



IDEA Series

Federal Monitoring and Enforcement of IDEA Compliance



National Council on Disability

February 7, 2018

National Council on Disability (NCD)
1331 F Street NW, Suite 850
Washington, DC 20004

(IDEA Series) Federal Monitoring and Enforcement of IDEA Compliance

National Council on Disability, February 7, 2018
Celebrating 30 years as an independent federal agency

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National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

Letter of Transmittal

February 7, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit this report titled *Federal Monitoring and Enforcement of IDEA Compliance*. This report is part of a five-report series on the Individuals with Disabilities Education Act (IDEA) that examines the history and current process of federal monitoring and enforcement of IDEA, the role of the U.S. Department of Education's Office for Civil Rights (OCR), the U.S. Department of Justice (DOJ), and IDEA's options for resolving disputes and addressing systemic violations.

As you know, the right of students with disabilities to receive a free and appropriate public education in the least restrictive environment is solidly rooted in the guarantee of equal protection under the law granted to all citizens under the Constitution. NCD has voiced concerns over federal monitoring and enforcement of IDEA in multiple reports since 1995. Some significant concerns included OCR's lack of enforcement complaint referrals to DOJ; DOJ's lack of authority to investigate and litigate IDEA cases; the Department of Education's continued funding to school systems that were noncompliant with IDEA; and a lack of funding for enforcement, complaint-handling, and technical assistance. NCD also reported that the lack of national compliance standards for IDEA hindered enforcement efforts, and recommended that the Department of Education (ED) and DOJ develop standards, improvement measures, and enforcement sanctions triggered by specific actions indicating a state's failure to ensure implementation of IDEA.

The research in this report provides up-to-date information on the issues that NCD identified in its previous IDEA reports, describes federal actions taken to address the issues and progress made, and gives recommendations for the improvement of the federal monitoring and enforcement scheme.

NCD stands ready to assist the Administration in ensuring the right to a free and appropriate public education for students with disabilities as set forth in IDEA.

Respectfully,

A handwritten signature in black ink, appearing to read "Clyde E. Terry".

Clyde E. Terry
Chairperson

(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)

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Executive Summary

The Individuals with Disabilities Education Act (IDEA) confers significant responsibilities for its implementation to the U.S. Department of Education (ED). Through a complex system of monitoring, ED reviews and reports on states' IDEA implementation annually. The system has undergone several changes over the years.

To better understand the current system of IDEA monitoring and enforcement, the National Council on Disability (NCD) commissioned this report. Using a mixed-methods study, key questions were used to examine the history and current process of IDEA federal monitoring and enforcement, the role of other agencies such as the Office for Civil Rights and the U.S. Department of Justice (DOJ), and IDEA's options for resolving disputes and addressing systemic violations.

In this report, NCD found the current system of monitoring and enforcement, while moving toward a more balanced approach of compliance and results, often fails to address noncompliance in a timely and effective manner, and utilize all of the options available to address issues. The following are some key findings.

Monitoring

IDEA does not impose a specific monitoring framework on states; however, the system should be accountable for enforcing IDEA requirements and for ensuring continuous improvement.

Office of Special Education Programs (OSEP) Oversight

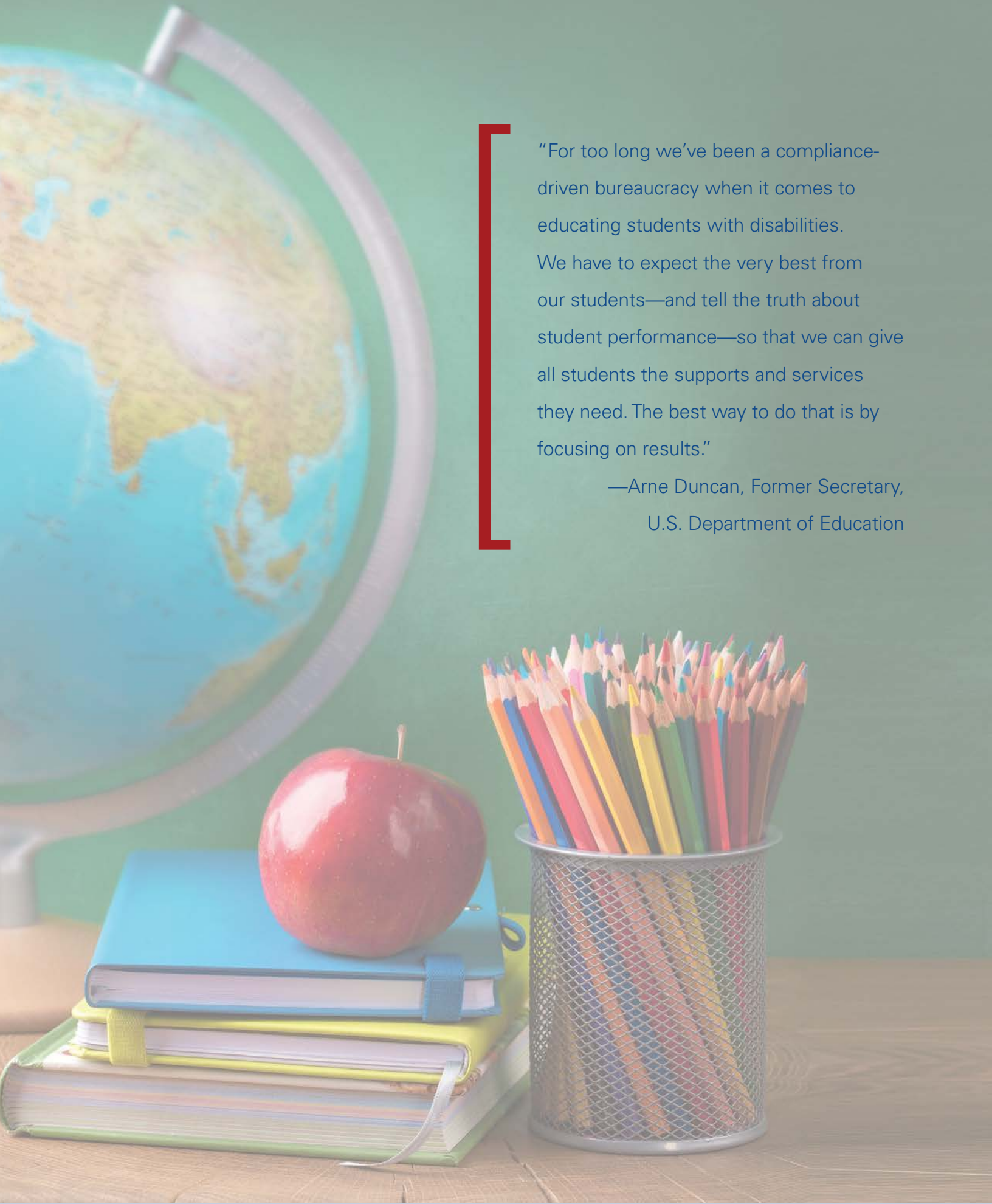
OSEP and the Office of Special Education and Rehabilitative Services (OSERS) regularly issue Dear Colleague Letters and Memorandums to address issues, including violations of IDEA that appear to be systemic.

