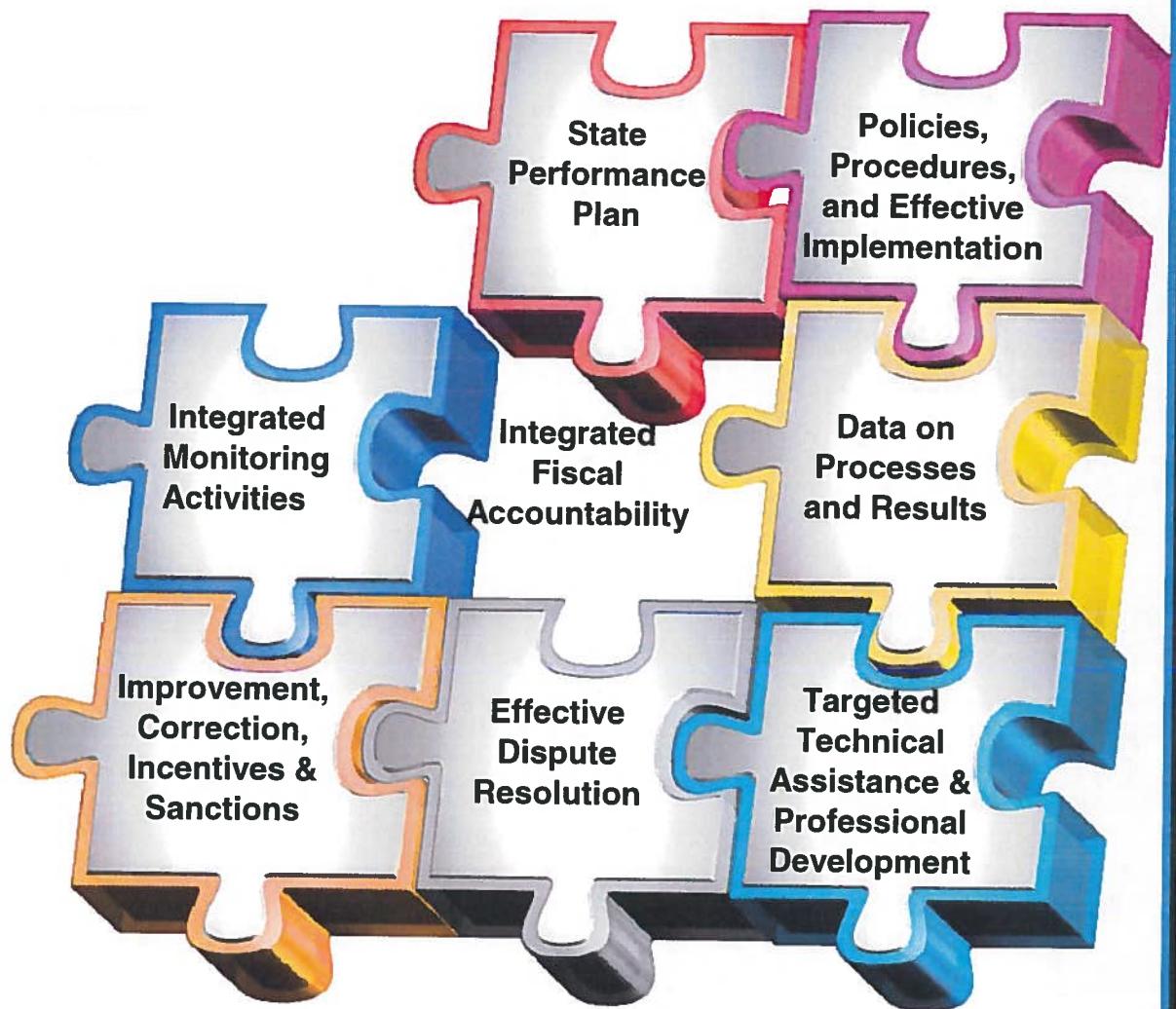


*New Mexico's Integrated Special Education Accountability System – A Comprehensive Monitoring Approach to Improving Outcomes for Students with Disabilities.*



**January 2016**

## Introduction

On December 2, 2004, the reauthorized Individuals with Disabilities Education Act (IDEA) went into effect. The highly qualified definition in Section 602(10) and Subparts 2, 3, and 4 of Part D went into effect on December 2, 2004. Parts A, B, and C, and subpart 1 of Part D went into effect on July 1, 2005. The reauthorized IDEA placed greater accountability on State Education Agencies (SEAs) and Local Education Agencies (LEAs) in the areas of compliance with the law, performance of students with disabilities, and the timely, accurate, and reliable reporting of data.

As a result of the reauthorization, the components of a State's system of General Supervision were revised and additional components were added. A successful system of General Supervision includes the following mechanisms:

1. State Performance Plan
2. Policies, Procedures, and the Effective Implementation
3. Data on Processes and Results
4. Targeted Technical Assistance and Professional Development
5. Effective Dispute Resolution
6. Integrated Monitoring Activities
7. Improvement, Corrections, Incentives, and Sanctions
8. Integrated Fiscal Accountability

In December 2005, every state was required to submit a State Performance Plan (SPP) to the United States Department of Education Office of Special Education Programs (OSEP). The SPP included a combination of 20 results and compliance indicators established by the U.S. Secretary of Education that spans six fiscal years (2005 – 2006 through 2010 - 2011). Since the IDEA is due to be reauthorized in the near future, the SPP was extended for two additional years (2011 – 2012 and 2012 – 2013). The SPP evaluates the State's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation.

On February 2, 2015 states were required to submit a new State Performance Plan. The number of compliance and results indicators were reduced from 20 to 16. The updated SPP included targets through Federal Fiscal Year (FFY) 2018.

As part of the SPP, each state was required to set targets for each of the indicators that did not have a target mandated by OSEP. Each year, every state must report its progress to OSEP and the public on the progress of students with disabilities in the state. Specifically, states must report, in their Annual Performance Report (APR), their progress in meeting the measurable and rigorous targets established in the SPP. Based on the information in the State's APR and any other information available, OSEP applies the following Determinations to States: (i) Meets Requirements of Part B of the Act, (ii) Needs Assistance in Implementing Part B of the Act, (iii) Needs Intervention in Implementing Part B of the Act; or (iv) Needs Substantial Intervention in Implementing Part B of the Act.

Included in the State's General Supervision, Monitoring, and Enforcement requirements under 34 CFR §§ 300.149 and 300.600, the State must review every district each year on the SPP Indicator performance. According to the IDEA, states are required to make "Determinations" annually on the performance of the LEAs in accordance with 34 CFR § 300.600(a)(2). States must use the same four categories as OSEP, listed above, in making Determinations of the status of local programs.

In accordance with 34 CFR § 300.149, the SEA also known as the New Mexico Public Education Department (NMPED), is responsible for ensuring –

- (1) That the requirements of the IDEA are carried out; and
- (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior) –
  - (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
  - (ii) Meets the educational standards of the SEA, including the IDEA.

On December 1, 2008 the IDEA regulations were amended requiring states to consistently apply the same enforcement mechanisms outlined in 34 CFR § 300.604, when assigning the annual Determinations. These enforcement mechanisms include, among others:

- Technical assistance
- Conditions on funding of an LEA
- A corrective action plan or improvement plan
- Withholding funds, in whole or in part

In addition, the amended regulations:

- Require all LEA noncompliance to be corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance;
- Set forth a process for distributing funds to new LEAs;
- Provide for a base payment adjustment for LEAs in their first year of operation; and
- Outlines a process for the reallocation of LEA funds.

The General Supervision and Accountability System is an evolving process. As a result of the reauthorization of IDEA, increased accountability at the state and local level, and changes in OSEP's Monitoring Priorities, New Mexico has moved from a Focused Monitoring System to an Integrated Accountability System. New Mexico's Integrated Special Education Accountability System (ISEAS) monitors and reviews all LEAs' compliance and results data annually. The ISEAS takes into account the eight components of General Supervision listed above, and involves stakeholders (IDEA Panel) in the process.

The primary focus of the State's monitoring activities under 34 CFR § 300.600(b) must be on:

- Results
  - Improving educational results and functional outcomes for all students with disabilities; and
- Compliance
  - Ensuring that public agencies meet the program requirements under Part B of the act, with particular emphasis on those requirements that are most closely related to improving the educational results for students with disabilities.

New Mexico's ISEAS focuses on student performance outcomes and the compliance requirements of the IDEA. In addition, the ISEAS takes into account the eight components of general supervision. This Accountability System Manual is a tool designed to provide the structure for the State and LEAs in the area of General Supervision. The ISEAS is the system that provides the assurances to OSEP that the State is carrying out its responsibilities, using quantifiable indicators in each of the priority areas listed below, and using such qualitative indicators as are needed to adequately measure performance and compliance in those areas which are listed below.

1. Provision of Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE).
2. State exercise of General Supervision including, but not limited to:
  - a. child find;
  - b. effective monitoring;
  - c. use of resolution meetings
  - d. mediation; and
  - e. system of transition services.
3. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent that the representation is the result of inappropriate identification.

The purpose of this manual is to increase accountability and provide transparency to all stakeholders on how New Mexico's school districts are monitored under the IDEA. The ISEAS also provides remedies or solutions for noncompliance or performance concerns identified in New Mexico's school districts.



## **Improvement, Corrections, Incentives, and Sanctions**

### *Identification of noncompliance*

Many components of the State's general supervision system are used to monitor compliance and to identify findings of noncompliance. This includes data from the following areas:

- State Performance Plan;
- Policies, Procedures, and Effective Implementation;
- Data on Processes and Results;
- Integrated Monitoring Activities;
- Integrated Fiscal Accountability; and
- Effective Dispute Resolution.

A finding of noncompliance is defined as: *A written conclusion that includes the citation of the regulation/requirement and a description of the quantitative and/or qualitative data supporting a decision of compliance or noncompliance with that regulation/requirement.* All noncompliance must be identified regardless of the source of data.

The State must make a finding of noncompliance in a timely manner, unless:

- In verifying whether the data demonstrate noncompliance, the State determines that the data do not demonstrate noncompliance; or
- The State verifies, using both prongs of OSEP Memo 09-02, that the LEA or State Supported Educational Program (SSEP) has corrected the noncompliance before the State issues written findings of noncompliance.

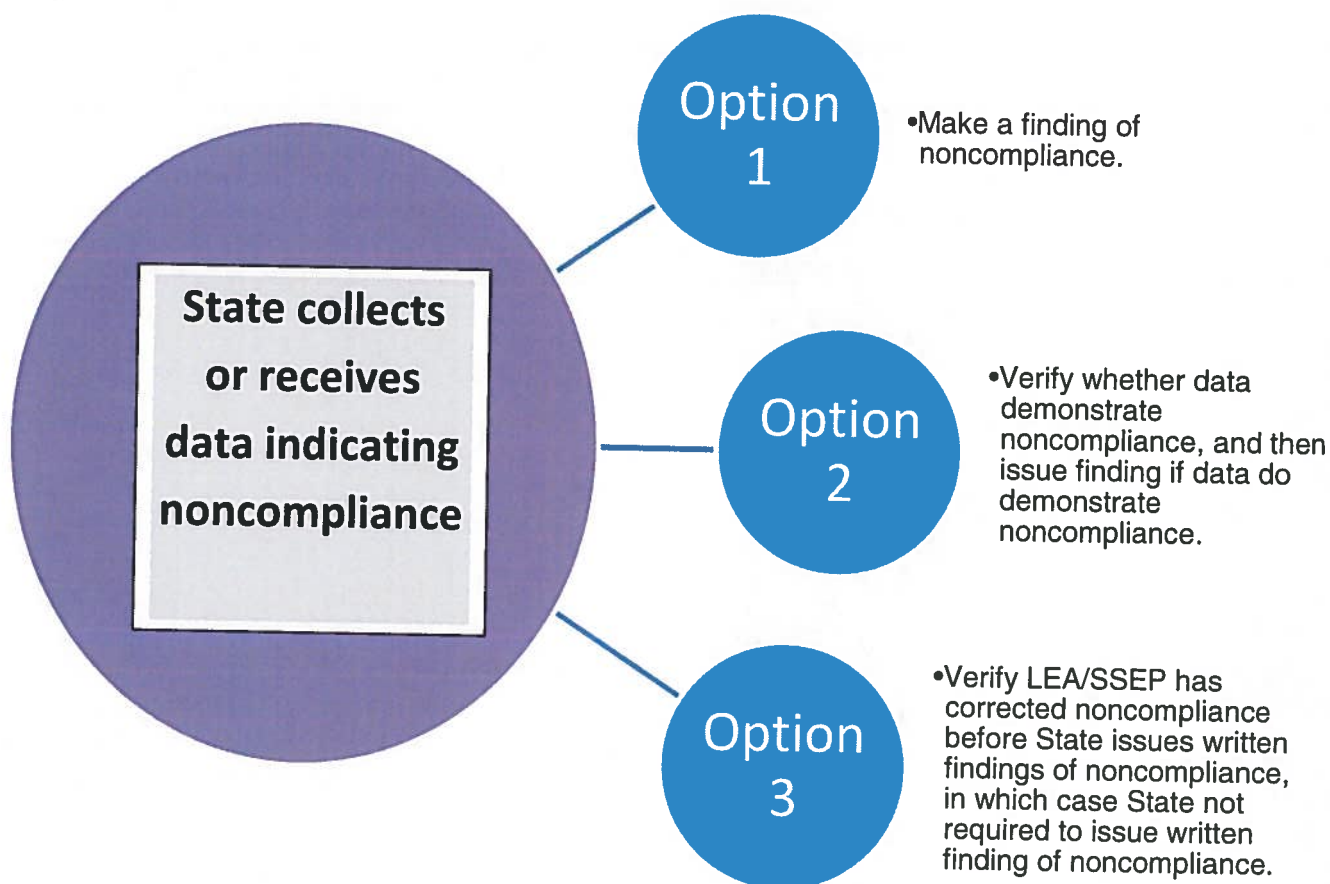
A timely manner is generally defined as within 90 days of the identification.

Noncompliance can be identified through various mechanisms such as:

- State database (Student Teacher Accountability Reporting System – STARS) through the review of SPP indicator data
- Desk audits of indicator data, review of policies, procedures, and practices, and fiscal information
- Self-assessments
- Due process hearing decisions and State complaint decisions
- Information from other sources

A State may identify one or more points in time, during the SPP/APR reporting period, when it will review compliance data from the database and data warehouse to identify and make findings of noncompliance. A State can review data in the database at other times as well, for purposes such as targeting resources, guidance or other technical assistance.

When a State collects or receives information indicating noncompliance, several options are considered. The options are illustrated below.



#### *Notification of findings of noncompliance*

If option 1 or 2 is met, LEAs or SSEPs are notified of findings of noncompliance, in a timely manner, by a formal letter from the State Special Education Director. The formal letter includes a written conclusion that includes the citation of the regulation/requirement and a description of the quantitative and/or qualitative data supporting a decision of compliance or noncompliance with that regulation/requirement. Notification occurs within 90 days of identification.

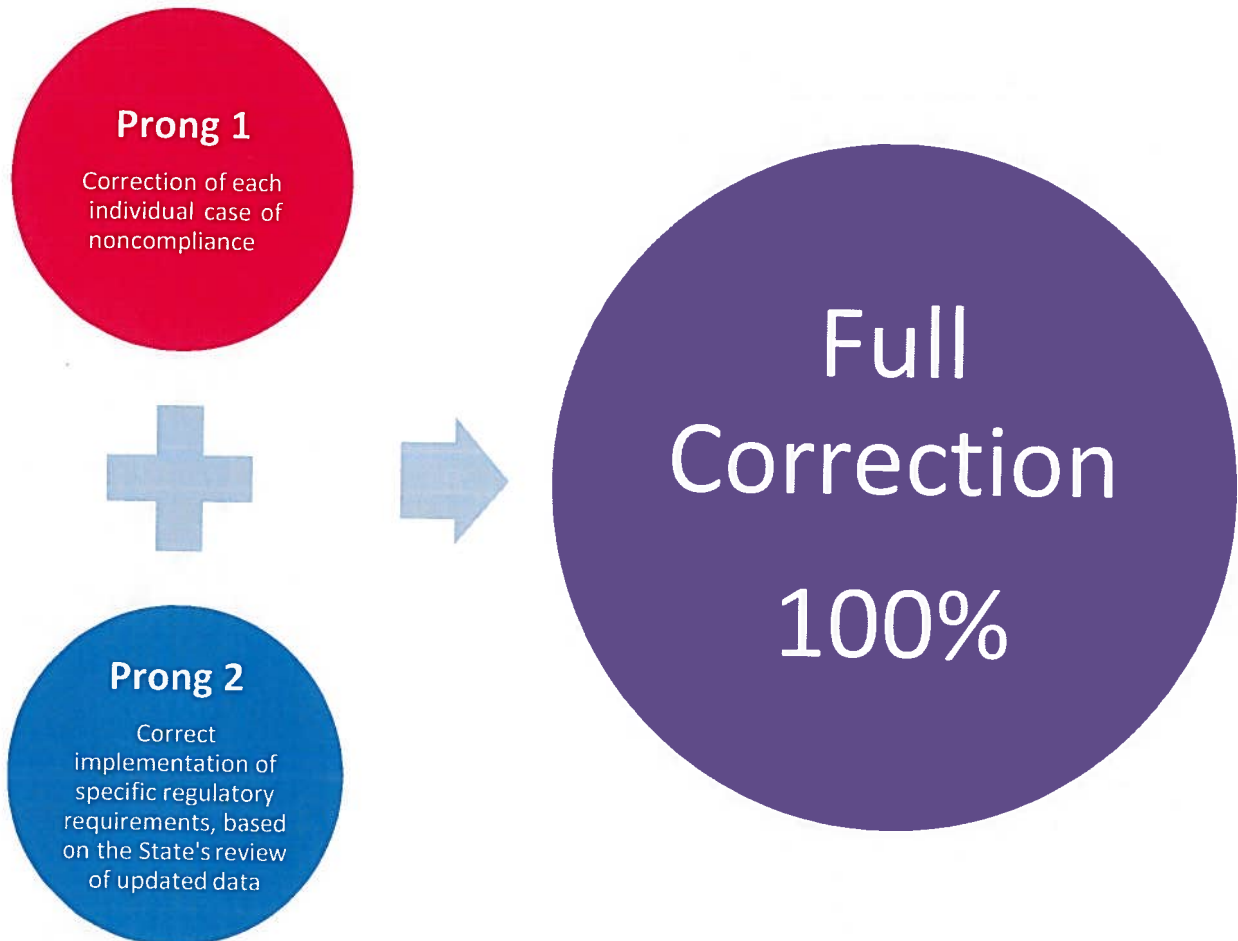
For the purposes of reporting, Option 3 is considered noncompliance and must be reported in the Annual Performance Report. It is reported as noncompliance that was corrected in a timely manner.

#### *Correction of findings of noncompliance*

Timely correction is defined in accordance with 34 CFR § 300.600(e), noncompliance must be corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. All noncompliance must be corrected to 100%. The use of thresholds is not allowed.

In accordance with the OSEP Memo 09-02, there are two prongs used in verifying the correction of noncompliance. Both prongs of the OSEP Memo 09-02 apply to correction of all findings of

noncompliance, including the compliance indicators, whether there is a high level of compliance (but below 100%) or a low level of compliance.



The SEB staff member assigned to the LEA is responsible for monitoring of the both prongs of correction.

What are individual cases of noncompliance?

- ✓ Findings from a formal complaint (corrective action plan steps)
- ✓ Findings from a due process hearing (due process hearing officer's order(s))
- ✓ Missed compliance indicators (4,9,10,11,12, and 13)
- ✓ Findings from monitoring visits or other sources



What evidence is reviewed to determine if a LEA is correctly implementing the specific regulatory requirements? The SEB reviews:

- ✓ Formal complaint CAP document(s) submission
- ✓ Documentation of due process hearing officer's order being implemented
- ✓ Follow up to mediation agreements
- ✓ Subsequent review of STARS data
- ✓ Improvement Plan or CAP data or document submissions
- ✓ Self-assessments (indicators 4, 9, and 10)
- ✓ Review of fiscal data including requests for reimbursements
- ✓ Review of LEA's policies, procedures, and practices
- ✓ Meeting of special conditions on sub-grant
- ✓ Review of students' records
- ✓ Random sampling of student files
- ✓ Review of Individualized Education Programs (IEPs)
- ✓ Other

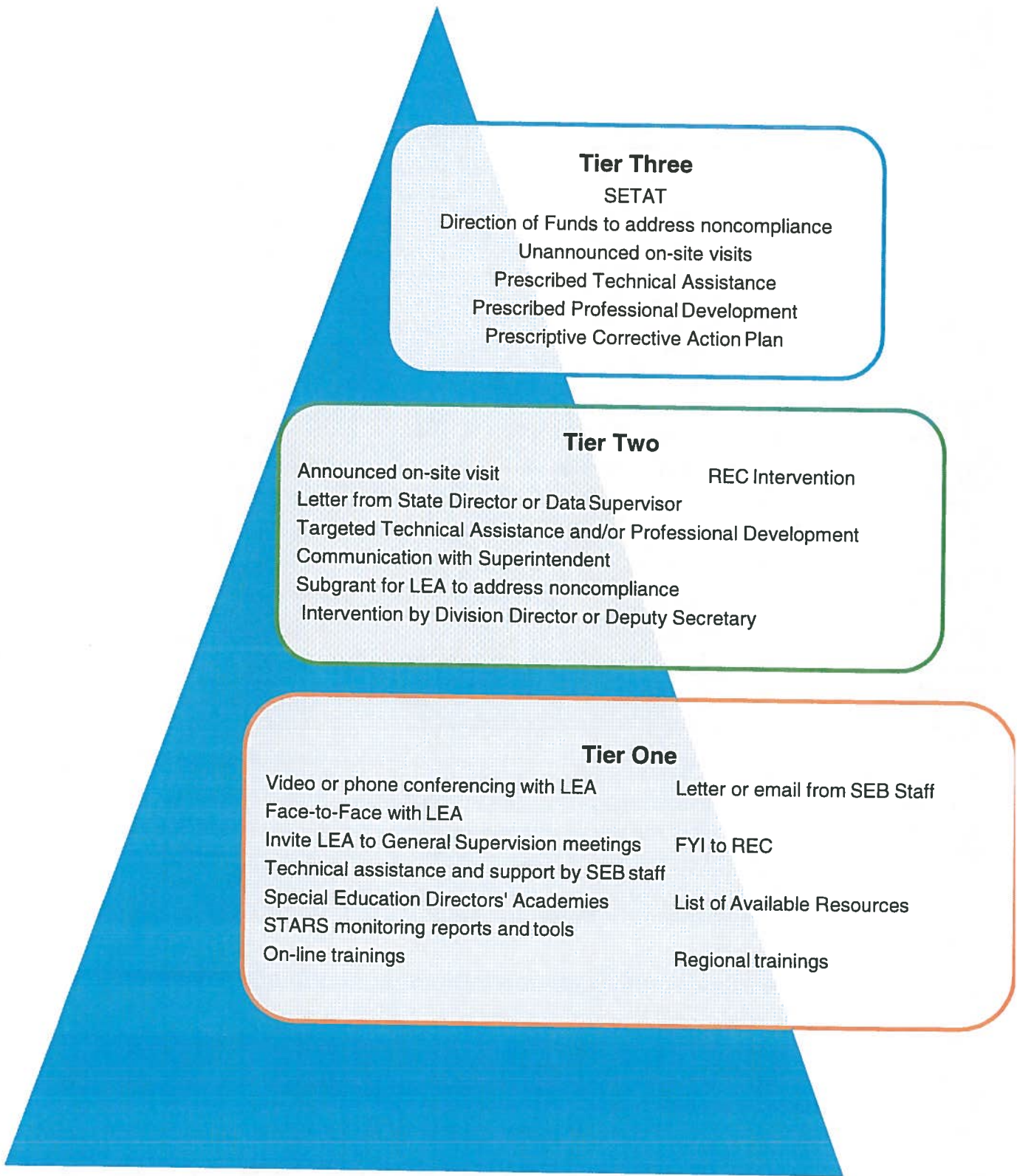
#### *Corrective Action*

All noncompliance requires corrective action. The State addresses corrective action of noncompliance through several different methods depending on how the noncompliance was identified, the magnitude of the problem/issue, the length of time the problem/issue has existed, the LEA's response to the problem/issue, and the LEA's level of determination which establishes the level of intervention by the State. The levels of intervention are located in Appendix A.

Findings of noncompliance through a State level formal complaint that involve an individual student or group of students are monitored through district corrective action plans with specific tasks to be completed with benchmarks and timelines for completion. Strategies for the correction of noncompliance with the SPP indicators are required to be a part of the LEA's Improvement Plan or Corrective Action Plan, depending upon the LEA's level of determination. LEAs are required to submit documents and evidence on a quarterly or semi-annual basis for SEB staff members to review. Due Process Hearing Officer's decisions are monitored separately. LEAs are required to meet the timelines set forth by the Hearing Officer.

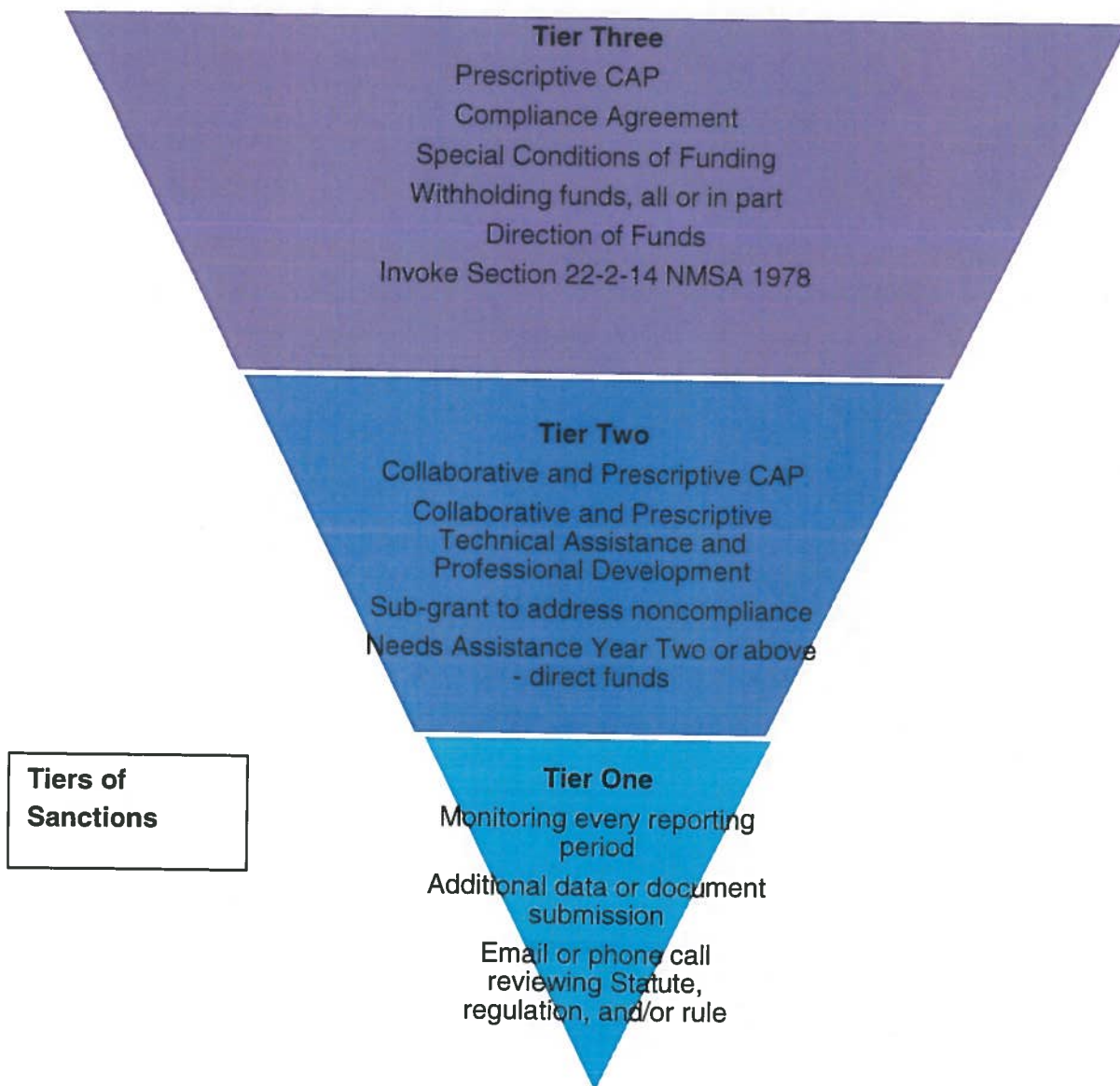
The State has developed a Tiers of Intervention model to work with LEAs. This proactive approach provides technical assistance and support through a tiered model in which the State and LEAs work in collaboration to improve educational results and functional outcomes for all students with disabilities. The tiered model allows the human and fiscal resources to be directed to those LEAs requiring the most intense support while preventing LEAs from moving into a more severe level of determination. The pyramid below highlights the Tiers of Intervention utilized when working with LEAs to assist them in meeting compliance and correcting noncompliance in a timely manner.

