



# Welcome

---

## Agenda

1. Annual determinations
2. OSEP guidance issued in July 2023
3. Correcting non-compliance
4. Corrective action Plan Closure
5. Corrective action outside of annual determinations

# *Annual Determinations*

*Investing for tomorrow, delivering today.*

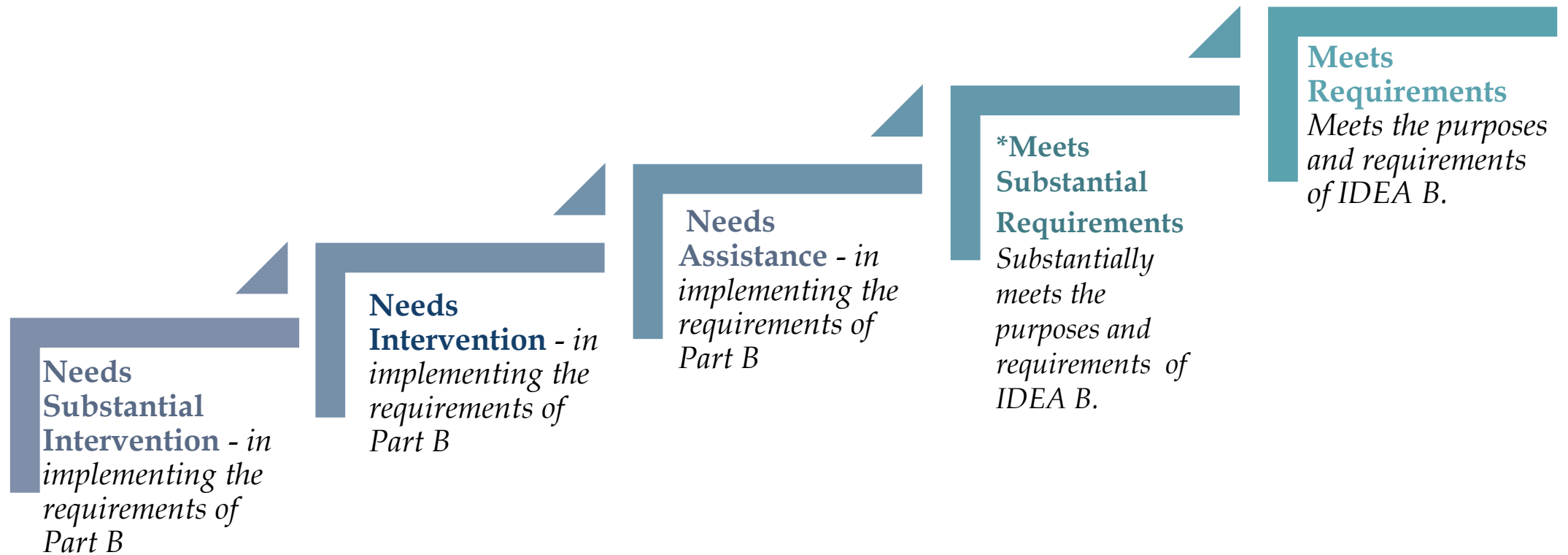


# Annual Determinations (ADs)

- The State is required to assign annual determinations (AD) to all Local Education Agencies (LEAs) each year.
  - Individuals with Disabilities Education Act (IDEA) at 34 CFR § 300.600(a)(2); and
  - Subsection F of 6.31.2.9 NMAC.
    - ✓ What to expect:
      - The Superintendent/Charter School Leader/State Supported School Leader will receive a letter from the Secretary of Education containing the determination category assigned to the LEA.
      - Special Education Directors will be copied.

