

MONITORING MANUAL

Individuals with Disabilities Education Act (IDEA)

Version 2.2





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SECTION 1 HISTORY OF MONITORING

Why do we monitor?

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. The states’ general supervision authority requires SEAs to ensure that each student with an individual education program (IEP) within the state receives a Free Appropriate Public Education (FAPE).

SEAs provide general supervision through a variety of methods.

Kentucky’s System of General Supervision



The pieces of the system work together to ensure that SEAs are exercising general supervision over local school districts. Although there are many important parts of the general supervision “puzzle,” the key to making sure school districts are complying with the IDEA rests with SEA monitoring. Monitoring takes many forms, as we shall see in the following pages.



The importance of monitoring was emphasized in the most recent IDEA Reauthorization in 2004. The IDEA statute at [34 USC § 300.600](#) states 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 States meet the program requirements under this part, with *particular emphasis* on those requirements that are *most closely related to improving educational results for children with disabilities*.
(*Emphasis added.*)

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.

History of Monitoring - 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 the KDE are important to the KDE in making future decisions.

Until 2004, OSEP oversaw states’ IDEA compliance by conducting periodic on-site monitoring visits. The KDE subsequently developed a parallel system for compliance monitoring of school districts. During the 1990s, the 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 DECS. It did not lead to better outcomes for students with IEPs.

The United States Education Department (USED) received criticism from Congress about the IDEA monitoring system during the 1990s and early 2000s. The main criticism was that students with IEPs had not improved their educational performance during the 25-plus years under the IDEA.

During the early 2000s, OSEP began requiring 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 felt were most important in achieving improved outcomes for students with IEPs.

OSEP’s changes meant DECS changed its method of monitoring Kentucky school districts. Kentucky also adopted an IDEA self-assessment for districts. The KDE’s self-assessment was not successful, as DECS did not have sufficient staff to review each district’s self-assessment and enforce Corrective Action Plans (CAPs). Self-assessment without oversight by the governing agency invited less than truthful reporting by school districts.

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 which, if done correctly, will lead to improved outcomes for students with IEPs. Those key areas became the SPP indicators.

OSEP checks the accuracy of states' reporting of SPP indicators through a review of the states' Annual Performance Reports (APRs) and Section 618 data.

IDEA compliance indicators are bolded.

The SPP indicators that apply to school district performance and are reported to OSEP in the APR are:

- Indicator 1- Graduation rate
- Indicator 2- Dropout rate
- Indicator 3- Proficiency in reading and math
 - **3B- Inclusion of students with IEPs in statewide testing**
 - 3C- Proficiency rate for students with IEPs
- Indicator 4 - Suspension of more than 10 days/expulsion
 - 4A- Significant discrepancy in suspension of students with IEPs for more than 10 days/expulsion
 - **4B- Significant discrepancy in suspension of more than 10 days/expulsion of students with IEPs by race/ethnic groups due to policies, procedures or practices that violate IDEA**
- Indicator 5- Least Restrictive Environment
- Indicator 6- Least Restrictive Environment for preschool students
- Indicator 7- Preschool student outcomes
- Indicator 8- Parent involvement
- **Indicator 9- Disproportionate representation in special education of students by racial/ethnic groups**
- **Indicator 10- Disproportionate representation in certain categories of disabilities by racial/ethnic groups**
- **Indicator 11- Timely initial evaluation**
- **Indicator 12- Timely transition from the Part C program (First Steps) to preschool**
- **Indicator 13- Secondary transition**
- Indicator 14- Post-school outcomes

Compliance Indicators 4B, 9, 10, 11, 12 and 13 require school districts within the state to comply with the indicator with no instances of noncompliance. Indicator 3B requires a minimum of 95% compliance.



For an overview of changes in OSEP's monitoring of SEAs and SEAs' monitoring of school districts within states, see the OSEP document [Questions and Answers on Monitoring, Technical Assistance and Enforcement \(June 2009\)](#).

Kentucky's System of General Supervision

The KDE exercises its general supervision responsibilities, including monitoring, for all public agencies involved in the provision of special education and related services. To meet this requirement, the OSEEL conducts monitoring activities to identify and correct noncompliance at the individual student level and the systems level.

OSEEL monitoring consists of the following activities:

- Focused Monitoring
 - State Consolidated Monitoring (SCM)
 - Special Monitoring
- Correctional Facilities Monitoring
 - Department of Juvenile Justice/Kentucky Educational Collaborative for State Agency Children (KECSAC) Facilities
 - Department of Corrections' Correctional Facilities (ages 18-21)
- Desk Audits
 - SPP/APR Indicators
 - Physical Restraint and Seclusion
 - Comprehensive Coordinated Early Intervening Services (CCEIS)
- Management Audits
- Fiscal Audits

SPP Data Collection and Verification

SPP Compliance Indicators

The OSEEL determines if districts have complied with SPP compliance indicators through data analysis, self-reporting and desk audits.

Indicator 3B data are obtained through the KDE's Office of Assessment and Accountability, which is responsible for the KDE's statewide testing for all Kentucky students. The participation rate is calculated from dividing the number of children with IEPs participating in the assessment by the total number of children with IEPs enrolled during the testing window.

For Indicators 11, 12 and 13, districts submit self-reported data to the Division of IDEA Monitoring and Results (DIMR) on whether they have complied with the three SPP indicators. The KDE randomly reviews 10% of districts that reported 100% compliance through the desk audit process. Randomization is accomplished through the use of an online randomizer. The



KDE does not conduct desk audits for districts acknowledging noncompliance with Indicators 11, 12 or 13.

If the KDE desk audit of student records reveals noncompliance, the KDE cites the district for noncompliance with the IDEA and issues a Corrective Action Plan (CAP). Districts that self-report noncompliance are given a corrective action plan as well.