# Tiers of Intervention



The interventions listed above are not an exhaustive list, only options that are considered and applied by SEB staff. Each LEA is unique and the maintenance of compliance and timely correction of noncompliance varies. An LEA may have missed a SPP indicator for the first time and tier one interventions may be applicable. However, in the case of the same LEA who has uncorrected noncompliance beyond one year and who has not met the two prong criteria, a tier three intervention may be the most reasonable.

At times, unfortunately Tiers of Intervention may not be enough of an intervention to correct the LEA's noncompliance and Tiers of Sanctions may need to be applied. The diagram below illustrates some of the sanctions that are considered when working with LEAs.



### *Enforcement Actions and Sanctions*

The New Mexico Administrative Code (NMAC), State Special Education Rules, at Subsection G 6.31.2.9 requires the notification of the public agency in case of ineligibility, if the State determines that the public agency is not eligible under IDEA Part B. The State is required to provide the public agency with reasonable notice and the opportunity for a hearing.

In accordance with Subsection H of 6.31.2.9 NMAC, if the State withholds funds due to noncompliance after reasonable notice and an opportunity for a hearing, if the public agency is failing to comply with any requirement described in 34 CFR. §§ 300.201 – 300.213 and 34 CFR. § 300.608, the State must reduce or may not provide any further Part B payments to the public agency until the State is satisfied that the public agency is in compliance with that requirement.

In addition, 22-2-14 NMSA 1978 requires:

A. Money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department shall give written notification to a local school board, local superintendent and school principal, as applicable, of any failure to meet requirements by any part of the school district under the control of the local school board. The notice shall specify the deficiency. Instructional units or administrative functions may be disapproved for such deficiencies. The department shall disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

B. Within thirty days after receipt of the notice of failure to meet requirements, the local school board, local superintendent and school principal, as applicable, shall:

- (1) comply with the specific and attendant requirements in order to remove the cause for disapproval; or
- (2) submit plans satisfactory to the department to meet requirements and remove the cause for disapproval.

C. The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board, local superintendent or school principal that has had notice of disapproval and fails to comply with procedures of Subsection B of this section. The department shall act in lieu of the suspended local school board, local superintendent or school principal until the department removes the suspension.

D. To suspend a local school board, local superintendent or school principal, the secretary shall deliver to the local school board an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be held by the department, at which the local school board, local superintendent or school principal may appear and show cause why the suspension should not be put into effect. Within five days after the hearing, the secretary shall make permanent, modify or withdraw the alternative order.

E. The secretary may suspend a local school board, local superintendent or school principal when the local school board, local superintendent or school principal has been notified of disapproval and when the department has sufficient reason to believe that the educational

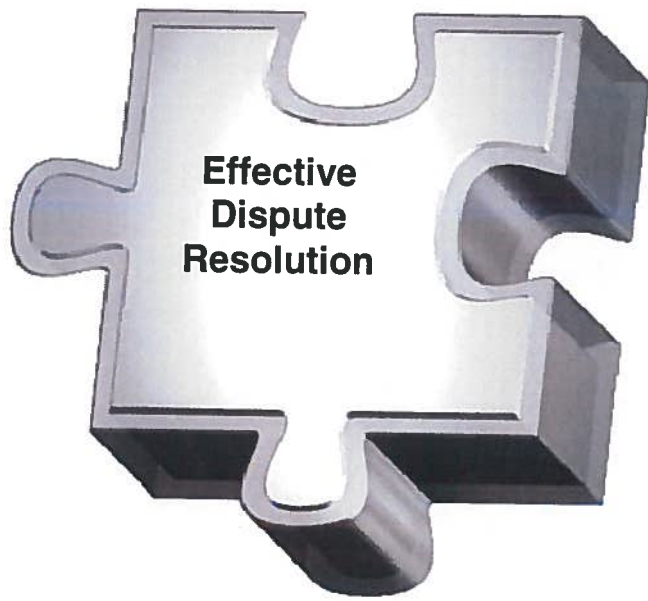
process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.

F. The department, while acting in lieu of a suspended local school board, local superintendent or school principal, shall execute all the legal authority of the local school board, local superintendent or school principal and assume all the responsibilities of the local school board, local superintendent or school principal.

G. The provisions of this section shall be invoked at any time the secretary, after consultation with the commission, finds the school district or public school has failed to attain and maintain the requirements of law or department standards and rules.

H. The commission shall consult with the secretary and may recommend alternative actions for the secretary's consideration.

I. A local school board, local superintendent or school principal aggrieved by a decision of the secretary may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.



**Effective  
Dispute  
Resolution**

## **Effective Dispute Resolution**

### **Formal State Level Complaints**

The State has procedures for organizations and individuals to file a State level complaint alleging the failure of the department or a public agency to comply with State and Federal laws or regulations governing programs for children with disabilities under the IDEA. The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the SEB.

Organizations or individuals can file a complaint utilizing the State level model complaint form located on the SEB's website or by writing a letter. The model form can be accessed at <http://www.ped.state.nm.us/SEB/index.html>. The complaint must:

- ✓ be in writing;
- ✓ be submitted to the SEB (or the Secretary of Education, in the case of a complaint against the department);
- ✓ be signed by the complainant or designated representative and have the complainant's contact information;
- ✓ include a statement that the department or a public agency has violated a requirement of an applicable State or Federal law or regulation; and
- ✓ contain a statement of the facts on which the allegation of violation is based, and

Any complaint that does not contain each of these elements will be declined, with an explanation of the SEB's decision and further guidance, as appropriate. The complaint procedure is outlined in Subsection (H) 6.31.2.13 NMAC and the Complaint Investigator's procedure manual that includes a process to ensure each allegation contained in the complaint is addressed.

### *Timely Resolution of Complaints*

The State has established a procedure for the timely resolution of formal complaints that is outlined in Paragraphs (5) and (6) of Subsection H of 6.31.2.13 NMAC. The process is outlined in the flow chart located on the SEB website at [http://ped.state.nm.us/ped/SEBdocuments/community/2013/Complaint\\_Procedure\\_chart\\_wth\\_A\\_DR\\_May\\_2013.pdf](http://ped.state.nm.us/ped/SEBdocuments/community/2013/Complaint_Procedure_chart_wth_A_DR_May_2013.pdf).

### *Extension of the 60-day timeline*

Pursuant to 34 CFR § 300.152(a), all complaints must be investigated and resolved within sixty days of the New Mexico Public Education Department's receipt of the complaint letter.

An extension of time to complete the investigation may only be granted if:

1. The parties agree to engage in mediation (or some other form of alternative dispute resolution) and request, in a writing sent to the complaint investigator, an extension of the deadline to permit these settlement discussions, or
2. If exceptional circumstances exist.

Examples of exceptional circumstances include:

- ✓ Holding a complaint in abeyance because a request for due process hearing was filed concerning the same issue(s).
- ✓ Other unforeseen circumstances beyond the control of the parties which significantly impede the ability of the complaint investigator to investigate the complaint.

The SEB sends a letter informing the parties of an extension of the 60-day time limit for exceptional circumstances, including the basis for the extension and the length of the extension.

### *Implementation of Complaint Decisions*

The complaint resolution report includes procedures for effective implementation of the final decision, if needed, including technical assistance and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

If the public agency fails or refuses to comply with the applicable law or regulations, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by State laws or Federal regulations. The department shall retain jurisdiction over the issue of noncompliance with the law or regulations and shall retain jurisdiction over the implementation of any corrective action required.

The implementation of the Corrective Action Plan (CAP) is the responsibility of the LEA. The implementation is monitored by the Office of General Counsel (OGC) staff. The OGC staff member provides the technical assistance and support to the district in correcting noncompliance. The OGC staff member sets up the timelines for meeting the CAP steps through Microsoft Outlook and reminds the LEA of pending timelines. Before a LEA is considered compliant, the LEA must correct the individual case(s) of noncompliance. Once all of the noncompliance has been corrected, the LEA is notified in writing, by the State Special Education Director that the CAP is closed and the district is in compliance with those areas identified as deficient.

### **Expedited and Due Process Hearings**

The State has procedures at Subsection (I) 6.31.2.13 NMAC for a parent or public agency to initiate an impartial due process hearing on the following matters:

1. the public agency proposes to initiate or change the identification, evaluation, or educational placement or provision of FAPE to the child;
2. the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. The Due Process Hearing Fact Sheet can be reviewed at

<http://ped.state.nm.us/SEB/community/dl10/What%20a%20Parent%20Needs%20to%20know%20about%20a%20Due%20Process%20Hearing%20May%202012.pdf> .



Parents or public agencies can utilize the State's model due process form or write a letter that includes all of the components included in Subsections (I)(4)(5) 6.31.2.13 NMAC. The model form can be located at <http://www.ped.state.nm.us/SEB/index.html>. The due process procedure flow chart that includes the alternative dispute resolution options is located on the SEB's website under Formal Dispute Resolution Flow Chart [http://ped.state.nm.us/ped/SEB\\_laws.html](http://ped.state.nm.us/ped/SEB_laws.html).

### **Alternative Dispute Resolution**

New Mexico offers parties involved in dispute a spectrum of options for resolution including alternative methods. New Mexico's alternative dispute resolution (ADR) options include:

- Third-party assisted intervention
- Facilitated Individualized Education Program
- Mediation
- Resolution Session

The request for ADR can be found at <http://www.ped.state.nm.us/SEB/index.html>.

### **Third-party Assisted Intervention**

This mediation option is available to parents and public agencies who request such third-party assisted intervention prior to filing a state level complaint or due process hearing. This option is provided at State expense by a State trained and approved mediator. The request must be in writing and both parties must agree to participate. The process is described in detail in Subsection G (2)(b) of 6.31.2.13 NMAC.

### **Facilitated Individualized Education Program (FIEP)**

Parties to a State level complaint may choose to convene a FIEP. This ADR option is provided at no expense to the parties by a State trained and approved facilitator. Each session in the FIEP must be scheduled in a timely manner and must be held in a location that is convenient to the parties of the dispute. The FIEP fact sheet is located at [http://ped.state.nm.us/ped/SEB\\_laws.html](http://ped.state.nm.us/ped/SEB_laws.html).

### **Mediation**

If parties choose to use mediation, the following requirements apply:

1. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
2. Any mediated agreement must state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement must also be signed by both the parent and a representative of the agency who has the authority to bind such agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.
3. If a mediated agreement involves IEP-related issues, the agreement must state that the public agency will subsequently convene an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly.

4. The mediator shall transmit a copy of the written mediation agreement to each party within 7 days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.
5. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
6. Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

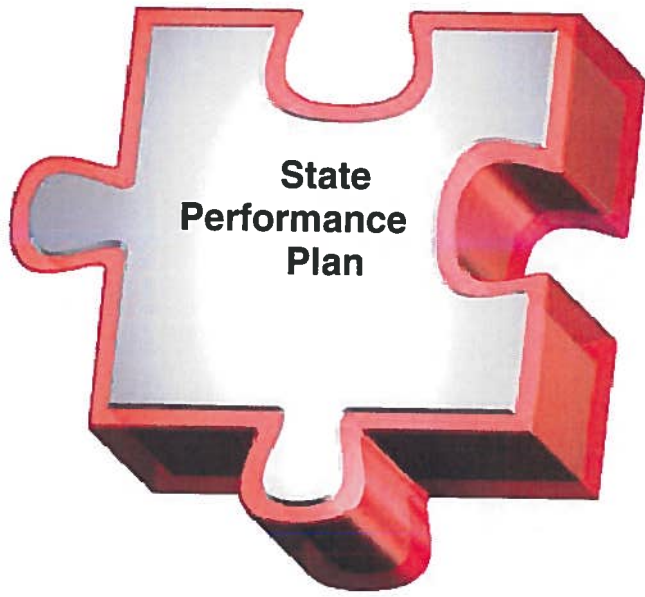
The mediation fact sheet is located at [http://ped.state.nm.us/ped/SEB\\_laws.html](http://ped.state.nm.us/ped/SEB_laws.html).

Sixty days after the mediation session, the SEB sends a form to both parties. The mediation follow up form is located in Appendix B. The purpose of the correspondence is to determine if the conditions of the mediation are being met by both parties. If the conditions are not being met, the SEB follows up with the parties and requires compliance with the conditions of the agreement. Tiers of Sanctions are applied, if needed. Since the mediation agreement is a legally binding contract, if either party fails to meet the agreement, the party can seek enforcement of the agreement in state or federal court.

### **Resolution Sessions**

Prior to an impartial due process hearing, the public agency shall convene a resolution session with the parent(s) and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parent(s) and the public agency agree in writing to waive such a meeting or agree to use the mediation process instead. The process for the resolution session is described in Subsection (8)(a) 6.31.2.13(I) NMAC and the fact sheet is located at [http://ped.state.nm.us/ped/SEB\\_laws.html](http://ped.state.nm.us/ped/SEB_laws.html).

Seven days after a due process hearing is filed, the SEB follows up with the LEA to see if the resolution session was held or was scheduled within 15 days of receipt of the due process hearing. The resolution tracking form is located in Appendix C. If both parties agree to waive the resolution session, the parties may engage in mediation or proceed with the due process hearing. If the LEA failed to offer the resolution session in 15 days and did not engage in another form of ADR, the LEA is considered noncompliant and is required to complete an action plan to correct the noncompliance.



**State  
Performance  
Plan**

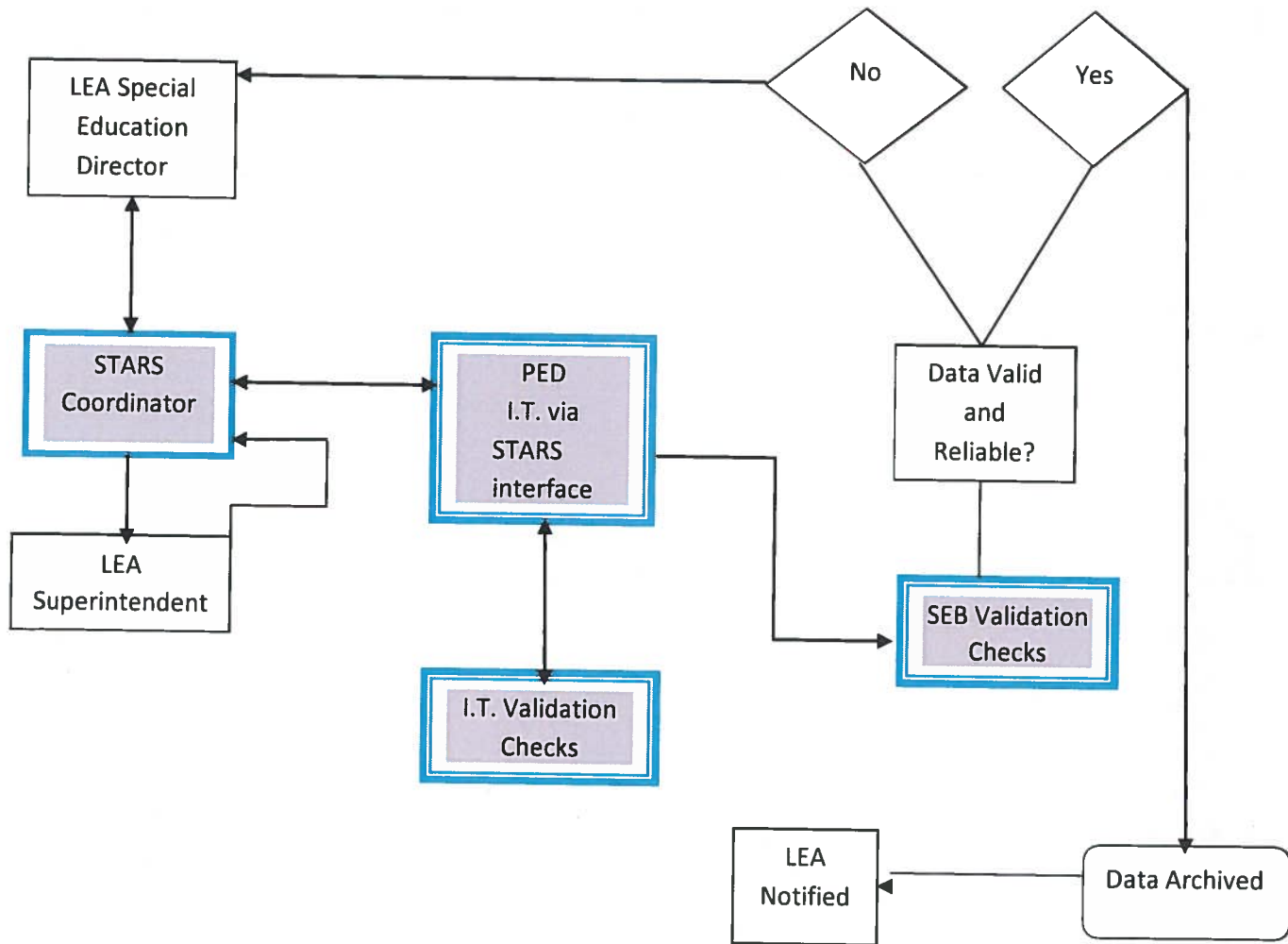
## **State Performance Plan**

### *Data Collection and Validation*

The majority of the data for the State Performance Plan (SPP) is collected electronically through the State's data warehouse (STARS) and the State's data base. The data source and reporting period for each indicator are listed in the chart below.

<b>Indicator</b>	<b>Data Source</b>	<b>Reporting Date</b>
One – Graduation rates	STARS – cohort data	EOY
Two – Drop-out rates	STARS	EOY Exiting Data
Three – School grades, participation rates, and proficiency	PARCC and Alternate Assessment	Annually in August
Four – Significant Discrepancy in rates of long term suspensions and expulsion	STARS	EOY – Prior Year Data
Five – Least Restrictive Environment (LRE) ages 6 – 21	STARS	Second Weds. in October
Six – LRE ages 3 – 5	STARS	Second Weds. in October
Seven – Early Childhood Outcomes	STARS	Second Weds. in October and Second Weds. in February
Eight – Parent Involvement	Parent Survey	April
Nine – Disproportionate Representation due to inappropriate identification	STARS and Self-assessment	Second Weds. in October and end of February (self-assessment)
Ten - Disproportionate Representation due to inappropriate identification (specific disability categories)	STARS and Self-assessment	Second Weds in October and end of February (self-assessment)
Eleven – 60 day timeline from consent for initial evaluation to evaluation	STARS	Each reporting period
Twelve – Part C to Part B Transition	STARS	Each reporting period
Thirteen – Secondary Transition	STARS	Second Weds. in February
Fourteen – Post School Outcomes	REC 4 Survey	Annually in the Fall
Fifteen – Resolution Sessions	State dispute resolution data base	As Resolutions Sessions Completed
Sixteen – Mediations resulting in Mediation Agreements	State alternative dispute resolution data base	As Mediations Completed
Seventeen – State Systemic Improvement Plan	DIBELS Data	SCA – Beginning Of Year (BOY), Middle of Year (MOY) and End Of Year (EOY)

The general data submission and validation process is illustrated below. The specific process for each compliance indicator and most of the results indicators can be found in Appendix D.



The boxes shaded above delineate various and distinct data validation points along the process. For example: the LEA validates the child specific data before submitting to the PED. The I.T. validation determines if data are duplicates, have errors or are incomplete. The SEB further validates the data specific to children, IEPs, required fields for compliance indicator validation, and the prong one and prong two criteria. The SEB in conjunction with I.T. has programmed in several internal data validation tools to assist staff with determining whether or not the data are credible.

When a child enters a public school in New Mexico, upon registering, the parent(s) must present actual proof of the child's age with a document such as a birth certificate. Additional information is gathered from the parent(s) such as race/ethnicity, disability information, etc. This information along with other data collected by the school (English language learner status, free and reduced lunch status) are entered into STARS and sent to the PED. The PED then assigns the child a unique identification number. The unique number remains with the child their entire time they

are enrolled in public schools. This information is critical to the data validation at the PED and SEB.

### *LEA Annual Determinations*

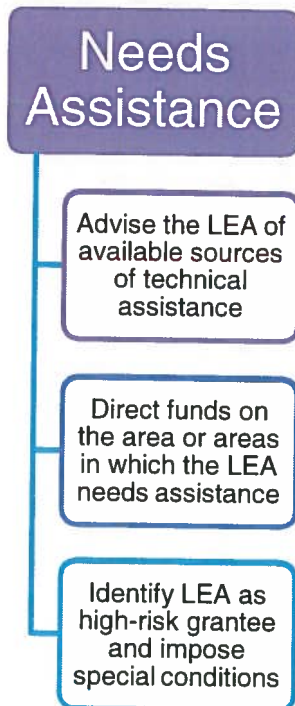
Annually in August, the State assigns LEAs determinations under 34 CFR § 300.600(a)(2) (2008). The State uses the document entitled: How the Department Made Determinations under Section 616(d) of the Individuals with Disabilities Education Act: Part B, from the U.S. Department of Education to define the determination criteria annually. The State utilizes the August timeframe because this is when the school grades are made under the Elementary and Secondary Education Act, according to the State's waiver. LEAs can begin the school year with all relevant data from the previous year and can begin improvement planning through the Improvement Plan or CAP. This timing assists LEAs with the planning of the professional development activities for the upcoming school year. In addition, the right to appeal the needs intervention determination through due process under 34 CFR §§ 300.600(a)(3) and 300.603(b)(2) and Subsection F of 6.31.2.9 NMAC is at the same time as the school grade appeal.

Missed compliance indicators and results indicators may be included in the LEA's Improvement Plan or CAP. After the completion of the Root Cause Analysis (RCA) for any missed compliance indicator(s), the LEA develops strategies for the correction of the noncompliance and includes the strategies in the Improvement Plan or CAP. Strategies for the results indicators are also developed and included in the appropriate plan.

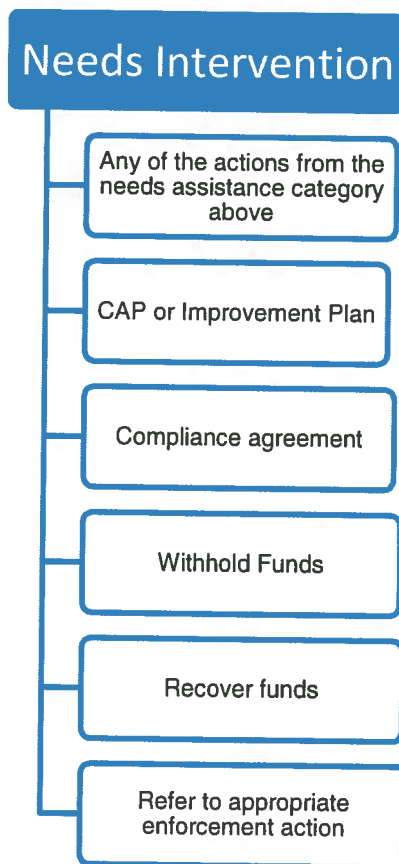
### *Enforcement Actions*

The enforcement actions are applied in accordance with 34 CFR § 300.600(a)(3). The Tiers of Interventions and Tiers of Sanctions that are applied are located in the Improvement, Correction, and Incentives & Sanctions section. The Levels of Intervention matrix illustrating the various enforcement actions is located in Appendix A. All noncompliance must be fully corrected as soon as possible and in no case later than one year from identification using the two prong approach in accordance with the OSEP 09-02 memorandum.

When a LEA is considered in Need of Assistance for two consecutive years, the State takes one or more of the following actions:

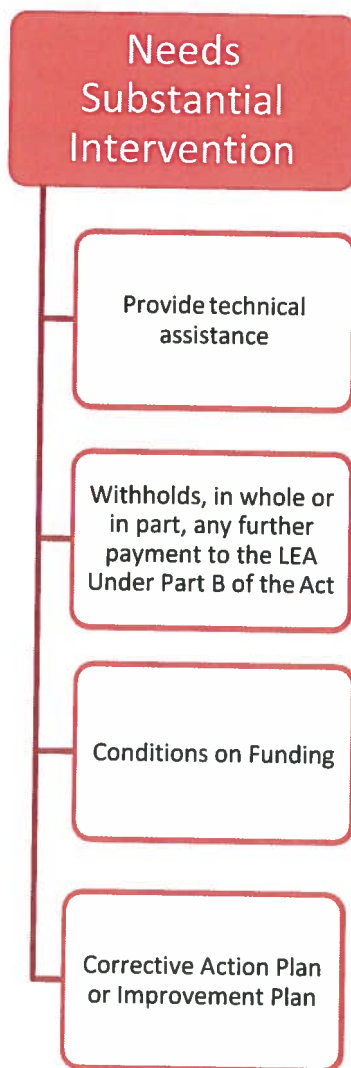


If the State determines that a LEA, for three or more consecutive years, needs intervention, the following shall apply:



The State may take any of the enforcement actions under Needs Assistance and or any of the actions listed above. If the State determines that a LEA needs substantial intervention in

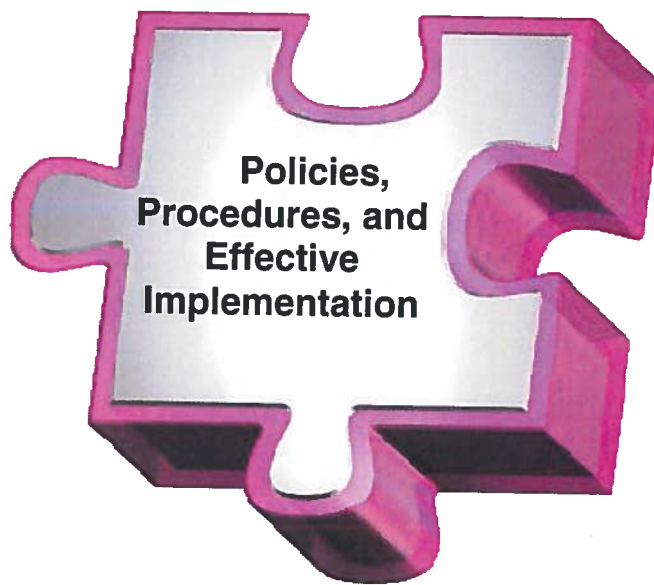
implementing the requirements of IDEA Part B or that there is a substantial failure to comply with any condition of the LEA's eligibility under Part B of the IDEA, the State will take one or more of the following actions:



### *Public Reporting*

The State reports annually on the performance of each LEA as provided in 34 CFR § 300.602(b)(1)(i)(A) and (b)(2). The performance of each LEA located in the State on the targets in the State's performance plan is published on the SEB's website as soon as practicable but no later than 120 days following the State's submission of its annual performance report in February. The public reports can be accessed at <http://www.ped.state.nm.us/SEB/data/index.html>.





**Policies,  
Procedures, and  
Effective  
Implementation**

## **Policies, Procedures, and Effective Implementation**

Annually, LEAs must submit a plan that provides assurances to the State that the LEA meets conditions under 34 CFR §§ 300.201 – 300.213. This includes the requirement that the LEA must have in effect policies, procedures, and programs that are consistent with the State.

The State provides a model template of policies and procedures for the LEAs to utilize or the LEA can develop its own policies as long as they are consistent with the State. The template is updated as needed whenever there are changes to the regulations or State rules. The SEB must approve all policies and procedures. The LEA provides the assurance annually in the sub-grant application along with documentation from the LEA's Board of Education or Governing Council that the LEA has adopted the required policies and procedures.