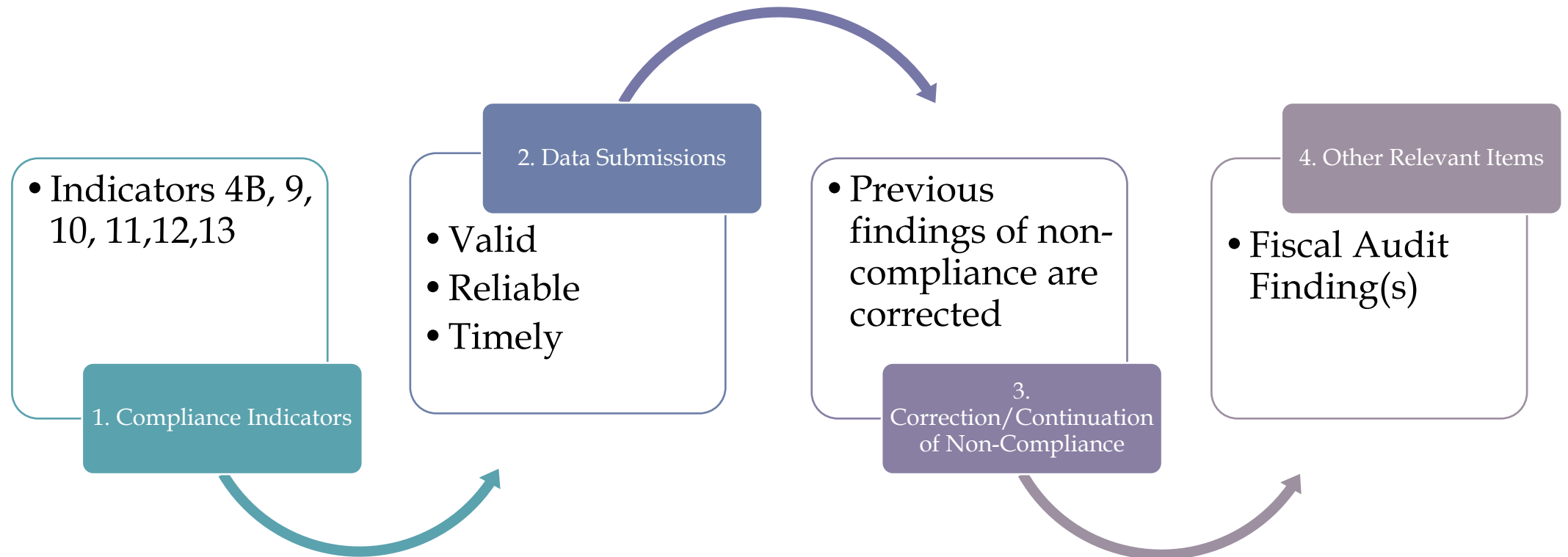
# Determination Categories

- 4.5 categories a determination can be assigned:



# Elements of Annual Determinations

- 4 OSEP required components of an annual determination.



# Data/Information Sources



## Compliance Indicators

- Student Teacher Accountability System (STARS)/Nova data - performance on Indicators 4b, 9, 10, 11, 12
- Annual IEP Review performance: Indicator 13



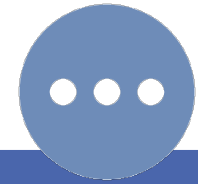
## Data Submissions

- Submission timelines compared to deadlines established.
- Data submitted error free
  - All indicators
  - Other reporting requirements



## Non-Correction/Non-Continuance of Non-Compliance

- Non-compliance identified from the previous year corrected in 1 year, as required.
  - All areas including state complaints and mediations.



## Other Relevant Items

- Fiscal audit findings

# Data Metrics



- Suspension/Expulsion Rates (Indicator 4B):

- LEAs with at least 1 student in a race/ethnicity category, must not have a rate ratio of 3.00 or above.
- Policies, procedures and practices which contributed to the mathematical finding.



- Disproportionate Representation by Race/Ethnicity (Indicator 9):

- LEAs with greater than 10 students or more in the racial and ethnic groups; and
- Have a Risk Ratio and Alternate Risk Ratio of 3.0 or above (over-representation) for students ages 5 in Kindergarten – 21; and
- Policies, procedures and practices which contributed to the mathematical finding.



- Disproportionate Representation by Race/Ethnicity and Disability Category (Indicator 10):

- LEAs with greater than 10 students or more in the racial and ethnic groups and disability group; and
- Have a Risk Ratio and Alternate Risk Ratio of 3.0 or above (over-representation) for students ages 5 in Kindergarten – 21 in a particular disability category; and
- Policies, procedures and practices which contributed to the mathematical finding.



