentucky Department of Education shall have thirty (30) business days from receipt of the information to review the documentation and issue a final report.

(10) Within thirty (30) business days of the date of the final audit report, if applicable, the LEA shall submit to the Kentucky Department of Education an amended child count report and a CAP to address deficiencies identified during the audit.

(11) The Kentucky Department of Education shall certify the reduced count and submit a correction to the U.S. Department of Education and the Kentucky Department of Education's Division of Finance.

(12) The IDEA grant award for the fiscal year affected shall be recalculated and:

(a) If the child count reduction affects the current year's project, then the amount of the recovery shall be subtracted from the original allocation and shall not be sent to the LEA the following year;

(b) If the reduction in grant award is for a year in which funds have already been expended, the LEA's grant shall be reduced the following year by the reduced amount in a manner that shall not disrupt current delivery of instructional services; or

(c) If the reduction affects an application for the fiscal year, the LEA shall be notified of the reduction of the recalculated grant award for the following year.

(13) Follow-up audit. The Kentucky Department of Education shall conduct a follow-up audit at the time the CAP is scheduled for completion. The Kentucky Department of Education shall verify that deficiencies have been corrected. If the follow-up visit verifies that the LEA has completed all CAP activities and no areas of noncompliance are identified, the Kentucky Department of Education shall issue a final report.

HISTORY: (26 Ky.R. 2148; 27 Ky.R. 508; eff. 8-14-2000; 33 Ky.R. 3496; 34 Ky.R. 567; eff. 11-5-2007; Crt eff. 11-16-2018.)

Sanction

# APPENDIX G

## RISK ASSESSMENT RUBRIC

### Differentiated Monitoring and Tiered Engagement

#### Risk Assessment Rubric

The Individuals with Disabilities Education Act (IDEA) requires state education agencies (SEAs) such as the Kentucky Department of Education (KDE) to oversee IDEA compliance by school districts within the states. The oversight mandate is known as the IDEA “**general supervision**” requirement. Under this oversight mandate, SEAs must ensure that each student with an individual education program (IEP) within the state receives a free appropriate public education (FAPE). As part of the general supervision process, the KDE’s Office of Special Education and Early Learning (OSEEL) is providing Differentiated Monitoring and Tiered Engagement (DMTE) to local education agencies (LEAs) as part of its compliance review and results-driven accountability system. The OSEEL differentiates monitoring and support for each LEA based on the LEA’s unique strengths and areas for improvement. LEAs are identified as Tier I – Universal Engagement, Tier II – Targeted Engagement or Tier III – Intensive Engagement.

District engagement will be differentiated based on OSEEL’s Differentiated Monitoring and Tiered Engagement system. Tier I districts will receive statewide universal guidance, support and technical assistance (TA) in the form of guidance documents, website support and services from OSEEL by request. Tier II districts will receive universal as well as targeted support and TA in the form of statewide or regional training, coaching or content-specific TA. Tier III districts will receive the support available to Tier I and II districts as well as an onsite monitoring review. A district’s level of risk is determined by the LEA Annual Determination and the OSEEL’s Risk Assessment Rubric.

A district is identified for Tier III and Risk Focused Monitoring (RFM):

- *An Annual Determination* of needs assistance, needs intervention or needs substantial intervention and has not received a focused monitoring visit in the past two years; **OR**
- *An Annual Determination* of meets requirements, with a score in the top 5% of all districts on the *Risk Assessment Rubric* and has not received an on-site focused monitoring visit in the past five years.

Districts can also be identified for Tier III Engagement through:

1. Comprehensive Special Education Review
2. Kentucky Educational Collaborative for State Agency Children (KECSAC) and Correctional Facilities Monitoring
3. Management Audits
4. Fiscal Audits

A district is determined to be Tier II:

1. If not identified for RFM and scores in the top 15% on the Risk Assessment Rubric

2. Indicator desk reviews

3. Alternate Assessment: desk reviews, justifications, assurances

All districts are offered Tier I support.