If a district is cited for IDEA noncompliance and is subject to a CAP, the KDE is charged with ensuring the district corrects both individual student noncompliance and systemic noncompliance which was discovered during the desk audit process. The KDE must also review updated data from the district to ensure the noncompliance was remedied throughout the district. See [OSEP Memorandum 09-02 Reporting on correction of noncompliance in the Annual Performance Report](#).

Correction of noncompliance is thoroughly addressed in Section 2.

Desk audits for Indicators 4B, 9 and 10 are conducted through a more complicated process involving districts' Section 618 data. It is a two-pronged review.

1. The Office of Special Education and Early Learning (OSEEL) data managers do calculations of Section 618 data to determine if districts' data for Indicators 4B, 9 and 10 reveal the following:
 - Are districts suspending/expelling a disproportionate number of students with IEPs who are in certain racial or ethnic groups?
(Significant discrepancy standard - Indicator 4B)
 - Are districts identifying a disproportionate number of students in certain racial/ethnic groups as eligible for IDEA services?
(Disproportionate representation standard - Indicator 9)
 - Are districts identifying a disproportionate number of students in certain racial/ethnic groups in high incidence disability categories?
(Disproportionate representation standard - Indicator 10)
2. Depending on the indicator, OSEEL data managers calculate each district's data for significant discrepancy or disproportionate representation. DIMR then conducts desk audits for the districts whose data indicate significant discrepancy or disproportionate representation.

Records of students in the affected racial or ethnic group are examined to determine whether applicable IDEA requirements were followed.

- Records of students who were suspended/expelled (Indicator 4B) are reviewed for compliance with evaluation requirements and the appropriateness of the IEP, as well as IDEA discipline requirements including manifestation determination provisions.



- Records of students who may have been over-identified as eligible for IDEA (Indicator 9) or as eligible in high-incidence disability categories such as Other Health Impaired or Mild Mental Disabilities (Indicator 10) are reviewed for compliance with IDEA eligibility requirements.

If the desk audits reveal IDEA noncompliance, the districts are cited and are required to complete a CAP.

Compliance Indicator 3B data are obtained through the KDE's Office of Assessment and Accountability, which is responsible for the KDE's statewide testing for all Kentucky students. The DIMR does not conduct desk audits for Indicator 3B.

SPP Outcome Indicators

In evaluating the results of SPP outcome indicators, states collect and compile Section 618 data from local school districts. Kentucky used its Section 618 data in the initial year of the SPP as its baseline data, then projected 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.

Kentucky then examines its APR data to determine whether the state has met each SPP indicator target. If the target was not met, the data is analyzed and the reason is reported in the APR.

In Kentucky, the OSEEL data manager reviews districts' submission of Section 618 data. If inconsistencies or errors are noted, the data manager contacts the school districts to verify data accuracy.

Section 618 data used as the data sources for SPP outcome indicators include:

- Child Count;
- Educational Environments;
- Exiting;
- Discipline; and
- Assessment

Sources of Data for the KDE's SPP Outcome Indicators

OSEEL - Section 618

- Graduation and dropout rates (SPP Indicators 1 and 2);
- Suspensions of more than 10 days/expulsions (SPP Indicator 4A);
- Least Restrictive Environment (LRE) for elementary and secondary students (SPP Indicator 5); and
- Least Restrictive Environment for preschool students (SPP Indicator 6)



Office of Assessment and Accountability

- Districts' proficiency rate for students with IEPs (SPP Indicator 3C)

Human Development Institute (HDI) at the University of Kentucky

- Preschool (Indicator 7);
- Parent involvement (Indicator 8); and
- Secondary transition (Indicator 14)

Data for the final three outcome indicators (SPP Indicators 7, 8 and 14) are not collected by the KDE but by the Human Development Institute (HDI) at the University of Kentucky. The KDE contracted with HDI to establish the data system, data points, the process of collecting the data and data analysis for each of the three SPP indicators. HDI collects the data for the three indicators, analyzes the data and drafts APR indicator reports for evaluation and approval by the DIMR.

Monitoring for Results

As noted above, OSEP's monitoring system has changed several times since the last IDEA Reauthorization in 2004. This led to corresponding changes in the monitoring system by the KDE that are aligned with OSEP practices. DIMR has developed a monitoring system that identifies IDEA compliance by school districts, using methods that support the ultimate goal of improving educational results and functional outcomes for all students with IEPs. While monitoring activities must examine compliance issues, the KDE has structured its monitoring approach so the broader themes of IDEA – equity in education and student outcomes – are emphasized.

Focused Monitoring

20 USC 1416 (a) (2) sets out new standards for monitoring as the primary manner under which OSEP monitors SEAs. As noted earlier, this was a far-reaching change – from monitoring IDEA compliance to focusing 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 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 look at student outcomes. DIMR (then known as DECS) reviewed IDEA regulations and decided there were 272 IDEA legal requirements districts had to meet to be compliant with the IDEA.



All Kentucky districts were monitored within a 5-year cycle. An entire branch of DECS was devoted to on-site monitoring of school districts. Large numbers of DECS staff, as well as Regional Exceptional Children Consultants (RECCs) were devoted to traveling to districts and reviewing student records through the lens of compliance with the 272 IDEA requirements. Staff then wrote reports and issued CAPs.

There was no evaluation of the system's usefulness. As noted above, it wasn't until Congress raised questions about the effectiveness of IDEA monitoring that the system changed, both at the national and state level.

Added to questions about effectiveness of compliance monitoring was the real-life problem of continuing to monitor in this fashion. DECS suffered massive staff cuts since the 1990s, going from a bureau of 80 or more employees to a branch of fewer than 10 special education consultants. The RECC positions were eliminated by the legislature. It became impossible to maintain the former monitoring system with reduced staff, even if it had been effective.

The change to focused monitoring helped resolve this dilemma. By focusing on the areas in the IDEA that make a difference in student outcomes, the issue of the ineffectiveness of the original compliance monitoring system was resolved. By having a limited number of indicators to monitor, the reduction in staff became less of an issue.