# Data Metrics



- **Child Find-60 Day Timeline (Indicator 11):**

- 60 days between obtaining signed parent consent for an evaluation and completing the evaluation report.



- **Preschool Transition-Part C to B (Indicator 12):**

- IEP completed and implemented prior to student's third birthday.



- **Secondary Transition (Indicator 13):**

- 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 that is likely to be responsible for providing or paying for transition services, including, if appropriate, pre-employment transition services, was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority.

# Timeframe of Data/Information



## Compliance Indicators

- Lag year data (1 year prior to school year that ended):
  - Indicator 4b
- Prior year data (school year that ended):
- Indicators
  - 9
  - 10,
  - 11,
  - 12
  - 13



## Data Submissions

- Prior year information (school year that ended) :
  - Timelines met.



## Non-Correction/Non-Continuance of Non-Compliance

- Prior year data (school year that ended and beyond if non-compliance not corrected)
- Non-compliance identified from the previous year corrected in 1 year, as required.



## Other Relevant Items

- Prior year data (school year that ended and beyond if non-compliance not corrected)
  - Fiscal audit findings

# Determination Criteria

- This table is used to assign a determination based on:
  - LEA performance on the Annual Determination elements.
  - AD's based on 2022-2023 will be the last year this table will be used.

**FFY 2021 (2021-2022 School Year)  
Determination Criteria**

Meets Requirements	Needs Assistance	Needs Intervention	Needs Substantial Intervention
No unresolved special conditions on sub-grant	No unresolved special conditions on sub-grant	Unresolved special conditions on sub-grant	Substantial failure to comply with IDEA-B sub-grant requirements.
No outstanding monitoring findings	No outstanding monitoring findings	Outstanding monitoring findings	Unwilling to comply with IDEA- B
No fiscal audit findings	Fiscal audit findings	Fiscal audit findings	Impact of any longstanding unresolved issues on the district's implementation of the program
Compliance and/or substantial compliance (95% or above) with all compliance indicators (4B, 9,10,11,12, 13)	Compliance indicators less than 95% and above 50%	Compliance indicators at 50% and below 50%.	Substantial failure to comply with IDEA-B compliance requirements.
No compliance agreement	No compliance agreement	Compliance agreement	Compliance agreement
Valid and reliable data submitted for all indicators	Valid and reliable data submitted for all indicators	Data not valid and reliable and/or failure to provide data for all indicators	Data not valid and reliable and/or failure to provide data for all indicators
No significant discrepancy in the rates of long-term suspensions/ expulsions of students with disabilities	Significant discrepancy in the rates of long-term suspensions/expulsions of students with disabilities	Significant discrepancy in the rates of long-term suspensions/expulsions of students with disabilities	Significant discrepancy in the rates of long-term suspensions/expulsions of students with disabilities
Data submitted in a timely manner	Data submitted in a timely manner	Data not submitted in a timely manner	Data not submitted in a timely manner
No unresolved problems/issues	•Length of time problem/issue existed •Degree of problem or issue	•Length of time problem/issue existed •Degree of problem or issue	•Length of time problem/issue existed •Degree of problem or issue
No continued non-compliance	Continued non-compliance	State enforcement for multiple years for failing to comply with key IDEA requirements (LEA data demonstrate continued noncompliance)	State enforcement for multiple years for failing to comply with key IDEA requirements (LEA data demonstrate continued noncompliance)

# Determination Letters

- A determination letter is issued to the LEAs.
  - 2 different letters are issued based on the determination type.

## Meets Requirements

- Requirements met.
- No further action is required from the LEA.
- Letter RE: **Annual Determination 2022-2023 School Year**

## Meets Substantial Requirements, Needs Assistance, Needs Intervention, Needs Substantial Intervention

- Requirements not met.
- Further action is required from the LEA.
- Letter RE: **Annual Determination 2022-2023 School Year (Corrective Action Required)**

- A determination only applies to the criteria in the previous slides and does not imply full compliance with IDEA Part B requirements and/or state rule and statute.