There are times when policies, procedures, and practices are reviewed in-depth by the State. As a result of the review, LEAs are required to revise their policies, procedures, and practices. Some of the circumstances are listed below.

- Significant discrepancy in the rates of long-term suspensions and expulsions for students with IEPs (indicator 4a)
- Significant discrepancy in the rates of long-term suspensions and expulsions for students with IEPs, by race and ethnicity (indicator 4b)
- Disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification (indicator 9)
- Disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification (indicator 10)
- Significant disproportionality based on race and ethnicity with respect to the identification of children with disabilities, the placement in particular settings of children, and the incidence, duration, and type of disciplinary actions.
- Other areas of identified noncompliance

### *Significant Disproportionality – Mandatory Coordinated Early Intervening Services (CEIS)*

State's definition of significant disproportionality -

In New Mexico, a Local Education Agency (LEA) is considered to have Significant Disproportionality based on race and ethnicity if the LEA has a Westat Risk Ratio and Weighted Risk Ratio of 5.0 or above with a sample size of greater than 10.

The State's policy and procedure on the identification and correction of significant disproportionality is located in Appendix E. Annually, data in the areas of identification, placement, and discipline are reviewed. The data are submitted from the LEA to the SEB via STARS. The data are sorted accordingly, into the Westat Calculator, in regards to the area of significant disproportionality being examined. All data are reviewed as an aggregate then by LEA regardless of the "n" size. The data is compared longitudinally or over time to determine any possible trends. LEAs with a "n" size of greater than 10 in a specific area i.e. students who

are Caucasian and considered to have another health impairment and whose risk ratio and weighted risk ratio is 5.0 or above are identified as having significant disproportionality.

LEAs are notified of significant disproportionality in a timely manner. The notification about the identification and placement in a particular educational setting occurs in the early spring, prior to the approval of the LEA's annual sub-grant application and initial budget. The discipline notification occurs in the summer because the end-of-year data submission is not due until June 30<sup>th</sup>. All notification is in writing from the NM Secretary of Education or designee. The notification includes explicit directions on what the LEA must do fiscally, programmatically including data submission, and in regards to the review of policies, procedures, and practices. Once the State has completed the review of the policies, procedures, and practices and determines that they are deficient, the LEA is directed to revise them to comply with requirements in accordance with 34 CFR § 300.646(b)(2). The revised policies, procedures, and practices are submitted to the SEB for review or approval. The LEA is required to report publically on the revision of the policies, procedures, and practices on their website. If they do not have a website, they must convey the information to the public in the same manner as they send out information regarding meetings such as Board of Education meetings.

The charts below highlight the data sources utilized by the State to determine whether or not a LEA meets the definition of significant disproportionality.

Identification	Placement	Discipline
<ul style="list-style-type: none"><li>• Annual Child Count</li><li>• Second Wednesday in October</li></ul>	<ul style="list-style-type: none"><li>• Annual Child Count - Educational Environment</li><li>• Second Wednesday in October</li></ul>	<ul style="list-style-type: none"><li>• Annual Discipline report</li><li>• End-of-Year</li></ul>

In addition to the review and possible revision of policies, procedures, and practices in regards to significant disproportionality, the LEA is required to reserve 15% of its total Part B 611 and 619 funds for Coordinated Early Intervening Services (CEIS).

Specific fund codes have been set up in the State's fiscal monitoring system, the Operating Budget Management System (OBMS). In the letter from the NM Secretary of Education or

designee, LEAs are directed to submit a Budget Adjustment Request (BAR) for the 15%. Prior to submission to the SEB, the BAR is approved by the LEA Board of Education and the superintendent. The detailed fiscal monitoring of CEIS due to significant disproportionality is described in the Integrated Fiscal Accountability section of the manual.

The LEA is required to submit a plan for CEIS that must be approved prior to implementation. The plan must include the following information:

- How will the LEA use the funds for CEIS for those students, particularly, but not exclusively in those groups that were significantly over-identified?
- What is the LEA's plan to provide services to students in grades K – 12, who are not identified as needing special education and related services, but who need additional support (academic and/or behavioral) to succeed in the general education environment?
- How will the students be identified? What criteria will be used?
- How will the funds be spent in accordance with 34 CFR § 300.226(b)?
  - Professional development in the areas of scientifically academic and behavioral interventions
  - Educational and behavioral evaluations services and supports
- How will the LEA report the number of students in STARS who receive CEIS and the number of students that subsequently receive special education and related services?
- How will the LEA notify the public of the revision of the policies, procedures and practices?

Mandatory CEIS is monitored through STARS and OBMS. The students who have been identified to receive CEIS are monitored through STARS. Each student has a unique identification (ID) number. Through the unique ID, SEB staff can verify important information such as the student's race/ethnicity and grade level. Those students are entered into STARS through the regular education portal and would be flagged if they had a subsequent referral for special education and related services. If the CEIS student eventually receives special education and related services, the student would be included in the special education portion of STARS. The SEB validates this through evaluation and IEP information.

OBMS has specific fund codes under the Uniform Chart of Accounts (UCOA) that are used to track encumbrances and expenditures. CEIS has its own fund code (24112). The UCOA also includes codes for professional development, evaluations, staff, etc. If a district is using CEIS funds for professional development, they would use the following code, 24112.1000.53330 when setting up their budget, requesting budget authority from the department, and when requesting reimbursement. CEIS funds set aside under 24112 are not allowed to be transferred to another fund code through a budget adjustment request. Those funds must remain in 24112 for the remainder of the grant period. LEAs must expend 100% of the 24112 funds on State approved CEIS activities in order to be considered compliant.

### *Voluntary Coordinated Early Intervening Services*

A LEA may not use more than 15% of its IDEA Basic funds (24106) for voluntary CEIS less any amount reduced by the LEA pursuant to 34 CFR § 300.205, if any, in combination with other amounts (which may include amounts other than education funds), in accordance with 34 CFR § 200.206.

Prior to the implementation of Voluntary CEIS, the LEA must

- Submit the request through the LEA's annual sub-grant application. The sub-grant application must be signed by the LEA Board of Education President, Superintendent, and Special Education Director.
- Specify what funds, if any, that will be used in combination with the IDEA Part B funds. This includes the coordination with ESEA funds. The funds may be used to carry out CEIS aligned with activities funded by, and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA.
- Submit a plan for CEIS, to SEB for approval, that includes
  - Number of students to be served needing academic and/or behavioral support including the grade level
  - Services to be provided for the students
    - Professional development for teachers
    - Educational and behavioral evaluations
    - Educational and/or behavioral supports and services
  - LEA's process for submitting student information into STARS on the number of students who received CEIS and the number of students that subsequently received special education and related services.
- If the sub-grant application considered substantially approvable by the Secretary and the SEB has approved the plan for voluntary CEIS, set up budget authority in OBMS utilizing the UCOA for CEIS
- Assure that the amount of IDEA B 611 and 619 funds sets aside for voluntary CEIS will not affect the LEA's Maintenance of Effort (MOE).

The use of IDEA B funds for CEIS is considered when the State calculates the LEA Maintenance of Effort (MOE). The amount of funds expended by a LEA for CEIS under § 300.226 shall count toward the maximum amount of expenditures that the LEA may reduce its effort.

The student data for voluntary CEIS is monitored through STARS in the same fashion as the mandatory CEIS. The fiscal data is monitored through OBMS in the same manner as the mandatory CEIS. The LEA is required to submit a final progress report that includes the students' progress and whether or not the students were referred for special education and related services and are receiving services. The report is due annually on June 15<sup>th</sup>.

### State Prohibition

If the PED determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 613(a) of the Act or the PED has taken action against the LEA under Section 616 of the Act, the PED must prohibit the LEA from reducing the level of expenditures under 34 CFR § 300.205(a) for that fiscal year.

### Special Rule

The amount of funds expended by an LEA for early intervening services under 34 CFR § 300.226 shall count towards the maximum amount of expenditures that the LEA may reduce, for purposes of maintenance of effort, under 34 CFR § 300.205(a)

### *National Instructional Materials Accessibility Standard (NIMAS)*

New Mexico has adopted the NIMAS and coordinates with the National Instructional Materials Access Center (NIMAC). The State has adopted the requirements and has incorporated them into State Rules (6.75.4 NMAC) that can be accessed at

<http://164.64.110.239/nmac/parts/title06/06.075.0004.htm>. Annually as part of the LEA's IDEA B sub-grant application, the LEA must provide one of the following assurances.

1. The LEA has chosen to coordinate with the NIMAC when purchasing print materials to students who are blind or who have a print disability.
2. The LEA has chosen not to coordinate with the NIMAC but assures that it will provide instructional materials to blind students or other students with print disabilities in a timely manner.

If the LEA selects the second assurance, they must provide a narrative describing how they will meet the NIMAS. Either assurance must be approved by the SEB prior to the sub-grant being considered substantially approvable.



All of the data collected for SPP indicators 1 – 13 are collected through the STARS data warehouse. Indicator 14 data is collected electronically through a portal at the Regional Education Cooperative.

SPP indicators 1 – 13 are collected during various reporting periods throughout the year. The data collection periods are illustrated in the indicator chart in the State Performance Plan section of this manual. Beginning with the 2010 – 2011 school year, the reporting periods were standardized across the State. The STARS data warehouse has various programs built in to automatically check the validity of the data being submitted by the LEA. This includes information attached to the student's unique identification number. For example the level of service for a student cannot be changed automatically with a change in an IEP date. Certain information cannot be submitted through STARS if the fields are left blank. If a student is no longer receiving special education services, they must be exited otherwise the student membership count numbers will not match and cannot be validated.

STARS has two types of flags, yellow and red, to indicate a possible problem with the data. Yellow flags serve as a warning that information is needed; but is not critical to the indicator calculation. Red flags can indicate missing data, incomplete data, noncompliance, incorrect data, or errors, including data anomalies.

Data anomalies such as a seven-year-old student being submitted in an early childhood setting because of his/her date of birth or a student enrolled in two schools or districts at one time are automatically flagged. The process for identifying data anomalies is the same for the Section 618 and 616 data collections since the entire system is automated. STARS has built in exception reports that automatically move data out of the collection and into the exception report to be addressed by the LEA in conjunction with the SEB. An example of an exception report is the duplication of students, students who are developmentally delayed and who are over nine years old, and students whose IEPs have expired.

If LEAs are flagged, they have 10 days to correct or update the data and resubmit for validation. Failure to meet the 10 day timeline impacts the LEA's annual determination. The data must be validated by the LEA superintendent and STARS coordinator prior to resubmission.

The data is validated by the department's I.T. staff and SEB staff to determine if the data has been corrected. For example: have the duplicated students been deleted from the LEA's child count or have the nine year old students been reevaluated and have an updated evaluation date, eligibility determination date, IEP date, and an updated disability. Or, in the case of the student who did not qualify, an exit date. The SEB can ask for additional data to validate the corrected data. This can include a document review.

Practices and procedures that led to the data anomalies are addressed through several means. Depending upon the magnitude of the problem, the LEA may be required to complete a root cause analysis (RCA). Based upon the results of the RCA, the LEA may have to have strategies included in the LEA's Improvement Plan or Corrective Action Plan. The LEA could also be required to participate in professional development activities or be the recipient of targeted



technical assistance. The STARS validation process is illustrated in the State Performance Plan section of this manual.

*IDEA Section 618 Data Collection*

The method and timing of the Section 618 data collection are illustrated in the charts below.



Dispute  
Resolution

State Data base

End-of-Year

Discipline

STARS  
Student  
Infraction  
Template

End-of-Year

Personnel

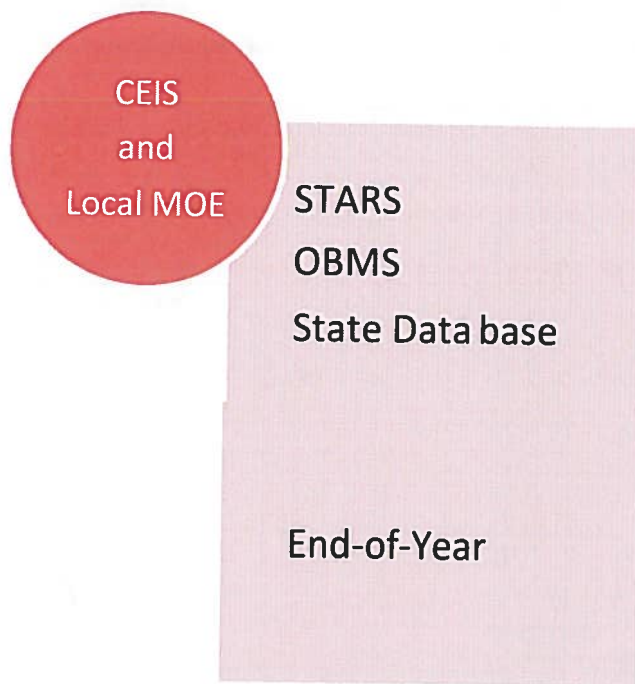
STARS  
Staff  
Assignment  
Template

End-of-Year

Assessment

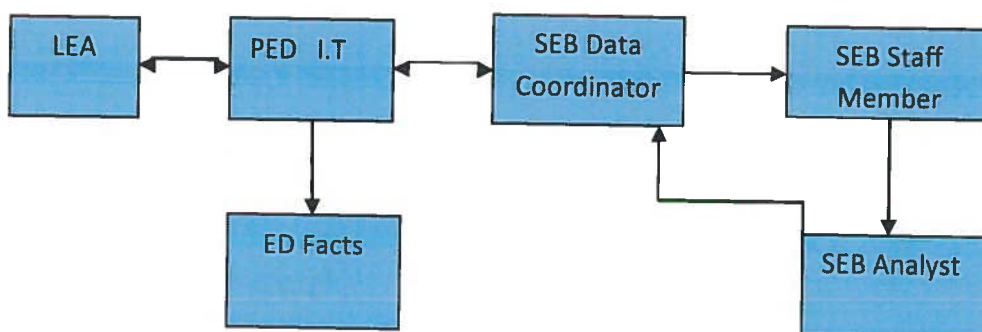
STARS  
Assessment  
Fact Template

End-of-Year



The State ensures that the Section 618 data are collected in a consistent and accurate manner among the LEAs. The directions for the data collections and definition of terms such as regular preschool setting are defined in the STARS manual. The directions and descriptors match the information in the Section 618 instructions. Each preschool student, by their unique identification number, can only be entered using the predetermined setting codes from the Office of Management and Budget (OMB).

The information needed for the subsequent year's Section 618 data submissions occur throughout the preceding year, with the exception of the annual child count and educational environment count that occurs on the second Wednesday of October. As students exit, that information is entered into STARS throughout the school year and is extracted at the end of the year. It is not a data event, but a compilation of data that occurs all year and is validated by SEB staff throughout the school year. This ensures the accuracy since there is no rush at the end of the year to submit a year's worth of data. The diagram below illustrates the edit checks in place for the local 618 submissions.





**Integrated  
Monitoring Activities**

## **Integrated Monitoring Activities**

The state's current system of school and district support is designed to help schools and districts meet state mandates as outlined in the approved New Mexico Elementary and Secondary Education Act (ESEA) Flexibility Request (February 2012). These mandates are as follows: implementation of Common Core State Standards; development and administration of annual, statewide, aligned, high-quality assessments that measure student growth; implementation of the state-developed A–F School Grading Accountability System; and development and implementation of guidelines for local teacher and principal evaluation and support systems. The full waiver can be viewed at <http://ped.state.nm.us/waiver/index.html>

The state's support system includes: differentiated technical assistance, opportunities for professional development, annual program budget reviews, data-driven decision making, resources for best practices and research-based programs, and a number of tools to assist schools and districts in analyzing and determining their strengths and opportunities for improvement. Each school will be able to find themselves on a specific page within this document based on their school's report card grade (and status if applicable).

The specific criteria for each school, based upon the school grade, Title I and non-Title I status along with the prescribed technical assistance, professional development and audit tools can be found at <http://ped.state.nm.us/ped/PrioritySchoolsIndex.html>.

34 CFR 300.600(b) indicates that the primary focus of the State's monitoring activities must be on -

- (1) Improving educational results for and functional outcomes for all children with disabilities; and
- (2) 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.

In order to meet 34 CFR § 300.600(b), the State's monitoring activities must be integrated across all components of the general supervision system. Multiple data sources and methods are used to monitor every LEA. This includes on-site and off-site monitoring activities. The charts below illustrate the various sources of data that are utilized to monitor LEAs.

- STARS (Ind. 1 - 13) desk top review
- Parent Survey (Ind. 8)
- REC (Ind. 14)
- Root Cause Analysis
- On-site monitoring
- State's review of updated data

### SPP Indicators



- Individual cases of noncompliance
- Formal Complaints - CAPS
- Due Process Hearings - DPHO order(s)
- On-site monitoring

### Dispute Resolution



- Surveying of both parties to see if mediation agreements holding and issues addressed
- Following up on Resolution Sessions within 15 days of receiving notice

### Alternative Dispute Resolution



- Self-assessments
- Assurances from LEA to State
- Submission of updated policies and procedures when regulations or rules change
- Submission of MOUs or other agreements
- Significant Disproportionality
- Significant Discrepancy in rates of suspensions and expulsions

### Policies and Procedures



- Annual sub-grant applications
- Assurances
- OBMS - BAR approval and requests for reimbursement
- UCOA
- SHARE
- Desk-top Audits
- On-site Audits
- State's review of updated data

### Fiscal



When LEAs miss compliance indicators, they may be required to include the indicator(s) along with strategies for correction in an improvement plan. If a Corrective Action Plan (CAP) has been developed, the noncompliance is addressed through the CAP. The method of correction depends on the LEA's annual determination. LEAs with a determination of needs intervention year three or above are required to complete a CAP. LEAs that missed results indicators are recommended to include the indicator along with improvement strategies in the improvement plan or CAP.

Training is provided at all levels (State and local) for those involved in the monitoring to provide consistency in the implementation of monitoring procedures and to ensure transparency in the process. This includes contractors provided through the levels of intervention system. The

contractors working with the LEAs considered in need of an intervention have developed specific monitoring tools and processes to improve the LEA's annual determination.

The monitoring activities in the charts above lead to the identification of underlying causes of noncompliance and assist in the development of improvement strategies at the LEA level and improvement activities at the State level. The monitoring results trigger effective corrective actions, technical assistance, fiscal decisions, sanctions, and incentives to ensure timely correction of noncompliance. Results of the integrated monitoring activities are used in the Section 616 determinations and are used to report LEA performance on SPP targets.





## **Targeted Technical Assistance and Professional Development**

### *Compliance Data*

The Integrated Monitoring Activities section highlighted the various data systems and activities used for monitoring of the LEAs. Those data systems and activities are used in the following manner:

- ✓ Improvement of program and systems operations
- ✓ Improved/Sustained compliance and improved performance
- ✓ Inform technical assistance and new initiatives

The data gathered through the various systems (monitoring, self-assessment, root cause analysis STARS, due process hearings and State complaints) are used to improve programs at the State level and the LEA level. Data is examined over time in order to have an understanding of what is happening and to determine if there are isolated problems or systemic issues. Correlations are drawn with multiple data points at the State level and LEA level. This data is utilized to develop the State's improvement activities.

The data from the data systems are used to ensure improved and sustained compliance. This is done through the correction of the individual cases of noncompliance (prong one) the review of updated data and information to ensure the LEA is implementing the specific regulatory requirements (prong two). The LEA's participation in the root cause analysis identifies issues at the systems level that are addressed through strategies in the improvement plans or CAP in order to sustain performance.

Data from the State's data system is used to inform targeted technical assistance and professional development at the State level and at the LEA level. Section 618 data, SPP indicator data, dispute and alternative dispute data are used to provide the large scale professional development for the LEAs at the Directors' academies and the monthly webinars. This information is also used to development technical assistance manuals or guidance documents.

LEA level data is examined by SEB staff to determine what type of targeted technical assistance is needed. The data examined includes the indicator data, self-assessments, root cause analysis and the rubric. The root cause analyses are located in Appendix F. The SEB staff works directly with the LEA on how to use data to inform decision making and the development of improvement strategies to be included in the improvement plan or CAP. The level of collaboration and prescription depends on the LEA's annual determination. See Appendix A for details on the levels of intervention.

Although the majority of the targeted technical assistance focuses on compliance and the improvement of the State's and LEA's determination, the improvement of educational results and functional outcomes for all children with disabilities is also addressed.

## *Results Data*

### Graduation, drop-out, and post-school outcomes

If LEAs miss the targets for these indicators, they must include strategies in their improvement plan or CAP. Targeted technical assistance can be provided through the Regional Education Cooperative and the Utah State University Technical Assistance for Excellence in Special Education center. LEAs are referred to the National Secondary Transition Technical Assistance Center (NSTAAC) and the National Technical Assistance Center on Transition (NTACT). Depending on the LEA's determination, LEAs can be issued a sub-grant to address these indicators.

### Least Restrictive Environment (students aged 6 – 21)

If the LEA misses the target for the LRE indicator for students aged 6 – 21, they include the missed indicator in the improvement plan or CAP. The LEA examines its data to determine why the target was missed. Data is reviewed by grade level, school, disability, and race and ethnicity. The LEA also reviews individual IEPs to glean what is written in the LRE statements.

The State recommended IEP forms address the LRE consideration. The following three questions must be answered when considering the LRE continuum:

1. Explain why supplementary aids and services are not adequate to meet the student's needs in the general education class [34 CFR §300.320 (a)(4), and 34 CFR §300.114 (a)(2)(ii)]:
2. Explain how placement in a special education setting will be more advantageous in meeting student's needs [34 CFR §300.320 (a)(4)(iii)]:
3. Explain why placement in a general education setting is reduced or limited and what is being done to reintegrate the student back to a general education setting [34 CFR §300.320 (a)(5)]:

### Preschool Least Restrictive Environment (students aged 3 – 5)

Preschool data is also reviewed annually. LEAs are encouraged to increase the number of typically developing peers in the regular preschool settings. Or if the LEA has one of the State funded Pre-Kindergarten programs, LEAs are encouraged to consider four-year-olds with disabilities when enrolling students in their programs. The LEAs must answer the three questions above when considering the preschool LRE environment. This area is also addressed in the improvement plan or CAP.

Preschool outcome data are collected on every student through a census data collection. The data is used to write IEP goals. The data is entered into STARS, by the students' unique identification number, and can be accessed by the LEA for future use and planning.

LEAs are referred to the National Early Childhood Technical Assistance Center (NECTAC) for promising and evidence based practices.



## **Integrated Fiscal Accountability**

### ***Purpose and Authority***

The purpose of the IDEA-B grant award is to: (a) Ensure that all children with disabilities have available to them free and appropriate education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare for them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities are protected; (c) To assist States, localities and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. (34 Code of Federal Regulation (CFR) §§300.1) (Authority: 20 U.S.C. 1400(d))

The State Education Agency (SEA), also known as the New Mexico Public Education Department, receives an annual federal IDEA-B grant award under section 611. The grant's purpose is to ensure that sufficient funds are available to LEAs to provide FAPE through the delivery of special education and related services to children ages 3 through 21 and to ensure that all students with disabilities are identified as per 34 CFR §§300.111.

The SEA grant award amount is determined according to IDEA-B regulations outlined in 34 (CFR) §300.703. Annually, OSEP publishes State IDEA-B grant awards (section 611 and 619). After setting aside necessary and allowable amounts for SEA administration and state-level activities consistent with the SEA approved grant application (34 CFR §§300.704, 300.812-814), the SEA calculates and allocates the remainder of the grant award in sub-grant awards for each of the State's LEAs.

The federal authority for allocation procedures is cited in 34 CFR §300.705 (sub-grants of IDEA-B section 611 funds) and 300.815 and 816 (sub-grants of IDEA-B section 619 funds). See 6.31.2.3 New Mexico Administrative Code (NMAC) for State statutory authority.

The SEA receives an annual grant award under section 619 of IDEA-B. This grant, which is substantially less than the section 611 grant award is to provide special education and related services to children ages 3 through 5. The federal determination of the amount of this SEA grant is outlined in the IDEA-B regulations at 34 CFR §§300.807-810. The IDEA-B section 619 sub-grant may be used for specific activities related to special education (e.g., child find, evaluations) for children ages 3 through 5 served in preschool or in kindergarten.

LEAs that do or could serve five-year-old children in kindergarten receive a sub-grant under IDEA-B section 619, even if they have no preschool program. Expenditures of these funds are required to be in-line with IDEA-B requirements and consistent with the approved SEA and LEA grant applications.

## ***IDEA-B Program Compliance Monitoring***

To ensure that the provision of FAPE is carried out the primary responsibility of the SEA is to conduct compliance monitoring of LEA's special education activities according to 34 CFR § 300.600(b). The elements of general supervision include:

- Results Driven Accountability
  - Improving educational results and functional outcomes for all students with disabilities; and
- Compliance
  - Ensuring that public agencies meet the program requirements under Part B of the Act, with particular emphasis on those requirements that are most closely related to improving the educational results for students with disabilities.

The appropriate and allowable use of IDEA-B funds is to pay for the excess costs of providing special education and related services to students with disabilities and in doing so to improve the educational outcomes for students with disabilities. To achieve this requirement, the ISEAS manual provides the necessary guidance documentation to develop integrated fiscal monitoring procedures for LEAs, other stakeholders and the Special Education Bureau (SEB).

Fiscal monitoring is one of the eight components of general supervision under the IDEA-B. Fiscal monitoring includes mechanisms to provide oversight in the distribution and use of the IDEA-B funds at the State and local level. The State must ensure that funds are used in accordance with Federal and State requirements. Results of the fiscal monitoring are considered in LEA annual compliance determinations.

Integrated fiscal accountability includes the monitoring of, but is not limited to:

- Appropriation of IDEA-B funds including funds for charter schools and private schools
- Obligation and liquidation of IDEA-B funds (Section 611 and 619)
- Appropriate use of IDEA-B funds

The fiscal monitoring compiles data and information from various data sources including:

- Operating Budget Management System (OBMS) – Uniform Chart of Accounts (UCOA)
- LEA annual sub-grant applications
- Statewide Human Resources, Accounting and Management Reporting System (SHARE)
- Student Teacher Accountability Reporting System (STARS)
- State level activity allocations
- On-site LEA data sources

### **Conditions of Eligibility**

Annually in the Spring LEAs must apply for IDEA-B funds through a sub-grant application. In order to receive an IDEA-B allocation (section 611 and 619), the LEA must meet a set of assurances, or conditions of assistance. The LEAs must meet each of the conditions or

assurances in 34 CFR §§ 300.201 – 300.213 and Subsection C of 6.31.2.9 of the New Mexico Administrative Code (NMAC). The sub-grant application is signed by the Board of Education President, Superintendent, Business Manager and Special Education Director.

As part of its assurances, the LEA must prove to the State that it has in effect policies, procedures, and practices that are consistent with the State policies and procedures established under §§ 300.101 through 300.163 and §§ 300.165 through 300.174. This is done through the LEA submitting proof that special education policies and procedures have been adopted which includes the Board of Education agenda and minutes showing the adoption.

In accordance with Subsection (5)(C) of 6.31.2.9 NMAC, the department shall not approve and certify any operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited. The sub-grant application process requires the LEA to submit a list of parents who participated in the budget process.

### Excess Costs

Annually as part of the sub-grant application process, in addition to the Board of Education President, LEA Superintendent, LEA Business Manager and Special Education Director signing assurances that funds must be used only to pay for the excess costs of providing special education and related services to children with disabilities in accordance with 34 CFR § 300.202 and the permissive use of funds as described in 34 CFR § 300.208, the LEA must complete the excess cost calculation worksheet for elementary and secondary school (objective eight) in the local application. The excess cost calculation must be approved by the SEB prior to the LEA's sub-grant to be considered substantially approvable.

The guidelines for the annual sub-grant application and assurances list the allowable uses of IDEA-B sub-grant funds as follows:

1. Must be used only to pay the excess cost of providing special education and related services to children with disabilities;
2. Must be used to supplement State, local, and other Federal funds and not to supplant such funds; and
3. Must not be used to reduce a LEA's maintenance of effort (MOE) for the education of children with disabilities below the preceding year's level.