The report makes recommendations to Congress, ED, and states. Among these recommendations are the following:

- Congress should appropriate funds for competitive grants to develop and pilot effective monitoring and enforcement activities that improve results and correct noncompliance in a timely manner.
- ED should engage in more aggressive enforcement of IDEA, and utilize its authority to withhold federal funds and make referrals to DOJ for enforcement as permitted by IDEA.
- States should fully adhere to the requirement to make public all information regarding local educational agency (LEA) monitoring and enforcement of IDEA compliance, including LEA annual performance reports (APRs), annual determinations, corrective actions ordered, and funding withheld; and develop user-friendly, easily locatable information in collaboration with parents and other stakeholders in the state.

Acronym Glossary

ADA	Americans with Disabilities Act of 1990
APR	annual performance report
CDE	California Department of Education
CIMP	Continuous Improvement Monitoring Process
CPRC	Community Parent Resource Center
CRDC	Civil Rights Data Collection
COPAA	Council of Parent Attorneys and Advocates
DCL	Dear Colleague Letter
DOJ	U.S. Department of Justice
ED	U.S. Department of Education
EL	English learner
ESE	Massachusetts Department of Elementary and Secondary Education
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
FAPE	free appropriate public education
GAO	Government Accountability Office
GEPA	General Education Provisions Act
GNETS	Georgia Network for Educational and Therapeutic Support
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
LEA	local educational agency
LRE	least restrictive environment
NCD	National Council on Disability
NCSI	National Center for Systemic Improvement
OCR	Office for Civil Rights
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitative Services
P&A	Protection and Advocacy
PTI	parent training information center
RDA	Results Driven Accountability
SEA	state educational agency
SPP	state performance plan
SSIP	state systemic improvement plan
TEA	Texas Education Authority



“For too long we’ve been a compliance-driven bureaucracy when it comes to educating students with disabilities. We have to expect the very best from our students—and tell the truth about student performance—so that we can give all students the supports and services they need. The best way to do that is by focusing on results.”

—Arne Duncan, Former Secretary,
U.S. Department of Education

Introduction

In 1995, 20 years after the passage of the Individuals with Disabilities Education Act (IDEA),¹ the National Council on Disability (NCD) released a report in which one of the key findings was “that the majority of problems which have occurred in special education have not been the result of problems with the law itself, but with its implementation.”² Yet again, in its 2000 report, *Back to School for Civil Rights*, NCD discovered that IDEA was not being implemented as intended, finding that the Federal Government was not doing enough to force states to comply with federal law on special education, and as a result, many children with disabilities were getting substandard schooling.³

This report examines the findings in previous NCD reports, the progress achieved since the last report 16 years ago, and the evolution of monitoring practices and current practices by the U.S. Department of Education (ED), and it seeks to answer the following questions:

- How does the IDEA complaint process differ in investigation and enforcement?
- Has ED developed standards, improvement measures, and enforcement sanctions triggered by specific actions indicating a state’s failure to ensure implementation of the law?

- Does ED make complaint referrals to the Department of Justice (DOJ) when lack of compliance is found?
- Does DOJ seek remedies in referred complaints?
- Does ED continue to fund school systems that are noncompliant with IDEA requirements?
- Has funding increased for IDEA enforcement, complaint handling, and technical assistance?
- Have national compliance standards for IDEA been developed by ED and DOJ?

Research Methods

To address these questions, NCD conducted a mixed-methods study gathering stakeholder perspectives, as well as policy and quantitative information. The research questions provided a basis for analysis of the history, trends, and current status of federal law—authorizing and appropriations; examination of available research and descriptive data; and consideration from the experiences of stakeholders—parents, school personnel, district and state officials or their national organizations, and ED officials.

Research Questions Addressed in Report

- How does the IDEA complaint process differ in investigation and enforcement?
- Has ED developed standards, improvement measures, and enforcement sanctions triggered by specific actions indicating a state's failure to ensure implementation of the law?
- Does ED make complaint referrals to the Department of Justice (DOJ) when lack of compliance is found?
- Does DOJ seek remedies in referred complaints?
- Does ED continue to fund school systems that are noncompliant with IDEA requirements?
- Has funding increased for IDEA enforcement, complaint handling, and technical assistance?
- Have national compliance standards for IDEA been developed by ED and DOJ?

Qualitative Analysis

To gather stakeholder perspectives, the NCD research team conducted interviews, and held four regional forums and one national forum. Specifically, NCD conducted 20 semistructured interviews with ED officials, state and local administrators, researchers, representatives from disability rights organizations, and parent organizations to determine current challenges related to the funding of IDEA.

In the second phase of research, we gathered perspectives from parents and students through four regional focus groups in California, Illinois, Texas, and Virginia. NCD recruited participants through the Council of Parent Attorneys and Advocates (COPAA)'s member network, local parent networks, and state and national partners in the forum locations. In total, 72 people participated in the regional forums. Only 30 percent of regional forum participants were COPAA members, and 70 percent were non-COPAA members. Of the 72 participants in the regional forum, 38 percent were parents or students of color.

The third phase of data collection occurred during an online forum at COPAA's national conference. In total, 58 people participated in the forum. Twenty-three percent were people of color. An additional 23 people responded through an email address.⁴

In all settings, NCD used a semistructured question protocol to gain perspectives about parent and child experiences with IDEA. Data was recorded and transcribed to identify themes among the experiences (see appendix for protocols).

Policy Analysis and Literature Review

To understand the policy context, we conducted a thorough review of current policy on the issue of IDEA federal monitoring, examining specifically any relevant statute, regulations, or guidance on the topic.

Quantitative Data

In our quantitative review, NCD gathered descriptive statistics and reviewed data from the IDEA annual reports to Congress, annual determinations of state implementation of IDEA,

state performance plans (SPPs) and annual performance reports (APRs), and other relative data, as well as other available national datasets. This quantitative review helps to provide an overarching picture of the topic nationally and enhances the individual perspectives gathered from the qualitative components.