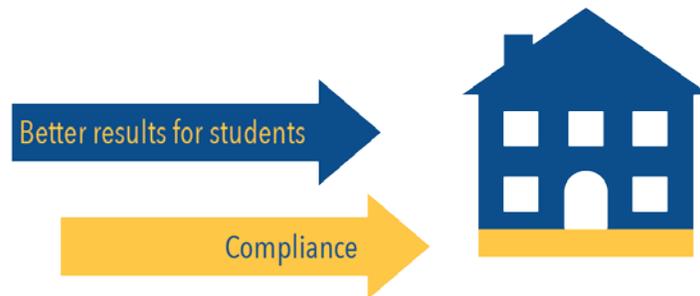
DIMR continues to evaluate its monitoring system. Tasks not related to student outcomes are not relevant in the age of focused monitoring. On-site monitoring must be reserved for activities which can only be accomplished when visiting the district, such as staff interviews or classroom observations. One way of eliminating time spent in the district is to review student records off-site. This saves money and staff time.



What do we monitor?

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.



IDEA Compliance Requirements

State Performance Plan (SPP) Indicators 4B, 9, 10, 11, 12 and 13 are IDEA requirements that must be implemented at 100% compliance. DIMR monitors the SPP compliance indicators through desk audits. Districts provide data on all SPP indicator areas of compliance, which are then verified by DIMR through desk audits. These data are reported in Kentucky's APR to OSEP.

Student Outcomes

Data on student outcomes are collected and reported in the APR as well. Examples of SPP student outcome indicators are:

- Graduation and dropout rates (Indicators 1 and 2);
- Proficiency (Indicator 3C);
- Suspensions/expulsions over 10 days (Indicator 4A);
- LRE (Indicator 5);
- Preschool LRE (Indicator 6);
- Outcomes of preschool students (Indicator 7);
- Parent involvement (Indicator 8); and



- Postschool outcomes (Indicator 14)

DIMR cannot monitor compliance with student outcomes since there are no legal grounds to do so. In other words, the IDEA does not set standards for outcomes such as graduation rates that a district must meet to be compliant with the IDEA.

While outcome indicators cannot be monitored for compliance, OSEP has developed a document to assist states with viewing the SPP outcome indicators through the lens of IDEA compliance. [Related Requirements](#) assist states with matching – to the extent possible – the SPP outcome indicators and IDEA compliance requirements, to make a connection between student results and compliance.

Statewide Consolidated Monitoring (SCM) Process

Overview of SCM Process

The following information was primarily taken from the [SCM](#) page on the KDE website.

To reduce the impact on district time and services, the KDE coordinates the monitoring of its state and federal programs with a selected set of school districts annually.

Consolidated monitoring provides districts an opportunity to review state and federal programs with an eye toward effective implementation and collaboration. Aside from individual program reports, districts are provided consolidated reports that represent an opportunity for collaboration among the programs. Program monitors note effective practices identified during the monitoring visit as well as provide recommendations for addressing noted common concerns. These reports provide opportunities for programs to collaborate, streamline implementation and increase success within each.

Districts are selected for monitoring using a risk assessment tool developed in accordance with the [Uniform Grant Guidance](#) regulations regarding monitoring, including [2 CFR 200.331](#) and [2 CFR 200.519](#).

The following state or federal programs are currently included in the monitoring process:

- [Alternative Education Programs](#)
- [Career and Technical Education](#)
- [Gifted and Talented](#)
- [IDEA - Special Education Services](#)
- [Preschool Services](#)
- [Title I, Part A - Improving Academic Achievement of the Disadvantaged](#)
- [Title II, Part A - Teacher and Principal Quality](#)
- [Title III - English Learner \(EL\) and Immigrant Students](#)



- [Title IV, Part A - Student Support and Academic Enrichment](#)
- [Title V, Part B, - Rural Education Achievement Program \(REAP\)](#)

The consolidated monitoring process was developed in 2011-2012 with the intent of reducing the number of visits and interruptions to school districts served by the KDE. Instead of receiving individual visits from the nine participating programs at different intervals throughout the school year, school districts now receive a single visit with all programs present.

In previous school years, SCM typically looked like this:

- Ten to 14 districts were selected for SCM monitoring;
- Districts were selected in late October or early November;
- Superintendents were notified of SCM visit by mid-November;
- Visits were conducted from January to May;
- Most visits, with the exception of IDEA, lasted one to three days;
- IDEA visits usually took four or five days; and
- The final report was sent to the school district and posted to the KDE website

Currently when DIMR monitors a school district as part of the SCM process, it bases the monitoring activities on an identified statewide focus area. Focus areas are identified using data collected by OSEEL. Focus areas are proposed by the DIMR director and approved by the OSEEL associate commissioner no later than Aug. 1.

Challenges to IDEA Monitoring through the SCM Process

Since the inception of the SCM, the DIMR has used this process to conduct most of its onsite monitoring visits. This has been problematic on several fronts:

The IDEA is an individual entitlement program that requires detailed monitoring at the student-specific level. Other KDE programs look at program-specific requirements that can be addressed with checklists or interviews with district programmatic staff.

Reviewing individual student records is a time-consuming process which required the IDEA members of SCM teams to be in the district much longer than other team members, frequently for a full week. There was little or no time to visit programs or conduct interviews with district staff for the DIMR to understand why the record review data looked as they did.

The nature of IDEA monitoring made it difficult to find commonalities with the other programs in providing feedback across multiple programs.

Even though the intent of the IDEA monitoring process was to focus on specific areas for improvement, this was not always communicated well to districts, resulting in district staff not understanding the connections. Examples include failure to link:



- Reviews of progress monitoring data on IEP goals to improved academic outcomes for students with disabilities; and
- monitoring statements of reasons for removal of students from the general education environment to improve LRE data

In the LRE example above, it is difficult to measure success since many districts copied and pasted boilerplate LRE statements into conference summary reports.

These issues have led to reconsideration of the use of SCM as the primary vehicle for looking at student outcomes, as well as compliance for programs geared for students with disabilities. Instead, focused monitoring activities outside the SCM process will be used to fulfill this area of the KDE's general supervision responsibilities.