# AD LEA Next Steps

## Meets Requirements

- Review data
- Share with internal and external stakeholders
- Prepare for the addition of target indicators next year.
- Keep up the great work for students with disabilities!

## Meets Substantial Requirements

- Review and share data
- Complete and submit Root Cause Analysis (RCA) for areas on non-compliance
- Complete Corrective Action Plan (CAP) steps identified in CAP.
- Correct all individual cases of non-compliance identified (Prong 1)
- Correct all systemic issues of non-compliance identified
- Submit all records for review.

## Needs Assistance

- Review and share data
- TAESE support as determined by EA or requested by LEA
- Complete and submit Root Cause Analysis (RCA) for areas on non-compliance
- Complete Corrective Action Plan (CAP) steps identified in CAP.
- Correct all individual cases of non-compliance identified (Prong 1)
- Correct all systemic issues of non-compliance identified
- Submit all records for review.
- On-site Review triggered.

## Needs Intervention

- Funds withheld/redirected\*
- Interventions provided by TAESE
- Complete and submit Root Cause Analysis (RCA) for areas on non-compliance
- Complete Corrective Action Plan (CAP) steps identified in CAP.
- Correct all individual cases of non-compliance identified (Prong 1)
- Correct all systemic issues of non-compliance identified
- Submit all records for review.
- On-site Review triggered.

## Needs Substantial Intervention

- Funds withheld/redirected\*
- Interventions provided by TAESE
- Complete and submit Root Cause Analysis (RCA) for areas on non-compliance
- Complete Corrective Action Plan (CAP) steps identified in CAP.
- Correct all individual cases of non-compliance identified (Prong 1)
- Correct all systemic issues of non-compliance identified
- Submit all records for review.
- On-site Review triggered.

# Consideration Factors

- Underreporting of data
  - Suspension/Expulsion data
  - Child find data
- Misrepresentation of data
  - Data reported can be skewed
  - Verified through file reviews



# *New OSEP Guidance and Annual Determinations*

QA 23-01

# OSEP QA 23-01

- Released July 23, 2023
- Provides additional and clarifying information on LEA annual determinations.
  - [https://sites.ed.gov/idea/files/Guidance\\_on\\_State\\_General\\_Supervision\\_Responsibilities\\_under\\_Parts\\_B\\_and\\_C\\_of\\_IDEA-07-24-2023.pdf](https://sites.ed.gov/idea/files/Guidance_on_State_General_Supervision_Responsibilities_under_Parts_B_and_C_of_IDEA-07-24-2023.pdf)



## STATE GENERAL SUPERVISION RESPONSIBILITIES UNDER PARTS B AND C OF THE IDEA

MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT

OSEP QA 23-01

U.S. DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES

JULY 24, 2023

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2800  
www.ed.gov

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*



# OSEP QA 23-01

- OSEP issued the State General Supervision Responsibilities Under Part B of the IDEA – Monitoring, Technical Assistance and Enforcement Document on July 24, 2023.

## What to Expect-

### ✓ Needs Assistance for Two Consecutive Years

If the State determines that an LEA needs assistance for two consecutive years, the State ***must*** take one or more of the following actions:

- 1) Advise the LEA or EIS program of available *sources of TA* that may help the LEA or EIS program address the areas in which the LEA or EIS program needs assistance and require the LEA or EIS program to work with the appropriate sources of TA. 34 C.F.R. §§ 300.604(a)(1) and 303.704(a)(1).
- 2) Identify the LEA or EIS program *as a high-risk grantee and impose Specific Conditions on the LEA's IDEA Part B grant award* or the EIS program's Part C grant award. 34 C.F.R. §§ 300.604(a)(3) and 303.704(a)(2).
- 3) For Part B, if a State determines that an LEA is not meeting the requirements of Part B, including the targets for compliance indicators in the SPP/APR, the State must *prohibit the LEA from reducing its maintenance of effort* under 34 C.F.R. § 300.203 for any fiscal year. 34 C.F.R. § 300.608(a).