Limitations

In this study, NCD recruited participants through COPAA's member network; local parent

networks; and state and national partners in the forum locations. Additionally, we purposefully selected interview participants based on location and position. Therefore, the qualitative data identified in the report should not be viewed as generalizable, but rather as perspectives of individuals within those positions. The qualitative data offers individual first-person perspectives to complement the quantitative aspects of this report.

Chapter 1: Examining the Federal Role in Education

Three federal laws protect students with disabilities: Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973,⁵ and the Americans with Disabilities Act of 1990 (ADA).⁶

Among these, only IDEA provides federal funds to assist states and local educational agencies with the additional costs of special education and related services. States must provide a free appropriate public education (FAPE) to all children with disabilities as a condition of receiving federal IDEA funds. Thus, IDEA is both a grants statute and a civil rights statute. IDEA includes monitoring activities and procedural safeguards as mechanisms for ensuring compliance with the statute's extensive requirements. The monitoring activities are overseen by the Office of Special Education Programs (OSEP) at the U.S. Department of Education. IDEA also requires states to provide an administrative complaint process that must be carried out by each state educational agency (SEA). IDEA is also closely interwoven with Every Student Succeeds Act (ESSA),⁷ the current version of the Elementary and Secondary Education Act (ESEA).

Section 504

Section 504 of the Rehabilitation Act of 1973, as it applies to students with disabilities, is a federal law designed to protect the rights of people with disabilities in programs and activities that receive federal financial assistance from ED. In terms of students and their education, it prohibits schools from discriminating against students with disabilities and to provide students with disabilities appropriate educational services. These services must be designed to meet the individual educational needs of students with

disabilities to the same extent that the needs of students without disabilities are met. The Office for Civil Rights

(OCR) at ED enforces Section 504, receiving and investigating complaints from parents, students, or advocates. OCR conducts agency-initiated compliance reviews and provides technical assistance to school districts, parents, and advocates. OCR provides guidance through Dear Colleague Letters (DCLs) and supplementary materials. Guidance is often issued jointly by OCR and the Civil Rights Division of DOJ or the Office of Special Education and Rehabilitative Services (OSERS).

IDEA is both a grants statute and a civil rights statute.

Disagreements between parents and school districts can be pursued through Section 504 due process hearings. OCR offers an early complaint resolution process, as well as an appeals process for complainants. OCR attempts to reach compliance through negotiation of a corrective action agreement. Resolution letters and agreements are made available to the public. If OCR is unable to achieve voluntary compliance, OCR might initiate enforcement action. OCR might (1) initiate administrative proceedings to terminate ED financial assistance to the recipient, or (2) refer the case to DOJ for judicial proceedings.⁸

The ADA

ADA Title II prohibits discrimination on the basis of disability by state and local governments regardless of whether they receive federal financial assistance.

Like Section 504, in Title II of ADA, Congress prohibited discrimination by public entities. Title II goes beyond Section 504—it applies to state and local schools regardless of whether they receive any federal funds, while Section 504 applies only to schools that receive federal funds. Because public schools receive federal funds, they are subject to the requirements of both Title II of ADA and Section 504.

[Title II of the ADA] applies to state and local schools regardless of whether they receive any federal funds, while Section 504 applies only to schools that receive federal funds.

Unlike IDEA, however, the scope of Section 504 and ADA is much broader, particularly for specific disability-related areas. In fact, ADA includes a mandate to eliminate discrimination against people with

disabilities, and it required DOJ to promulgate regulations to implement ADA to that end.⁹ Thus, while IDEA might set the “basic floor of opportunity,”¹⁰ ADA/504 might require more.

The rights of students under Title II of ADA are enforced by OCR at ED in essentially the same manner as Section 504.

Chapter 2: Evolution of Monitoring and Enforcement Under IDEA

IDEA specifies that IDEA's monitoring and enforcement responsibilities are charged to the Secretary of the U.S. Department of Education, as well as to state educational agencies (SEAs). The Secretary exercises his or her authority through ED's OSEP and OCR. States receiving IDEA federal funds must have a system of general supervision that monitors the implementation of IDEA by local educational agencies (LEAs) (i.e., school districts). IDEA does not impose a specific monitoring framework on states; however, the system should be accountable for enforcing IDEA requirements and for ensuring continuous improvement.¹¹

Monitoring initially involved an on-site visit every five to six years. Such visits included stakeholder interviews, reviews of policies and procedures, and review of student files. The state would receive a letter from OSEP summarizing the findings of the visit and direction on how the state should address any findings of noncompliance.¹²

Driven in part by the recognition that this approach to monitoring was not leading to improved performance of children with disabilities, states and OSEP began shifting to a concept called "focused monitoring" in the late 1990s.¹³ The 1997 amendments to IDEA required states to develop performance goals and indicators that would be used to judge the

states' progress in improving results for students with disabilities.¹⁴ These requirements lead to a new monitoring approach called a Continuous Improvement Monitoring Process (CIMP).¹⁵ OSEP conceptualized the CIMP model as a continuous cycle composed of the following activities:

- Self-assessment
- Validation planning
- Validation data collection
- Improvement planning
- Implementation of improvement strategies
- Verification and consequences
- Review and revision of self-assessment

OSEP used CIMP to monitor states from the 1998–1999 through 2001–2002 school years. There was no requirement, however, that states adopt this approach in monitoring LEAs. States were required to develop state improvement plans based on the findings of a self-assessment. OSEP provided technical assistance to help states implement improvement strategies, regardless of whether the states used CIMP or another approach to monitor their local programs' compliance. If a state did not make the necessary improvements, OSEP could impose enforcement actions such as special conditions

on grant awards, compliance agreement, or withholding of funds.¹⁶

OSEP modified certain aspects of CIMP in 2000, in part because of an NCD report that concluded that every state in the country was out of compliance with IDEA.¹⁷ The NCD report, *Back to School on Civil Rights*, analyzed the data contained in DOJ's state monitoring reports from 1975 to 1998, and concluded the following:

All states and the District of Columbia were found to be out of compliance with IDEA requirements to some degree. Federal efforts over several administrations to enforce IDEA in states where noncompliance persists were found to be inconsistent, often ineffective, and without any real teeth. While the statutory framework of IDEA envisioned states as the primary implementers of IDEA, the Federal Government has fallen short over five administrations in its efforts to ensure that the protections of the law for children with disabilities are enforced. This study confirmed what students with disabilities and their parents have repeatedly told NCD and that while they are enthusiastic supporters of IDEA, noncompliance with the law has persisted in some states over many years, placing enormous burdens on children and families.¹⁸