Excess costs are those costs for the education of an elementary or secondary student with a disability that are in excess of the average annual per student expenditure in a LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate. A LEA must spend at least the average annual per student expenditure on the education of an elementary school or secondary school child with a disability before funds under Part B of the Act are used to pay the excess costs of providing special education and related services. Section 602(8) of the Act and 34 CFR § 300.16 require the LEA to compute the minimum average amount separately for children with disabilities in its elementary schools and for children with disabilities in its secondary schools. LEAs cannot compute the minimum average amount a LEA must spend on the education of children with disabilities based on a combination of the enrollments in its elementary and secondary schools.

When calculating excess cost, LEAs must use the following definitions included in State law at

22-1-3 NMSA 1978.

**Definitions: public schools classifications**

As used in the Public School Code:

- A. "elementary school" means a public school providing instruction for grades kindergarten through eight, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades kindergarten through six;
- B. "secondary school" means a public school providing instruction for grades nine through twelve, unless there is a junior high school program approved by the state board [department], in which case it means a public school providing instruction for grades seven through twelve;
- C. "junior high school" means a public school providing a junior high school program approved by the state board [department] for grades seven through nine, or for grades seven and eight; and
- D. "high school" means a public school providing instruction for any of the grades nine through twelve, unless there is a junior high school program approved by the state board [department] for grades seven through nine, in which case it means a public school providing instruction for any of the grades ten through twelve.

Expenditures for preschool services cannot be included in the excess cost calculations since preschool is not defined as an elementary school.

Additional Allowable use of IDEA-B Funds

In addition to the use of IDEA-B funds to pay for the excess costs of providing special education and related services, funds can be used as follows:

1. Appropriate technology for IEP case management - LEAs may use their IDEA-B sub-grant funds to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in IEPs that are needed for implementation of those case management activities. [20 U.S.C. § 1413(a)(4)(B); 34 CFR § 300.208(b)]
2. High Cost Special Education and Related Services - LEAs may use their IDEA-B sub-grant funds to establish and implement cost or risk sharing funds, consortia, or cooperatives to pay for high cost special education and related services. [20 U.S.C. 1413(a)(4)(A)(iii); 34 CFR § 300.208(a)(3)]

IDEA-B grant funds may be used to benefit children who have not been identified for special education as a "child with a disability," but only in limited circumstances, described below:

1. Incidental Benefits to Nondisabled Children – LEAs may use their IDEA-B sub-grant funds for the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the child's IEP, even if one or more nondisabled children benefit from these services. [20 U.S.C. 1413(a)(4)(A)(i); 34 CFR § 300.208(a)(1)]

Note: In this situation, the child with a disability is the direct, targeted beneficiary because the IDEA-B funds are intended to pay for the child's IEP services. Normally, federal program services must only benefit the targeted program beneficiaries. If nondisabled children derive benefits, incidentally, from the fact that IEP services are being provided to the targeted beneficiary, this would not make the expenditure of IDEA-B funds unallowable.

2. Direct Benefits to Certain Nondisabled Children Who Need Additional Academic and Behavioral Support To Succeed (Coordinated Early Intervening Services) – If approved by the SEB, LEAs may use up to 15 percent\* of IDEA-B Basic and preschool entitlement sub-grant funds to develop and implement coordinated early intervening educational services. These services may either be (1) professional development for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions and, where appropriate, instruction on the use of adaptive and instructional software; or (2) provision of educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction. The services must be designed to directly benefit nondisabled children who need additional academic and behavioral support to succeed in the general education environment; these students are the intended target group for this type of IDEA-B funded services. Coordinated early intervening services must not be provided to, or directed to benefit, children who have been identified for special education as “children with disabilities.” IDEA-B-funded early intervening services can be aligned with activities funded by, and carried out under the Elementary and Secondary Education Act (ESEA). However, the IDEA-B funds must be used to supplement, and not supplant, ESEA funds made available for these activities and services. [20 U.S.C. 1413(a)(4)(A)(ii); 34 CFR §§ 300.208(a)(2), 300.226]

*\*The amount of IDEA-B Entitlement (Section 611 and 619) sub-grant funds the LEA can set aside for coordinated early intervening services may be affected by the amount by which an LEA can choose to adjust its local fiscal effort under 34 CFR § 300.205 if the LEA is permitted to do so.*

3. Benefits to All Children in a School-wide Program - IDEA-B sub-grant funds may be used to carry out a Title I school-wide program under section 1114 of the ESEA, even if the specific expenditure is not in accordance with other applicable provisions of IDEA-B. The amount available for this purpose is capped per each Title I school-wide program. The cap is computed as follows:
  - (i) The LEA's IDEA-B sub-grant for that fiscal year; divided by
  - (ii) The number of children with disabilities in the LEA's jurisdiction; and multiplied by
  - (iii) The number of children with disabilities participating in the school-wide program.

If an LEA uses IDEA-B sub-grant funds for this purpose, the funds are still considered Federal Part B funds for purposes of the excess cost calculations and any calculations to determine if supplanting has occurred.

**NOTE:** If an LEA is considering use of its IDEA-B funds for this purpose, IDEA-B requires that the LEA meet all other requirements of IDEA-B, including ensuring that children with disabilities in school-wide program schools:

- (i) receive services in accordance with a properly developed IEP; and
- (ii) are afforded all of the rights and services guaranteed to children with disabilities under IDEA-B. [20 U.S.C. 1413(a)(2)(D); 34 CFR § 300.206]

If an LEA cannot meet all other requirements of IDEA-B, it should not use its IDEA-B sub-grant funds for this purpose.



IDEA-B Preschool sub-grant funds:

- (1) Must be used exclusively for services for students with disabilities who turn three during the school year to those students who turn five after September 1.
- (2) May not be used to develop and implement early intervention educational services provided for under Part C.

#### Federal Cost Principles

All IDEA-B funds must be used consistent with the Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74-81 (depending on when awards were made) and 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles and Audit requirements for Federal Awards. EDGAR can be accessed at <http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html> and the 2 CFR Part 200 at [http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=6214841a79953f26c5c230d72d6b70a1&tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl).

The use of federal funds for conferences and meetings must meet the Frequently Asked Questions (FAQ) to assist U.S. Department of Education Grantees to Appropriately use Federal Funds for Conferences and Meetings. The FAQ is located at <http://www2.ed.gov/policy/fund/guid/gposbul/gposbul.html>.

#### Local Education Agency Maintenance of Effort

It is important that all LEAs be familiar with the updated Maintenance of Effort regulations that went into effect on July 1, 2015. The regulations can be viewed at <https://www.federalregister.gov/articles/2015/04/28/2015-09755/assistance-to-states-for-the-education-of-children-with-disabilities>.

Local Educational Agency's Maintenance of Effort (MOE) is calculated annually by the SEB so that LEAs can ensure that their calculation and implementation of LEA MOE is in accordance with the guidance provided by the SEB. Per capita calculations are considered as part of the MOE review process. When per capita calculations are considered only those enrollment numbers collected during the State's 40<sup>th</sup> day count (second Wednesday in October) are considered. Final expenditures and a compilation a full year's activity and enrollment does vary throughout the year. By using one source of data for per capita calculations allows for consistency in this calculation and avoids possible double counting of students that may have transferred to another LEA during the year.

Certain funds cannot be considered State or local funds for the purposes of MOE calculations.

1. Reimbursements from Federal funds (e.g. Medicaid) for services provided under IDEA-B shall not be considered State or local funds for the purposes of determining the LEA's maintenance of effort.
2. Expenditures made from funds provided by the Federal Government for which the State is required to account to the Federal Government or for which the LEA is required to account to the Federal Government directly or through the State shall not be considered in determining the LEA's MOE compliance.

In calculating MOE for the LEA, the SEB considers expenditures in the following object codes:

- 53211 Diagnosticians – Contracted.
- 53212 Speech Therapists – Contracted
- 53213 Occupational Therapists – Contracted
- 53214 Physical/Recreational Therapists – Contracted
- 53215 Psychologists/Counselors – Contracted
- 53216 Audiologists – Contracted
- 53217 Interpreters – Contracted
- 53218 Specialists – Contracted
- 53219 Special Ed Assistants (Non-Instructional) – Contracted

In calculating MOE for the LEA, the SEB also considers expenditures in the following Job classification codes as reported under object codes 51100 (Salaries Expense), 51200 (Overtime Expense) and 51300 (Additional compensation):

- 1311 Diagnosticians
- 1312 Speech Therapists
- 1313 Occupational Therapists
- 1314 Physical/Recreational Therapists
- 1315 Psychologists/Counselors
- 1316 Audiologists
- 1317 Interpreters
- 1318 Specialists
- 1319 Special Ed Assistants (Non-Instructional)
- 1412 Teachers - Special Education
- 1712 Instructional Assistants – Special Education

The SEB does review other allowable expenditures, submitted to the department by the LEA for consideration, for the provision of special education and related services on a case-by-case basis.

#### *Estimated MOE*

Before the end of the third fiscal quarter, the SEB extracts budgeted LEA MOE expenditures for the current year as reported in the State's Operating Budget Management System (OBMS). OBMS collects budget and expenditure information by each LEA and each LEA's local charter schools. The SEB's calculation of the estimated LEA MOE is then compared to the LEA's prior year expended MOE. The purpose of this exercise is to make sure the LEA has sufficient time to make sure that it meets the required MOE level established in the prior fiscal year. The SEB's calculations are sent to each LEA in a template letter. Information provided in this first of two LEA MOE letters is as follows:

- Final LEA MOE established in the prior fiscal year;
- LEA MOE estimated for the current fiscal year; and
- LEA's Annual Determination as assigned under 34 CFR § 300.604 for a possible reduction of LEA MOE as per 34 CFR § 300.205.

Only those LEAs that have a meets requirements annual determination under 34 CFR §

300.604 can reduce effort. *Final MOE*

Before the end of the second fiscal quarter, the SEB extracts final LEA MOE expenditures from the prior fiscal year as reported in the State's OBMS. The SEB's calculations are sent to each LEA.

Information provided in the LEA MOE letters is as follows:

- LEA MOE as established in the fiscal year preceding the prior fiscal year;
- LEA MOE as expended in the prior fiscal year;
- LEA MOE actual reduction or increase amount;
- LEA's Annual Determination for consideration for a possible reduction of LEA MOE as per 34 CFR § 300.205;
- SEB's direction ("Yes" or "No") as to whether or not the LEA can reduce its MOE as per 34 CFR § 300.205. If a reduction is made without an applicable determination of Meets Requirements, then the SEB's will follow-up with the LEA to determine if the reduction is authorized per 34 CFR 300.204.

#### *Exception to Maintenance of Effort*

Detailed procedures on how LEAs should submit exceptions and the process in which the SEB considers the exceptions are located in Appendix G. If the LEA's MOE has been decreased, the LEA must provide documentation and an explanation to the SEB. The SEB then determines if the decrease was attributable to any of the following, in accordance with 34 CFR § 300.204:

- a. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.
- b. A decrease in enrollment of children with disabilities.
- c. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State, because the child
  1. Has left the jurisdiction of the agency;
  2. Has reached the age at which the obligation of the agency to provide FAPE to the child has been terminated; or
  3. No longer needs the program of special education.
- d. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.
- e. The assumption of the cost by the high cost fund operated by the SEA under 34 CFR § 300.704(c).

If the LEA meets the exception requirements, the LEA is allowed to reduce its MOE base. However, based upon the SEB's review of updated data, if it is determined that the LEA is not correctly implementing the specific regulatory requirements, the LEA is considered non-compliant with 34 CFR § 300.203 and will be notified in writing. The PED will take appropriate action, as permitted under IDEA-B Part B 34 CFR Parts 76 and 80, and State law or regulation, which could include an action to seek recovery of funds from the LEA consistent with 34 CFR §§ 76.770 and 76.783. Notice and an opportunity for a hearing will be provided to the LEA to the extent required under Federal or State laws or regulations.

LEAs that do not maintain or exceed the prior year's effort and have no allowable exceptions will be considered non-compliant with federal law. As part of the State's annual assurance to the USDE, the PED is required to pay the USDE back the amount of funds, not maintained, with non-federal sources or funds. As a result, the PED will seek to recover funds from the LEA that did not maintain effort. Prior to the recovery of funds, the LEA will receive a notice of intended action and will be provided an opportunity for a hearing in accordance with Subsection (G) 6.21.2.9 of the NMAC.

The hearing procedures will be conducted in accordance with 6.21.2.9 of the NMAC. If a LEA is required to repay the funds, the repayment shall be made from non-federal sources in accordance with Subsection (C) 6.21.2.9 of the NMAC.

#### IDEA-B LEA Sub-Grant Allocation Process and Timeline

*Summary* – Annually in February, the State develops estimated section 611 and 619 allocation tables which include LEA base payments, population, and poverty amounts utilizing the State's annual allocation table from the U.S. Department of Education.

The SEB Fiscal Supervisor is responsible for coordinating the sub-grant allocation process. Positions that report to the Fiscal Supervisor and that are involved in this activity include: Financial Coordinator, Business Operations Specialist, and Education Administrator – Operations. After compiling the LEA sub-grant allocations, the SEB fiscal team collaborates with senior SEB management to ensure accuracy and then presents the LEA sub-grant allocations to the NMPED Fiscal Grants Management Bureau to be finalized.

After the LEA sub-grant allocations are finalized, they are published on the NMPED website under the heading "Administrative Services Division" and LEAs are notified. The LEA sub-grant allocations are then disseminated to LEA superintendents using official correspondence signed by or for the NMPED Secretary of Education.

*Process* – Base payments for section 611 and 619 are calculated in accordance with 34 CFR §§ 300.705 and 300.815-300.817. All LEAs receive a base payment allocation even if the LEA is not serving any children with disabilities. The allocation of the remaining funds (population and poverty) are calculated in accordance with 34 CFR §§ 300.705(b)(3)(i)(ii) and 300.816(c)(1)(2). The relative number of children enrolled in public and private elementary and secondary schools within the LEA's jurisdiction (population) are derived from the State wide child count in accordance with 22-8-13 (B)(1) NMSA 1978, the first reporting date, the second Wednesday in October. This reporting date was selected since it is the only time all children who are enrolled in private schools are reported to the department. Counting the relative number of children on one specific day prevents duplicate counting of children in accordance with the Single Audit Act Amendments of 1996 (31 U.D.C 7501-7507) and Uniform Guidance. Since preschool is not included in the State's definition of elementary and secondary schools, population numbers only include the relative number of students enrolled in grades K – 12. The State utilizes the poverty data from the U.S. Census Bureau data to determine the relative numbers of children living in poverty.

This count is gathered and updated annually. The estimated allocations are finalized in October and become official after the State receives its final grant.

In order to prevent commingling of IDEA-B funds, funds are to be budgeted by fund codes as follows:

• IDEA-B – Basic Entitlement	24106
• IDEA-B – Preschool Entitlement	24109
• IDEA-B – CEIS	24112
• IDEA-B – Private School Proportionate Share	25115
• IDEA-B – High Cost Fund	24120
• IDEA-B – State Directed NM Autism Project	24108
• IDEA-B – Advancing Measurement @ PED	24188
• IDEA-B – State Directed Activity IGAs to RECs	27200

The UCOA required for fiscal reporting to the SEA are organized as follows:

- Fund
- Function
- Program
- Location
- Job Classification

All of the LEA appropriations must be allocated in one or more of the following Objectives:

- (1) Objective One – Direct Instruction and Extended School Year (UCOA Function Code 1000)
- (2) Objective Two – Instructional Support (UCOA 2100 & 2200)
- (3) Objective Three – All other activities related to the provision of special education services for students with disabilities (UCOA 2300 or higher)
- (4) Objective Four – Voluntary Coordinated Early Intervening Services (CEIS) (UCOA 24112)
- (5) Objective Five – Mandatory Coordinated Early Intervening Services (CEIS) (UCOA 24112)
- (6) Objective Six – Local Charter School Objective
- (7) Objective Seven – Private School (UCOA 24115)

#### *Creation of New LEAs or Significantly Expanding Charter School Enrollment*

When new LEAs are created such as the State Chartered Charter Schools, they must complete a rigorous application process that has to be presented and approved by the New Mexico Public Education Commission (PEC). The application includes a comprehensive section on the delivery of special education and related services that includes the appropriate use of funds, which must be approved or disapproved by the SEB prior to submission to the PEC.

At least 120 days before the date a State Chartered Charter School is scheduled to open or significantly expand in enrollment, the charter school must provide the PED written notification

which includes the following information:

- Any available data or information that the PED may reasonably require to assist the PED in estimating the amount of funds the charter school may be eligible to receive
- Once the charter school opens or significantly expands its enrollment, the charter school must provide the PED actual enrollment data and eligibility data at the time the PED reasonably requires

The PED is not required to provide funds to the charter school LEA until the charter school provides the PED with the required actual enrollment and eligibility data. The charter school is required to establish eligibility and comply with all applicable program requirements on the same basis as other LEAs.

The State must allocate funds to eligible charter school LEAs in accordance with 34 CFR § 76.792 as follows:

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

(b) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1 but before February 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives at least a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program. The *pro rata* amount must be based on the number of months or days during the academic year the charter school LEA will participate in the program as compared to the total number of months or days in the academic year.

(c) For each eligible charter school LEA that opens or significantly expands its enrollment on or after February 1 of an academic year, the SEA may implement procedures to provide the charter school LEA with a *pro rata* portion of the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

The funds are allocated to the charter LEAs according to § 76.793, except as provided in §§ 76.788(b) and 76.789(b)(3):

(a) For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must allocate funds to the charter school LEA within five months of the date the charter school LEA opens or significantly expands its enrollment; and

(b)(1) For each eligible charter school LEA that opens or significantly expands its enrollment after November 1, but before February 1 of an academic year, the SEA must allocate funds to the charter school LEA on or before the date the SEA allocates funds to LEAs under the applicable covered program for the succeeding academic year.

(2) The SEA may provide funds to the charter school LEA from the SEA's allocation under the program for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation under the program for the succeeding academic year.

New LEAs such as State Chartered Charter Schools (public charters schools), base payment adjustments are made in accordance with 34 CFR § 300.705 (b)(2). The State must divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 – 21, or ages 6 – 21. The distribution of the remaining funds will be made in the same manner as described in the *Sub-grants to LEAs* section above.

Since current budgets are based on prior year funding, initial budgets are considered estimates. Adjustments are made to the new LEAs the following year after the 40<sup>th</sup> day child counts (second Wednesday in October). In accordance with 34 CFR § 76.791(b), for the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

If the new LEA is a State Chartered Charter School, it will be required to comply with 34 CFR § 76.788 and the SEB will allocate funds as provided by 34 CFR §§ 76.789 – 799 and 34 CFR 300.705(b).

The State must make any adjustment to the allocations on or before the date the State allocates funds to LEAs for the succeeding year in accordance with 34 CFR § 76.797. The allocating funds used for the adjustment may be from the State's allocation for the academic year in which the LEA opened or significantly expanded or from the State's allocation the succeeding year.

If an LEA received a base payment of zero in its first academic year of operation, the State must adjust the base payment for the first fiscal year after the first annual child count (second Wednesday in October) in which the LEA reports it is serving students with disabilities in accordance with 34 CFR § 300.705(b)(2)(iv).

#### *Charter Schools that are Public Schools of an LEA*

The annual LEA sub-grant application has a specific objective (objective six) regarding charter schools that are public schools of the LEA. The LEA must serve children with disabilities attending those charter schools in the same manner as the LEA provides services in its other schools.

The LEA must provide IDEA-B funds to those charter schools –

- (1) On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on the relative enrollment of children with disabilities; and
- (2) At the same time as the LEA distributes other Federal funds to the LEA's other public schools, consistent with the State's charter school law.

Each LEA is responsible for funding charter schools that are public schools of a LEA in accordance with 34 CFR § 76.799. The LEA must include the funding for each local charter school in the sub-grant application. The LEA is also required to include the special education

enrollment, by level of service, and the proportional share calculation. The enrollment is verified through the STARS data.

In order to verify that LEAs are reserving the appropriate amount of funds for students with disabilities enrolled in local charter schools, each charter school must have a distinguishable budget within OBMS. The LEA must report the charter school under objective six of the sub-grant application and the funds are to be budgeted in OBMS under function code 2500 (Central Services) and object code 55912 (Flow-through grants to Charter Schools). This OBMS budget action will trigger the release of charter school's LEA allocation under a locked revenue code 41924 (Flow-through grants from district) in OBMS so that the charter school can budget actual expenditures by function code, object code, program code and job classification.

#### *Private School Proportionate Share*

The LEA must control and administer the funds used to provide special education and related services under §§ 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

As part of the LEA's annual sub-grant application under Objective Seven, the LEA must include the following information, for each of the private schools within the LEA's educational jurisdiction:

- Proportionate Share for Equitable Participation (Appendix B of the IDEA-B regulations);
- Determination of who receives Equitable Participation Services;
- Determination of Equitable Participation Services to be provided;
- Documentation of Private School Consultation; and
- Number of private school evaluations completed, the number of children determined to have disabilities, and the number of children served the previous year.

The LEAs utilize the number of children with disabilities enrolled by their parents in a private school from the annual child count under 34 CFR § 300.644(c), taken on the second Wednesday in October. The private school proportionate share allocations are entered into OBMS and tracked utilizing the specific funding code (24115) exclusive to private schools. Requests for Reimbursements (RFR) from the LEA are submitted and tracked through OBMS. Funds not expended during the current fiscal year are carried over into the next fiscal year, in the same private schools fund code. LEAs are not allowed to complete a Budget Adjustment Request (BAR) and move funds to another funding code. However, if the LEA does not use the funds for the provision of services for parentally-placed children with disabilities by the end of 24 months, the LEA may transfer funds from fund code 24115 to 24106.

As part of the agreement to provide equitable services to students who are parentally placed in private schools, LEAs can purchase supplies and equipment. If the LEA plans to purchase equipment, the LEA must submit a request to the SEB for approval, prior to purchase. The form can be accessed at: <https://webnew.ped.state.nm.us/bureaus/special-education/funding/> under FISCAL REQUEST FORMS [Note: Coming soon, form under revision].

If the purchase of equipment is approved by the SEB, the LEA may place the equipment and supplies in a private school for the period of time needed for the Part B program. The LEA must



ensure that the equipment and supplies placed in a private school

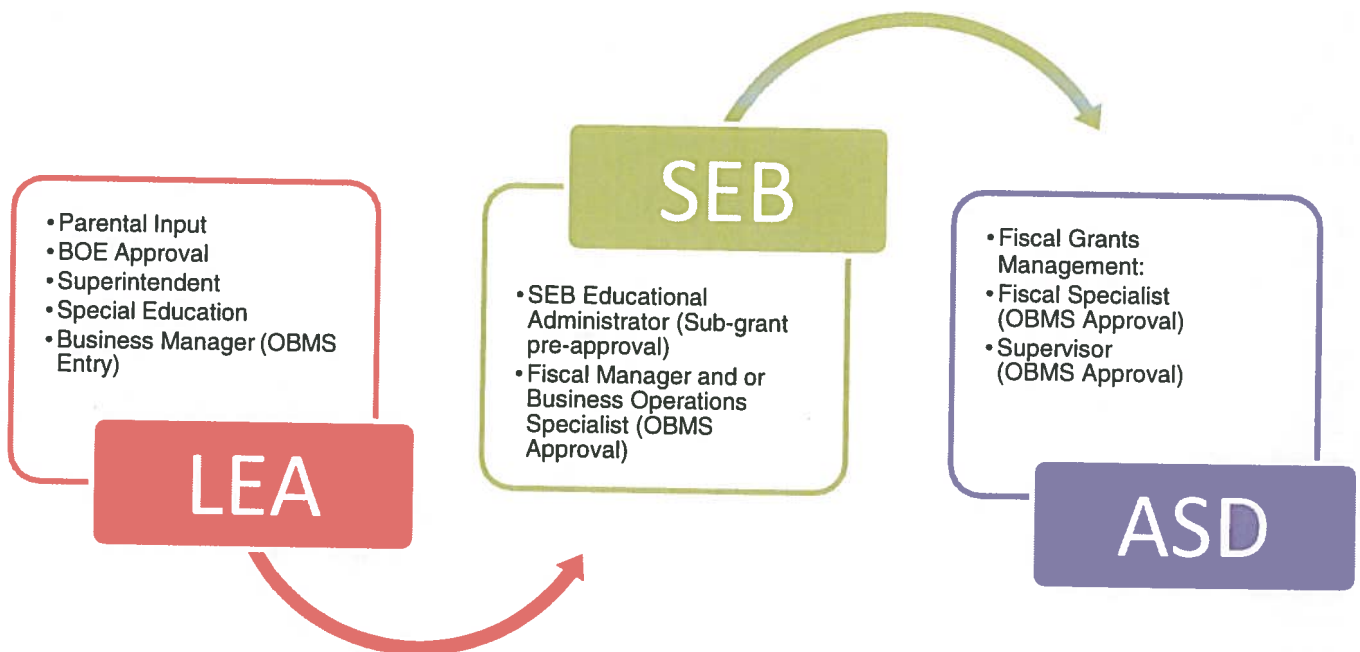
1. Are used only for Part B purposes; and
2. Can be removed from the private school without remodeling the private school facility.

The LEA must remove the equipment and supplies from a private school if

1. The equipment and supplies are no longer needed for Part B purposes; or
2. Removal is necessary to avoid unauthorized use of the equipment and supplies under for other than Part B purposes.

#### *OBMS budget submission and approval or denial process*

The entire budget process from the local level to the administrative services division is illustrated below.



The annual sub-grant application is submitted to the SEB staff member assigned to the LEA. The SEB staff member reviews the application for completeness, assurances, required documents that needed to be attached and the proposed amounts to be budgeted in accordance with the estimated allocations.

The estimated allocations included in the sub-grant application sent to the SEB for approval must be entered in the OBMS in accordance with the UCOA for the initial Budget Adjustment Request (BAR) or initial budget. As part of the department's internal controls, OBMS has several levels of approval or denial as listed below.

- (1) Level One: Initial Budget Established and Entered by LEA Business Manager.
- (2) Level Two: SEB Program Pre-Approval (comparison to sub-grant application) by Education Administrator.
- (3) Level Three SEB Fiscal Approval

- (4) Level Four: Fiscal Grants Management fiscal analyst approval (Administrative Services Division).
- (5) Level Five: Fiscal Grants Management supervisor approval (initial budget only).

According to department policy, all BARS must be approved or disapproved within 30 days. Fifteen days in the SEB and 15 days in ASD. During that time period, the LEA can be contacted via the message system in OBMS and additional documentation needed for approval can be requested for submission. If a BAR is disapproved, anyone in the sequence of internal controls can send an automatic message to the LEA indicating why the BAR was not approved.

Allocations for Charter Schools that are public schools of the LEA and Private School proportionate share funds are approved or denied utilizing the same process above. The LEA's entire budget is approved or denied at one time. If approved, the local charter schools receive the funds at the same time as any other school within the LEA.

Any changes to the initial budget request must be submitted through OBMS for approval or denial. If the budget request changes the initial sub-grant award issued by the NM Secretary of Education, an amended sub-grant, that includes the required signatures, must be submitted to the SEB for approval.

#### *Requisitions and Purchase Orders*

Once the sub-grant application is considered substantially approvable and all of the level approvals have been completed in OBMS, purchase orders are created for the exact amount of each sub-grant flow-through allocation. The purchase orders are created by ASD. Requisitions require the following levels of approval as part of the department's internal controls:

1. Level One: Fiscal Grants Management fiscal analyst.
2. Level Two: Fiscal Grants Management fiscal manager.
3. Level Three: Department of Finance and Administration (DFA).

In addition to program and fiscal approvals, requisitions exceeding \$1,500 require DFA approval. Once approved, Purchase Order (PO) amounts are uploaded into SHARE. When LEAs submit RFRs, in addition to the funds being required to be spent on what was indicated by the LEA in the sub-grant application and OBMS, the LEA cannot exceed the PO amount. POs can only be increased if BARs are submitted through OBMS and approved and sub-grants have been amended.