# OSEP QA 23-01

- OSEP issued the State General Supervision Responsibilities Under Part B of the IDEA – Monitoring, Technical Assistance and Enforcement Document on July 24, 2023.

## What to Expect-

### ✓ Needs Intervention for Three or More Consecutive Years

If the State determines that an LEA needs intervention for three or more consecutive years, the State may take any of the actions described above for “Needs Assistance.” In addition, the State must take one or more of the following enforcement actions:

- 1) Require the LEA to *prepare a corrective action plan or improvement plan* to correct the identified area(s). 34 C.F.R. §§ 300.604(b)(2)(i) and 303.704(b)(2)(i).
- 2) *Withhold, in whole or in part, further payments under Part B to the LEA.* 34 C.F.R. §§ 300.604(b)(2)(v) and 303.704(b)(2)(iv).



# OSEP QA 23-01

- OSEP issued the State General Supervision Responsibilities Under Part B of the IDEA – Monitoring, Technical Assistance and Enforcement Document on July 24, 2023.

## What to Expect-

### ✓ Needs Substantial Intervention

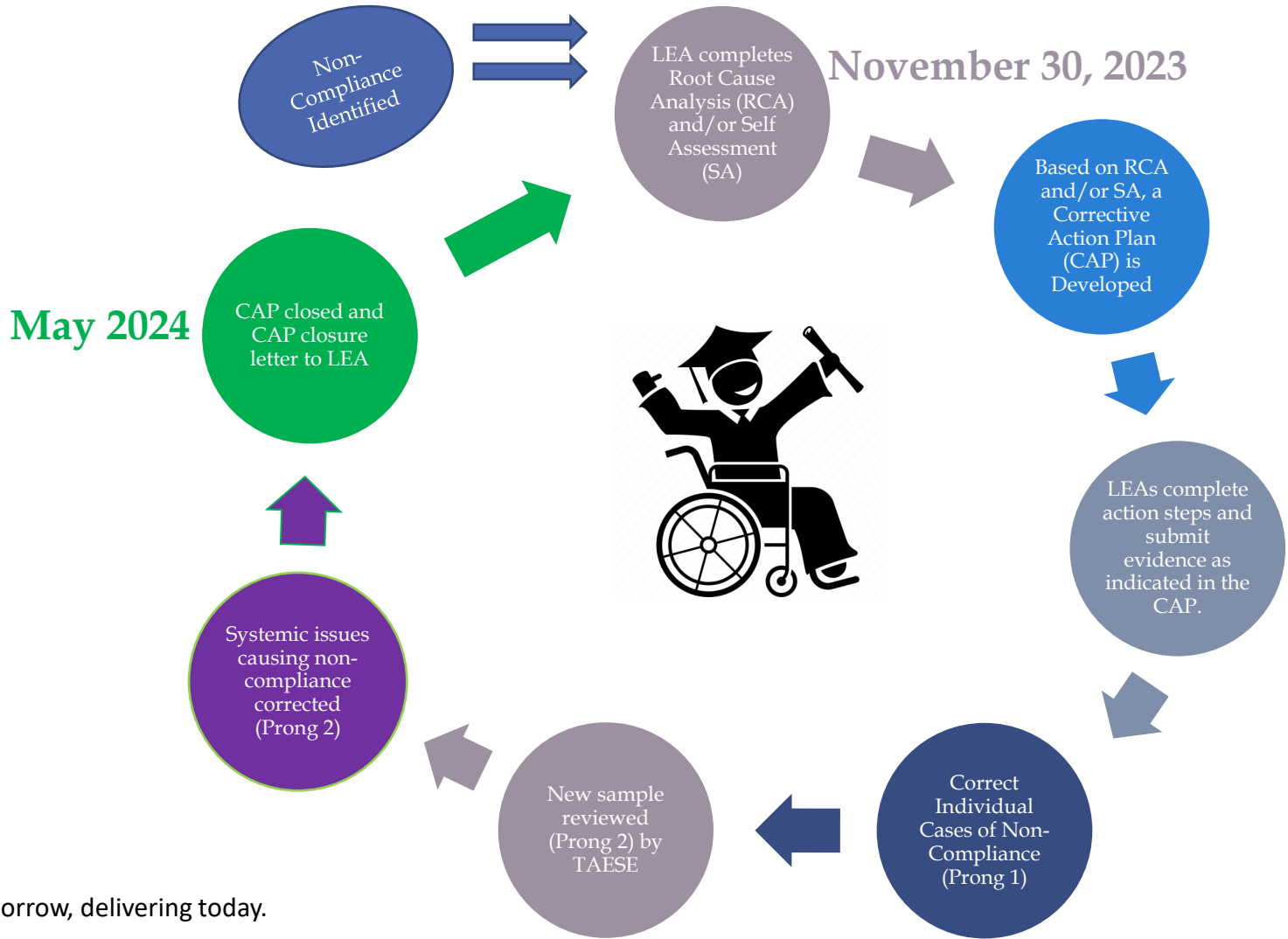
A State's determination that an LEA "needs substantial intervention," at any time, *must result in the State's withholding* (after reasonable notice and opportunity for a hearing, consistent with 34 C.F.R. §§ 300.155, 300.221, and 76.401(d)), *in whole or in part, any further payments under Part B to the LEA.* 34 C.F.R. §§ 300.604(c)(2) and 303.704(c)(2).