In 2002, the President's Commission on Excellence in Special Education issued an extensive report that included recommendations

regarding federal regulations and monitoring. The commission found that

[t]here is little demonstrable link between process compliance and student results and success. While process compliance two decades ago allowed the federal government to determine whether children with disabilities received any education services, then and now it does little to help parents and teachers judge whether those services lead to student success. Indeed, the complaints by NCD, witnesses and the public about the lack of historic

OSEP modified certain aspects of CIMP in 2000, in part because of an NCD report that concluded that every state in the country was out of compliance with IDEA.

compliance with IDEA beg the more fundamental question of whether such procedural compliance has anything to do with actual student achievement and

their post-school success. To answer these problems, the Commission recommends that IDEA, its regulations and federal and state monitoring activities be fundamentally shifted to focus on results and accountability for scientifically based services, and their continuous improvement.¹⁹

The commission also found that it took between four and 20 months for OSEP to issue a monitoring report following the conclusion of the on-site visit, with an average of 13.6 months, and concluded that "[b]ecause of the substantial time between on-site monitoring and the release of reports, most reports are impractical and provide no assurance to Congress or families of the status of IDEA implementation."²⁰

The commission's final report made the following recommendation regarding monitoring: "The U.S. Department of Education should seek to radically change how it conducts technical assistance and monitoring activities to focus on results instead of process. The Department should monitor and provide effective technical assistance on a much smaller number of substantive measures guided by broad federal standards that focus on performance and results."²¹

Also in 2002, the U.S. Commission on Civil Rights offered its recommendations for the upcoming reauthorization of IDEA. On the subject of monitoring and enforcement, it recommended the following:

A complaint-handling process should be established at the federal level, and state complaint systems should be monitored by OSEP for efficiency and effectiveness. . . . The Federal Government must ensure that state special education programs comply with IDEA by gathering adequate data on each state's implementation and developing national compliance standards.²²

ED should exercise its authority to sanction state and local education agencies that repeatedly fail to comply with IDEA by withholding allotments until compliance is achieved. To accomplish this, ED must conduct regular and thorough reviews of how states are spending federal funds. The amount of funds withheld should be based on level of noncompliance, and sanctions should be applied equally to all states.

Compliance is best achieved through consistent federal enforcement bolstered by support activities performed by states. . . .

[S]tates should be given the same sanction authority as federal enforcement agencies to ensure that local special education programs comply with IDEA. States should scrutinize school district expenditures and allocate or withhold funds accordingly."²³

A 2004 report by the Government Accountability Office, *Special Education: Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System*, echoed much of what the President's Commission found. ED was again criticized for the length of time it took to issue monitoring reports and to approve corrective action plans. The report summarized these as follows:

Education has endeavored to bring states into compliance through state corrective action plans and technical assistance, but cases of noncompliance have generally continued for years before being fully resolved. To resolve the range of deficiencies Education identified in its monitoring visits, the department required states to (1) develop corrective action plans, (2) institute remedies, and (3) demonstrate the effectiveness of the remedy within 1 year. We found that all of the 7 cases of noncompliance from 1997 to 2002 that have been fully resolved took from 2 to 6 years for closure to occur, and the remaining 23 cases—some dating back as far as 1997—have still not been completely resolved. . . . Our examination of Education documents showed that each phase of the monitoring and correction process took a considerable amount of time, including Education's issuance of its findings report and the

approval of the state correction plan. On average, Education took about a year to issue a monitoring report following its site visits, and generally 1 to 2 years passed before states' corrective action plans were approved. Infrequently, in cases of serious or longstanding noncompliance, Education has taken more severe action by using sanctions such as making grant renewals conditional on correcting noncompliance, but resolution has been slow in these cases as well. In addition, states that we examined rarely resolved noncompliance within the 1-year compliance deadline specified by Education for correction.

The report recommended the following:

To improve special education monitoring, we are recommending that Education develop additional guidance for collecting data on key outcome measures. To strengthen enforcement of IDEA, we are recommending that Education improve its response times throughout the monitoring process and that it impose realistic timeframes and firm deadlines for remedying findings of noncompliance, including making greater use of compliance agreements when appropriate.²⁴

Ultimately, the 2004 amendments to IDEA expanded requirements regarding performance goals and indicators, and included specifications for state performance plans, data collection, and reporting on targets. States had to develop an SPP that included indicators measuring compliance, as well as those measuring

performances of students with disabilities. States were required to submit an APR, which became the primary component of OSEP's state monitoring. OSEP also was required to initiate state on-site meetings over a five-year period to conduct "verifications visits." Each year, OSEP issues to every state a "determination" of its implementation of IDEA using the following categories:

- Meeting requirements and purposes of IDEA
- Needing assistance in implementing the requirements of IDEA
- Needing intervention in implementing the requirements of IDEA
- Needing substantial intervention in implementing the requirements of IDEA

Section 616 of IDEA 2004 states: "The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on— (A) improving educational results and functional outcomes for all children with disabilities; and (B) ensuring that States meet the program requirements under this part with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities."

Despite this intended focus, monitoring using the SPP/APR data and information from on-site visits remained primarily focused on compliance rather than results. In response, states focused on correction of noncompliance. Not surprisingly, state performance on compliance indicators improved significantly while student performance remained relatively unchanged.²⁵

Chapter 3: Department of Education’s Current Process

In 2012, after extensive input from stakeholders, and in an effort to improve the educational outcomes of students with disabilities, ED announced a major shift in the way OSEP would oversee the effectiveness of states’ special education programs. Until that time, OSEP’s primary focus was to determine whether states were meeting procedural requirements such as timelines for evaluations, due process hearings, and transitioning children into preschool services.

While these compliance indicators remain important to children and families, under the revised framework known as Results Driven Accountability (RDA),

OSEP now includes educational results and outcomes for students with disabilities in making each state’s annual determination under IDEA. In announcing RDA, the Secretary of Education said this:

For too long we’ve been a compliance-driven bureaucracy when it comes to educating students with disabilities. We have to expect the very best from our students—and tell the truth about student performance—so that we can give all students the supports and services they

need. The best way to do that is by focusing on results.

ED also announced that it would cease to conduct verification visits, but would continue to review states’ APRs and monitor state supervision systems.²⁶

As part of RDA, OSEP moved to “differentiated monitoring and support” for all states, but especially low-performing states.

OSEP now provides differentiated technical assistance based on annual determinations, with low-performing states receiving more intensive support.²⁷

In shifting to the RDA process for annual determinations, OSEP funded technical assistance centers to provide states help with data collection. The Center for IDEA Fiscal Reporting²⁸ and the IDEA Data Center²⁹ are two such centers. OSEP also has a system that flags state data that appears to be questionable, and verifies such data with the state.