<b>General Risk Measures</b>	<b>Score = 0</b>	<b>Score = 1</b>	<b>Score = 2</b>	<b>Score = 3</b>
Percentage of students receiving special education and related services	Percentage is equal to or less than the state average	Percentage is 0.01% to 4.99% above the state average	Percentage is 5% to 9.99% above the state average	Percentage is 10% or more above the state average
Timely and accurate submission of IDEA data annually: 1) Child Count 2) Exiting 3) Discipline 4) Indicators 11, 12, 13 Self-Assessments 5) Alternate Assessment 6) Personnel 7) Comprehensive Coordinated Early Intervening Services (CCEIS) 8) Maintenance of Effort (MOE)	All required data submitted on or before established due date and did not require any corrections to the reports.	Either one submission past established due date or one report had to be corrected.	A total of two submissions late or needing corrections.	More than two submissions are past established due dates, or more than two reports had to be corrected
IDEA Formal Written Complaints	No formal complaints with findings of non-compliance	One IDEA formal complaint with substantiated non-compliance identified	Two IDEA formal complaints with substantiated non-compliance identified	Three or more IDEA formal complaints with substantiated non-compliance identified
Director of Special Education (DoSE) experience	Three years or more of DoSE experience in the district	Two years of DoSE experience in the district	One year of DoSE experience in the district	First-year as a DoSE in the district
Significant Disproportionality under the IDEA (if a district has multiple findings for significant disproportionality, the highest determination category of those data is the	The LEA is at or below the 3.000 minimum threshold for the potential CCEIS identification	The LEA has one year of significant disproportionality data above the 3.000 minimum	The LEA is a current CCEIS identified district or is in year one of reasonable progress exit	The LEA is above the 3.000 minimum threshold for potential CCEIS identification for

area to which the overall risk score for this category is assigned)		threshold for potential CCEIS identification or has more than one year of reasonable progress exit		the past two data years
<b>Indicator Risk Measures</b>				
Indicator	0	1	2	3
Indicator 4A: Suspension/Expulsion	The district does not have significant discrepancy by race or ethnicity in the rate of suspensions and expulsions of greater than 10 days in a school year for students with IEPs.	-----	-----	The district does have significant discrepancy by race or ethnicity in the rate of suspensions and expulsions of greater than 10 days in a school year for students with IEPs.
Indicator 5A: Educational Environments (School Age)	The LEA is meeting or exceeding the state target identified on the State Performance Plan (SPP)	The LEA is below the state target identified on the SPP and has improved from the previous year	The LEA is below the state target identified on the SPP and has remained constant from the previous year	The LEA is below the state target identified on the SPP and has declined from the previous year
Indicator 6A Educational Environments (Preschool)	The LEA is meeting or exceeding the state target identified on the SPP	The LEA is below the state target identified on the SPP and has improved from the previous year	The LEA is below the state target identified on the SPP and has remained constant from the previous year	The LEA is below the state target identified on the SPP and has declined from the previous year
Indicator 7: Preschool Outcomes	The LEA is meeting or exceeding the state target identified on the SPP	The LEA is below the state target identified on the SPP and has improved from the previous year	The LEA is below the state target identified on the SPP and has remained constant from the previous year	The LEA is below the state target identified on the SPP and has declined from the previous year

Indicator 8: Parent Involvement	The LEA is meeting or exceeding the SPP target	The LEA is below the state target identified on the SPP and has improved from the previous year	The LEA is below the state target identified on the SPP and has remained constant from the previous year	The LEA is below the state target identified on the SPP and has declined from the previous year
Indicator 14C: Post School Outcomes	The LEA remained constant or demonstrated growth from previous year.	-----	-----	The LEA declined from the previous year.

**Bonus Areas**

Timely Grant Management Application and Planning (GMAP) application submitted in a substantially approvable form	-1			
1st Year DoSE Mentorship through KY GUIDES	-1			
Participation in Transformation Zone (T-Zone)	-1			
Meets Requirements for LEA annual determinations for the last five years	-1			