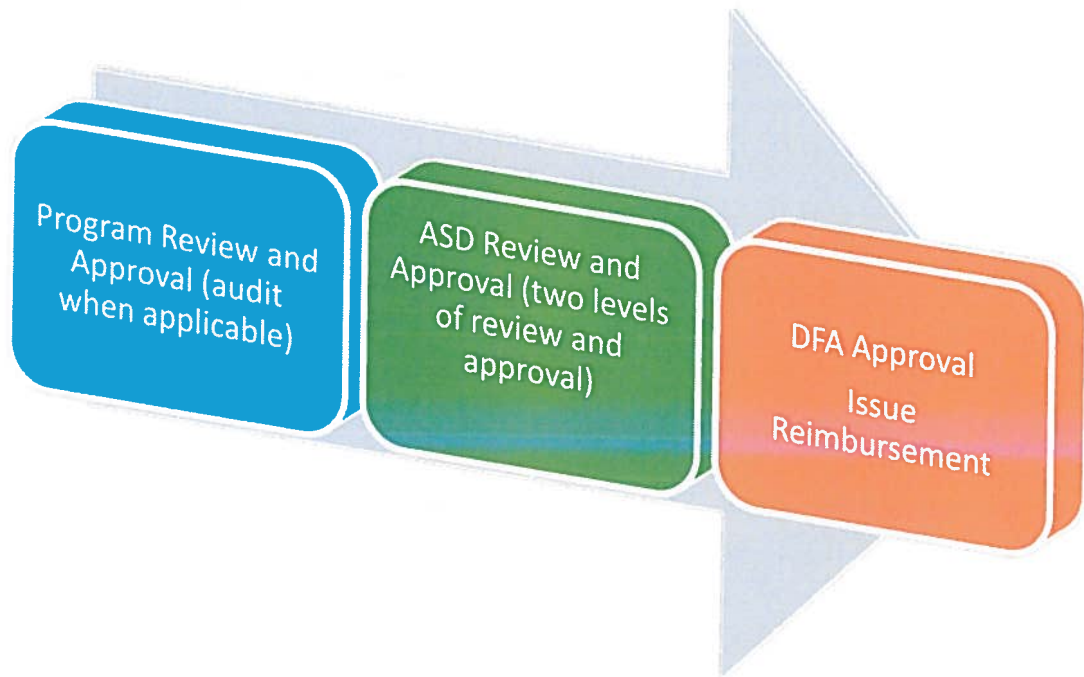
#### *Requests for Reimbursements*

IDEA-B funds are reimbursed in accordance with the Education Department General Administrative Regulations (EDGAR). LEAs submit RfRs to the department twice/month, per fund code. Department policy requires all RfRs to be processed within 30 days. RfRs, along with any supporting documentation such as detailed expenditure reports, are submitted via OBMS. RfRs are audited in accordance with PED policy. The internal controls and levels of RfR approval consists of:

1. SEB Business Operations Specialist or Advanced Educational Administrator
2. Fiscal Grants Management fiscal analyst

3. Fiscal Grants Management supervisor or manager
4. DFA

The Request for Reimbursement approval process is illustrated below.



#### Obligation and Liquidation of IDEA-B Funds (Section 611 and 619)

LEAs must apply for IDEA-B funds (611 and 619) annually and meet a series of assurances. The approval process for the sub-grants and initial and sequential budget approvals were discussed in the previous section.

Funds are not available for LEAs until the State receives its annual award on or around July 1<sup>st</sup> in accordance with 34 CFR § 76.703(b)(3)(ii). LEAs cannot begin to obligate funds until the sub-grant application is substantially approvable under 34 CFR § 76.708(a)(2). The award

consists of the LEA's base amount, population, and poverty in accordance with 34 CFR § 300.706 and notifies the LEA that the sub-grant application is substantially approvable.

The award letter indicates the period of availability of funds (27 months – 15 months plus the 12 month Tydings period). The award clearly indicates when funds need to be obligated and expended. LEAs are encouraged to expend the funds during the first fiscal year of the award for the excess cost of providing special education and related services to ensure that students receive a Free Appropriate Public Education (FAPE). The period of availability is discussed in detail in the SEB's Guidelines for the Local Application.

All of the Section 611 and 619 funds are assigned an award number by fiscal year. This assists the department in tracking funds from year to year to ensure the funds are spent according to how the LEA indicated in its sub-grant application and OBMS. This also helps to ensure that the Part B funds are available for the full 27 months allowed and an additional 3 months for liquidation under EDGAR.

If the LEA does not obligate all its funds by the end of the fiscal year, it may obligate the remaining funds during a carryover period of one additional year in accordance with 34 CFR § 76.709(a). All of the funds are tracked and monitored to ensure that funds carried over are accurate. Annually, the LEA receives written notification of the IDEA-B funds by fiscal year that includes the award number, including proportionate share amounts for parentally placed private school students that are available and need to be encumbered. This helps to ensure that all obligations are liquidated no later than 90 days after the obligation period. It is important to note that obligations made during a carryover period are subject to current statutes, regulations, and applications in accordance with 34 CFR § 76.710.

#### *Section 611 and 619 Other State Level Activity Funds*

Annually, a fiscal stakeholder group provides input on how to distribute the Other State Level Activity funds consistent with the IDEA-B requirements under 34 CFR §§ 300.704(b) and 300.814. The proposed funds, by activity, are posted for 60 days on the SEB website. Public comment on the funds is gathered for 30 days. Public comment is considered and the allocations are finalized by the NM Secretary of Education.

Funds under Other State Level Activities are allocated to LEAs and Regional Education Cooperatives (RECs) through Inter-governmental agreements (IGAs). Funds allocated to other entities are in the form of contracts. Funds should support the following:

- New Mexico's Strategic Plan "Kids First, New Mexico Wins!"
- State Performance Plan Indicators
- New Mexico's waiver under the Elementary and Secondary Education Act

The agreements (IGAs and contracts) include specific activities that support the above goals, deliverables, timelines, and outcomes. The funds are allocated by specific activity. For example:

34 CFR § 300.704(b)(4)(i) "For support and direct services including technical assistance, personnel preparation, and professional development and training."

Purchase orders are issued and approved through the PED process. The requisitions are created in the SEB and are approved by the Department of Finance and Administration. Individual contract and IGA amounts are tracked

through SHARE and reconciled quarterly. Invoices must support the deliverables as stated in the contracts or IGAs, or otherwise the recipients are not reimbursed.

### ***Reallocations of Sub-Grant Funds***

IDEA-B Regulations: 34 CFR §§300.227, 300.704, 300.705, and 300.817

If the SEA determines that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that agency with state and local funds, the SEA may reallocate any portion of the funds under this part that are not needed by that LEA to provide FAPE.

The SEA may make the reallocation decision based on information gathered through its general supervision system or based on notification from an LEA that it is providing FAPE but will not use the full amount of its allocation. If the SEA receives notification that an LEA will not use its funds, the SEA will examine the LEA's compliance to determine if the LEA is adequately providing FAPE to children with disabilities. When the [SDE] determines that the LEA is adequately providing FAPE, it may:

Reallocate the unused funds to eligible LEAs that are not adequately providing special education and related services to children with disabilities. Reallocation is required if the SEA sets aside the maximum amount for state-level activities. Use of funds for allowable state-level activities if the state did not set aside the maximum amount for state-level activities, up to the point where the maximum amount is reached will be considered by the SEA if such state level activity will enhance the State's ability to achieve and sustain compliance.

If the SEA determines that one or more LEAs are not adequately providing special education and related services to children with disabilities, it will reallocate funds to those LEAs based on multiple factors including the amount of funds needed to adequately provide special education and related services, child count, or corrective actions required by the state. In such cases, monitoring efforts will be accelerated to ensure that the LEA achieves and sustains compliance.

### ***IDEA-B Section 619 Sub-grants to LEAs when the State Award Is Below the FFY 1997 Funding Level***

The amount of SEAs FFY 1997 federal IDEA-B section 619 award was \$2,274,308.00. In any year when the federal IDEA-B section 619 award to the state is below the above mentioned level, special circumstances apply to how the SEA allocates IDEA-B section 619 sub-grants to LEAs.

If, after the state set-aside amount is subtracted from the total IDEA-B section 619 award, the amount available for making IDEA-B section 619 sub-grants is less than 75 percent of the state's FFY 1997 IDEA-B section 619 award, then the SEA will: Ratably reduce each LEA's base payment by the percentage of the reduction in the total amount actually available for making base payments.

After making base payments, if necessary, make base adjustments using the ratably reduced base payments.

The state will not have any remaining IDEA-B section 619 funds available after making base payments, and, therefore, will be unable to make population/poverty payments from IDEA-B section 619 funds.

If, after the state set-aside is subtracted from the total award, the amount available for making IDEA-B section 619 sub-grants is equal to 75 percent of the state's FFY 1997 IDEA-B section 619 award, then the state will: Make base payments and, if necessary, base payment adjustments in accordance with 34 CFR §300.816(a) and (b).

The state will not have any remaining IDEA-B section 619 funds available after making base payments, and, therefore, will be unable to make population and poverty payments from IDEA-B section 619 funds.

If, after the state set-aside is subtracted from the total award, the amount available for making sub-grants is greater than 75 percent of the state's FFY 1997 IDEA-B section 619 award, then the state will: Make base payments and, if necessary, base payment adjustments, and then allocate any remaining funds using population and poverty measures in accordance with 34 CFR 300.816(c).

**Appendix B**

**Mediation Follow-Up Form**

DATE

RE: CASE No.

**FOLLOW-UP OF COMPLIANCE ON MEDIATED  
AGREEMENT FORM**

The Special Education Bureau (SEB) would like to commend the parties for reaching resolution of their special education dispute through mediation. It is the responsibility of this office to ensure compliance with written, signed mediated agreements. Although the contents of a settlement agreement remain confidential between the parties, the SEB has prepared a series of questions to monitor compliance with mediated agreements. In fulfillment of that responsibility, please take a moment to respond to the following statements. Check all that apply:

- The student's Individualized Education Program (IEP) was amended as a result of the mediated agreement
- The student received compensatory education services specified in the mediated agreement
- The District has fully complied with the terms of the mediated agreement
- The Parent(s) has fully complied with the terms of the mediated agreement
- The District has partially complied with the terms of the mediated agreement
- The Parent(s) has partially complied with the terms of the mediated agreement
- The District is not in compliance with the terms of the mediated agreement
- The Parent(s) is not in compliance with the terms of the mediated agreement

Explanation of issues that are believed to be partially compliant or non-compliant:

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If the parents or the District believe that the settlement agreement has not been implemented according to its terms, either party may exercise other dispute resolution options, including:

- Filing a suit for enforcement of the mediated agreement in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 §300.506(b)(7) and 6.31.2.13.H(3)(c)(ii) NMAC.
- Filing a state level complaint alleging the failure of the department or a school
- District to comply with state or federal laws or regulations governing programs for children with disabilities under the IDEA pursuant to 34 §300.153 and 6.31.2.13.H(1) NMAC.
- Filing a due process hearing request relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE to the child pursuant to 34 §300.507 and 6.31.2.13.I(3) NMAC.

More information about these options can be obtained by referring to the SEB's website at [http://www.ped.state.nm.us/seo/dispute /index.htm](http://www.ped.state.nm.us/seo/dispute/index.htm) or by contacting the Alternate Dispute Resolution Coordinator, at (505) 827-1457

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Type or Print the Name and Title of Person Completing the Form

Signature of the Person Completing the Form

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Contact Phone Number	Date
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**Appendix C**

**Resolution Session Tracking Form**

**ATTENTION LOCAL EDUCATIONAL AGENCY (LEA):** The New Mexico Public Education Department Special Education Bureau is required to collect data on the resolution session outcomes.

**A representative of the LEA must complete this form.** Please send a copy of the completed form along with any written waivers to the Due Process Hearing Officer assigned to your case at the PED and the Special Education Bureau (SEB) staff member prior to your pre-hearing conference. The Documents can be mailed or faxed to:

Due Process Hearing Officer (DPHO)  
ATTN: [Name of DPHO]  
Address  
City, NM Zip Code  
FAX:

New Mexico Public Education Department  
Special Education Bureau (SEB)  
ATTN: [SEB Staff member]  
120 South Federal Place, Room 206  
Santa Fe, NM 87501  
FAX: (505) 954-0001

Date Due Process Filed: \_\_\_\_\_

Date of Resolution Session Notification: \_\_\_\_\_

Due Process Hearing NO.: \_\_\_\_\_

Student Name: \_\_\_\_\_

Local Educational Agency: \_\_\_\_\_

Authorized LEA Representative (print name): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Resolution Period: Resolution Meeting**

1. Was a resolution session held? \_\_\_\_\_ Yes \_\_\_\_\_ No      If you answered No to question #1, please go to question #4.
2. If yes, what was the date of the resolution session? \_\_\_\_\_  
If more than one resolution session was held, list all dates: \_\_\_\_\_
3. Was an agreement reached? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, was it a full or partial agreement? \_\_\_\_\_  
Yes, but the agreement was voided within three business days \_\_\_\_\_
4. If a resolution session was not held please select one of the following:  
\_\_\_\_\_ The parties agreed, in writing, to waive the resolution session (See **Waiver of Resolution Section**).  
\_\_\_\_\_ The resolution session was convened but the parent failed to attend (please describe your efforts in Comments Section of this form and attach any relevant documentation)  
\_\_\_\_\_ The LEA failed to convene the resolution session.  
\_\_\_\_\_ The parties agreed to participate in mediation.

**Complete Sections 1, 2, or 3 Below**

**1. Waiver of Resolution Session (Both parties must agree to waiver)**

- We agree to waive the Resolution Session; or
- We agree to a mediation instead of a resolution session.

Date of agreement of waiver: \_\_\_\_\_

**Parent(s) or adult student:**

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

LEA: \_\_\_\_\_

Authorized LEA Representative (Print Name): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PROVIDE A COPY OF THIS SIGNED WAIVER (AGREEMENT TO WAIVE THE RESOLUTION SESSION AND PROCEED WITH THE HEARING) TO YOUR DPHO AND SEB IMMEDIATELY AS THIS WILL START YOUR 45 - DAY HEARING TIMELINE**

**2. Resolution Period: Impasse (Unable to reach agreement)**

- We participated in a resolution session, but no agreement is possible.
- We participated in mediation, but no agreement is possible.

**Parent(s) or adult student:**

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

LEA: \_\_\_\_\_

Authorized LEA Representative (Print Name): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**PROVIDE A COPY OF THIS SIGNED IMPASSE TO YOUR DPHO AND SEB IMMEDIATELY AS THIS WILL START YOUR 45- DAY HEARING TIMELINE**

**3. Resolution Period: Mediation (Both parties agree to participate)**

1. Was mediation used in lieu of a resolution session? \_\_\_\_\_ Yes \_\_\_\_\_ No
2. If yes, what was the date of the mediation session? \_\_\_\_\_
3. Was an agreement reached? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, was it a full or partial agreement? \_\_\_\_\_

**COMMENTS (attach additional pages if necessary):**

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## DUE PROCESS – RESOLUTION SESSION INFORMATION

**What is a resolution session?** A resolution session is a dispute resolution process that occurs after a parent has filed a due process hearing request and before the due process hearing timelines begin. It provides parents and local educational agencies (LEA) an opportunity to meet to resolve the concerns identified in the parent's due process hearing request. Resolution sessions are explained in greater detail in the federal regulations that implement the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. § 300.510.

**What are the resolution session timelines?** Within **15 days** of receiving notice of a parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting – the resolution session – with the parents that filed the due process complaint, and relevant members of the Individualized Education Program (IEP) team. At this meeting, the parents are given the opportunity to discuss their due process complaint and the facts that form the basis of the complaint. The LEA is provided the opportunity to resolve the due process complaint. The resolution session must be convened unless: (1) the parent and the LEA jointly agree in writing to waive the meeting; or (2) the parent and the LEA agree to participate in mediation in lieu of a resolution session.

**What are the resolution timelines for expedited due process hearing requests?** When a parent files a request for an expedited due process hearing, the LEA must hold a resolution session within 7 days of receiving notice of the due process complaint, and attempt to reach resolution with 15 days of the receipt of the hearing request.

**Who are the required participants?** Resolution session participants include the parent and the relevant member or members of the IEP team who have knowledge of the facts identified in the due process complaint, including a LEA representative who has decision making authority.

- The resolution session **may not** include the LEA's attorney unless the parent is accompanied by an attorney.

**What if the parent does not want to participate in a resolution session or the LEA does not convene the resolution session?** If a parent files the due process complaint and the LEA does not convene a resolution session within the timelines, the parent may ask the due process hearing officer (DPHO) to begin the due process hearing timeline. If the parent files the due process complaint and does not come to the meeting as scheduled, and the LEA documents that it is unable to obtain the participation of the parent, the LEA may, at the conclusion of the 30 day resolution period, request that the DPHO to dismiss the parent's due process complaint.

**Is what is discussed at the resolution session confidential?**

Since there is no guidance in the IDEA or implementing regulations about the confidentiality of discussions held in a resolution session, it is recommended that the parties agree in writing to maintain the confidentiality of all discussions and that such discussions cannot later be used as evidence in the due process hearing or any other proceeding.

**What happens if we reach agreement?** If the issues in the due process complaint are resolved at the resolution session, then the parties shall develop a legally binding written agreement that is signed by both the parent and a representative from the LEA with authority to bind the agency. The agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States. Either party may void the resolution agreement within **three business days** of the agreement's execution.

**What happens if we do not reach agreement?** If, after the resolution session or mediation the LEA has not resolved the parent's due process complaint within 30 days of receipt of the complaint, the due process hearing may occur. The 45 day due process hearing timeline begins at the end of the 30 day resolution period, or the day after one of the following events:

1. Both parties agree jointly in writing to waive the resolution session; or
2. After the mediation or the resolution session starts, but before the end of the 30 day resolution period, the parties agree jointly in writing that no agreement is possible.

**If one of the above occurs, the parties must immediately notify the DPHO.**

*If you have questions about resolution sessions, please contact the  
New Mexico Public Education Department  
Special Education Bureau at (505) 827-1457.*

## **Appendix D**

### **Indicator Worksheets**

New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 1:** Percent of youth with IEPs graduating from high school with a regular diploma. (States must report using the graduation rate calculation and timeline established by the Department under ESEA)  
(20 U.S.C. 1416 (a)(3)(A))

Targets: See New Mexico's Annual Performance Report (APR)

**Data Collection**

Graduation rules apply to students that began high school in the fall of a given school year, and who were expected to graduate 4 years later by August 1. The group is named by their expected graduation year, such as the Cohort of (or Class of) 20 . New Mexico's ESEA flexibility request also recognizes extended graduation rates of 5-year and 6-year students.

Data is entered at the beginning of the school year and at the end of the school year in the following fields:

- Student
- Student Snapshot
- Special Education Snapshot

Each student has a unique identification number assigned to them in STARS. The STARS templates that need to be completed for each student depend upon when the student graduates from high school. The following options are possible:

- First semester or prior summer graduates
- Graduates beyond four years of high school (transitioning or continuing students)
- Graduating at end-of-year

The State must report data using the adjusted cohort graduation rate required under the ESEA. This includes all three graduation options.

**Verification of Indicator Data**

1. SEB staff members review the LEA data during the first reporting period (2<sup>nd</sup> Wednesday in October – graduation options report) and at the end of the year (student roster report).
2. Exception reports are available for LEAs, in STARS, that have incomplete or inaccurate data fields. The reports list each student with an error.
3. LEAs have 10 days to correct the data once notified by the SEB.

New Mexico Integrated Special Education Accountability System  
Compliance Indicators

**Indicator 4A:** Percent of districts that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs. (20 U.S.C. 1416(a)(3)(A); 1412(a)(22))

Target: See New Mexico's Annual Performance Report (APR)

State's definition of significant discrepancy in the rates of suspension and expulsions of greater than 10 days in a school year for children with IEPs

The State defines a significant discrepancy in the rates of suspension and expulsions of greater than 10 days in a school year for students with IEPs (disabilities) among LEAs in the State if the following criteria are met:

- The LEA must have an "n" size of greater than 10 suspensions and expulsions of students with disabilities greater than 10 days in a school year; and
- The rate of suspensions/expulsions for students with IEPs is more than 1% higher than the average rate of suspensions and expulsions greater than 10 days among LEAs in the State.

**Data Collection**

**Step 1 – LEA Submission of IDEA Part B Long-Term Suspension and Expulsion Data**

At the end of each school year, LEAs submit all discipline data including suspension and expulsion data for students with disabilities in the Student Teacher Accountability Reporting System (STARS). This is the data that is extracted from STARS for OSEP's Table 5 of Information Collection 1820-0621 (Report of Children with Disabilities Unilaterally Removed or Suspended/Expelled for More than 10 Days).

**Step 2 – Collecting Data to Calculate State Averages**

1. The Special Education Bureau's (SEB's) Information Technology (IT) Data Base Administrator extracts the suspension and expulsion data, by LEA, from STARS after the End of Year (EOY) reporting period.
2. The average rate of suspensions and expulsions of greater than 10 days in a school year is calculated for students with disabilities in the State.
3. All LEA's comparisons are reviewed regardless of the "n" size.
4. Upon completion of the secondary validation of the averages, LEAs with a suspension and expulsion rate for students with IEPs that is greater than 1% of the State average are determined to have significant discrepancy.



### **Step 3 – LEA Notification of Having Significant Discrepancy and the Completion of the New Mexico Self Assessment Form**

1. The LEA is notified of the findings of the significant discrepancy and is required to complete Indicator 4 self-assessment. The self-assessment includes the review of policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and support, and procedural safeguards.

### **Step 4 – Review of the Self Assessment and Policies, Procedures, and Practices:**

1. Upon receipt of the self-assessment, the SEB exams the self-assessments through a desk-audit or an on-site visit to determine if the policies, procedures, and practices comply with the law. This includes the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.
2. The SEB contacts the Special Education Director and interviews him/her based upon the self-assessment information, which includes the policies, procedures, and practices.
3. The SEB works with the LEA to determine root cause(s) of the significant discrepancy.

### **Identification of Compliance Status**

When a State collects or receives data indicating noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrate noncompliance, and then issue a finding if the data do demonstrate noncompliance; or
3. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a finding of noncompliance.

Compliance with this indicator includes, but is not limited to:

- Target Met.
- No significant discrepancies in the rates of long-term suspensions and expulsions for students with disabilities compared to State average of suspensions and expulsions for students with disabilities.
- All individual noncompliance corrected, unless the student is no longer within the jurisdiction of the LEA.
- Policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards comply with the Act.
- LEA correctly implementing specific regulatory requirements.

Noncompliance for this indicator includes, but is not limited to:

- Missed target.
- Individual cases of noncompliance not corrected for the students within the jurisdiction of the LEA.
- Policies, procedures, and practices do not meet the requirements of the Act.
- LEA not correctly implementing the specific regulatory requirements including the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.

- LEA failed to correct policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and support, and procedural safeguards to comply with the Act.
- Noncompliance not corrected as soon as possible; and in no case later than one year after the State's identification.

When the SEB collects or receives data indicating noncompliance

- and the district did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],
- or the additional information submitted did not demonstrate correction (verified whether the data demonstrate noncompliance) [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],
- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

the LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the statute or regulation or rule;
- A requirement that the noncompliance be corrected as soon as possible and in no case later than a year after the State's identification, in accordance with 34 CFR 300.600(e);
- If applicable, the requirement for correction of any policies, procedures, and practices that contributed to the significant discrepancy and do not comply with the requirements of the law; and
- A statement that the noncompliance will be monitored either through an improvement plan or through a Corrective Action Plan (CAP).

### Correction of Noncompliance

All noncompliance must be corrected as soon as possible and in no case more than one year from identification. Before a State can conclude and report that noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance, if applicable.
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 4A is considered through the following methods, but is not limited to:

- Correct implementation of the specific regulatory requirements for which the noncompliance was identified
- Subsequent review of a reasonable subset of STARS discipline data or other data that is representative
- Review of a reasonable subset of student discipline files and/or IEPs

- Approval of LEA's revised policies, procedures and practices to comply with IDEA requirements including the use of PBIS and Procedural Safeguards in accordance with 34 CFR § 300.170(b)

If a LEA did not correct the noncompliance, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of the noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered corrected.

New Mexico Integrated Special Education Accountability System  
Compliance Indicators

**Indicator 4B:** Percent of districts that have: (a) a significant discrepancy, by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. (20 U.S.C. 1416(a)(3)(A); 1412(a)(22))

Compliance Target: 0%

State's definition of significant discrepancy, by race and ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year

The State's definition of significant discrepancy is as follows:

In order for a LEA to be flagged for possible significant discrepancy, by race and ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for students with IEPs, the LEA must meet the following criteria:

- An "n" size of greater than 10 students or more suspended or expelled for greater than 10 days in a school year; and
- An "n" size of greater than 10 students in the race or ethnicity category; and
- The rate of suspensions/expulsions, by race and ethnicity, for students with IEPs is more than 1% greater than the average rate of suspensions and expulsions greater than 10 days in a school year for students with IEPs among LEAs in the State.

#### Data Collection

##### **Step 1 – LEA Submission of IDEA Part B Suspension and Expulsion Data**

At the end of each school year, LEAs submit all discipline data including suspension and expulsion data for students with disabilities into the Student Teacher Accountability Reporting System (STARS). This is the data that is extracted from STARS for OSEP's Table 5 of Information Collection 1820-0621 (Report of children with Disabilities Unilaterally Removed or Suspended/Expelled for more than 10 days).

##### **Step 2 – Collecting Data for the State Average**

1. The Special Education Bureau's (SEB's) Information Technology (IT) Data Base Administrator extracts the long-term suspension and expulsion data from STARS after the End of Year (EOY) reporting period. The average rates of suspensions and expulsions are calculated.
2. The rate of long-term suspensions and expulsions of students with disabilities, by race and ethnicity, are compared among LEAs in the State.
3. The LEA's aggregate and disaggregated numbers (students with IEPs by race and ethnicity suspended or expelled greater than 10 days) are given to the SEB for review and secondary validation. The LEAs that have a rate greater than 1% in the comparison to the State are "flagged". Absent a valid justification for treating different racial/ethnic groups differently, the U.S. Department of Education has stated that it is

- unacceptable to set a different state bar for each racial/ethnic group. Each racial/ethnic group is compared to the State average which includes all racial/ethnic groups.
4. All LEA's comparisons are reviewed regardless of the "n" size.
  5. Upon completion of the secondary validation, final averages are calculated and districts that meet the definition of significant discrepancy are flagged for possible significant discrepancy.

### **Step 3 – LEA Notification of Having Possible Significant Discrepancy and the Completion of the New Mexico Self Assessment Form**

1. The LEA is notified of the findings of the significant discrepancy and is required to complete Indicator 4 self-assessment to determine if the LEA's policies, procedures, or practices contributed to the significant discrepancy and do not comply with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports (PBIS) and procedural safeguards.

### **Step 4 –Review of the Self Assessment. Policies, Procedures, and Practices and IEP Review:**

1. Upon receipt of the self-assessment, the SEB exams the self-assessment to determine if the policies, procedures, and practices contributed to the significant discrepancy and they do not comply with the law.
2. The IEPs for those students suspended/expelled are reviewed by the SEB using the Indicator 4 IEP checklist. The development and implementation of the IEPs are reviewed along with the use of Positive Behavioral Interventions and Supports and Procedural Safeguards.
3. The SEB contacts the Special Education Director and interviews him/her based upon the self-assessment information, which includes the policies, procedures, and practices.
4. The SEB works with the LEA to determine root cause(s) of the noncompliance.

### **Identification of Compliance Status**

When a State collects or receives data indicating noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrate noncompliance, and then issue a finding if the data do demonstrate noncompliance; or
3. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a written finding of noncompliance (noncompliance would still be reported in the APR and would considered a part of the LEA's annual determination).

Compliance with this indicator includes, but is not limited to:

- Target = 0% (no significant discrepancies, by race and ethnicity, in the rates of long-term suspensions and expulsions for students with disabilities among LEAs in the State All individual cases of noncompliance corrected, unless the student is no longer within the jurisdiction of the LEA
- Policies, procedures, and practices are not contributing to long-term suspensions and expulsions
- LEA correctly implementing specific regulatory requirements

Noncompliance for this indicator includes, but is not limited to:

- Did not meet 0% target
- Individual cases of noncompliance not corrected, for students within the jurisdiction of the LEA
- Policies, procedures, and practices are contributing to the rates of suspensions and expulsions
- LEA not correctly implementing the specific regulatory requirements including the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards
- LEA failed to correct policies, procedures, and practices
- Noncompliance not corrected as soon as possible; and in no case later than one year

When the SEB collects or receives data indicating noncompliance

- and the LEA did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],
- or the additional information submitted did not demonstrate correction (verify whether data demonstrate noncompliance) [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],
- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

the LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement/rule;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the statute or regulation or rule;
- A requirement that the noncompliance be corrected as soon as possible and in no case later than a year in accordance with 34 CFR 300.600(e)
- If applicable, the requirement for correction of any policies, procedures, and practices that contributed to the significant discrepancy and do not comply with the requirements of the law.
- A statement that the noncompliance will be monitored either through the improvement plan or through a Corrective Action Plan (CAP).