OSEP also added a new indicator to the SPP in 2013. The new indicator required states to develop a State Systemic Improvement Plan (SSIP). An SSIP is a plan for improving results for students with disabilities. The basis for the SSIP

OSEP now includes educational results and outcomes for students with disabilities in making each state’s annual determination under IDEA.

is a detailed data and infrastructure analysis that will guide the development of strategies to increase the state’s capacity to structure and lead meaningful change in LEAs. The SSIP has been implemented in stages, beginning with the APR submitted February 1, 2015.³⁰ To assist states in the planning and implementation of the SSIP, OSEP

funded a new technical assistance center known as the National Center for Systemic Improvement (NCSI).

This center is charged with “helping states achieve a national vision of Results Driven Accountability for special education and early intervention programs.”³¹

OSEP began using the RDA process in making the Part B state determinations in June 2014. As the following chart indicates, the impact of the shift from a focus primarily on procedural compliance to consideration of both compliance and results made a significant difference in state ratings, with the percentage of states receiving

a “meets requirements” rating declining substantially.

OSEP Annual State Determinations 2007–2017

The following table provides information on the number of states identified in each determination

category between 2007 and 2017.

Annual determinations are based on data from the prior two years. For example, the 2016 determinations were

based on data for fiscal year 2014.

It should be noted that no state has ever been designated as “needing substantial intervention,” despite the fact that the Bureau of Indian Education has received a needs intervention determination for five consecutive years and the District of Columbia has received a needs intervention determination for 10 consecutive years. In other words, there appears to be no amount of ongoing noncompliance that rises to

[T]here appears to be no amount of ongoing noncompliance that rises to the level of [“needing substantial intervention”].

Number of States by Determination Category			
Year	Meets Requirements	Needs Assistance	Needs Intervention
2007	9	41	10
2008	14	36	10
2009	30	25	5
2010	31	27	2
2011	30	26	4
2012	33	18	9
2013	40	17	3
RDA/2014	21	34	5
RDA/2015	21	36	3
RDA/2016	26	31	3
RDA/2017	25	34	1

the level of this determination. This might be, at least in part, because of the specific actions the Secretary must take in the case of a state determined to need substantial intervention (see the following description).

Both IDEA law and regulations provide explicit actions the Secretary may or shall take for each determination category, as the following describes.³²

Actions the Education Secretary May or Shall Take by Determination Category

Needs Assistance Category (for Two Consecutive Years)

The Secretary shall take one or more of the following actions:

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

(continued)

Actions the Education Secretary May or Shall Take by Determination Category, *continued*

Needs Intervention Category (for Three or More Consecutive Years)

The Secretary can take any of the actions listed under Needs Assistance.

The Secretary shall take one or more of the following actions:

- Requires the state to prepare a corrective action plan or improvement plan if the Secretary determines that the state should be able to correct the problem within one year
- Requires the state to enter into a compliance agreement under section 457 of the General Education Provisions Act, as amended, 20 U.S.C. 1221 et seq. (GEPA), if the Secretary has reason to believe that the state cannot correct the problem within one year
- For each year of the determination, withholds not less than 20 percent and not more than 50 percent of the state's funds under section 611(e) of the Act, until the Secretary determines the state has sufficiently addressed the areas in which the state needs intervention
- Seeks to recover funds under section 452 of GEPA
- Withholds, in whole or in part, any further payments to the state under Part B of the Act
- Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

Needs Substantial Intervention Category

Secretary shall take one or more of the following actions:

- Recovers funds under section 452 of GEPA
- Withholds, in whole or in part, any further payments to the state under Part B of the Act
- Refers the case to the Office of the Inspector General at the Department of Education
- Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice

OSEP officials interviewed for this report³³ indicated that the issue of a possible referral to DOJ for enforcement is raised when necessary in discussion with states that are not complying fully with their IDEA obligations. However, OSEP has not made any referrals to DOJ for enforcement under IDEA.

ED has not developed general standards, improvement measures, or enforcement sanctions beyond those specified in IDEA law and federal regulations. The SPP/APR module is publicly available online at osep.grads360.org and provides each state with information on OSEP's response to the state's performance on indicators one through 17 of the SPP and any actions that the state is required to take. SEAs are required to make their SPP/APRs available to the public, primarily via posting online, and information regarding OSEP's response to the APR makes it possible for interested parties to utilize the information, including specific corrective action the state is to undertake.

OSEP and OSERS regularly issue DCLs and Memorandums to address issues, including violations of IDEA that appear to be systemic. For example, recent DCLs addressed the use of the terms dyslexia, dyscalculia, and dysgraphia in IDEA evaluations, eligibility determinations or Individualized Education Program (IEP) documents; the requirement that schools provide positive behavioral supports to students with disabilities who need them; and the rights of

students with disabilities to have access to the general education curriculum and standards-based IEPs to ensure educational opportunity.³⁴ While not carrying the force of law, these communications are valuable tools that can be used by parents, advocates, districts, schools, and states.³⁵ In fact, the November 2015 DCL on standards-based IEPs served as the centerpiece of a resource document for states produced by the Council of Chief State School Officers and

NCSI regarding how states can improve services to students with disabilities in the context of ESSA.³⁶

OSEP also issues policy letters that are direct responses to requests for clarification on a variety of issues raised by parents, advocates, and school personnel. Again, while they do not carry the weight of law, these letters are helpful in

providing clarification on specific circumstances that might not be directly addressed in IDEA law or federal regulations.³⁷

OSEP utilizes other types of information beyond the states'

SPP/APR to monitor states and LEAs, including receiving multiple reports regarding the same LEA and reporting by the press. One recent example of this is the actions taken by ED in 2016 with the Texas Education Authority (TEA). The *Houston Chronicle* asserted that TEA had placed a cap on the percentage of students that LEAs could identify as eligible for special education.³⁸ Based on this reporting, OSEP demanded a formal response from TEA, held a series of "listening sessions" across Texas in

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mid-December 2016, and performed monitoring visits to several Texas LEAs. While OSEP's actions in this case are admirable, it should be noted that Disability Rights Texas, the state's protection and advocacy agency, had reported the same concerns regarding the TEA policy to OSEP more than a year prior to the *Houston Chronicle* reports, and no action was taken.

Another recent OSEP action was spurred by an opinion issued in 2016 by a federal judge in Connecticut in an education funding case. In the decision, the judge suggested that children with multiple disabilities should not be given an education because no services would be "appropriate" for children with profound disabilities. OSEP issued a letter to the Connecticut State Department of Education, making it clear that all children are entitled to an education, regardless of their disability or the severity of the disability.³⁹

OSEP does not provide a formal process through which to file a complaint regarding alleged violations of IDEA. While OSEP receives phone calls and written communications of complaints, how it handles these complaints is not directed by any formal process (unlike the written state complaint process detailed in IDEA federal regulations). This lack of a formal complaint process should be further investigated.