Special Monitoring

Special monitoring is conducted through the OSEEL's general supervision requirement. Special monitoring allows the OSEEL to monitor districts with significant risk that were not selected for the consolidated monitoring or SPP/APR desk audits.

Special monitoring audits are proposed by the DIMR director and approved by the associate commissioner of OSEEL. These visits are also communicated to the commissioner of education prior to the inciting of the visit.

Focused monitoring areas for special monitoring are determined through a data analysis conducted using district data. For example, if the district has a high percentage of students with IEPs receiving a novice rating on the statewide assessment, the DIMR would look for the reason students are not being successful in school. Some of these reasons might be related to IDEA compliance, such as:

- IEP goals which are not measurable;
- Evaluations which are inappropriate; and
- Progress monitoring data not collected for IEP goals

If a district's data shows a significant discrepancy in the number of students with IEPs being suspended for over 10 days or expelled, or a large percentage of the district's students with IEPs being restrained or secluded, DIMR will look at IDEA compliance requirements to determine the reasons for the district's issues with student discipline. These requirements may include:

- Relevant evaluations based upon the students' suspected disabilities;
- Appropriate IEPs developed through the evaluation process and students' areas of educational concerns;
- Appropriate Behavior Intervention Plans (BIP) based on high-quality Functional Behavioral Assessments (FBAs);
- Positive behavioral supports in the students' IEPs, based upon the students' BIPs; and
- Other relevant data to assist DIMR including students' discipline records and absences



In this way, DIMR seeks to improve student outcomes while performing the required task of monitoring for compliance.

Fiscal Audits

The process for fiscal audits is laid out in the *Outlining Steps for Fiscal Monitoring Activities Under the IDEA* manual.

Physical Restraint and Seclusion and CCEIS audits

The process for each of these audits is laid out in their individual protocols.

Annual Determinations

The 2004 IDEA reauthorization radically revised the IDEA monitoring process by focusing on student results instead of strict compliance. 20 USC 1416(d) sets out OSEP's new system for monitoring SEAs. Instead of conducting on-site monitoring of states, OSEP implemented the State Determinations process required by the reauthorization.

During state determinations, OSEP reviews each state's APR indicators to determine whether states are meeting the requirements of the IDEA. States are also required to determine districts' level of compliance with the IDEA.

§1416 (d) Secretary's Review and Determination

(1) Review

The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

(2) Determination

(A) In general - Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

- (i) meets the requirements and purposes of this subchapter;*
- (ii) needs assistance in implementing the requirements of this subchapter;*
- (iii) needs intervention in implementing the requirements of this subchapter;*
- or*
- (iv) needs substantial intervention in implementing the requirements of this subchapter*

Neither OSEP nor DIMR can monitor SPP outcome requirements (such as the graduation rate of students with IEPs) for strict compliance since there is no IDEA requirement that students with IEPs must achieve a certain level of educational outcomes. The sole way OSEP and DIMR examine student outcomes is through the determinations process.



In developing its new system of SEA oversight, OSEP reviews not only the states' IDEA compliance indicators but also the results of the states' educational outcomes for students with IEPs. As part of the determinations process of evaluating progress on states' outcome indicators, OSEP set cut scores for SPP student outcomes, to decide if states were improving educational results and functional outcomes as required by the IDEA. States' success at meeting the SPP outcome standards were factored into whether states "meet requirements," "need assistance," "need intervention" or "need substantial intervention." States were then required to begin determinations of districts' level of compliance with the IDEA, by overseeing each district's results.

When the KDE began the process of making LEA Annual Determinations, it looked at SPP compliance indicators and other areas related to the KDE's general supervision requirements, such as issues associated with fiscal Maintenance of Effort and Persistent Failure to Comply with IDEA statutes or regulations. For example, a district that was not able to close a Corrective Action Plan within three years was deemed to have a Persistent Failure to Comply with federal or state IDEA requirements.

The OSEEL developed its determination system through the use of a point system. One point was assigned for most noncompliance, such as failure to comply with a SPP compliance indicator. The category of *Persistent Failure to Comply* was assigned two points. A district earning two points was assigned to the *Needs Assistance* category, which meant a district that was persistently unable to comply with a CAP was automatically determined to *Need Assistance*.

In 2015, the OSEEL followed OSEP's lead and began reviewing district outcomes. Initially, the OSEEL used districts' SPP Indicator 3C results in math proficiency at the 8th grade level. Note: Indicator 3C (Proficiency in math at the 8th grade level) was chosen as the initial SPP outcome indicator used in district determinations, to align it with the State Systemic Improvement Plan (SSIP), SPP Indicator 17. OSEEL also added compliance indicator 3B related to participation in statewide assessments in math and reading in the 4th and 8th grades.

In 2017, the KDE added the district graduation rate to district determinations as the second SPP outcome indicator. Currently, the DIMR is reviewing the process for district determinations to determine any additional improvements which could be made to the system.

Technical Assistance

The IDEA identifies specific technical assistance (TA) or enforcement actions the United States Education Department (USED) must take under specific circumstances for states that are determined not to *Meet Requirements*.

If a state *Needs Assistance* for two consecutive years, the USED must take one or more enforcement actions, including, among others, requiring the state to access TA, designating the state as a high-risk grantee, or directing the use of state set-aside funds to the area(s) where the state needs assistance.



If a state *Needs Intervention* for three consecutive years, the USED must take one or more enforcement actions, including, among others, requiring a corrective action plan or compliance agreement, or withholding further payments to the state. Any time a state Needs Substantial Intervention, the USED must take immediate enforcement action, such as withholding funds or referring the matter to the USED's inspector general or to the Department of Justice.

SEAs likewise must take enforcement action against districts that do not Meet Requirements. The KDE uses the OSEP requirements cited above as its basis for requiring TA or other harsher actions.