### **Correction of Noncompliance**

All noncompliance must be corrected as soon as possible but in no case more than one year from identification. Before a State can conclude and report that the noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance, if applicable
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 4B is considered through the following methods, but is not limited to:

- Target = 0%
- Subsequent review of STARS discipline data or other data

- Review of the student discipline files and/or IEPs
- Approval of LEA's revised policies, procedures and practices to comply with IDEA requirements including the use of PBIS and Procedural Safeguards in accordance with 34 CFR § 300.170(b).

If the LEA did not correct the noncompliance and meet the 0% target, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered corrected.

New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 5:** Percent of children with IEPs aged 6 through 21 served:  
A. Inside the regular class 80% or more of the day;  
B. Inside the regular class less than 40% of the day; and  
C. In separate schools, residential facilities, or homebound/hospital placements.  
(20 U.S.C. 1416 (a)(3)(A))

Targets: See New Mexico's Annual Performance Report (APR)

**Data Collection**

LEAs submit Least Restrictive Environment (LRE) or level of integration data each reporting period. However, data for this indicator is extracted from STARS the second Wednesday in October as part of the OSEP Table Three, Annual Report of Children Served, Educational Environments.

**Verification of Indicator Data**

1. SEB staff members review the LEA data during the first reporting period (2<sup>nd</sup> Wednesday in October)
2. Exception reports are available for LEAs, in STARS, that have incomplete or inaccurate data fields. The reports list each student with an error or any duplicated students.
3. LEAs have 10 days to correct the data once notified by the SEB.



New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 6:** Percent of children with IEPs aged 3 through 5 attending a:  
A. Regular early childhood program and receiving the majority of special education and related services in the regular early childhood program; and  
B. Separate special education class, separate school or residential facility. (20 U.S.C. 1416(a)(3)(A))

Targets: See New Mexico's Annual Performance Report (APR)

**Data Collection**

LEAs submit Least Restrictive Environment (LRE) or level of integration data each reporting period. However, data for this indicator is extracted from STARS the second Wednesday in October as part of the OSEP Table Three, Annual Report of Children Served, Educational Environments.

**Verification of Indicator Data**

1. SEB staff members review the LEA data during the first reporting period (2<sup>nd</sup> Wednesday in October).
2. Exception reports are available for LEAs, in STARS, that have incomplete or inaccurate data fields. The reports list each student with an error or any duplicated students.
3. LEAs have 10 days to correct the data once notified by the SEB.

New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 7:** Percent of preschool children aged 3 through 5 with IEPs who demonstrate improved:

- A. Positive social-emotional skills (including social relationships);
- B. Acquisition and use of knowledge and skills (including early language/communication and early literacy); and
- C. Use of appropriate behaviors to meet their needs.

Targets: See New Mexico's Annual Performance Report (APR)

**Data Collection**

LEAs submit (ECO) Early Childhood Outcome data when the child enters the program or exits the program. However, only data for children who have been in program for six months are extracted from STARS at the end of the program year and reported in OSEP Indicator 7 summary statements 1 and 2. Results data is submitted using the criteria in the Early Childhood Outcomes Summary Form (COSF).

**Verification of Indicator Data**

1. SEB staff members review the LEA data during each reporting period (2<sup>nd</sup> Wednesday in October, December, February and EOY).
2. SEB staff members review the LEA entry, progress and exit data. \_\_\_\_\_
3. Exception reports are available for LEAs, in STARS, that have incomplete or inaccurate data fields. The reports list each student with an error or any duplicated students.
4. LEAs have 10 days to correct the data once notified by the SEB.

New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 8:** Percent of parents with a child receiving special education and related services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.  
(20 U.S.C. 1416(a)(3)(A))

Targets: See New Mexico's Annual Performance Report (APR)

**Data Collection**

1. Annually the SEB submits a list of students receiving special education and related services to the contractor. The list is by LEA and includes demographic information on the students.
2. Using representative sampling, a sampling technique that satisfies the statistical criteria necessary to be recognized as a census, a SEB contractor randomly selects a group of students with disabilities from each of the LEAs.
3. The list of students selected and the surveys along with stamped and addressed envelopes are sent to the LEA to distribute to the families. The packet includes a memorandum from the SEB explaining the data collection process.
4. Once the parent(s) complete the survey, they mail the survey back to the contractor for analysis.

**Verification of Indicator Data**

1. The representativeness of the surveys is assessed by the contractor by examining the demographic characteristics of the children of the parents who responded.
2. Representativeness is verified by the following:
  - a. Geographic region where the children attend school;
  - b. Race and Ethnicity of the children;
  - c. Grade level of the children; and
  - d. Primary disabilities of the children.
3. Results are weighted by districts to take into account differential sampling and differences in response rates by the districts.
4. To ensure statistical validity, the contractor guarantees the statistical validity of the data. The contractor delivers to the SEB Management Analyst.
5. The SEB Management Analyst reviews the data for general accuracy.

New Mexico Integrated Special Education Accountability System  
Compliance Indicators

**Indicator 9:** Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification. (20 U.S.C. 1416(a)(3)(C))

**Indicator 10:** Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification. (20 U.S.C. 1416(a)(3)(C))

Indicator 9 Compliance Target: 0%

State's definition of Disproportionate Representation of racial and ethnic groups in special education that is the result of inappropriate identification

In order for a LEA to be considered to have disproportionate representation of racial and ethnic groups in special education that is the result of inappropriate identification, the following criteria must be met:

- A "n" size of greater than 10 students or more in the racial and ethnic groups; and
- Risk Ratio (RR) and Weighted Risk Ratio (WRR) of 3.0 or above, but less than 5.0, (over-representation) for students aged 6 – 21; and
- Deficient Policies, procedures, and/or practices.

Indicator 10 Compliance Target: 0%

State's definition of Disproportionate Representation of racial and ethnic groups in special education, in specific disability categories that is the result of inappropriate identification:

In order for a LEA to be considered to have disproportionate representation of racial and ethnic groups, in specific disability categories, in special education that is the result of inappropriate identification, the following criteria must be met:

- A "n" size of greater than 10 students or more in the racial and ethnic groups and the specific disability category; and
- Risk Ratio (RR) and Weighted Risk Ratio (WRR) of 3.0 or above, but less than 5.0, (over-representation) for students aged 6 – 21; and
- Deficient Policies, procedures, and/or practices.

## Data Collection

### **Step 1 – LEA Submission of IDEA Part B Child Count by Race and Ethnicity and Specific Disability Categories**

On the 2<sup>nd</sup> Wednesday of October, the LEAs submit their data through the Student Teacher Accountability Reporting System (STARS). The child count numbers include the student's disability and race/ethnicity.

### **Step 2 – Collecting Data to Calculate Risk Ratios and Weighted Risk Ratios**

1. The Special Education Bureau's (SEB) Information Technology (IT) Administrator extracts the child count data, by LEA, from STARS and runs it through the WESTAT calculator to determine the LEA's Risk Ratios and Weighted Risk Ratios.
2. The data is disaggregated by race and ethnicity and the six disability categories (autism, emotional disturbance, intellectual disability, other health impairment, speech language impairment, and specific learning disability)
3. Both the aggregate and disaggregated numbers are given to the SEB for review and secondary validation. The districts that have both Risk Ratios and Weighted Risk Ratios of 3.0 or above, but less than 5.0 are flagged.
4. All LEA's comparisons are reviewed regardless of the "n" size.

### **Step 3 – LEA Notification of Being "Flagged" for Possible Disproportionate Representation and Submission of the New Mexico Self Assessment Form**

1. The LEA is notified in writing of the possible disproportionate representation and is required to complete the Indicator 9/10 self- assessment. The purpose of the self-assessment is to determine if the LEA has deficient policies, procedures, and practices.

### **Step 4 – Review of the Self Assessment and Policies, Procedures, and Practices**

1. Upon receipt of the self-assessment, the SEB examines the self-assessment to determine if the policies, procedures, and practices are deficient and contributed to the inappropriate identification.
2. The SEB contacts the Special Education Director and interviews him/her based upon the self-assessment information, which includes the policies, procedures, and practices.
3. The SEB works with the LEA to determine root cause(s) of the noncompliance.

## Identification of Compliance

When a State collects or receives data indicating noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrates noncompliance, and then issue a finding if the data does demonstrate noncompliance; or
3. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a written finding of noncompliance (noncompliance would still be reported in the APR and would be considered a part of the LEA's annual determination).

Compliance with this indicator includes, but is not limited to:

- Target = 0% (no disproportionate representation, by race and ethnicity, due to inappropriate identification)
- All individual cases of noncompliance corrected, unless the student is no longer within the jurisdiction of the LEA
- Policies, procedures, and practices are not deficient
- LEA correctly implementing specific regulatory requirements

Noncompliance for this indicator includes, but is not limited to:

- Did not meet 0% target
- Individual cases of noncompliance not corrected, for students within the jurisdiction of the LEA
- Policies, procedures, or practices are deficient
- LEA did not correctly implement the specific regulatory requirements
- LEA failed to correct policies, procedures, or practices
- Noncompliance was not corrected as soon as possible; and in no case later than one year

When the SEB collects or receives data indicating noncompliance

- and the LEA did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],
- or the additional information submitted did not demonstrate correction (verify whether data demonstrate noncompliance) [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],
- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

The LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement/rule;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the statute or regulation or rule;
- A requirement that the noncompliance be corrected as soon as possible and in no case later than a year in accordance with 34 CFR 300.600(e);
- If applicable, the requirement for correction of any policies, procedures, and practices that contributed to the disproportionate representation due to inappropriate identification and do not comply with the requirements of the law; and
- A statement that the noncompliance will be monitored either through the improvement plan or through a Corrective Action Plan (CAP).

## Correction of Noncompliance

All noncompliance must be corrected as soon as possible, and in no case more than one year from identification. Before a State can conclude and report that the noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 9 or 10 is considered through the following methods, but is not limited to:

- Target = 0%
- Subsequent review of STARS identification data or other data
- Review of the student assessment files and/or IEPs
- Correction of policies, procedures, and practices in the areas of child find, evaluation, and eligibility requirements in 34 CFR §§ 300.201, and 300.301 through 300.111.

If the LEA did not correct the noncompliance and meet the 0% target, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of the noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered to be corrected.

New Mexico Integrated Special Education Accountability System  
Compliance Indicators

**Indicator 11:** Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. (20 U.S.C. 1416(a)(3)(B))

Compliance Target: 100%

**Data Collection**

**Step 1: LEA Submission of Indicator 11 Data**

On the 2<sup>nd</sup> Wednesday of October, December, February, and at the End of Year (EOY), LEAs are required to submit to the New Mexico Public Education Department through the Student Teacher Accountability Reporting System (STARS), their Indicator 11 data. The Indicator 11 data components entered into STARS, by unique student identification number, are as follows:

- Parental Consent date for an initial evaluation for special education
- Initial Evaluation date
- Noncompliance reason code if they did not meet the 60 day timeline
- Compliance code, if applicable, in accordance with 34 CFR § 300.301(d) and (e)
- Number of days beyond 60 for when the initial evaluation was completed
- Initial Eligibility or Non-eligibility Date Determination
- Date of Initial IEP

**Data Validation**

**Step 1: Validation of Indicator 11 Data**

1. Data that is inaccurate or missing elements are flagged. Yellow flags are used for data that is important, but not essential to the indicator calculation, that needs to be corrected. Red flags are used for potential noncompliance with the indicator. There is a ten day window to resubmit data if corrections are needed.
2. The indicator data is validated by the SEB staff member assigned to the LEA using various checks and balances built into STARS, i.e. the student moves from the regular education portion of STARS into the special education templates that includes membership, level of service, and various IEP information.



## Identification of Compliance

When a State collects or receives data indicating noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrates noncompliance, and then issue a finding if the data does demonstrate compliance; or
3. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a written finding of noncompliance (noncompliance would still be reported in the APR and would be considered a part of the LEA's annual determination).

Compliance with this indicator includes, but is not limited to:

- Target = 100% (all parental consent for initial evaluations conducted within 60 days with the exceptions in accordance with 34 CFR § 300.301(d) and (e)).
- All individual cases of noncompliance corrected, unless the student is no longer within the LEA's educational jurisdiction
- All noncompliance corrected as soon as possible, and in no case later than one year from identification
- LEA is correctly implementing specific regulatory requirements based upon the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system

Noncompliance for this indicator includes, but is not limited to:

- Target less than 100%
- Noncompliance codes in STARS indicating LEA at fault for evaluations going beyond 60 days
- Failure of the LEA to correct individual cases of noncompliance for those students within its educational jurisdiction
- LEA failed to correct the implementation of special education regulatory requirements, based upon the State's review of updated data
- Noncompliance not corrected as soon as possible; and in no case later than one year

When the SEB collects or receives data indicating noncompliance and the LEA did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],

- or the additional information submitted did not demonstrate correction (verify whether data demonstrates noncompliance [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],
- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

the LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement/rule;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the Statute or regulation or rule;
- A requirement that the LEA must complete a root cause analysis to determine why the LEA missed the indicator;
- A requirement that the noncompliance be corrected as soon as possible, and in no case one year after the State's identification of the noncompliance in accordance with 34 CFR § 300.600(e); and
- A statement that the noncompliance will be monitored either through the improvement plan or through a Corrective Action Plan (CAP).

### Correction of Noncompliance

All noncompliance must be corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. Before a State can conclude and report that the noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 11 is considered through the following methods, but is not limited to:

- Target = 100%
- Reasonable subset of STARS data reviewed and meets target
- Subsequent review of a reasonable subset of initial evaluation data
- Review of a reasonable subset of student files
- LEA correctly implementing 34 CFR § 300.301(c)(1) and other applicable regulations identified in the root cause analysis
- Meeting the strategies in the improvement plan or CAP

If the LEA did not correct the noncompliance and meet the 100% target, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of the noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered corrected.

## New Mexico Integrated Special Education Accountability System

### Compliance Indicators

**Indicator 12:** Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays. (20 U.S.C. 1416(a)(3)(B))

Compliance Target: 100%

#### Data Collection

##### **Step 1 – LEA Submission of Indicator 12 Data**

On the 2<sup>nd</sup> Wednesday of October, December, February and at the End of Year (EOY), LEAs are required to submit to the New Mexico Public Education Department through the Student Teacher Accountability Reporting System (STARS), their Indicator 12 data. The Indicator 12 data components that are entered into STARS, by unique student identification number, are as follows:

- Transition conference date
- Parental consent for evaluation date
- Initial Evaluation date
- Part C to B eligibility determination (Yes or No) and date
- Part B initial placement Individualized Education Program (IEP) date
- IEP Implementation Date
- Noncompliance code if the LEA missed the child's third birthday
- Compliance codes in accordance with 34 CFR § 300.301(d)

##### **Step 2 - Validation of Indicator 12 Data**

1. Data that are inaccurate or have missing elements are flagged. Yellow flags are used for data that are important, but not critical for the indicator calculation. Red flags are used for potential noncompliance with the indicator. There is a ten day window to resubmit data if corrections or updates are needed.
2. The indicator data are validated by the SEB staff member assigned to the LEA using various checks and balances built into STARS, i.e. date of initial IEP, student's enrollment and membership in the LEA.

## Identification of Compliance

When a State collects or receives data including noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrate noncompliance, and then issue a finding if the data do demonstrate compliance; or
4. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a written finding of noncompliance (noncompliance would still be reported in the APR and would be considered a part of the LEA's annual determination).

Compliance with this indicator includes, but not limited to:

- Target = 100% (all children referred by Part C prior to age 3, found eligible for Part B services, and have an IEP developed and implemented by their third birthdays with the exceptions in accordance with 34 CFR § 300.301(d) and for the children who were referred to Part C less than 90 days before their third birthdays)
- All individual noncompliance corrected, unless the student is no longer within the LEA's educational jurisdiction
- LEA correctly implementing specific regulatory requirements based upon the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system
- Noncompliance corrected as soon as possible, and in no case later than one year from identification in compliance with 34 CFR § 300.600(e)

Noncompliance for this indicator includes, but not limited to:

- Target less than 100%
- Noncompliance codes in STARS indicating LEA at fault for not determining eligibility for Part B and having an IEP developed and implemented by the third birthday
- Failure of the LEA to correct individual cases of noncompliance for those students within its educational jurisdiction
- LEA failed not correctly implementing of specific regulatory requirements, based upon the State's review of updated data
- Noncompliance not corrected as soon as possible, and in no case later than one year from identification

When the SEB collects or receives data indicating noncompliance

- and the LEA did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],
- or the additional information submitted did not demonstrate correction (verify whether data demonstrate noncompliance [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],

- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

the LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement/rule;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the Statute or regulation or rule;
- A requirement that the noncompliance be corrected as soon as possible, and in no case later than one year from identification in accordance with 34 CFR §300.600(e);
- A completion of the indicator root cause analysis to determine why the LEA missed the indicator; and
- A Statement that the noncompliance will be monitored either through the improvement plan or through a Corrective Action Plan (CAP).

### Correction of Noncompliance

All noncompliance must be corrected as soon as possible, and in no case more than one year from identification. Before a State can conclude and report that noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 12 is considered through the following methods, but is not limited to:

- Target = 100%
- Correction of individual instances of noncompliance
- Subsequent review of reasonable subset of STARS data
- Subsequent review of reasonable subset of student files
- LEA properly implementing specific regulatory requirements identified in the root cause analysis
- LEA properly implementing 34 CFR § 300.124(b)
- Strategies and in Improvement Plan or CAP met

If the LEA did not correct the noncompliance and meet the 100% target, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of the noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered corrected.

New Mexico Integrated Special Education Accountability System  
Compliance Indicators

**Indicator 13:** Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP Team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority. (20 U.S.C. 1416(a)(3)(B))

**Compliance Target:** 100%

**Data Collection**

**Step 1 – LEA Submission of Indicator 13 data**

On the 2<sup>nd</sup> Wednesday of February, LEAs are required to submit to the New Mexico Public Education Department through the Student Teacher Accountability Reporting System (STARS), their Indicator 13 data. Each student (excluding students who are gifted only) aged 16 or above must be entered at least annually. The STARS data warehouse includes an abbreviated National Secondary Transition Technical Assistance Center (NSTTAC) checklist for LEAs to assist with compliance and monitoring. The Indicator 13 data components are entered into STARS, by unique student identification number, are as follows:

- Are there appropriate measurable post-secondary annual goals?
- Are the measurable post-secondary goals updated annually?
- Do the measurable post-secondary goals include transition services?
- Do the measurable post-secondary goals include courses of study?
- Are the measurable post-secondary goals based upon an age appropriate transition assessment?
- Is there evidence that the student was invited to the IEP team meeting?
- Is there evidence that a representative of a participating agency was invited to the IEP meeting?
- Are there annual IEP goals related to the student's transition service needs?

## Data Validation

### **Step 1: Validation of Indicator 13 Data**

1. The district submits their Indicator 13 data into STARS during the State's reporting period. There is a ten day window to resubmit data if corrections are needed. Data that is inaccurate or missing elements are flagged. Yellow flags are used for data that is important, but not essential to the indicator. Red flags are used for potential noncompliance with the indicator.

### **Step 2: Validation of NSTTAC Checklist and Individualized Education Programs (IEPs)**

1. The NSTTAC checklist is reviewed by staff and a reasonable subset of files are reviewed including any checklist that answered "No" to any of the questions.
2. IEPs are randomly selected and reviewed for accuracy when compared to the checklist and compliance.
3. IEPs that have an invalid "Yes" on the checklist and those not meeting compliance are required to be corrected and resubmitted.

### **Step 3: Validation of IEP Reviews with STARS Data**

1. Staff compares data from NSTTAC checklist to ensure it aligns with the STARS EOY data collection.

## Identification of Compliance

When a State collects or receives data indicating noncompliance, it must:

1. Make a finding of noncompliance; or
2. Verify whether the data demonstrate noncompliance, and then issue a finding if the data do demonstrate compliance; or
3. Verify that the LEA has corrected the noncompliance before the State issues written findings of noncompliance, in which case the State would not be required to make a written finding of noncompliance (noncompliance would still be reported in the APR and would be considered a part of the LEA's annual determination).

Compliance for this indicator includes, but is not limited to:

- Target = 100% (no noncompliant IEPs)
- All individual cases of noncompliance corrected, unless the student is no longer in the jurisdiction of the LEA
- LEA correctly implementing specific regulatory requirements

Noncompliance for this indicator includes, but is not limited to:

- STARS data less than 100%
- Individual cases of noncompliance of noncompliance not corrected, for students within the jurisdiction of the LEA

- LEA failed to correct the implementation of special education regulatory requirements, based upon the State's review of updated data
- Noncompliance not corrected as soon as possible; and in no case later than one year

When the SEB collects or receives data indicating noncompliance and the LEA did not submit additional information regarding the individual cases of noncompliance being corrected [prong one],

- or the additional information submitted did not demonstrate correction (verify whether data demonstrate noncompliance [prong one],
- or the LEA did not correct the noncompliance prior to the State's notification [prong one],
- and based upon the State's review of any updated data such as data from subsequent on-site monitoring or data collected through the State's data system, the LEA did not properly implement the specific regulatory requirements and the data demonstrates noncompliance [prong two],

the LEA is issued an official notification of the noncompliance.

The notification includes:

- A citation of the regulation/requirement/rule;
- A description of the quantitative or qualitative data that supports the decision for determining noncompliance with the Statute or regulation or rule;
- A requirement that the LEA must complete a root cause analysis to determine why the LEA missed the indicator;
- A requirement that the noncompliance be corrected as soon as possible, and in no case one year after the State's identification of the noncompliance in accordance with 34 CFR § 300.600(e); and
- A statement that the noncompliance will be monitored either through the improvement plan or through a Corrective Action Plan (CAP).

### **Correction of Noncompliance**

All noncompliance must be corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. Before a State can conclude and report that the noncompliance has been corrected, it must first verify, consistent with OSEP Memo 09-02, that the LEA:

- Prong 1 – has corrected each individual case of noncompliance
- Prong 2 – is correctly implementing the specific regulatory requirements. This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through the State's data system.

Correction of noncompliance for Indicator 13 is considered through the following methods, but is not limited to:

- Target = 100%
- Reasonable subset of STARS data reviewed and meets target



- Subsequent review of a reasonable subset of students' IEPs using the NSTTAC checklist
- LEA correctly implementing 34 CFR § 300.320(b) and other applicable regulations identified in the root cause analysis
- Meeting the strategies in the Improvement Plan or CAP

If the LEA did not correct the noncompliance and meet the 100% target, the State will continue to verify the correction of noncompliance through the prong two methodologies. The length of time of the noncompliance, the magnitude of the issue/problem, and the LEA's response will be considered in the LEA's annual determination. The LEA is notified in writing when the noncompliance is considered corrected.

New Mexico Integrated Special Education Accountability System  
Results Indicators

**Indicator 14:** Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were:

- A. Enrolled in higher education within one year of leaving high school.
- B. Enrolled in higher education or competitively employed within one year of leaving high school.
- C. Enrolled in higher education or in some other postsecondary education or training program; or competitively employed or in some other employment within one year of leaving high school.

Targets - See New Mexico's Annual Performance Report (APR)

**Data Collection**

New Mexico conducts an annual census of students when they have been out of school for at least one year. LEAs survey students who exited from school and enter the data into an online data base maintained by a contractor. This includes all youth who had an IEP in effect at the time they left school, including those who graduated on any diploma option, dropped out or aged out. Data is collected by September on an annual basis.

**Verification of Indicator Data**

1. The contractor verifies all data submitted through the online database. The LEAs are contacted to answer any questions or clarify any discrepancies.
2. The contractor submits reported district data to the SEA and the data is sent to the LEAs.
3. Districts that did not report, report with errors, or report less than 50% of their exited students are notified by SEA of failure to comply.

## **Appendix E**

### **Significant Disproportionality**

## **Significant Disproportionality Procedure**

### **34 CFR § 300.646**

#### **New Mexico's Definition of Significant Disproportionality**

In New Mexico, a Local Education Agency (LEA) is considered to have Significant Disproportionality based on race and ethnicity if the LEA has a Westat Risk Ratio and Weighted Risk Ratio of 5.0 or above and a sample size of greater than 10:

1. The identification of children as children with disabilities, including the identification of children in accordance with a particular impairment (Autism, Emotional Disturbance, Intellectual Disabilities (Mental Retardation), Other Health Impairment, Specific Learning Disabilities, Speech Language Impairment) (Section 618 OSEP Table One); or
2. The placement in particular educational settings of these children (Section 618 OSEP Table 3); or
3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions (Section 618 OSEP Table 5).

#### **Identification Procedure**

1. Annually in the spring, the Special Education Bureau (SEB) will calculate the Risk Ratio and Weighted Risk Ratio in all disabilities under the Individuals with Disabilities Education Act (IDEA) and the six specific disability categories to determine if significant disproportionality, on the basis of identification, based on race and ethnicity is occurring in the State and the Local Education Agencies (LEAs) of the State. The SEB will use the State and LEA's count taken on the Second Wednesday in October.
2. As part of the State's General Supervision responsibility, all data will be examined annually regardless of the sample size. In other words, the State will review data from LEAs with less than ten students in the all disability categories and the six specific disability categories. This data will be compared to the previous year's data and will be monitored over time to determine if any patterns or irregularities exist.

#### **Placement in Particular Educational Settings Procedure**

1. Annually in the spring, the SEB will calculate the Risk Ratio and Weighted Risk Ratio in all disabilities under the IDEA to determine if significant disproportionality, on the basis of placement in a particular educational setting, based on race and ethnicity is occurring in the State and the Local Education Agencies (LEAs) of the State. The SEB will use the State and LEA's current Educational Environments Count taken on the Second Wednesday in October.

2. Data will be examined annually by race and ethnicity, for every LEA, regardless of sample size, in the following areas:
  - Children who receive educational and related services in the regular class no more than 79 percent of the day and no less than 40 percent of the day;
  - Children who receive special education and related services in the regular class for less than 40% of the day; and
  - Children who receive special education and related services in separate schools and residential facilities.
3. In regards to residential treatment centers or similar facilities within the LEA's educational jurisdiction, the annual examination of the data will consider how the student was placed in the facility (placed by the courts or a due process hearing officer, parental placement, or IEP placement).
  - a. If upon annual examination of the data it is determined that the significant disproportionality based on race and ethnicity was due to a residential treatment center or a similar facility within the LEA's educational jurisdiction and the placements were made by the courts, a due process hearing officer, or the child's parent, the LEA will not be considered to have significant disproportionality for that year.
  - b. In regards to students placed through the IEP process, the annual examination of data will determine which LEAs placed students in the residential treatment. The number of students placed will be calculated in the sending LEA's significant disproportionality calculation. If the sending LEA meets the criteria for significant disproportionality, the sending LEA will be considered to have significant disproportionality; not the LEA where the residential treatment center is located.
4. As part of the State's General Supervision responsibility, all data will be examined annually regardless of the sample size. In other words, the State will review data from LEAs with less than ten students by race and ethnicity in the all disability categories. This data will be compared to previous year's data and will be monitored over time to determine if any patterns or irregularities exist.

### **Disciplinary Actions Procedure**

1. Annually at the End-of-Year (EOY), the SEB will calculate the Risk Ratio and Weighted Risk Ratio in all disabilities under the IDEA to determine if significant disproportionality, on the basis of the incidence, duration, and type of disciplinary action, based on race and ethnicity is occurring in the State and the Local Education Agencies (LEAs) of the State. The SEB will use the State and LEA's current data for Table 5, Disciplinary Removal.
2. Data will be examined annually by race and ethnicity, for every LEA, regardless of sample size, in the following areas:
  - the number of out-of-school suspensions of 10 days or less;
  - the number of out-of-school suspensions (including expulsions) of greater than 10 days;
  - the number of in-school suspensions of 10 days or less;
  - the number of in-school suspensions of greater than 10 days; and

- the total number of disciplinary removals.
3. As part of the State's General Supervision responsibility, all data will be examined annually regardless of the sample size. In other words, the State will review data from LEAs with less than ten students by race and ethnicity in the all disability categories. This data will be compared to previous year's data and will be monitored over time to determine if any patterns or irregularities exist.

