

Exceptional Student Education Compliance Protocols 2019–20

Introduction

The Florida Department of Education, Bureau of Exceptional Education and Student Services (bureau), in carrying out its roles of leadership, resource allocation, technical assistance, monitoring and evaluation, is required to oversee the performance of district school boards in the enforcement of all exceptional student education (ESE) laws and rules (sections 1001.03(8), 1003.571 and 1008.32, Florida Statutes [F.S.]). One purpose of the Individuals with Disabilities Education Act (IDEA) is to assess and ensure the effectiveness of efforts to educate children with disabilities (section 300.1(d) of Title 34, Code of Federal Regulations [CFR]). In accordance with IDEA, the bureau is responsible for ensuring that the requirements of the Act and the educational requirements of the State are implemented (34 CFR §300.149(a)(1) and (2)).

In fulfilling this requirement, the bureau monitors ESE programs that district school boards provide in accordance with ss.1001.42, 1003.57, and 1003.573, F.S. Through these monitoring activities, the bureau examines and evaluates procedures, records and ESE services; provides information and assistance to school districts; and otherwise assists school districts in operating effectively and efficiently. The monitoring system is designed to emphasize improved educational outcomes for students while ensuring compliance with applicable federal laws and regulations and state statutes and rules.

Background

IDEA and its implementing regulations at 34 CFR §300.600 require that states focus their oversight activities on the following priority areas:

- Provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE)
- General supervision, including child find; effective monitoring and the use of resolution meetings, mediation and a system of transition services designed to facilitate the student's articulation from school to post-school activities
- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification

In accordance with 34 CFR §300.601, each state is required to develop a Part B State Performance Plan (SPP) that addresses indicators identified by the Office of Special Education Programs (OSEP) as representative of the monitoring priority areas noted. The state is required to develop a state Systemic Improvement Plan, which is a comprehensive, multi-year plan focused on improving results for students with disabilities.

Florida's general supervision website (GSW) ensures that school districts comply with federal and state requirements related to ESE programs, meet requirements related to the State Performance Plan and the bureau's strategic plan and make progress toward indicator targets.

For the purposes of this document, the term “school district” is used to identify any public agency designated as a local education agency (LEA) that receives funds through IDEA and is responsible for providing exceptional student education.

This document describes monitoring procedures and includes the protocols needed to conduct required compliance reviews, as well as optional protocols for districts to use for internal quality assurance activities or professional development.

Overview

All school districts will participate in a leveled system of compliance monitoring that includes both self-assessment activities and on-site monitoring visits. The results of monitoring activities may be used for LEA determinations required under 34 CFR §300.603 and to inform future monitoring activities.

To the extent applicable, all districts participate in Level 1 desktop monitoring by completing web-based self-assessment protocols related to basic ESE procedures. In addition, some districts may be required to complete additional self-assessment(s) in Level 2 desktop monitoring by completing indicator-specific “focused” protocols. **Level 2 monitoring may happen concurrently with Level 1 monitoring.** On-site monitoring and technical assistance for selected districts may include on-site visits and will be conducted in addition to Level 1 and any required Level 2 activities. Each of these levels is described in detail below.

Definitions

Monitoring

Monitoring consists of the activities or actions conducted to determine the functioning of a program or services compared to what is required by a regulation for the purpose of accountability.

Self-Assessment

Self-assessment is the process whereby districts undertake the review of critical components of their ESE programs. This is accomplished by completing the applicable protocols to determine the level of compliance with federal and state laws, rules, and regulations regarding procedures related to exceptional student education. Districts are responsible for conducting the self-assessment and for identifying and reporting on required corrective actions.

Finding of Noncompliance

In accordance with OSEP’s guidance regarding noncompliance that is identified through monitoring processes, within a given school district a ***finding of noncompliance*** is identified by the standard (i.e., regulation or requirement) that is violated, not by the number of times the standard is violated. Therefore, **multiple incidents** of noncompliance regarding a given standard that are identified through monitoring activities are reported as a **single finding** of noncompliance for that district. In contrast, **all findings** identified through state complaints and due process hearings in a given school district are reported in the SPP/APR as separate and distinct findings of noncompliance.