Since at least 2002, the U.S. Commission on Civil Rights identified a lack of adequate

resources for state and federal monitoring and enforcement programs. Upcoming budget proposals should assure adequate resources to carry out rigorous monitoring and enforcement activities.⁴⁰

OSEP should continue to strengthen its partnership with the Protection and Advocacy (P&A) System to improve IDEA compliance. The P&A System comprises a nationwide network

of congressionally mandated, legally based disability rights agencies operating in every state and territory in the United States. The P&A network has the authority to provide

legal representation and advocacy services to all people with disabilities. Despite the fact that the P&A System has no designated funding source for education-related casework, P&A advocates and attorneys work with families and schools to ensure students with disabilities receive the supports and services they are entitled to

receive. The extensive education work of the P&A networks makes them uniquely qualified to assist in monitoring and enforcement activities at both the federal and state levels.

One large state P&A network reported having 24 attorneys and advocates across the state doing special education advocacy work. The P&A networks generally seek to focus their education work on systemic issues such as restraint and seclusion, discipline, and least restrictive environment (LRE). Many use the IDEA state

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complaint process, discussed later in this report, as a means to address such systemic issues and bring about corrective action.

ED funds 104 parent information centers across the country, which includes 65 Parent Training Information Centers (PTIs), 30 Community Parent Resource Centers (CPRCs) and nine Technical Assistance Centers. Through the PTIs and CPRCs, “children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under IDEA, in order to develop the skills

necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services.”⁴¹ The centers also provide information to parents on alternative methods of dispute resolution, such as mediation. However, the centers rarely provide direct advocacy services to parents, and few have attorneys on staff. This is in large part due to their limited role as defined under IDEA and to inadequate funding, which has declined from \$28.9 million in 2012 to \$27.4 million in 2015 through 2017.⁴²

Chapter 4: State Monitoring of Local Educational Agencies (LEAs)

IDEA places responsibility for monitoring and enforcement of special education implementation of LEAs with SEAs. The IDEA does not establish any direct or enforcement relationship between ED, which distributes the IDEA funds to the states, and an LEA.

When states monitor LEAs' implementation of IDEA, regulations require that they focus on improving educational results and functional outcomes for all children with disabilities.

Monitoring must also ensure that public agencies meet the program requirements under IDEA, with an

emphasis on improving educational results for children with disabilities. Monitoring must also include (but is not limited to) the following:

- Making determinations annually about the performance of each LEA using the same categories used for annual state determinations
- Enforcement using appropriate mechanisms, which must include, if applicable, technical assistance; conditions on funding of an LEA; a corrective action plan or improvement plan; or withholding funds, in whole or in part, by the SEA

- Reporting to the public on the performance of each LEA on the targets in SPP/APR

States are reminded of the reporting requirement each year via letter from OSEP informing the state of its determination category. The letters state that the

[s]tate must report annually to the public, by posting on the State educational agency's (SEA's) Web Site, the performance of each local educational agency (LEA) located in the State on the targets in the SPP/APR as soon as

practicable, but no later than 120 days after the State's submission of its FFY 2014 SPP/APR. In addition, your State must:

1. review LEA performance against targets in the State's SPP/APR;
2. determine if each LEA "meets the requirements" of Part B, or "needs assistance," "needs intervention," or "needs substantial intervention" in implementing Part B of the IDEA;
3. take appropriate enforcement action; and
4. inform each LEA of its determination.⁴³

IDEA places responsibility for monitoring and enforcement of special education implementation of LEAs with SEAs.

Despite both IDEA requirements and annual reminders, most SEAs are not providing the public with information regarding the findings of LEA monitoring, including the determination category and LEA performance on SPP indicators.⁴⁴ OSEP should monitor SEA adherence to this requirement, and take action to ensure that every state is in full compliance with their legal responsibility to report. Providing this information in a user-friendly and easy-to-locate manner would enable the public to use the information in a variety of ways, and would provide transparency about how LEAs are performing.

Lack of Comprehensive Information about State Monitoring Practices

Unfortunately, there is a general lack of comprehensive information about state monitoring practices.

The latest report, issued in 2010, examined monitoring and improvement practices between 2004–2005 and 2006–2007. Thus, there is little information on

which to base recommendations regarding how to improve states' monitoring and enforcement processes.

The 2010 study found, as had previous reports, that there was substantial variability in the nature and design of states' monitoring systems. It recommended development of a common framework across states for consistency and research purposes.⁴⁵

A 2016 study, commissioned by the Massachusetts Department of Elementary and

Secondary Education (ESE), in anticipation of changes to its monitoring process, provides an inventory of national promising practices including a survey of compliance monitoring models currently employed in several states, with the goal of identifying approaches that support improved outcomes in special education programs.⁴⁶ The study found these best practices enhance a robust monitoring system:

- **Stakeholder engagement:** A diverse group of stakeholders should have an important role in monitoring activities, working in partnership with the state to develop targets, review data of improvement activities, and make suggestions for update to the activities and targets.

- **Vision statement and policy document:** States should develop a vision statement,

establish goals, and define their approach to monitoring. This should be written and described within the context of the state's System of General Supervision, providing

as much detail as possible for LEAs and other stakeholders to understand all of the state's special education monitoring activities. The information should be publicly available.

- **Customized approach:** There are myriad ways for states to develop monitoring systems. States should develop a monitoring process that is reflective of their priorities and designed to improve student outcomes.

Despite both IDEA requirements and annual reminders, most SEAs are not providing the public with information regarding the findings of LEA monitoring . . .

In a rare legal move, in 2012 two associations of parents of children with disabilities who attend California public schools filed a federal lawsuit against the California Department of Education (CDE), alleging that the state fails to effectively monitor LEAs' compliance with IDEA. Specifically, the suit alleges these three violations:

- CDE monitors local school districts' efforts to comply with IDEA only superficially. It does not ask for meaningful data or verify the accuracy of data it receives. It analyzes data selectively and turns a blind eye to negative trends.
- CDE does not truly investigate the complaints it receives. In its investigations,

it relies on unverified reports prepared by allegedly deficient school districts.