*For all three of these determination categories, the State may take additional enforcement actions that it identifies as appropriate under its determination's policy. See 34 C.F.R. §§ 300.608(b) and 303.708.*



# *Correcting Non-Compliance*

# Correcting Non-Compliance



# Root Cause Analysis

- What is a Root Cause Analysis (RCA)?
  - **Root cause analysis (RCA)** is the process of *discovering* the **root causes of problems in order to identify appropriate solutions**. RCA assumes that it is much more effective to systematically prevent and solve for underlying issues rather than just treating ad hoc symptoms and putting out fires. (*Tableau.com*)
- What is the objective for the LEA completing the RCA?
  - To *identify specific issues* within the LEA *causing the non-compliance*. The RCA is designed to help identify these causes.
- Were due November 30, 2023
  - RCAs with insufficient information may be returned for additional information.

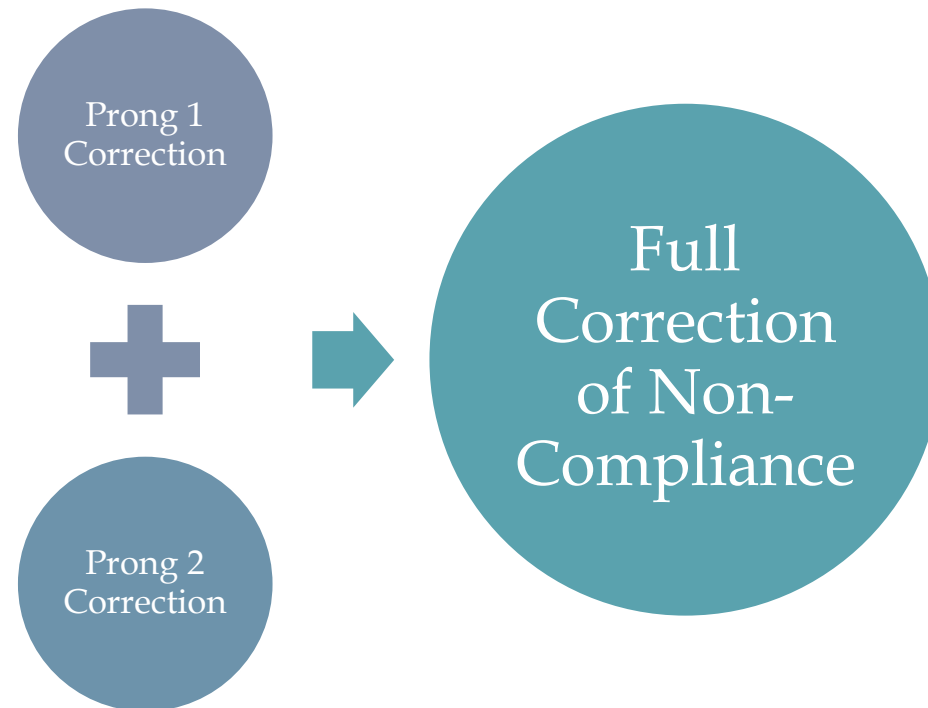
# Corrective Action Plans (CAPs)