Identification of Noncompliance

Formal ***identification of noncompliance*** occurs when the State issues a written conclusion that includes the citation of the regulation that has been violated and a description of the data supporting the decision of compliance or noncompliance with that regulation. Districts are informed of findings on noncompliance through the following types of communication:

- Correspondence provided following self-assessment and validation
- Correspondence provided following an on-site monitoring visit identifying student- specific noncompliance
- Final monitoring report provided following an on-site monitoring and assistance visit, including the student-specific noncompliance and identifying any additional noncompliance revealed during the development of the report
- Report of inquiry issued as a result of a state complaint investigation

Correction of Noncompliance

OSEP Memorandum 09-02, *Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act*, dated October 17, 2008, clarified that states must apply the following two-pronged standard when evaluating a district's **correction of noncompliance**:

- The district has corrected each individual incident of noncompliance
- The district is correctly implementing the specific regulatory requirement (i.e., achieved 100 percent compliance) based on the State's review of updated data

In order to verify a district's correction of identified noncompliance, there must be evidence that correction occurred for the individual student **and that the district is implementing the requirement appropriately for 100 percent of a sample of students.**

Timely Correction

In accordance with OSEP requirements, **timely correction** means that noncompliance is corrected and supporting documentation is submitted to the State as soon as possible but in no case later than one year from identification (i.e., from receipt of written notification of noncompliance). To ensure that noncompliance is corrected as soon as possible, the following procedures and timelines apply.

- For noncompliance identified through the self-assessment process, **within 60 days** of the date of follow-up correspondence, districts are expected to correct each incident of student-specific noncompliance and submit evidence of the action taken to correct it.
- For noncompliance identified through on-site monitoring, state complaint investigations, or the statewide data reporting system, the procedures and timelines for correction will be based on the nature and extent of the noncompliance and will be stated in the relevant correspondence or reports.
- **Windows of time** (i.e., monthly, from April through October) during which districts can sample records to demonstrate 100 percent compliance have been established. Sampling will continue until the district demonstrates 100 percent compliance, **which can be no later than one year from the date the noncompliance was identified.**

Additional guidance regarding sampling is provided in the following Correction of Noncompliance section.

Validation

An effective system of general supervision requires that monitoring procedures and protocols are implemented consistently to ensure the integrity of the process. Validation is the means whereby bureau staff test the accuracy of data obtained from the district's self-assessment.

Verification

In accordance with the OSEP requirements, states must **verify** that districts have corrected any findings of noncompliance. In most instances, verification is accomplished when the district submits supporting documentation (e.g., a copy of the revised individual educational plan [IEP] that reflects the required components). Verification must occur as soon as possible but in no case longer than one year from identification of the noncompliance.

Enforcement Actions

Enforcement actions designed to promptly bring the district into compliance are actions taken by the State education agency against a school district that has not corrected noncompliance within one year from its identification.

Monitoring Procedures and District Selection

Levels 1 and 2 – Desktop Monitoring

A self-assessment system that comprises both basic (Level 1) and focused (Level 2) desktop monitoring components has been established to ensure that school districts comply with all applicable laws, regulations, and State statutes and rules, while focusing on the student outcomes. The bureau has developed web-based compliance protocols to align with selected indicators using OSEP's *Part B SPP/APR Related Requirements* document. The specific standards (i.e., regulatory requirements) OSEP determined to relate most directly to each priority area and indicator under IDEA, as well as Florida-specific statutes and rules, are incorporated into the protocols, which include the citations for each standard.

The information required to complete these protocols is available as individual protocols. In addition to the protocols required for monitoring, protocols related to other ESE procedures (e.g., evaluation and eligibility) have been included for informational or staff-training purposes.

Self-Assessment Sampling Plan

Sampling plans identify the number of records to be reviewed as well as any criteria that must be applied when selecting student records (e.g., elementary, middle, or high schools; charter schools; Department of Juvenile Justice [DJJ] facilities; specific disabilities; age, race, or gender; diploma option). Sampling plans are based on district size, the specific protocol in question, and the number of protocol types the district is required to complete. LEAs will be notified of specific student records to sample for Levels 1 and 2 desktop monitoring through correspondence with their bureau liaison.

To the extent applicable, record selection will be based on school-level data related to a specific protocol. Districts may be asked to provide additional information about the schools in the district (e.g., feeder patterns for school enrollment, location of special programs). District-specific information regarding the specific protocols to use is provided in the *District-Required Activities* document. As applicable, a given student record may be used to complete more than one required protocol.

Completion of Web-Based Protocols

The desktop monitoring process requires that protocols representing specific ESE procedures be completed and submitted via the ESE General Supervision Website (GSW) at <http://beess.fcim.org>. Correction of noncompliance and corrective action plans (CAPs) are also reported and tracked via this website.