34 CFR 300.604 Enforcement

(a) Needs Assistance

(If the Secretary determines, for two consecutive years, that a State needs assistance under [§ 300.603\(b\)\(1\)\(ii\)](#) in implementing the requirements of Part B of the Act, the Secretary takes one or more of the following actions:

1. Advises the State of available sources of TA that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, TA providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. Such TA may include:
 - i. The provision of advice by experts to address the areas in which the **State** needs assistance, including explicit plans for addressing the area for concern within a specified period of time;
 - ii. Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;
 - iii. Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, TA, and support; and
 - iv. Devising additional approaches to providing TA, such as collaborating with institutions of higher education, educational service agencies, national centers of TA supported under Part D of the Act, and private providers of scientifically based TA.
2. Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.
3. Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.

(b) Needs Intervention



If the Secretary determines, for three or more consecutive years, that a State needs intervention under § 300.603(b)(1)(iii) in implementing the requirements of Part B of the Act, the following shall apply:

1. The Secretary may take any of the actions described in paragraph (a) of this section.
2. The Secretary takes one or more of the following actions:
 - i. Requires the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year;
 - ii. Requires the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 *et seq.* (GEPA), if the Secretary has reason to believe that the State cannot correct the problem within one year;
 - iii. For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention;
 - iv. Seeks to recover funds under [Section 452 of GEPA](#);
 - v. Withholds, in whole or in part, any further payments to the State under Part B of the Act; and
 - vi. Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

(c) Needs Substantial Intervention

Notwithstanding paragraph (a) or (b) of this section, at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of Part B of the Act or that there is a substantial failure to comply with any condition of a SEA's or LEA's eligibility under Part B of the Act, the Secretary takes one or more of the following actions:

1. Recovers funds under section 452 of GEPA;
2. Withholds, in whole or in part, any further payments to the State under Part B of the Act;
3. Refers the case to the Office of the Inspector General at the Department of Education;
and
4. Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

(d) Report to Congress.

The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.



(Authority: 20 U.S.C. 1416(e)(1)-(e)(3), (e)(5))

For information from OSEP on determinations, see the [2018 DETERMINATION LETTERS ON STATE IMPLEMENTATION OF IDEA](#).

From the OSEEL’s determination guidance:

Score from the Determination Scoring Rubric	Determination	
0-3	<i>Meets Requirements (MEETS)</i>	
4 through 15	<i>Needs Assistance (NA)</i>	
	NA1	<ul style="list-style-type: none"> • First year in Needs Assistance.
	NA2	<ul style="list-style-type: none"> • Second consecutive year of Needs Assistance.
	<i>Needs Intervention (NI)</i>	
	NI1	<ul style="list-style-type: none"> • Third consecutive year of Needs Assistance.
	NI2	<ul style="list-style-type: none"> • Fourth consecutive year of Needs Assistance.
	NI3	<ul style="list-style-type: none"> • Fifth consecutive year of Needs Assistance.
	<i>Needs Substantial Intervention (NSI)</i>	
<ol style="list-style-type: none"> 1. Sixth consecutive year of Needs Assistance (<i>unless Director of DIMR determines sufficient improvement</i>); or 2. Finding of Persistent Failure or Not Able to Comply; or 3. Results of an On-Site Monitoring Visit (Based on Monitoring Team Findings described below). 		
Persistent Failure to Comply or Not Able to Comply	Districts that are identified as Persistent Failure to Comply or Not Able to Comply will have a Determination of Needs Substantial Intervention (NSI) regardless of any other factors.	



SECTION 2

MONITORING PROCESS STEPS

Introduction

The IDEA empowers and designates all State Education Agencies, including the KDE, to exercise general supervision responsibilities, including monitoring, for all public agencies involved in the provision of special education and related services.

To meet this requirement, the KDE conducts several types of monitoring activities to identify and correct findings of noncompliance at both the individual student level, as well as systemically. The KDE monitoring processes outlined in this section includes the following activities:

- Focused monitoring
 - State Consolidated Monitoring (SCM); and
 - Special monitoring
- Corrections monitoring
 - KECSAC facilities/Department of Juvenile Justice (DJJ); and
 - Adult correctional facilities (ages 18-21)
- Desk audits for the SPP/APR compliance indicators
 - Indicator 4b - Disproportionate suspension rates over 10 days;
 - Indicators 9 and 10 - Disproportionate identification rates for students with disabilities by race/ethnicity;
 - Indicator 11 - 60-school day evaluation timelines;
 - Indicator 12 - Timely transition from Part C to Part B; and
 - Indicator 13 - Secondary transition requirements
- Additional desk audits:
 - Physical Restraint and Seclusion
 - Comprehensive Coordinated Early Intervening Services (CCEIS)
- Management Audits
- Fiscal audits

Monitoring Personnel

The KDE in conjunction with the HDI has established and trained a cadre of individuals to conduct all state consolidated IDEA monitoring activities. Approval, implementation and closure of corrective action plan (CAP) activities is the responsibility of designated KDE staff within the DIMR. Unless otherwise specified, the cadre will be referred to as the “monitoring team.”



Personnel – Roles and Responsibilities

The IDEA monitoring process involves individuals assigned to the following roles related to CAPS for all onsite and desk audit monitoring activities:

- **DIMR Director** – provides direct oversight to the IDEA monitoring manager and all monitoring personnel; directs revisions to be made to the CAP process as needed; intervenes in any personnel issues; approves final monitoring reports; approves CAP drafts; approves CAP closures; approves annual review of monitoring manual; approves department purchase requests (DPR) as they relate to monitoring and ensures routing for final financial approval by the associate commissioner.
- **Assistant Director** – serves as the DIMR director’s designee as assigned; performs the duties of the DIMR director when absent; ensures annual review of monitoring manual; provides TA to team members and branch staff; participates in CAP approval and closure meetings.
- **Branch Manager** – collaborates with the DIMR director/assistant director to oversee that all CAP procedures are appropriately implemented by branch staff; conducts monthly CAP management meetings with branch staff; provides TA to team members and branch staff; participates in CAP approval and closure meetings; intervenes in any personnel issues related to branch staff.
- **Administrative Assistant** – routes and tracks travel approvals; secures hotel contracts and state cars; creates monitoring calendars and tracks deadlines; oversees supplies for monitoring activities.
- **Monitoring Lead** – ensures all logistics are in order prior to the start of the monitoring season; serves as the Branch Manager’s backup in monthly CAP management meetings; ensures [CAP Tracker](#) is updated following visits; suggests revisions to monitoring manual; participates in review teams; sends notification letters and monitoring reports to the district; participates in all CAP approval and closure meetings.
- **Indicator Lead** – an individual who leads activities pertaining to an indicator reported in the SPP/APR; leads the desk audit for the indicator; participates in CAP approval and closure meetings.
- **Audit Lead** – an individual who leads monitoring visits; participates in CAP approval and closure meetings. This person could be contracted through HDI or may be a consultant from DIMR.
- **CAP Lead** – a DIMR staff member who participates in the initial onsite visit or desk audit; assumes responsibility for working with a district to develop an appropriate CAP; tracks CAP implementation; communicates with the district, branch manager and DIMR director on the status of CAPs in their care; writes CAP closure letters; participates in CAP approval and closure meetings.
- **Technical Assistance Lead** – a consultant from the Division of IDEA Implementation and Preschool (DIIP) that teams with the CAP lead and district to develop and assist in



implementing CAPs with districts who were monitored in the consolidated monitoring process; participates in CAP approval meetings; and

- **Team Member** – HDI and DIMR staff members selected to accompany the district monitoring lead on a particular onsite visit or to participate in a desk audit; conduct interviews with staff; conduct record reviews.

Monitoring Steps

Preparation

1. The IDEA Risk Assessment will be updated, if needed, and completed for every district in Kentucky by July 1 each year.
2. The KDE *Compliance Record Review Document* and *IEP Guidance Document* will be considered for revision annually based on feedback from the previous year's monitoring activities and issues identified by DIMR staff.
3. The DIMR director, in collaboration with the associate commissioner of OSEEL, will identify the area(s) targeted for IDEA focused monitoring.
4. Intensive training shall be provided for all monitoring team members in the following areas:
 - a. Family Educational Rights and Privacy Act (FERPA) training;
 - b. Review of [OSEP Memorandum 09-02](#);
 - c. Student due process record reviews using the *Compliance Record Review Document*;
 - d. Interview techniques;
 - e. Use of available data to formulate hypotheses and triangulate data to verify conclusion(s) for issues under review;
 - f. Development of appropriate CAPs to effectively address student-specific and systemic findings of noncompliance; and
 - g. Protocols for onsite visits, including the following:
 - i. Onsite visitation ethics;
 - ii. Professional decorum (i.e., appropriate behavior and mode of dress); and
 - iii. Report drafting
5. Prior to conducting compliance record reviews in the district, the branch manager will calibrate a sampling of records from each monitoring team member to identify any concerns with the integrity of the process, including errors in data entry or inappropriate responses in the compliance record review form.
6. Student records selected must include a representative sample based on special education population including, as applicable:
 - a. Files from each school site, with an emphasis on schools where data reviews raise concerns;
 - b. Disability categories;
 - c. Gender;



- d. Race/ethnicity;
- e. English Learners (EL);
- f. Age of student (preschool, elementary, middle, high);
- g. Students who have been suspended, expelled, moved to an interim alternative educational setting (IAES) or alternative schools; and
- h. Characteristics related to the monitoring issue(s)

Example: If excessive restraint of elementary students with IEPs is the issue, student records should be chose from students in elementary schools within disability categories most likely to be restrained.

7. Numbers of student files to be reviewed for each district shall be based on the following criteria:

Total District Child Count in Focus Area	# Files to Review
100 or fewer	minimum of 10
101 or more	10% up to 100

8. Except for when safety is a concern, the DIMR will notify the district’s superintendent and copy the director of special education (DoSE) two weeks prior to the monitoring team’s arrival in the district. The notification letter will include the following:
- a. Date and time of arrival;
 - b. Schools to be visited;
 - c. Interview schedules, including names of individuals to be interviewed;
 - d. School visit schedules (if relevant);
 - e. Monitoring team needs (private meeting room, access to copy machine, etc.); and
 - f. A request for the district’s special education procedures (e.g., link or paper copy)
9. The monitoring team will arrive in the district office promptly at the scheduled time and will request to see the DoSE.
10. The audit lead will ensure introductions are made and will outline the reasons for the visit.
11. At the end of the workday, the audit lead will ensure records are securely stored before leaving the district for the night.
12. The DIMR monitoring lead will send the preliminary report to the district via email.
13. Consistent with [707 KAR 1:380](#) and [OSEP Memorandum 09-02](#), the cover letter and/or report template will include this information:
- a. The district will be given a 10-business-day window to provide additional information or clarify issues related to the report;
 - b. Within seven calendar days of receiving the district’s additional/clarifying information, the KDE will review and inform the district if changes to the report will occur and a final monitoring report is issued;



- c. The district must submit a root cause analysis of all systemic monitoring report issues and a CAP no later than 30 business days after the district receives the preliminary report of noncompliance;
 - d. The KDE must notify the district of the status of the CAP within 30 business days of receiving the CAP. If the KDE rejects the CAP, the district will have 15 business days to submit a new CAP;
 - e. Any noncompliance verified by monitoring must be corrected within 12 months from the date of the notification to the district of the noncompliance. This means that the KDE must provide written notice that the area(s) of noncompliance identified in the written report have been corrected no later than one year from the date the preliminary monitoring report was issued;
 - f. Corrections must be made at the individual student level and the district must be able to show the district is systemically in compliance; and
 - g. The name of the CAP lead assigned to the district
14. If the district chooses to submit additional information to verify or clarify issues related to the report as allowed under [707 KAR 1:380, Section 1 \(4\)](#), the audit lead, the DIMR monitoring lead, and the CAP lead will meet as soon as possible, either in person or electronically, to consider and respond to the district's request. Any requested changes to the preliminary report must be approved by the DIMR director or their designee.
15. A final report must be sent to the district within seven calendar days following the clarification period. A final report will be sent to the district in every case, even if the district did not submit a clarification request.
16. Clarification requests will not be considered after the final report has been issued.