- CDE takes no action to meaningfully enforce school districts' obligations under IDEA. It requires only that school districts adopt

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policies, not implement those policies, and it is satisfied with shallow promises of future effort. It does not verify compliance, and when it does, it does so by sampling student data after advanced warning. School districts can therefore sanitize their records.⁴⁷

The suit is moving through the courts at the time of this report. Its outcome could have a significant impact on the monitoring system of the nation's largest SEA.

Chapter 5: IDEA Dispute Resolution Options

IDEA provides several ways in which disputes can be addressed, including the written state complaint process, mediation, and due process complaints. States are charged with the responsibility to carry out each of these options and ensure timely compliance with federal timelines.

Among these options, only the written state complaint process is available to parties other than the parent or guardian of a student receiving special education. State complaints may be filed by an organization or individual, including one from another state. It is also the only option that allows complainants to allege systemic violations against LEAs.⁴⁸ In fact, the usefulness of state complaints was noted by ED when issuing the IDEA federal regulations in 2006, stating that “[t]hrough its Part B State complaint procedures, each State has a powerful tool to address noncompliance with Part B of IDEA and its implementing regulations in a manner that both supports and protects the interests of children and their parents and facilitates ongoing compliance by the State and its public agencies with the IDEA and implementing regulations.”⁴⁹

State complaints and the investigation reports produced by SEAs can serve as critical sources of information in OSEP monitoring activities.

The manner in which SEAs handle investigations of written state complaints, including findings of fact and corrective action ordered, varies significantly across states. To help address this, OSEP has issued several policy letters and guidance in recent years regarding

issues such as burden of proof and corrective action.

State complaints and the investigation reports produced by SEAs can serve as critical sources of information

in OSEP monitoring activities. An analysis of the issues raised in state complaints and findings of noncompliance should be a standard part of monitoring activities by SEAs and OSEP. Furthermore, steps should be taken by SEAs to ensure that all state complaint investigation reports are available to the public in a timely manner.

Due process complaints continue to be the most utilized dispute resolution option for individual students and their families. However, most of the hearing requests are settled without the need for a fully adjudicated (i.e., submitted for decision) hearing. Just 2,571 of the 17,107 due process complaints filed in 2014–2015 resulted in fully adjudicated hearings, or only 3.8 hearings per

10,000 special education students in the nation. The vast majority of complaints are withdrawn, dismissed or resolved without a hearing.⁵⁰

Mediations are requested less frequently than due process hearing; however, this is the only option that shows steady increase and results in more agreements. The past several years have also seen wide adoption by states of a process known as IEP Facilitation. IEP Facilitation is an optional process, not required by IDEA, that SEAs or school districts can provide to parents and schools. A facilitated IEP meeting is the same as any other IEP meeting, except that a facilitator

joins the meeting.⁵¹ The number of states offering IEP Facilitation in 2017 was 36, up from 29 in 2015 and 9 in 2005.⁵²

Yet, according to data compiled by the federally funded Center on Dispute Resolution, IDEA written state complaints are the least utilized dispute resolution options, suggesting that this appears to be underutilized as a tool for improving the compliance and quality of special education programs. The following table shows the use of each option during school year 2014–2015 and the trend between 2006–2007 and 2014–2015.⁵³

Dispute Resolution Option	Number Reported	Number per 10,000 Special Education Students Ages 3–21	Trend 2006–2007 to 2014–2015
Written State Complaints filed	4,991	7.5	Declined 12.2%
Mediation Requests	10,260	15.3	Increased 19.5%
Due Process Complaints filed	17,107	25.5	Declined 8.3%

A 2014 Government Accountability Office (GAO) report, *Special Education: Improved Performance Measures Could Enhance Oversight of Dispute Resolution*, noted that data collected on due process hearings

does not provide clear, complete information about the duration of this process, information which is useful for ensuring effective program monitoring and targeted technical assistance. While Education tracks the number of hearing decisions made within 45 days, without

information on the amount of time added to decisions timelines by extensions, Education is limited in its ability to monitor in this area, which could negatively affect children and their families by, for example, delaying the provision of appropriate special education services.

The report recommended that OSEP revise its performance measure to collect information from states on the amount of time that extensions add to due process–hearing decisions.⁵⁴



The data and results of the state complaint process, mediations, and facilitated IEP meetings indicate that there are viable options to parents and families prior to proceeding to a due process hearing. Given the low rate of

due process hearings that are fully adjudicated, further study is needed to determine how families may be informed of alternative dispute resolution options and the state complaint process.

Chapter 6: Role of the Office for Civil Rights (OCR)

OCR has, pursuant to its authority under Section 504 of the Rehabilitation Act and ADA's Title II, issued several guidance documents relating to the rights of children with disabilities in public schools. Frequently, OCR and OSERS issue joint DCLs and policy guidance in an attempt to provide states and LEAs with guidance on systemic issues such as bullying, restraint and seclusion, and access to accelerated programs and extracurricular athletics.⁵⁵

Unlike OSEP, OCR has the resources and statutory authority to investigate complaints filed against individual LEAs. OCR has regional offices staffed with attorneys who carry out investigations of complaints and seek resolutions. OCR also initiates cases, typically called compliance reviews, to target resources on compliance problems that appear particularly acute.

OCR has seen a dramatic increase in complaints. In its latest annual report (2016), OCR documented receiving 16,720 complaints, by far the highest one-year total in OCR's history and 61 percent higher than 2015. Nearly 6,000 of the complaints filed in 2016 alleged violations of disability laws covering a broad range of issues.

Of those, over 2,000 alleged violation of a free appropriate public education. OCR resolved over 5,200 claims of disability discrimination, and entered into 587 written agreements in fiscal year 2016.⁵⁶ The dramatic increase in OCR

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complaints involving children with disabilities, the majority of whom are IDEA-eligible students, might suggest that parents and other parties, such as advocates, are

turning to OCR complaints filed as violations of Section 504 rather than using the dispute resolution options under IDEA. Thus, when considering the trends in disputes, it is important to consider data on complaints filed under both IDEA and Section 504.

The ADA Amendments Act of 2008 broadened the eligibility for protections to children with disabilities under Section 504. As a result, the number of children with Section 504 plans has increased. According to data from the 2011–2012 Civil Rights Data Collection (CRDC), 738,500 students (approximately 1.5 percent of public school enrollment) are eligible under Section 504.⁵⁷ This is in addition to almost six million public school students who are eligible under IDEA. All IDEA eligible students are also protected by Section 504.

Current funding in the 2018 proposed budget remains flat funded at \$108.5 million for the Education Department's Office for Civil Rights⁵⁸— which has investigated thousands of complaints of discrimination in school districts across the country and needs to retain the ability to do so going forward. Executive Order 13777,

which mandated every federal agency review existing regulations and recommend which are “burdensome” or too expensive for school districts, states, and colleges to implement, must be carefully watched to ensure there is not a discriminatory or chilling effect on enforcement of civil rights.