To ensure confidentiality, no personally identifiable student information will be included on the website. The following procedures must be adhered to:

- Upon beginning a review for a given protocol, a **unique student identifier** will be assigned by the web-based application.
- **The user must record the student identifier assigned to the particular review**; and provide this number to the bureau liaison on a student list, as maintaining this information is critical for the validation and verification processes.
- A single student record may be used to complete more than one protocol; **if so, a separate unique student identifier will be assigned to each protocol, not to each student record.**
- Upon the district's completion of the self-assessment, districts must submit via mail a list of student names with corresponding student identifier generated by the GSW.
- The bureau will identify records for validation from the list for the desktop monitoring.

If you have questions regarding the content or procedures related to the desktop monitoring, please contact your bureau monitoring liaison. For questions regarding technical difficulties accessing or navigating the website, please contact the Florida Center for Interactive Media (FCIM) at support@fcim.org or 800-357-1072. When contacting FCIM, please include your name, school district, and the protocol or section of the website with which you have experienced difficulty.

Refer to the *Comprehensive Timeline of Activities* document for a detailed schedule of required activities.

Level 3 Monitoring and Assistance

On-site monitoring of selected districts is conducted annually, which may be included as part of Level 3 monitoring and assistance. The focus of the visits and other assistance varies by district and is based on areas of concern identified by the bureau. Team members providing the assistance may include bureau staff as well as other Florida Department of Education staff, discretionary project staff and contracted consultants.

Planning for On-Site Visits

Districts are notified of on-site visits by a telephone call to the exceptional student education director and a letter to the superintendent. Following communication between the bureau and the district regarding the date of the visit, the bureau liaison or state support team (SST) bureau facilitator will contact the district to discuss the activities of the on-site monitoring and assistance process. Items to be included in the discussion(s) prior to the on-site visit may include the following:

- Identification of SST members
- Preparation for problem-solving process
- Identification of district staff to participate in pre-visit telephone interview(s)
- Review Guiding Questions documents with district staff
- Request(s) for additional data to determine specific school site selection
- Notification of school principals
- School checklist for on-site preparation
- Request for student records for review
- Logistics (daily schedules) of on-site visit

- School-level interviews
- Student focus groups
- Classroom observation procedures

School Selection

The bureau will determine school site selections after submission of data pertaining to the specific issues to be addressed. School selection will vary depending upon the reason(s) for the on-site visit and the size of the district. If applicable, at least one charter school and DJJ facility may be visited. It is recommended that the ESE director notify the schools and DJJ facilities in advance of the scheduled visit, as the bureau liaison or SST bureau facilitator may need to communicate with the school principals prior to the visit.

The following checklist is intended as a guide for selected schools to use in completing activities in conjunction with the monitoring process:

- Prepare a map of the school with classrooms identified for bureau staff.
- Prepare copies of teacher schedules, bell schedule, and pertinent information about the school (e.g., unique programs in place).
- Prepare copies of ESE student rosters, including name, date of birth, areas of eligibility, statewide assessment participation and time in general education classes.
- Inform school staff about the upcoming visit and make them aware of the possibility of an interview and class visit.
- Make arrangements for a substitute teacher or other appropriate personnel as needed to cover classes for teachers who are being interviewed.
- Have private space available for interviews and record reviews, if possible.

Note: The bureau may make unannounced visits to additional schools in the district at any time during the on-site visit.

Student Records

The bureau may request student records prior to and following the on-site visit. The records to be reviewed may include but are not limited to the following:

- Current IEP
- Previous IEP
- Functional behavioral assessment (FBA), if any
- Behavioral intervention plan (BIP), if any
- Therapy logs
- Consultation logs
- Discipline record
- Attendance record
- Lesson plans
- Evidence of provision of accommodations and modifications
- Evidence of provision of special education and related services
- Evidence of provision of supplementary aids and services
- Evidence of provision of supports for school personnel
- Report cards
- Progress reports
- Student schedule
- Parent notices and other documentation related to restraint and seclusion
- Any other supporting documentation, as needed

District Interview

Prior to the on-site visit, selected district staff members may be asked to participate in a telephone interview with the SST. The selection of district staff members to participate is at the discretion of the district and varies based on the focus of the visit, but may include the ESE director, representation from general education, staff members, compliance staff and other district-level personnel responsible for the area(s) of concern. Questions or topics for discussion may be provided prior to the interview in order to allow time for the district to provide thorough responses and opportunity for discussion. In some cases, an interview may be conducted on-site at the beginning of the visit.