Correctional Facilities Monitoring

Introduction

As used in this document, the terms “public agency” and “public agencies” refer to both the local school district and the correctional facility.

Through the Kentucky Educational Collaborative for State Agency Children (KECSAC), the Commonwealth of Kentucky annually provides residential and community-based services to approximately 12,000 state agency children. These young people are the responsibility of the Department of Juvenile Justice (DJJ), the Department for Community Based Services and the Department for Behavioral Health, Developmental and Intellectual Disabilities. The 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.

As part of its general supervision responsibilities, the KDE must monitor the IDEA requirements shared by KECSAC and its subagencies which could include the local school district in providing a FAPE for students within these facilities. The KDE must also monitor the IDEA requirements of facilities operated by the Department of Corrections.

The USED issued guidance in a [December 5, 2014 “Dear Colleague” letter](#) relating 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 state education agencies in exercising their general supervision responsibilities to ensure a FAPE for all students placed in these facilities.

The indicators used for monitoring correctional facilities were adapted by the KDE 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 the KDE directly bears responsibility through its monitoring of correctional facilities. PA indicators are considered the primary responsibility of the public agencies. The KDE is responsible for ensuring public agencies comply with these standards.



Correction of Findings of Noncompliance

The Office of Special Education Programs (OSEP) requires all noncompliance to be corrected as soon as possible but in no case later than one year from the date of notification of the noncompliance. To ensure this consistently occurs, IDEA Corrective Action Plan (CAP) procedures have been developed and are specified below.

It is essential that the CAP lead notify the district of the initial status of the CAP within 30 business days as specified by 707 KAR 1:380 Section 1 (6).

General CAP Procedures

1. The CAP lead will be familiar with the contents of the monitoring report and all issues that must be addressed within the CAP.
2. Within two business days after the preliminary monitoring report has been issued to the district, the CAP lead must make an initial contact with the DoSE to walk them through the CAP process and answer questions. The CAP lead will provide the DoSE with copies of a root cause analysis template and the CAP template.
3. A root cause analysis is required for systemic violations. Proposed CAP activities from the district must relate to the root cause of noncompliance and address systemic correction.
4. For consolidated monitoring only, if the identified noncompliance falls within scope of the State Personnel Development Grant (SPDG) the technical assistance lead, in consultation with the audit lead and CAP lead, will schedule a meeting with leadership from the district to discuss the CAP process and the needed technical assistance to be provided to the district.
5. Once the district has submitted a CAP to KDE for review, the CAP lead will schedule a CAP Approval Consideration meeting with the branch manager, the DIMR monitoring lead, the audit lead (whether from HDI or KDE), the DIMR director or their designee and other personnel necessary to review the district's CAP to determine if the CAP is approvable, or if revisions are needed.
6. Prior to the meeting, the CAP lead will preview the CAP and prepare suggested revisions for the approval team. It is imperative that:
 - a. Technical assistance is provided in a timely manner.
 - b. Student-specific corrections should be submitted within ample time for the review of additional records to confirm the district has achieved systemic compliance.
 - c. Student-specific corrections must be completed after training has occurred. In most cases waiting until the summer to conduct a training will not be possible, since training must be provided prior to the corrections of noncompliance. When



completing corrections after the training is complete, compliance is more likely to occur.

- d. The district's DoSE is not a KDE-approved trainer.
- e. Districts may consider using a quarterly time frame for CAP completion as follows:
 - i. first quarter – clarification, root cause analysis, scheduling trainings, etc.;
 - ii. second quarter – complete trainings, review and revise systems, etc.;
 - iii. third quarter – student specific corrections, finish CAP activities, etc.; and
 - iv. fourth quarter – comparison folder reviews
7. CAPs require approval signatures from the following people:
 - a. CAP lead;
 - b. Audit lead; and
 - c. DIMR director or designee
8. The completed CAP form will be sent to the DoSE via email with copies sent to:
 - d. the special education cooperative director;
 - e. the DIMR director;
 - f. the assistant director;
 - g. the branch manager; and
 - h. the monitoring lead
9. If the CAP is not ready to approve, it will be returned to the DoSE via email. The CAP form will specify the requirement that the district submit its revised CAP within 15 business days as specified by 707 KAR 1:380, Section 1 (6).

CAP Implementation and Closing Procedures

1. According to [OSEP Memorandum 09-02](#), “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).
2. The preliminary report is the beginning of the one-year timeframe as this date is when the noncompliance was identified to the district.
3. The CAP lead will contact the DoSE monthly by phone or email about CAP progress.
4. Districts must submit evidence to the CAP lead no less than quarterly. Districts are encouraged to submit evidence as it becomes available instead of waiting for the quarterly update.
5. Any request for amendments to CAPs after approval, including amending internal timelines, must be approved by the DIMR director. The DIMR director may not extend any CAP past the one year timeline.
6. CAP progress will be documented by the CAP lead and communicated to the district on the CAP form, which can be found in Appendix C.
7. All evidence and clarification submitted by the district will be documented by the CAP lead 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 sign in sheets, copies of trainings, updated policies and meeting notes.