### **Implementation Procedure**

1. After the LEA is notified in writing that it has significant disproportionality based on race and ethnicity in the identification of children with disabilities, including the identification of children as children with disabilities with a particular impairment, the placement in particular educational settings, or in the incidence, duration, and type of disciplinary actions, the SEB will review the LEA's policies, procedures, and practices related to:

- Identification of children with disabilities, including children with disabilities with particular impairments;
- Placement in educational settings; or
- Incidence and duration of disciplinary actions.

2. The SEB will review the LEA's policies, procedures, and practices.

3. The LEA will be notified in writing by the SEB that the Policies, Procedures, and/or Practices must be revised. The LEA will be required to publicly report on any revisions following the same protocol (including translations, if necessary) it utilizes for posting public announcements such as Board of Education meetings. If the LEA has a website, the LEA will be required to publicly report any revisions on the LEA's website, as well. If a website is not an option, suggested venues can include newspapers, newsletters, radio, or Board of Education meetings.

4. The notice will remain on the LEA's website until it has determined by the State that the policies, procedures, and practices have been revised and that the above mentioned that attributed to the significant disproportionality have been eliminated and when the LEA's data reflects that the significant disproportionality is no longer occurring.

### **Fiscal Procedure**

1. If the LEA is found to have significant disproportionality, the LEA will be directed to reserve not more than the maximum amount of flow-through entitlement funds (Part B = 15%) in accordance with 34 CFR § 300.646(b)(2).
2. The LEA must indicate on its annual IDEA Sub-grant application that it is mandated to reserve 15% of their Part B funds to provide comprehensive Coordinated Early Intervening Services (CEIS) to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified. The LEA will include its budget and plan as part of the local IDEA Sub-grant application. The plan must include specific student measures with detailed outcomes. The statute does not authorize LEAs to use these funds for any other purpose.

3. The budget and plan will be reviewed to determine if it meets the criteria set forth in 34 CFR 300.226(b). The LEA will be notified in writing if the plan is accepted or if any revisions are necessary. The LEA will be unable to spend the EIS dollars until it receives written confirmation from the State.
4. The budget must include specific components aligned with the Uniform Chart of Account (UCOA). The UCOA will track expenditures in areas such as professional development, evaluations, and the purchase of items such as scientifically based literacy programs.
5. Once the plan is approved, the LEA will send the Requests for Reimbursements (RfRs) to the SEB. The SEB will verify whether or not the RfRs support the EIS program. If the RfRs do not support the EIS plan and program, the RfRs will not be approved and the LEA will not be reimbursed.
6. The SEB will request detailed ledgers to validate costs.

### **Data Procedure**

1. The LEA's data will be monitored throughout the year by the SEB.
2. Students participating in the CEIS program will be reported in the Student Teacher Accountability Reporting System (STARS) by the LEA to the State in accordance with 34 CFR 300.226(d). Students will be reported by their unique student identification number.
3. After one year, if the LEA is no longer considered to have significant disproportionality based upon a data review by the SEB, the LEA will no longer be required to reserve 15% of its IDEA funds. However, if the LEA continues to have significant disproportionality, the LEA will be required to reserve 15% of its IDEA funds for mandatory Coordinated Early Intervening Services. The LEA will be notified in writing by the State.
4. If the LEA continues to be considered to have significant disproportionality, the State will consider this when making the LEA's Annual Determination in addition to the implementation of this policy. All Technical Assistance and Professional Development as described in the Integrated Special Education Accountability System (ISEAS) will be provided so the New Mexico Public Education Department will be assured the issue will be corrected.
5. The State and LEA data will be reported annually to the State's IDEA Advisory Panel Stakeholder Group.

## **Appendix F**

### **Root Cause Analyses**



**SPP/APR Indicator B - 11: Child Find - Percent of children who were evaluated within 60 days of receiving consent for initial evaluation.**

Systems	Practices
<p>1. Does your district have policies and procedures in effect as per the Child find rules and regulations of 34 CFR § 300.111 and Subsection B of 6.31.2.10 NMAC?</p>	<ul style="list-style-type: none"> <li>• How does your district identify and locate all children with disabilities residing in your district per Subsection (B) of 6.31.2.7 NMAC? Including:               <ul style="list-style-type: none"> <li>• Homeless children?</li> <li>• Children who are wards of the State?</li> <li>• Children with disabilities attending private schools?</li> <li>• Children who reside on reservations?</li> <li>• Children in correctional facilities?</li> <li>• Children in residential treatment centers?</li> </ul> </li> </ul>
<p>2. If applicable, does your district have interagency agreements (IGAs) or memorandums of understanding (MOUs) with providers and agencies who work with children (e.g. Part C providers, agencies who work with homeless children, children residing on the reservations, correctional facilities, residential treatment centers, etc.) to ensure that all children with disabilities in your district are identified, located and evaluated within 60 days of receiving consent to evaluate?</p>	<ul style="list-style-type: none"> <li>• With what agencies or providers does your district enter into IGAs or MOUs?</li> <li>• Who is responsible to formulate these IGAs/MOUs?</li> <li>• How often are these agreements formulated?</li> <li>• What signatures are required on these agreements?</li> <li>• Where and how are these agreements safeguarded?</li> </ul>
<p>3. Does your district have a student intervention system (e.g. SAT, Rtl, PBS) in place, as required under Subsection (D) of 6.29.1.9 of NMAC? What system or systems does your district use?</p>	<ul style="list-style-type: none"> <li>• What training(s) are available for staff on the system(s) your district uses? State level? District level?</li> <li>• Who must attend the training(s)? How often?</li> <li>• How does your district ensure that the system is</li> </ul>

<p>4. As part of prior written notice (PWN) under 34 CFR §§ 300.503 and 300.9, does your district have a written policy on how to explain, obtain and process an informed parental consent form for evaluation?</p>	<p>being utilized properly with all students?</p> <ul style="list-style-type: none"> <li>• How does your district process a signed informed parental consent form?</li> <li>• How does your district address a situation where the intervening system recommends that the child be evaluated but parent(s) refuse to consent?</li> <li>• How does your district address a situation where the child is a ward of the State?</li> <li>• How does your district log and track the signed consent form? Who is responsible?</li> <li>• How does your district inform parents of their parental rights, e.g. Procedural Safeguards?</li> <li>• How does your district ensure that all languages and/or vernaculars are supported when explaining and obtaining parental consent for evaluation?</li> <li>• How does your district ensure that evaluations are completed within 60 days from date consent form was signed?</li> </ul>
<p>5. Does your district have sufficient and adequately trained staff to conduct initial evaluations within the 60-day timeline in accordance with the requirement?</p>	<ul style="list-style-type: none"> <li>• How does your district recruit sufficient and adequately trained staff to conduct initial evaluations?</li> <li>• Does your district have ongoing and reoccurring trainings for the staff that is recruited and hired? Who is responsible? How often does it occur?</li> <li>• How does your district ensure that staff is qualified?</li> <li>• How does your district retain the qualified staff?</li> <li>• How does your district ensure that all languages and/or vernaculars are supported when conducting initial evaluations?</li> </ul>

	<ul style="list-style-type: none"> <li>• How does your district address evaluations that have exceeded the 60 day timeline?</li> <li>• How does your district ensure timely delivery of services to avoid compensatory service commitments?</li> </ul>
<p>6. Does your district use a common interface for data collection system (DCS) integration with STARS?</p>	<ul style="list-style-type: none"> <li>• Who is responsible for acquiring and setting up the data collection system (DCS) for your district?</li> <li>• Who do you contact for support regarding your system?</li> <li>• Are you aware of a common technical support resource to ensure accurate data collection and integration into STARS?</li> <li>• What are these resources? How often are they upgraded?</li> </ul>
<p>7. In your district, is there consistent competency regarding Special Education requirements in the staff responsible for collecting and entering data into your DCS? For example, what is collected, how it is entered, data submission dates, validation process/timelines, etc.</p>	<ul style="list-style-type: none"> <li>• What criteria determine who should obtain training on collecting and entering data into your DCS?</li> <li>• Is there sufficient training for the staff responsible for collecting and entering data into your DCS?</li> <li>• What trainings are available? At state level? At district level?</li> <li>• Who is responsible for making sure the staff with these responsibilities is receiving training? How often are they checking?</li> <li>• Is your data collection system (DCS) updated annually? Who is responsible to ensure the current systems information is available prior to data submission?</li> </ul>

8. Does your district have policies in place to safeguard written material developed during the consent and initial evaluation processes?

- What type of safeguards does your district have in place for handling written material developed during the consent and initial evaluation processes?
- Who is responsible to safeguard the documentation?
- Does your district have a method to indicate timelines for time sensitive documents (e.g. parental consent, evaluations) that indicate important timelines and the next steps required? Describe your method?
- Where is the documentation located to provide access to all staff that supports these processes? Is it centrally located?

## **Summary from Indicator B - Analysis**

- ➔ Based on the data/information identified above, what categories of factors/reasons (e.g. procedures, infrastructure, practice, training, technical assistance, data and supervision) are related to our current noncompliance?
  
- ➔ What strategies related to these categories of factors/reasons should we include in our improvement plan/CAP? For each strategy, include who is responsible and the timeline for completing the strategy.

Contributing Factor Area	Improvement Plan/CAP Strategies for Improvement	Who is responsible?	Timeline for Completion

**SPP/APR Indicator B - 12: Percent of children referred by Part C prior to age 3 and who are found eligible for Part B, and who have an IEP developed by their third birthday.**

Systems	Practices
<p><b>1. What systems does your district have in place to ensure that children referred by Part C that are found eligible for Part B, have an IEP developed by their third birthday?</b></p>	<ul style="list-style-type: none"> <li>• What is your school district referral process for transitioning students from Part C to Part B?</li> <li>• How does your district determine eligibility for Part B services?</li> <li>• Who is responsible for conducting an initial evaluation?</li> <li>• Who is involved in making eligibility determinations?</li> <li>• What practices are implemented to ensure that the district coordinates with Part C programs?</li> </ul>
<p><b>2. Does the district have clear policies and procedures regarding sharing information and planning with families about potential service options for their children when they exit Part C early intervention? How do you assure these policies and procedures have been adhered to? §300.124</b></p>	<ul style="list-style-type: none"> <li>• What information on resources does the district have available to families to assist in transitioning?</li> <li>• How does the district include families in developing the policies and procedures designed to support them during transition?</li> <li>• How does the district ensure that families understand the policies and procedures related to transition?</li> <li>• How does the district ensure that families understand the need for early referral and the expectations and requirements of the school district?</li> <li>• What translating and/or interpreting services are available to families in their native language. What methods does the district use to verify that procedures, and practices for Indicator 12 comply with Federal Regulations and State Rules?</li> <li>• What practices are in place to correct non-compliance in a timely manner?</li> </ul>

<p><b>3. Does your district have a system in place to monitor a smooth and effective transition from Part C to Part B?</b></p>	<ul style="list-style-type: none"> <li>• What role does the district play in the transition conference?</li> <li>• What practices are in place to effectively assist parents with their child's transition from Part C to Part B?</li> <li>• What are the planning activities that take place between Part C providers and district staff prior to the transition conference?</li> </ul>
<p><b>4. What systems does the district have in place to ensure valid and reliable data is collected for this indicator?</b></p>	<ul style="list-style-type: none"> <li>• What practices does the district have in place to submit data into the Student Teacher Accountability Reporting System (STARS)?</li> <li>• What is the district's process for examining the validity, reliability, and timeliness of data?</li> <li>• How does your district ensure that IEP data is accurately entered into STARS?</li> <li>• Who is responsible for ensuring that valid and reliable student information is entered into STARS?</li> <li>• How does your district's IEP form reflect Part C to B information?</li> </ul>
<p><b>5. Does your district have policies and procedures in place to ensure that interagency agreements or memorandums of understanding (MOUs) are put in place with providers and agencies so that all children with disabilities are identified, located and evaluated?</b></p>	<ul style="list-style-type: none"> <li>• What does the district have in place to ensure that evaluations take place within 60 days of receiving consent to evaluate?</li> <li>• What does the district do to ensure that the requirements of the MOU are met?</li> <li>• How does the district ensure the MOUs are implemented with fidelity as required in the district's policies and procedures?</li> <li>• Who is responsible for ensuring the requirements of the MOU are met?</li> <li>• How often does your district review your interagency agreements and MOUs? Are all staff and administrators aware of these agreements?</li> </ul>



<p><b>6. Does your district provide opportunities for professional development and technical assistance so staff have a clear understanding of Part C to Part B requirements?</b></p>	<ul style="list-style-type: none"> <li>• What types of networks exist within the district to improve the quality of technical assistance for personnel and stakeholders?</li> <li>• How does the district utilize their professional development and technical assistance opportunities?</li> </ul>
<p><b>7. Does your district have clear and concise guidelines to determine a student's eligibility for Part B services?</b></p>	<ul style="list-style-type: none"> <li>• What is the district's responsibility for conducting an initial evaluation?</li> <li>• What information is reviewed to determine eligibility?</li> <li>• Who is involved in making eligibility determinations?</li> <li>• How does the district document the information that is obtained from a variety of sources?</li> <li>• What information is obtained to determine eligibility for Part B services.</li> </ul>

### **Summary from Indicator B - Analysis**

- ➔ Based on the data/information identified above, what categories of factors/reasons (e.g. procedures, infrastructure, practice, training, technical assistance, data and supervision) are related to our current noncompliance?
  
- ➔ What strategies related to these categories of factors/reasons should we include in our Improvement Plan/CAP? For each strategy, include who is responsible and the timeline for completing the strategy.

Contributing Factor Area	Improvement Plan/CAP Strategies for Improvement	Who is responsible?	Timeline for Completion

**SPP/APR Indicator B-13:** Percent of youth with IEPs aged 14 and above with an IEP that includes appropriate measurable postsecondary goals that are annually updated and based upon an age appropriate transition assessment, transition services, including courses of study, that will reasonably enable the student to meet those postsecondary goals, and annual IEP goals related to the student's transition services needs. There also must be evidence that the student was invited to the IEP team meeting where transition services are to be discussed and evidence that, if appropriate, a representative of any participating agency was invited to the IEP team meeting with the prior consent of the parent or student who has reached the age of majority.

Systems	Practices
<p><b>1. Does the district have clear policies and procedures in place for Indicator 13 transition services (Sec. 300.320(B)(7)(b))?</b></p>	<ul style="list-style-type: none"> <li>• How does the district ensure that the district's policies and procedures align with the requirements of this indicator?</li> <li>• How does the district ensure that the student has had their first Transition IEP by the age of 14?</li> <li>• Beginning not later than one year before the student reaches the age of majority under State law, does the IEP include a statement that the student has been informed of the student's rights under Part B of the Act, if any, that will transfer to the student on reaching the age of majority?</li> </ul>
<p><b>2. Are the district's policies and procedures on transition applied consistently across schools in the district?</b></p>	<ul style="list-style-type: none"> <li>• How does the district ensure that the policies and procedures on transition are applied consistently across schools in the district?</li> <li>• Who will be responsible for making sure that the policies are consistently followed?</li> <li>• When and how often does this occur.</li> </ul>
<p><b>3. Does your district include appropriate measurable post-secondary goals on the IEP?</b></p>	<ul style="list-style-type: none"> <li>• How does the district ensure that all transition requirements are included in the student's IEP?</li> <li>• How often are student IEPs reviewed? Who reviews them?</li> <li>• Will the goal(s) continue after the student graduates from school? How will this be supported through transition planning?</li> <li>• Based on the information available about this student does (do) the postsecondary goal(s) seem appropriate for</li> </ul>

	<p>the student? How do you know?</p> <ul style="list-style-type: none"> <li>Is (are) there an appropriate measureable postsecondary goal(s) that covers education or training, employment, and independent living? List them.</li> </ul>
<b>4. Are the post-secondary goals updated annually?</b>	<ul style="list-style-type: none"> <li>Was (were) the postsecondary goal(s) addressed/updated in conjunction with the development of the current IEP? What are the steps?</li> </ul>
<b>5. Are the post-secondary goals based upon age appropriate transition assessments?</b>	<ul style="list-style-type: none"> <li>What transition assessment(s) are you using?</li> <li>How are the assessments used to write goals?</li> <li>Is the use of transition assessments for the postsecondary goals mentioned in the IEP or evident in the student's file?</li> <li>What are the opportunities students have to receive appropriate guidance on career pathways to prepare them for transition after graduation?</li> </ul>
<b>6. Do the transition services include courses of study that will reasonably enable the student to meet their post-secondary goals?</b>	<ul style="list-style-type: none"> <li>Is the type of instruction, related service, community experience, or development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills, and provisions of functional vocational evaluation listed in association with meeting the postsecondary goals? How do you know?</li> <li>Do the transition services include courses of study that align with the student's postsecondary goals?</li> </ul>
<b>7. Are the annual IEP goals related to the students transition services needs?</b>	<ul style="list-style-type: none"> <li>What transition services are needed to meet the annual IEP goals? How do you know?</li> <li>Does your district utilize the state recommended IEP form? (That includes all the transition requirements). If not, has your district's form been reviewed to determine if it meets the criteria?</li> </ul>

<p><b>8. What evidence supports that the student was invited to the IEP team meeting where transition services were discussed?</b></p>	<ul style="list-style-type: none"> <li>• For the current year, is there documented evidence in the IEP record that the student was invited to attend the IEP team meeting?</li> <li>• Does the district have policies and procedures in place to ensure that all individuals who need to be involved in assisting the student with their transition plan are invited to the IEP meeting (including the student and/or parent/guardian)?</li> <li>• If the student does not attend the IEP team meeting, does the district take other steps to ensure that the student's strengths, preferences and interests are considered? What are the steps?</li> </ul>
<p><b>9. What evidence supports that a representative of any participating agency was invited in the IEP team meeting with the prior consent of the parent/guardian or student who has reached the age of majority?</b></p>	<ul style="list-style-type: none"> <li>• For the current year, is there documented evidence in the IEP that representatives of any of the following agencies/services were invited to participate in the IEP development including, but not limited to; postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living or community participation for this postsecondary goal?</li> <li>• How is prior consent of parents/guardians or student who has reached the age of majority obtained?</li> </ul>
<p><b>10. Does your district have transition specialists that are trained in the IDEA transition requirements? If not, who is responsible for transition planning and how are they trained?</b></p>	<ul style="list-style-type: none"> <li>• How does the district determine training needs for transition specialists or persons responsible for transition planning?</li> <li>• How often are they trained?</li> <li>• Who completes the training?</li> <li>• Does the district have adequate personnel to provide transition services?</li> <li>• Does the district have the appropriate resources needed to effectively implement transition services?</li> <li>• Do the case managers utilize the NSTTAC checklist when preparing and reviewing their IEPs?</li> </ul>

**11. Is the district's monitoring and supervision adequate to ensure that transition steps are included on the IEP and that the transition steps are appropriate?**

- Do the files include transition plans with appropriate steps to be taken to support the transition of the student? (e.g. discussions with and training of parents regarding future placements and other matters related to the student's transition; procedures to prepare the student for changes in service delivery, including steps to help the student adjust to, and function in, a new setting)
- How does the district ensure that monitoring and supervision of this indicator is adequate?
- How are deficiencies addressed?

**Summary from Indicator B – 13 Analysis**

- ➔ Based on the data/information identified above, what categories of factors/reasons (e.g. procedures, infrastructure, practice, training, technical assistance, data and supervision) are related to our current noncompliance?
- ➔ What strategies related to these categories of factors/reasons should we include in our improvement plan/CAP? For each strategy, include who is responsible and the timeline for completing the strategy.

Contributing Factor Area	Improvement Plan/CAP Strategies for Improvement	Who is responsible?	Timeline for Completion



**Appendix G**

**Local Education Agency**

**Maintenance of Effort**

### Local Maintenance of Effort (MOE) Overview

As a State Educational Agency (SEA) the New Mexico Public Education Department (PED) is required to follow all regulations governing the expenditures of federal grants awarded to the state by the United States Department of Education (USDE). One of the federal grants through which the PED receives federal funding is the Individuals with Disabilities Education Act, Part B (IDEA B).

Annually, the State must provide assurances that it has in effect policies and procedures to meet all eligibility requirements of Part B of the Act as found in PL 108-446, the Individuals with Disabilities Education Act (IDEA) and applicable regulations. This includes the assurance that Local Education Agencies (LEAs) in the State will meet the Conditions of Assistance under 34 CFR § 300.200 that includes maintaining fiscal effort from year to year, unless exceptions are granted by the PED.

Failure to meet Maintenance of Effort (MOE) requirements may result in the LEA losing eligibility to receive IDEA B entitlement funding and requiring a LEA to repay funds, using a non-federal source, to the SEA, which is required to send funds to the USDE. The Special Education Bureau (SEB) must determine that each LEA, including school districts and state chartered charter schools, is in compliance with the IDEA B regulations. MOE is one of several fiscal compliance regulations that measure the expenditures of funds on students with disabilities.

The SEB calculates MOE for all LEAs each fiscal year in accordance with IDEA B requirements. 34 CFR § 300.203 of the IDEA B regulations states that funds provided to a LEA under IDEA B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds<sup>1</sup> below the level of those expenditures from the preceding fiscal year.

In order to calculate MOE, the SEB must first determine that the LEA is eligible to receive IDEA B funds by confirming that the LEA budgets at least the same total or per capita amount from local funds that it did in the most recent fiscal year. LEAs establish eligibility for an IDEA B award by providing assurance that they have budgeted at least the same amount of state funding for special education they did previously when completing *Section III – Plan of Assurances* within the IDEA B annual application. LEAs must also submit a budget in the Operating Budget Management System (OBMS) that demonstrates that they budgeted at least the same amount of state funding for special education that they expended in the previous year.

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<sup>1</sup> When referring to “local funds”, the reference is to state funding since non-federal funding provided for students with disabilities comes from State Equalization Guarantee allocations provided to LEASs and state charters.

Here is an example of an approved budget from OBMS that demonstrates the LEA is eligible to receive IDEA B funding:

Fund	Function	Object	Program	Location	Job Class	Est. Amt	Est. FTE	Proj. Amt	Proj. FTE
11000	1000	51100	2000	0	1412	1,804,451	40.5	1,905,406	41.5
11000	2100	51100	2000	0	1312	233,409	4	233,411	4
11000	2100	51100	2000	0	1313	265,287	3	267,237	4.6
11000	2100	51100	2000	0	1314	299,560	5.2	299,561	5.2
11000	2100	51100	2000	0	1315	207,928	3	207,931	3
11000	2100	53211	2000	0	0	0		228,186	
11000	2100	53212	2000	0	0	377,587		417,587	
11000	2100	53213	2000	0	0	81,762		76,259	
11000	2100	53214	2000	0	0	40,313		40,474	
11000	2100	53215	2000	0	0	19,925		30,000	
11000	2100	53216	2000	0	0	9,979		12,000	
11000	2700	51100	0	0	1319	0	0	1,000	0
11000	2700	51300	0	0	1319	26,341	0	22,000	0
						<b>3,366,542.00</b>		<b>3,741,052.00</b>	

The SEB can determine that an LEA is in compliance with MOE after the fiscal year has closed and Final Reports have been submitted and approved in OBMS. The SEB calculates the level of effort for each LEA and determines MOE compliance.

#### How does SEB calculate the level of effort maintained by each LEA?

Each LEA is required to submit final reports through OBMS, using the Uniform Chart of Accounts (UCOA). The PED School Budget and Finance Analysis Bureau (SBFAB) is responsible for approving final reports in OBMS, for each LEA.

Upon the approval of the final reports in OBMS, the SBFAB generates a report identifying the specific funds, object codes and job classes used to calculate the level of effort for each LEA. The SEB uses this report to determine the level of effort for each LEA.

- It is important to note that SEB determines the level of effort for each LEA based entirely on the information provided by the LEA through OBMS.

The SEB considers three funds when calculating the level of effort for each LEA. Those three funds are 11000 (Operational) and 13000 (Transportation). Within these funds, there are specific object codes and job classes considered in determining the level of effort.

SEB considers expenditures for contracted ancillary services reported under the following Object Codes:

- 53211 Diagnosticians
- 53212 Speech Therapists
- 53214 Physical/Recreational Therapists
- 53215 Psychologists/Counselors
- 53216 Audiologists
- 53217 Interpreters

- 53218 Specialists
- 53219 Special Ed. Assistants (non-instructional)

SEB also considers expenditures for 51100 (salaries), 51200 (overtime) and 51300 (additional compensation) reported for the following Job Classes:

- 1311 Diagnosticians
- 1312 Speech Therapists
- 1313 Occupational Therapists
- 1314 Physical/Recreational Therapists
- 1315 Psychologists/Counselors
- 1316 Audiologists
- 1317 Interpreters
- 1318 Specialists
- 1319 Special Education Assistants (non-instructional)
- 1412 Teachers—Special Education
- 1712 Instructional Assistants—Special Education

LEAs may submit other allowable expenditures necessary for the provision of special education and related services for consideration in determining the LEA's level of effort. SEB will determine whether those expenditures will be included in the level of effort calculations, on a case-by-case basis. SEB does not consider expenditures made from any federal funds when determining the LEA's compliance with MOE.

#### **How does an LEA meet MOE requirements?**

There are two ways that a LEA can meet the MOE requirements. LEAs are required to maintain the same level of effort for the education of children with disabilities from state funds as measured either by total expenditures or per capita for the previous fiscal year.

#### **How is the level of effort by total expenditures determined?**

To determine if the LEA has maintained the level of effort by total expenditures, the SEB adds the year to date (YTD) expenditures, identified above, to determine the total expenditures or level of effort. Once the SEB determines the level of effort for each LEA, it compares that total to the final MOE base or level of effort from the previous fiscal year to determine whether the LEA has met MOE or if the LEA decreased the level of effort.

Please note that the MOE calculations for a LEA with a dependent charter in its district will include the expenditures identified above for all dependent charters within the district.

Examples of the reports that the SEB uses to calculate and compare the level of effort for each LEA are shown below. These reports are generated directly from OBMS after the LEA has submitted the Final Reports and they have been approved.

Figure A demonstrates a LEA's level of effort for 2012-2013. In this example, the level of effort in 2012-2013 was \$2,388,949.99.

Figure A		2012-2013 FINAL EXPENDITURES				
Budget Entity	Object List	Job Class List	11000 - Operational	13000 - Pupil Transportation	Grand Total	
LEA Name	51100 - Salaries Expense	1311 - Diagnosticians	144,772.11		144,772.11	
		1312 - Speech Therapists	340,140.83		340,140.83	
		1313 - Occupational Therapists	179,399.50		179,399.50	
		1315 - Psychologists/Counselors	203,260.32		203,260.32	
		1412 - Teachers- Special Education	1,019,324.21		1,019,324.21	
		1712 - Instructional Assistants-Special Education	234,617.53		234,617.53	
	51100 - Salaries Expense Total			2,121,514.50		2,121,514.50
	51300 - Additional Compensation	1313 - Occupational Therapists		2,811.04		2,811.04
		1319 - Special Ed Assistants (Non-Instructional)			44,256.40	44,256.40
	51300 - Additional Compensation Total			2,811.04	44,256.40	47,067.44
	53212 - Speech Therapists - Contracted	0000 - No Job Class		35,981.39		35,981.39
	53212 - Speech Therapists - Contracted Total			35,981.39		35,981.39
	53214 - Therapists - Contracted	0000 - No Job Class		143,363.01		143,363.01
	53214 - Therapists - Contracted Total			143,363.01		143,363.01
	53218 - Specialists - Contracted	0000 - No Job Class		41,023.65		41,023.65
	53218 - Specialists - Contracted Total			41,023.65		41,023.65
	LEA Grand Total			2,344,693.59	44,256.40	2,388,949.99

Figure B demonstrates a LEA's level of effort for 2013-2014. In this example, the level of effort in 2013-2014 was \$2,410,249.97.