Daily Schedule

The daily schedule for the on-site visit will be provided via email to the ESE director. The schedule will include the dates and times for district and SST problem-solving sessions as well as school visits. The exchange of contact numbers for district staff and the SST bureau facilitator is highly recommended, in the event there are delays or a change in schedule while on-site.

School administrators and staff may be interviewed regarding the identified issues for the visit. School-specific information and programs will be discussed during this time. ESE and general education teachers may be interviewed, and classroom observations may be conducted. Lesson plans, parent contact logs and any other relevant documentation should be available for review upon request. Student focus groups, if applicable, will be conducted. The school will have previously identified these students, with parents contacted in accordance with district policy.

Throughout the on-site visit, members of the SST and district staff (ESE and general education, as determined relevant) will participate in the problem-solving process or other applicable planning to address the identified areas.

Reporting Procedures and Corrective Actions

Follow-Up Correspondence

Levels 1 and 2 Self-Assessment

Upon completion of all required record reviews by school district staff, the results will be submitted to the bureau via the GSW, and follow-up correspondence will be provided to the district ESE director via email. If the district has identified noncompliance, the correspondence will include instructions regarding the types of corrective action required.

Correction of Noncompliance

A finding of noncompliance is made when the standard aligned with a given regulatory requirement is not met for one or more students. As described in the *Definitions* section, the following two-pronged standard applies when evaluating correction of noncompliance:

- The district has corrected each individual incident of noncompliance
- The district is correctly implementing the specific regulatory requirement (i.e., achieved 100 percent compliance) based on the State's review of updated data

Individual Correction

Individual correction should occur as soon as possible. For noncompliance identified through the self-assessment process, **within 60 days of the date of receipt of follow-up** correspondence **from the bureau**, districts must submit evidence of the following via the GSW:

- If individual correction **is** possible, the district must correct the noncompliance for the individual student(s) in question and provide a description of the action taken (e.g., convened the IEP team and revised the goals, contacted the parent and amended the IEP), the date the action was taken, and the outcome of the action.
- If individual correction **is not** possible, the district must identify the policy, procedure or practice that caused the noncompliance and provide evidence of the action taken to ensure future compliance (e.g., training for the specific staff member(s) responsible, sending meeting notices regarding the required content of the notices).
- In addition to the procedures described above, the district must develop a CAP detailing the activities, resources and timelines the district will implement to ensure that the compliance target of 100 percent will be met. This plan must include demonstration through review of a random sample of student records that the district is now consistently implementing the requirement (i.e., 100 percent compliance). (See *Demonstrating 100 Percent Compliance – Windows for Sampling and Reporting* below.)

Note the exceptions to the above statement: For noncompliance identified through on-site monitoring, the sampling process is required with slight variation. Demonstration of 100 percent compliance through the sampling process is not required typically for noncompliance identified through a state complaint investigation or due process hearing.

Demonstrating 100 Percent Compliance – Windows for Sampling and Reporting

For **any finding of noncompliance**, as soon as possible but in no case later than one year from identification, the district must demonstrate that it is implementing the targeted standard(s) 100 percent of the time. Procedures for sampling and reporting compliance are as follows:

- **Sampling**
 - Monthly windows for sampling have been established and include April, May, June, July, August, September and October. In addition, for noncompliance identified through the self-assessment process, sampling can occur within the 60-day period during which individual student correction must occur (see *Individual Correction* above).
 - Sampling during any given month is optional; however, the intent is that correction occurs as soon as possible, and the district **must** demonstrate 100 percent compliance through sampling **no later than one year** from the date of identification. **The sample must reflect actions taken within the stated month** (e.g., IEP was developed or amended within the month, incident of restraint or seclusion occurred within the month).
 - The sample size must be at least **five** student records, unless the total number of eligible records for that month is fewer than five; if so, report on the total number of eligible records (i.e., one, two, three, or four).
- **Reporting**
 - By the **15th of each month**, the district must report in the GSW, based on the previous month's actions, **one** of the following for **each** of the target standard(s):
 - The size of the sample and the results of the review (i.e., rate of compliance), **or**
 - That there were no eligible records during the month, **or**
 - That the district opted not to sample during the month

- When the district reports 100 percent compliance, verifying documentation must be provided to the bureau; upon review and approval, districts will be notified that the corrective action is complete.
- **Once the district has demonstrated 100 percent compliance on the required standard(s), no additional sampling or reporting is required.**

Corrective Action Plans

As indicated above, the district must demonstrate that a given standard is implemented appropriately 100 percent of the time. For noncompliance identified during the self-assessment process, the district must develop and implement a CAP to address the root cause of the noncompliance and achieve the goal of 100 percent compliance as soon as possible but in no case later than one year from identification.