8. All feedback from the CAP lead will be dated and documented in the “DIMR Feedback” section of the CAP form.
9. Any time a 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.
10. If a district misses multiple timelines, the DIMR director will set up a call with the CAP lead and the DoSE to discuss the status of the CAP, encourage voluntary compliance, and provide technical assistance to the district.
11. Before the KDE can conclude and report that noncompliance has been corrected, it must first verify, consistent with [OSEP Memorandum 09-02](#), that the district:
 - a. Prong 1 – Has corrected each individual case of noncompliance, and
 - b. Prong 2 – Is systemically in compliance with the specified regulatory requirements (i.e., subsequently achieved 100% compliance), based on the KDE review of updated data.
12. To document that the school district has achieved systemic compliance, the KDE will review additional student special education records. This is called comparison folder review.
13. The number of comparison folders reviewed by the DIMR will be determined based on the table below and will be randomly chosen by the 618 data manager. Randomness will be accomplished through the use of an online randomizer.

Level of Compliance Per Issue	Number of Identified IDEA Students in area reviewed	Number of Comparison Files to Review
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 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.
14. If any record is found noncompliant during comparison folder reviews, the district will be required to correct the noncompliance before the CAP can be closed. All records submitted according to the table above must be verified at 100% compliant in the areas originally cited before the CAP can be closed.
15. Once the comparison folder review process is complete, the CAP lead will recommend closure of the CAP. The CAP lead will schedule a meeting to include the following people:
- b. The CAP lead;
 - c. The audit lead; and
 - d. The DIMR director or their designee
16. **No closure letters may be signed without a closure meeting taking place.**
17. Once the CAP lead has obtained the necessary signatures, they will send the closure letter to the district. The letter is addressed to the superintendent. The following people should be copied:
- e. District DoSE;
 - f. Associate commissioner of OSEEL;
 - g. DIMR director;
 - h. Assistant director;
 - i. Branch manager;
 - j. Monitoring lead
 - k. Indicator lead;
 - l. CAP lead;
 - m. Administrative assistant; and
 - n. Special education cooperative director



Important Things to Remember

- Districts are always required to conduct a root cause analysis for systemic issues to determine why problem areas exist to drive the development of meaningful CAP activities.
- CAP leads must provide feedback to the district, as requested, for assistance in developing its CAP.
- It is imperative to respond to district questions or concerns regarding development of the CAP in a **timely** manner to keep the process on track.
- The order in which CAP activities are going to be completed is important. The monitoring team should never approve a CAP that seeks to correct student-specific areas of noncompliance prior to the implementation of professional development or other learning activities conducted resulting from the district's root cause analysis.
- The emphasis for all CAPS is on technical assistance. Any training activities that are part of the CAP shall be conducted by a KDE-approved trainer.
- The DoSE is not to be approved as a trainer for CAP trainings either in their own district or in other districts. Any exceptions to this rule must be approved by the DIMR director.
- **If the CAP lead determines it is likely noncompliance cannot be corrected within the one-year timeline, the DIMR director and assistant director must be notified immediately and regularly updated on progress until CAP closes.**
- While the district has up to one year to correct all areas of noncompliance, remember this is the **maximum** amount of time. Student-specific corrections of noncompliance need to be submitted with each CAP update once all training activities have been completed.
- The DIMR director must approve extensions to internal timelines or changes to CAP activities once the CAP has been approved.
- No extensions to the one-year timeline for correcting noncompliance shall be granted.



VIRTUAL MONITORING CONSIDERATIONS

The KDE is required to comply with federal monitoring requirements and will put virtual measures in place when appropriate to ensure the safety and well-being of students and staff. The DIMR director will consult with the associate commissioner of OSEEL to determine if and when virtual monitoring steps are appropriate. Decisions will be made on a case-by-case basis. The DIMR director will consider each case and determine which virtual monitoring considerations are appropriate.

The DIMR may at times need to implement a variety of monitoring approaches one of which could include virtual monitoring practices. 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 school district but may include:

- Desk audits of due process and discipline files;
- Phone or web-based interviews of school and district staff;
- Limited onsite visits to view seclusion rooms, alternative schools, conduct live video tours; and
- Limited onsite visits to retrieve or view select records or files



APPENDIX A

Supporting Documentation with Links

Hyperlinks appearing throughout this document are included below for quick reference:

- [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](#)
- [State Consolidated Monitoring Process](#)
- [Electronic Code of Federal Regulations - Uniform Grant Regulations](#)
- [2 CFR 200.331 Requirements for Pass-Through Entities](#)
- [2 CFR 200.519 Criteria for Federal Program Risk](#)
- [2018 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

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 this 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 outlined in:
 - (a) Off-site or onsite 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 the appeal rights



- have been exhausted; or
- (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 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 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;

(a) 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;

(b) 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

(c) 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. (26 Ky.R. 2148; Am. 27 Ky.R. 508; eff. 8-14-2000; 33 Ky.R. 3496; 34 Ky.R. 567; eff. 11-5-2007



APPENDIX C CAP Form Template

CORRECTIVE ACTION PLAN (CAP) XXXXXXXXXX School District

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

Area of Noncompliance Identified	
Population Size in Area Reviewed	
Number of Comparison Folders Required in First Round	
Percentage Compliant at CAP Onset	____% compliant
Percentage Compliant at CAP Closure:	____% compliant

Area of Non-compliance	Action Steps	Required Evidence	Due Dates	District Updates and Evidence	DIMR Feedback
Root Cause Analysis	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		
Issue 1	Activity 1.1				
	Activity 1.2				
Issue 2	Activity 2.1				
	Activity 2.2				



Student -specific	Student-specific corrections identified in the Monitoring Report				
Verification of Noncompliance	District will provide additional comparison student folders for verification of the correction of all noncompliance in accordance with the requirements of OSEP Memorandum 09-02	Additional files as determined by KDE/DIMR monitoring manual			

<i>For KDE/DIMR Use Only</i>		
Procedure	Date	Actions Taken
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)		

<i>For KDE/DIMR Use Only</i>		
CAP Approval Signatures Required	Signature	Date
<i>CAP Lead</i>		
<i>Audit Lead</i>		



<i>DIMR Director or Designee</i>		
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<i>For KDE/DIMR Use Only</i>		
CAP Closure Signatures Required	Signature	Date
<i>CAP Lead</i>		
<i>Audit Lead</i>		
<i>DIMR Director or Designee</i>		

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