Figure B		2013-2014 FINAL EXPENDITURES				
Budget Entity	Object List	Job Class List	11000 - Operational	13000 - Pupil Transportation	Grand Total	
LEA Name	51100 - Salaries Expense	1311 - Diagnosticians	49,365.91		49,365.91	
		1312 - Speech Therapists	303,426.00		303,426.00	
		1313 - Occupational Therapists	177,013.00		177,013.00	
		1315 - Psychologists/Counselors	260,908.35		260,908.35	
		1412 - Teachers- Special Education	1,123,862.46		1,123,862.46	
		1712 - Instructional Assistants-Special Education	131,481.29		131,481.29	
	51100 - Salaries Expense Total			2,046,057.01		2,046,057.01
	51300 - Additional Compensation	1315 - Psychologists/Counselors		3,042.59		3,042.59
		1319 - Special Ed Assistants (Non-Instructional)		501.83	44,197.17	44,699.00
	51300 - Additional Compensation Total			3,544.42	44,197.17	47,741.59
	53212 - Speech Therapists - Contracted	0000 - No Job Class		136,122.09		136,122.09
	53212 - Speech Therapists - Contracted Total			136,122.09		136,122.09
	53213 - Occupational Therapists - Contracted	0000 - No Job Class		96,317.73		96,317.73
	53213 - Occupational Therapists - Contracted Total			96,317.73		96,317.73
	53214 - Therapists - Contracted	0000 - No Job Class		48,035.18		48,035.18
	53214 - Therapists - Contracted Total			48,035.18		48,035.18
	53218 - Specialists - Contracted	0000 - No Job Class		35,976.37		35,976.37
53218 - Specialists - Contracted Total			35,976.37		35,976.37	
LEA Grand Total			2,366,052.80	44,197.17	2,410,249.97	

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Figures A and B demonstrate a LEA that has met the MOE requirement. The LEA actually increased the level of effort in 2013-2014 by \$21,299.98.

### How is the level of effort determined per capita?

The SEB uses the total expenditures calculated above and the total number of students with disabilities reported through the Student Teacher Accountability Reporting System (STARS) on the 40 Day, of the

MOE year, to determine a per capita amount for each LEA. In other words, when calculating the 2013-2014 MOE per capita, the October 2013 40<sup>th</sup> data is used.

LEAs are required to submit student counts annually on the 40<sup>th</sup> Day, 80<sup>th</sup> day 120<sup>th</sup> day, through STARS. However, only the total number of students with disabilities enrolled and reported on the 40<sup>th</sup> Day in STARS is used to calculate the per capita expenditure, for each LEA. To calculate the per capita amount, the total expenditures (identified above) are divided by the total students with disabilities enrollment count, excluding gifted-only students.

The per capita amount for the current year is then compared to the per capita calculation from the previous fiscal year to determine if the LEA met MOE per capita by spending the same average amount per student.

**Example 1** demonstrates how the per capita amount is calculated and compared to determine if the average amount spent per student was maintained for each LEA. In this example the LEA actually increased the per capita expenditures in 2013-2014 by \$527.22.

<b>Example 1</b>	2012-2013 Total Expenditures	\$2,388,949.99
	<u>2012-2013 40 Day Student Count</u>	<u>456</u>
	<b>2012-2013 Per Capita Amount</b>	<b>\$ 5,238.93</b>
	2013-2014 Total Expenditures	\$2,410,249.97
	<u>2013-2014 40 Day Student Count</u>	<u>418</u>
	<b>2013-2014 Per Capita Amount</b>	<b>\$ 5,766.15</b>

#### What if the LEA fails to maintain the level of effort?

If the LEA failed to maintain the level of effort in 2013-2014, the level of effort that the LEA must maintain going forward to 2014-2015 is the level of effort from 2012-2013, not the reduced level of effort from 2013-2014. The amount that the LEA has failed to maintain must be returned to PED unless the PED approves allowable exceptions and/or adjustments identified under 34 CFR §§ 300.204 and 300.205. **Figures C and D** show a LEA that did not meet the MOE requirement by total expenditures in 2013-2014.

Figure C demonstrates the LEA's level of effort for 2012-2013. In this example, the level of effort in 2012-2013 was \$3,563,153.25.

Figure C		2012-2013 FINAL EXPENDITURES				
Budget Entity	Object List	Job Class List	11000 - Operational	13000 - Pupil Transportation	25145 - Impact Aid Special Education	Grand Total
LEA Name	51100 - Salaries Expense	1312 - Speech Therapists	207,417.16			207,417.16
		1313 - Occupational Therapists	225,378.32			225,378.32
		1314 - Physical/Recreational Therapists	230,269.97			230,269.97
		1315 - Psychologists/Counselors	248,450.73			248,450.73
		1319 - Special Ed Assistants (Non-Instructional)		33,325.00		33,325.00
		1412 - Teachers- Special Education	1,514,443.23			1,514,443.23
		1712 - Instructional Assistants-Special Education	264,090.54		139,827.73	403,918.27
		<b>51100 - Salaries Expense Total</b>		<b>2,690,049.95</b>	<b>33,325.00</b>	<b>139,827.73</b>
	51300 - Additional Compensation	1319 - Special Ed Assistants (Non-Instructional)	8,167.75			8,167.75
		1412 - Teachers- Special Education	3,500.00			3,500.00
	<b>51300 - Additional Compensation Total</b>		<b>11,667.75</b>			<b>11,667.75</b>
	53211 - Diagnosticians - Contracted	0000 - No Job Class	221,499.74			221,499.74
	<b>53211 - Diagnosticians - Contracted Total</b>		<b>221,499.74</b>			<b>221,499.74</b>
	53212 - Speech Therapists - Contracted	0000 - No Job Class	418,928.06			418,928.06
	<b>53212 - Speech Therapists - Contracted Total</b>		<b>418,928.06</b>			<b>418,928.06</b>
	53213 - Occupational Therapists - Contracted	0000 - No Job Class	28,741.95			28,741.95
	<b>53213 - Occupational Therapists - Contracted Total</b>		<b>28,741.95</b>			<b>28,741.95</b>
	53214 - Therapists - Contracted	0000 - No Job Class	7,285.32			7,285.32
	<b>53214 - Therapists - Contracted Total</b>		<b>7,285.32</b>			<b>7,285.32</b>
	53216 - Audiologists - Contracted	0000 - No Job Class	11,827.75			11,827.75
	<b>53216 - Audiologists - Contracted Total</b>		<b>11,827.75</b>			<b>11,827.75</b>
	<b>LEA Grand Total</b>		<b>3,390,000.52</b>	<b>33,325.00</b>	<b>139,827.73</b>	<b>3,563,153.25</b>

Figure C		2012-2013 FINAL EXPENDITURES				
Budget Entity	Object List	Job Class List	11000 - Operational	13000 - Pupil Transportation	Grand Total	
LEA Name	51100 - Salaries Expense	1312 - Speech Therapists	207,417.16		207,417.16	
		1313 - Occupational Therapists	225,378.32		225,378.32	
		1314 - Physical/Recreational Therapists	230,269.97		230,269.97	
		1315 - Psychologists/Counselors	248,450.73		248,450.73	
		1319 - Special Ed Assistants (Non-Instructional)		33,325.00		33,325.00
		1412 - Teachers- Special Education	1,514,443.23			1,514,443.23
		1712 - Instructional Assistants-Special Education	403,918.27			403,918.27
		<b>51100 - Salaries Expense Total</b>		<b>2,829,877.68</b>	<b>33,325.00</b>	<b>2,863,202.68</b>
	51300 - Additional Compensation	1319 - Special Ed Assistants (Non-Instructional)	8,167.75			8,167.75
		1412 - Teachers- Special Education	3,500.00			3,500.00
	<b>51300 - Additional Compensation Total</b>		<b>11,667.75</b>		<b>11,667.75</b>	
	53211 - Diagnosticians - Contracted	0000 - No Job Class	221,499.74			221,499.74
	<b>53211 - Diagnosticians - Contracted Total</b>		<b>221,499.74</b>			<b>221,499.74</b>
	53212 - Speech Therapists - Contracted	0000 - No Job Class	418,928.06			418,928.06
	<b>53212 - Speech Therapists - Contracted Total</b>		<b>418,928.06</b>			<b>418,928.06</b>
	53213 - Occupational Therapists - Contracted	0000 - No Job Class	28,741.95			28,741.95
	<b>53213 - Occupational Therapists - Contracted Total</b>		<b>28,741.95</b>			<b>28,741.95</b>
	53214 - Therapists - Contracted	0000 - No Job Class	7,285.32			7,285.32
	<b>53214 - Therapists - Contracted Total</b>		<b>7,285.32</b>			<b>7,285.32</b>
	53216 - Audiologists - Contracted	0000 - No Job Class	11,827.75			11,827.75
	<b>53216 - Audiologists - Contracted Total</b>		<b>11,827.75</b>			<b>11,827.75</b>
	<b>LEA Grand Total</b>		<b>3,390,000.52</b>	<b>33,325.00</b>	<b>3,563,153.25</b>	

Figure D demonstrates the LEA's level of effort for 2013-2014. In this example, the level of effort in 2013-2014 was \$3,506,290.58.

Figure D		2013-2014 FINAL EXPENDITURES				
Budget Entity	Object List	Job Class List	11000 - Operational	13000 - Pupil Transportation	Grand Total	
LEA Name	51100 - Salaries Expense	1312 - Speech Therapists	53,214.00		53,214.00	
		1313 - Occupational Therapists	138,111.80		138,111.80	
		1314 - Physical/Recreational Therapists	259,111.00		259,111.00	
		1315 - Psychologists/Counselors	241,672.00		241,672.00	
		1319 - Special Ed Assistants (Non-Instructional)		46,814.39	46,814.39	
		1412 - Teachers- Special Education	1,526,131.29		1,526,131.29	
		1712 - Instructional Assistants-Special Education	367,399.32		367,399.32	
	51100 - Salaries Expense Total			2,585,639.41	46,814.39	2,632,453.80
	51300 - Additional Compensation	1313 - Occupational Therapists		45.00		45.00
		1314 - Physical/Recreational Therapists		90.00		90.00
		1319 - Special Ed Assistants (Non-Instructional)		23,029.04		23,029.04
		1412 - Teachers- Special Education		1,720.00		1,720.00
		1712 - Instructional Assistants-Special Education		14,184.50		14,184.50
	51300 - Additional Compensation Total			39,068.54		39,068.54
	53211 - Diagnosticians - Contracted	0000 - No Job Class		165,557.56		165,557.56
	53211 - Diagnosticians - Contracted Total			165,557.56		165,557.56
	53212 - Speech Therapists - Contracted	0000 - No Job Class		496,816.01		496,816.01
	53212 - Speech Therapists - Contracted Total			496,816.01		496,816.01
	53213 - Occupational Therapists - Contracted	0000 - No Job Class		163,248.74		163,248.74
	53213 - Occupational Therapists - Contracted Total			163,248.74		163,248.74
53216 - Audiologists - Contracted	0000 - No Job Class		9,145.93		9,145.93	
53216 - Audiologists - Contracted Total			9,145.93		9,145.93	
LEA Grand Total			3,395,314.98	46,814.39	3,506,290.58	

The level of effort for the LEA in Figures C and D decreased by \$56,862.67 in 2013-2014. The per capita amounts must be calculated to determine the next step for this LEA (see example below).

Example 2 demonstrates the per capita calculation for 2013-2014. In this example, the LEA did spend at least the same amount per student in 2013-2014 as it did in 2012-2013. This LEA has met MOE requirements using the per capita calculation.

<b>Example 2</b>	<b>2012-2013 Total Expenditures</b>	<b>\$ 3,563,153.25</b>
	<b>2012-2013 40 Day Student Count</b>	<b>562</b>
	<b>2012-2013 Per Capita Amount</b>	<b>\$ 6,340.13</b>
	<b>2013-2014 Total Expenditures</b>	<b>\$ 3,506,290.58</b>
	<b>2013-2014 40 Day Student Count</b>	<b>541</b>
	<b>2013-2014 Per Capita Amount</b>	<b>\$ 6,481.13</b>



**What if the LEA fails to maintain the level of effort by total expenditures but has met MOE requirements per capita?**

If the LEA met the 2013-2014 MOE requirements by using the per capita calculation as demonstrated in Example 2, the MOE or level of effort that the LEA must maintain going forward to 2014-2015 is \$3,563,153.25 and the per capita amount required to maintain is \$6,481.13.

**What if the LEA failed to maintain the level of effort by total expenditures or per capita amount?**

SEB will issue a notification to those LEAs that fail to maintain the level of effort by total expenditures or per capita amount. This notification provides the LEA an opportunity to submit allowable exceptions (described in detail below) to reduce the amount of MOE shortfall for the LEA.

**Example 3** demonstrates a LEA that did not meet the MOE requirements by total expenditures or per capita amount. If the LEA did not have allowable exceptions or adjustments approved by SEB, the LEA is required to pay back the MOE shortfall<sup>2</sup> from non-federal funding. In this example the MOE shortfall is \$56,862.67.

<b>Example 3</b>	<b>2012-2013 Total Expenditures</b>	<b>\$3,563,153.25</b>
	<u><b>2012-2013 40 Day Student Count</b></u>	<u><b>562</b></u>
	<b>2012-2013 Per Capita Amount</b>	<b>\$ 6,340.13</b>
	<b>2013-2014 Total Expenditures</b>	<b>\$3,506,290.58</b>
	<u><b>2013-2014 40 Day Student Count</b></u>	<u><b>555</b></u>
	<b>2013-2014 Per Capita Amount</b>	<b>\$ 6,317.64</b>
	 <b>2012-2013 Total Expenditures</b>	 <b>\$3,563,153.25</b>
	<u><b>2013-2014 Total Expenditures</b></u>	<u><b>\$3,506,290.58</b></u>
	<b>MOE shortfall</b>	<b>\$ 56,862.67</b>
	 <b>2013-2014 IDEA B Allocation</b>	 <b>\$290,068</b>

If it is determined that the LEA has not met the MOE requirements by total expenditures or per capita spending, LEAs are given an opportunity to submit the necessary documentation to the SEB for review. The SEB will determine and apply any allowable exceptions pursuant to 34 CFR § 300.204. There are five allowable exceptions taken into consideration when calculating the LEA's level of effort.

<sup>2</sup> If an LEA fails to meet the MOE compliance standard, it must pay back an amount equal to the amount by which the LEA failed to maintain its level of expenditures in that fiscal year, or the amount of the LEA's IDEA B subgrant in that fiscal year, whichever is lower.

1. **Voluntary Departure of Personnel** – by retirement or otherwise, or departure for just cause, of special education or related services personnel is an allowable exception. Examples of circumstances that would be considered a voluntary departure and the supporting documentation that the SEB will accept as evidence of expenditures to apply the voluntary departure exception are identified below:

**Voluntary Departure Example 1** – Teacher A retires and is not replaced. The LEA will need to provide the contract for the retiring teacher, a resignation letter showing that the teacher retired voluntarily and a payroll summary showing the total amount paid for the teacher’s salary.

Teacher A notifies the LEA in writing of her intention to retire at the end of the 2013-2014 School Year (SY). The Special Education Director in consultation with the Superintendent decides that since the number of students with disabilities has steadily declined over the past few years, the LEA will that not replace Teacher A. In support of its request for an allowable exception under this provision, the LEA will submit Teacher A’s letter of resignation clearly indicating the date it will take effect, her contract for the year, the payroll summary for the last school year for which she was employed and an explanation stating that she retired and her position will not be replaced. It is important to note that this LEA must still maintain the caseload requirements under Subsection H of 6.29.1.8 New Mexico Administrative Code (NMAC).

Employee Payroll Expenditure Summary for Fiscal Year			
Accounting Cycle: FY2014; Payroll Cycle <All>; Employee: Teacher A; Begin Date: 7/1/2013; End Date: 6/30/2014			
Employee	SSN	Paycheck Site	
Teacher A	XXX-XX-XXXX	Washington Public School	
Description	Employee/Employer	Expenditure Account	YTD Amount
Basic Life	Employer	11000-1000-52312-0000-514001-0000	\$ 42.30
Davis Vision non-cafeteria plan	Employer	11000-1000-52314-0000-514001-0000	\$ 21.60
Dental non-cafeteria plan	Employer	11000-1000-52313-0000-514001-0000	\$ 121.86
ERB	Employer	11000-1000-52111-0000-514001-0000	\$ 5,954.07
FICA	Employer	11000-1000-52210-0000-514001-0000	\$ 2,807.22
Medicare	Employer	11000-1000-52220-0000-514001-0000	\$ 656.61
NM Retire Health Care	Employer	11000-1000-52112-0000-514001-0000	\$ 905.49
Presbyterian non-caf	Employer	11000-1000-52311-0000-514001-0000	\$ 3,113.28
State unemployment	Employer	11000-1000-52500-0000-514001-0000	\$ 498.12
Teachers	Employer	11000-1000-51100-1010-514001-1412	\$ 45,461.52
Workers' Comp	Employer	11000-1000-52720-0000-514001-0000	\$ 6.87

In the example above, the amount of the allowable exception will be \$45,461.52, which will reduce both the amount of the MOE shortfall for the LEA as well as the overall MOE base (the required level of effort going forward to the 2014-2015 SY).

**Voluntary Departure Example 2** – A teacher voluntarily resigns and the position is replaced by another teacher at a lower salary. The LEA will need to provide the contracts for the teacher that resigned and his/her replacement, a resignation letter from the resigning teacher and a payroll summary for both teachers showing the total salary paid for each position.

Teacher B is a level three teacher and has been teaching students with disabilities for twenty years with the LEA. He has decided to move at the end of the 2013-2014 SY. The LEA hires as his replacement, Teacher C who is a newly licensed level one teacher. Teacher C will begin teaching students with disabilities as of the beginning of the 2014-2015 SY.

In order for the SEB to consider this for an allowable exception, the LEA must submit the 2013-2014 contract for Teacher B indicating a pay rate of \$65,000, his payroll summary for that year and his letter of resignation, indicating the effective date. The LEA will also submit the 2014-2015 contract for Teacher C indicating a pay rate of \$36,000, his/her payroll summary as well as a written explanation that Teacher C replaced Teacher B. In this example the amount of the allowable exception would be \$29,000 for the 2014-2015 SY. This would have the effect of reducing the LEA's MOE shortfall for 2014-2015 SY by \$29,000 and would also reduce the required level of effort (MOE base) for 2015-2016 SY by \$29,000.

**Voluntary Departure Example 3** – Teacher D is terminated for a breach of contract. The LEA will need to provide a termination letter and the payroll summary showing the amount paid toward the teacher's salary.

The LEA discovers there has been a breach of contract and terminates the employee for just cause. An example of the termination letter submitted by the LEA as evidence of departure for just cause states: "We regret to inform you that the school board has voted to terminate your contract due to violation of the district are zero tolerance policy. This termination is effective immediately."

The LEA should forward a copy of the dated letter along with a payroll summary showing the total salary paid to the teacher during the school year. The payroll summary must clearly indicate the fund, function, object code and job classification code. An example of a payroll summary is as follows:

Employee Payroll Expenditure Summary for Fiscal Year			
Accounting Cycle: FY2014; Payroll Cycle <All>; Employee: Teacher D; Begin Date: 7/1/2013; End Date: 6/30/2014			
Employee	SSN	Paycheck Site	
Teacher D	XXX-XX-XXXX	Washington Public School	
Description	Employee/Employer	Expenditure Account	YTD Amount
Basic Life	Employer	11000-1000-52312-0000-514001-0000	\$ 14.10
Davis Vision non-cafeteria plan	Employer	11000-1000-52314-0000-514001-0000	\$ 7.20
Dental non-cafeteria plan	Employer	11000-1000-52313-0000-514001-0000	\$ 40.62
ERB	Employer	11000-1000-52111-0000-514001-0000	\$ 1,984.69
FICA	Employer	11000-1000-52210-0000-514001-0000	\$ 935.74
Medicare	Employer	11000-1000-52220-0000-514001-0000	\$ 218.87
NM Retire Health Care	Employer	11000-1000-52112-0000-514001-0000	\$ 301.83
Presbyterian non-caf	Employer	11000-1000-52311-0000-514001-0000	\$ 1,037.76
State unemployment	Employer	11000-1000-52500-0000-514001-0000	\$ 166.04
Teachers	Employer	11000-1000-51100-1010-514001-1412	\$ 11,365.38
Workers' Comp	Employer	11000-1000-52720-0000-514001-0000	\$ 2.29

Note that the amount used to determine the amount of the exception is only the salary expense which is how the initial level of effort is determined. The LEA would need to notify SEB if it would like to

include additional expenditures for consideration. In the example (above) the amount considered for this exception is \$11,365.38.

**Example 4 would NOT be considered for Voluntary Departure** – If the LEA does not renew a teacher’s contract due to a reduction in force (RIF) or layoffs, salaries for those employees would not be considered as an allowable exception under voluntary departure.

- 1. Decrease in Student Enrollment** – A decrease in the enrollment of students with disabilities is an allowable exception. The LEA’s decrease in enrollment is automatically accounted for when calculating the LEA’s per capita amount. In addition, SEB will determine the amount allowed as an exception for a decrease in enrollment using the Workload Reduction Worksheet. The LEA’s total enrollment count of students with disabilities from the 40<sup>th</sup> Day report in STARS is used in the workload reduction calculation. Here is an example that demonstrates how the Workload Reduction is calculated for each LEA:

	A/B	Factor	C	Factor	D	Factor	Total Unit	Unit Factor	Extended	Decrease
2008-2009		0.7			1		2	0.00	\$ 3,871.79	\$ -
2009-2010	10.0	0.7	3.0		1	6.0	2	22.00	\$ 3,792.65	\$ 83,438.30
2010-2011	10.0	0.7	3.0		1	2.0	2	14.00	\$ 3,712.17	\$ 51,970.38
2011-2012	15.0	0.7	4.0		1	5.0	2	24.50	\$ 3,598.87	\$ 88,172.32
2012-2013	16.0	0.7	2.0		1	1.0	2	15.20	\$ 3,673.54	\$ 55,837.81
2013-2014	16.0	0.7	0.0		1	0.0	2	11.20	\$ 3,817.55	\$ 42,756.56

Labels in diagram: 40D counts of SWD at each level from STARS (points to A/B, C, D); Final Unit Value (points to Unit Factor); Amount of allowable exception due to decrease in enrollments (if any) (points to Decrease); SEG funding units per level (points to Factor columns); Total annual funding generated by SWD (points to Extended and Decrease columns).

In this example, the amount of the allowable exception due to a decrease in enrollment for the 2013-2014 SY is \$13,081.25, in the 2014-2015 SY the amount of the allowable exception would be \$32,334.51 and there would be no allowable exception due to a decrease in enrollment in the 2011-2012 SY.

- 2. Termination of the Obligation to Provide a Program of Special Education for a High Cost Student** – Each LEA is eligible for a reduction in expenditures when the obligation to provide a program of special education to a particular student with a disability, that was an exceptionally costly program, terminates. The LEA is required to provide evidence of disenrollment indicating that (a) the child has either left the district; (b), reached the age at which the obligation to provide a Free Appropriate Public Education (FAPE) to the child has terminated; or (c) the child no longer needs the special education program. This exception is evaluated based on costs associated with individual student.

For example, a LEA has a student with an IEP that requires a one-on-one educational assistant (EA) and a nurse. The student then moves out of the district. If the salaries for the EA and the nurse were paid out of one of the funds considered for MOE, those expenditures would qualify as an allowable exception. The LEA must provide contracts for the EA and nurse, a payroll summary identifying the salary amounts paid to the EA and nurse. The LEA must also provide the student's IEP showing that the one-on-one EA and the nurse were required.

3. **The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of a school facility.** This exception is considered on a case by case basis.
4. **The assumption of cost by the high cost fund operated by the SEA** is also considered an allowable exception. PED administers the high cost fund through a grant called Puente para los Niños to support LEAs with high cost students. The LEA must apply for the grant and receive an award letter from PED in order to establish eligibility for this exception. The LEA must show that these funds were utilized for the expenditures considered in the MOE calculation. The LEA must submit supporting documentation to show evidence of these expenditures, including expenditure reports and proof of the journal entries made when the Puente para los Niños funds were received.

Here is an example of an expenditure report submitted to support this exception.

24120 Expenditure Report		
Fiscal Year: 2013-2014		
Account Number	Description	YTD
24120.1000.51100.1010.xxxxx.1711	Salaries Expense	\$ 11,794.51
24120.1000.51100.2000.xxxxx.1412	Salaries Expense	\$ 5,210.00
24120.1000.52211.0000.xxxxx.0000	Educational Retirement	\$ 2,236.00
24120.1000.52112.0000.xxxxx.0000	ERA-Retiree Health	\$ 340.00
24120.1000.52210.0000.xxxxx.0000	FICA Payments	\$ 1,097.00
24120.1000.52220.0000.xxxxx.0000	Medicare Payments	\$ 247.00
24120.2100.53212.0000.xxxxx.0000	Speech Therapists--contracted	\$ 1,890.00
24120.2100.53213.0000.xxxxx.0000	Occupational Therapists--contracted	\$ 3,520.00
24120.2100.53218.0000.xxxxx.0000	Specialists--contracted	\$ 2,978.00
24120.2100.56118.2000.xxxxx.0000	General Supplies and Materials	\$ 72.99
<b>Grand Total:</b>		<b>\$ 29,385.50</b>

**Note:** To determine the amount to apply for this exception, SEB only considers expenditures from the same categories used to calculate MOE. So, while the LEA might have been expecting an allowable exception in the amount of \$29,385.50 (the entire amount of the Puente para los Niños award), the actual amount allowed was \$13,598.00 (only the highlighted amounts).

5. **Adjustments to Local Fiscal Efforts per 34 CFR § 300.205.** Adjustments to local fiscal efforts in certain years are allowable, if the LEA meets the following requirements:
  - (a) The LEA must have received an increase in its IDEA B allocation from the previous fiscal year;
  - (b) The LEA's must have an annual determination of "MEETS"; and

(c) The LEA must not have had action taken against it by the PED.

If the LEA meets the requirements listed above it would be eligible for an adjustment to its MOE. The SEB will determine the adjusted amount by taking 50% of the increase in the IDEA B allocation for the LEA if the LEA is eligible for this adjustment.

LEA's 2013-2014 Annual Determination	2012-2013 IDEA B Basic Allocation	2013-2014 IDEA B Basic Allocation	Eligible to Reduce Level of Effort	Allowable 50% Reduction FFY2013
★ MEETS	\$267,315.00	\$290,068.00	YES	\$11,376.50

There is an increase in IDEA B Basic Allocation in the amount of \$22,753.00.

= 50% of \$22,753.00

**What if an LEA does not have sufficient allowable exceptions to submit for consideration to offset the reduction in the level of effort (MOE shortfall)?**

If the LEA did not have enough allowable exceptions to offset the reduction in its level of effort, the PED is required to repay the federal government the amount by which the LEA failed to maintain. The PED will then recover these funds from the LEA. The LEA **must repay the state** the amount by which the LEA failed to maintain, from non-federal funds or funds for which accountability to the federal government is not required.

For example, the LEA reduced its level of effort by \$56,862.67. After receiving the initial notification of noncompliance from the SEB, the LEA submitted the required documentation for allowable exceptions to be considered to reduce the amount of the MOE shortfall. After a review of the documentation, SEB determines that the LEA has a total of \$46,549.72 in allowable exceptions to reduce the MOE shortfall. The LEA must return \$10,312.95 to the PED out of non-federal funds.

**2012-2013 Total Expenditures** \$3,563,153.25  
**2013-2014 Total Expenditures** \$3,506,290.58  
**MOE Shortfall** \$ 56,862.67

**Allowable Exceptions and Adjustments Approved by SEB** \$ 46,549.72

**MOE Shortfall \$ 10,312.95**

**How do allowable exceptions affect the level of effort?**

Using the calculations from the example above, the level of effort for this LEA would be \$3,516,603.53. The level of effort that the LEA should have maintained in 2013-2014 was \$3,563,153.25, after you subtract the total of the approved allowable exceptions and any applicable adjustments (\$46,546.72), the level of effort that this LEA must maintain for the 2014-2015 SY is \$3,516,603.53.