Noncompliance may reflect isolated incidents; complex, systemic issues related to the ways in which a district implements its ESE programs; or inconsistencies in the way the district's established policies and procedures are practiced by staff across the district. To ensure that the CAP includes effective strategies, districts are encouraged to implement a problem-solving process to identify those factors most likely to impact the standards in question. For example, if during a focused review regarding least restrictive environment (LRE) a systemic finding of noncompliance is made regarding the IEP team's explanation of the extent, if any, to which the student will not participate with nondisabled peers in the general education classroom, it would be helpful for district staff to understand the basis upon which placement decisions are made.

Understanding the root cause of noncompliance will assist the district in developing and implementing effective strategies to address the issue. Additional sources of information, such as interviews with teachers, administrators, and IEP team members or more in-depth record reviews, could be used to inform the problem-solving process. Problem-solving teams that include stakeholders and staff from a range of disciplines are generally most effective.

The CAP **must include**, at a minimum, (1) a description of activities to be implemented, (2) the resources to be accessed or allocated to implement the plan, and (3) assessment on the targeted standard(s) of a sample of records in accordance with the procedures described in *Demonstrating 100 Percent Compliance – Windows for Sampling and Reporting* above.

Activities may include such actions as reviewing and revising policies, procedures or forms; implementing intensive, targeted staff development; increasing supervision or changing staff assignments; or adding staff or other resources. The CAP must be developed to ensure noncompliance will be corrected to a level of 100 percent and verified by the bureau as soon as possible, but in no case later than one year from identification. Bureau staff is available to assist the district (see *Appendix C: Bureau Contacts* for a list of monitoring liaisons).

CAPs required as a result of Level 1 or Level 2 self-assessment should be submitted to the bureau for approval **within 60 days of the date of follow-up correspondence**. For CAPs required as a result of on-site monitoring, State complaint investigations, or other data sources, the district will be notified of the required timelines to be followed. Bureau compliance and program staff will review CAPs, and districts will be notified if revisions to the plan are required to better facilitate attainment of the desired outcomes.

Validation of Self-Assessment

A sampling of records from each district will be selected for validation.

- Districts will be provided a list of selected student identifiers and will be required to submit copies of all relevant records through tracked shipping for those students.
- Districts will organize and label documents according to standards on the protocols.
- Documentation provided to the bureau may be returned to the district if the documentation is insufficient or not organized in a way that allows bureau staff to validate.
- Bureau staff will review the records to determine whether the district accurately identified noncompliance.
- If it is determined that some requirements were not accurately assessed, the district will be provided technical assistance regarding appropriate use of the protocols.

After the final results are submitted to the bureau, they will be reflected in the GSW. If the results warrant it, the district's CAP will be revised to reflect the results of the validation. Districts for which the validation process reveals a high level of inconsistencies when compared with the rest of the state may be selected for additional validation activities or consideration for on-site monitoring.

Verification of Correction of Noncompliance

Verification will be accomplished through examination of student records and other documents, interviews with district and school staff, or other actions the bureau determines necessary. The most common method of verification is the submission of supporting documents by the district (e.g., a copy of the revised IEP that includes all required components). Data may be collected through on-site visits, if warranted. To ensure timely correction, the verification process will be conducted as soon as possible to allow for additional technical assistance to be provided to school districts **to ensure correction within a year**.

Verification Report

Levels 1 and 2 Self-Assessment

A verification report will be issued to the district superintendent subsequent to the validation process.

Level 3 Monitoring and Assistance

A final report will be disseminated to the district superintendent after the close of the on-site visit summarizing the activities of the on-site visit and including any corrective action deemed necessary. When all corrective action has been completed, reviewed and accepted by the bureau, a final closeout letter will be sent to the ESE director.

Additional Enforcement

In the event a district demonstrates ongoing noncompliance, either through Levels 1 or 2 self-assessment, Level 3 monitoring and assistance, State complaint investigations, or other data sources, the bureau reserves the right to implement additional enforcement actions that may include, but are not limited to: additional targeted on-site monitoring; required participation in targeted technical assistance; and additional self-assessment and reporting, with results verified by the bureau.