## Why CAPs?

- (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the **noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.**  
34 C.F.R. § 300.600
- (3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (**a corrective action plan or improvement plan**), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and  
34 C.F.R. § 300.600

# Correcting Non-Compliance

- The Office of Special Education Programs (OSEP) requires all identified non-compliance to be corrected using a 2-prong process.
  - The requirements are documented in OSEP QA 23-01





# Correcting Non-Compliance

- Individual Cases – Prong 1

- OSEP’s longstanding position, first described in OSEP Memo 09-02, is that, in order to demonstrate that noncompliance has been corrected, the State must verify that the LEA or EIS program or provider:

Prong 1:

(2) if applicable, has corrected each individual case of child-specific noncompliance, **unless** the child is no longer within the jurisdiction of the LEA or EIS program or provider, **and** no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance). The State must maintain documentation and evidence demonstrating that the LEA or EIS program or provider has corrected each individual case of the previously noncompliant files, records, data files, or whatever data source was used to identify the original noncompliance (child-specific compliance), if applicable, and that the review of updated data and information did not reveal any continued noncompliance (systemic compliance).



# Correcting Non-Compliance

New sample reviewed (Prong 2) by TAESE

Systemic issues causing non-compliance corrected (Prong 2)

- Systematic Correction based on updated dated (new sample) – Prong 2
  - OSEP’s longstanding position, first described in OSEP Memo 09-02, is that, in order to demonstrate that noncompliance has been corrected, the State must verify that the LEA or EIS program or provider:

**Prong 2:**

(1) is **correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data and information**, such as data and information subsequently collected through integrated monitoring activities or the State’s data system (systemic compliance);

✓ In small districts that may not have updated data available, the requirement per OSEP QA 23-01 is:

- In situations where an extremely small LEA does not have sufficient updated data to demonstrate systemic compliance (i.e., is correctly implementing the specific regulatory requirements and has achieved 100 percent compliance with the relevant IDEA requirements based on a review of updated data), **States should use other evidence of change**. In this instance, States could **review revised policies, procedures, and practices; documentation of training provided; and changes made to supervision and oversight that demonstrates systems are in place to ensure systemic compliance**



# *Corrective Action Plan Closure*

# Corrective Action Plan (CAP) Closure

- Once all actions below are completed a CAP closure letter is issued
  - Corrective actions identified in the CAP have been completed and all evidence has been submitted to the Office of Special Education
  - All individual cases of non-compliance corrected. (Prong 1)
  - A new sampling of data is reviewed and reveals 100% compliance (Prong 2)



# Corrective Action Outside of ADs



## General Supervision Responsibility

Under Part B, SEAs must carry out their general supervisory responsibilities to ensure that Part B requirements are implemented and that each educational program for children with disabilities meets the SEA's educational standards (including the Part B requirements). See 34 C.F.R. §§ 300.149, 300.600 through 300.604, and 300.608.



Any Non-Compliance with IDEA Part B requirements and State rule and statutes could result in a CAP outside of ADs.

Thank you for your  
time and attention.



Thank you



# Contact Information

**Dr. Margaret Cage**  
*State Director*  
*Office of Special Education*

**Email:**

[margaret.cage@ped.nm.gov](mailto:margaret.cage@ped.nm.gov)

**Phone:**

(505) 487-6662

**Charlene Marcotte**  
*Deputy Director of Data & Finance*  
*Office of Special Education*

**Email:**

[Charlene.marcotte@ped.nm.gov](mailto:Charlene.marcotte@ped.nm.gov)

**Phone:**

(505) 309-1688