Chapter 7: Role of the Department of Justice (DOJ)

The DOJ Civil Rights Division, Educational Opportunities Section, is primarily responsible for enforcing Title IV of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, national origin, sex, and religion in public schools and institutions of higher learning; the Equal Educational Opportunities Act of 1974, which, among other things, requires states and school districts to provide English learner (EL) students with appropriate services to overcome language barriers; and ADA, which prohibits disability discrimination. The Section will also enforce Section 504 of the Rehabilitation Act and IDEA upon referral from other governmental agencies. The Section may also intervene in private suits alleging violations of education-related anti-discrimination statutes.⁵⁹

Despite the fact that IDEA gives ED the authority to refer states to DOJ after several consecutive annual determinations that the state is failing to implement IDEA in compliance with IDEA law and regulations, ED has not exercised this authority since beginning the monitoring activities required by IDEA 2004.

In recent years, ED and DOJ have jointly filed a number of *amicus curiae* briefs in ongoing federal litigation. These briefs are another method by which ED establishes its policies and views on issues involving individual cases that interpret the requirements of IDEA. These cases have presented issues involving evaluations, the responsibility of LEAs to provide translations for parents of children with disabilities at IEP meetings and similar meetings where the

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parents do not speak and understand English well, and overrepresentation of students of color in special education. At the appellate level, briefs have addressed the interaction of IDEA and ADA's Title II

regarding a Deaf and Hard of Hearing student, access of P&A networks to student records, whether efforts to stop bullying of a child with a disability must be addressed in the child's IEP, whether a child might qualify as having a disability under more than one category, and whether a child's consistent failure to advance academically violates IDEA. ED and DOJ have also jointly filed briefs in IDEA cases decided by the Supreme Court in 2016, including a brief in *Andrew F. v. Douglas County School District* that

addressed the critical issue of whether IDEA requires a “meaningful benefit” for students with disabilities.⁶⁰ ED also sends notifications to school districts explaining the positions taken in its *amicus* briefs.

In 2016, DOJ, in consultation with ED, filed a complaint in federal court alleging that the state of Georgia had violated ADA’s Title II by unnecessarily segregating many students with behavioral disabilities in separate school buildings around the state, which was known as the Georgia Network for Educational and Therapeutic Support (GNETS) Program.⁶¹ Placement in GNETS completely isolates these students from their peers. The DOJ investigation revealed that the separate buildings were often in poor condition, the students there did not have access to the

full curriculum other students had, and the quality of instruction often was not up to the standards of that in other schools. The state of Georgia contends that the placement practices

are lawful under IDEA.⁶²

The government alleged that the GNETS program violates the community integration mandate of ADA and the 1999 Supreme Court’s decision in *Olmstead v. L.C.*⁶³ It is the first DOJ case to challenge a state-run school system for segregating students with disabilities utilizing ADA.⁶⁴

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As these examples demonstrate, there are various ways in which ED can set forth its views on issues addressing the rights of individual students under IDEA, even though its legal authority is technically limited to reviewing state implementation of IDEA.

Chapter 8: Perspectives of Key Stakeholders

Current Monitoring and Enforcement of IDEA Compliance

Across all stakeholders, there was nearly unanimous support for ED's decision to move from reviewing states' IDEA implementation using strictly procedural compliance. In their opinion, the new system has a better balance of focusing on compliance and results such as academic achievement and graduation in order to improve the quality of education for students with disabilities. Several stated that the mostly compliance-oriented review that OSEP used prior to moving to RDA seemed to accomplish very little in improving the quality of special education services.

Nearly all also agreed that while the shift to RDA appears to be a positive development, it is too early to determine whether the new approach will translate into improved services and outcomes for students with disabilities. Most individuals interviewed agreed that, as promising as RDA appears to be, it will take several years before experts in the field can decide whether progress has been made under this approach. However, no one recommended a return to past review policies.

There was a consistent view, however, that the current method of OSEP review of state data and reporting can provide only limited results. One continuing concern is that because the state data is a statistical aggregation of data provided by LEAs, this data permits OSEP to discover only broad patterns of violations. Given the large number of LEAs in most states, even systemic violations or problems within one or two LEAs are not readily apparent in state data.

[I]t may take OSEP and states a number of years to uncover and remedy problems. During that time, children will not be receiving appropriate IDEA services, and problematic practices will continue.

These issues can create two problems. First, as previously stated, problems in one or two LEAs, even of a systemic nature, may not be apparent when statewide data is aggregated. The

second is that, even if OSEP can discern a broad pattern of IDEA problems or violations, the process of correcting the underlying violation or questionable conduct can be very time-consuming. The data must demonstrate the violations, OSEP must discover them, and then OSEP must describe the issues to the state and allow time for corrective action. Consequently, it may take OSEP and states a number of years to uncover and remedy problems. During that time, children will not be receiving appropriate IDEA

services, and problematic practices will continue. Denial of FAPE, LRE, or appropriate services for a number of years can have very serious or even catastrophic consequences on an individual student's development. The OSEP review process, many felt, was unfortunately slow and cumbersome, allowing deficiencies for many students to continue for long periods of time.

Several interviewees commented that OSEP appears to no longer make on-site visits to LEAs that may be having difficulties or deficiencies in implementing IDEA. Each felt an on-site presence used to be helpful to OSEP, and indicated to state and local officials, and the public, that OSEP was actively monitoring compliance. Many said those visits should be resumed.

Several interviewees stated that the accuracy of LEA data has improved over the years. They also acknowledged that there might still be occasions when the data that an LEA provides to the state is not accurate. Unless the state discovers the problems, and most often they will not be apparent, the inaccuracies will be embedded in the state's data report that becomes its SPP/APR. To assist states with quality of data, OSEP funds two technical assistance centers, the Center for IDEA Fiscal Reporting⁶⁵ and the IDEA Data Center.⁶⁶

Nearly all the individuals interviewed had the viewpoint that OSEP's enforcement efforts have been too mild and need to be more assertive. When OSEP determines that a state's data discloses deficiencies in IDEA implementation, OSEP will point out those deficiencies but will

not impose sanctions; rather, OSEP will simply offer technical assistance to the state to help correct the problem. Some participants felt that while technical assistance is welcomed and can work, in many instances, use of more severe sanctions authorized by IDEA (e.g., withholding of federal funds, referral to DOJ for enforcement action) should be employed, or at least explored, more than they are now. The view of some was that there is insufficient follow-up by OSEP, and problems can be left unremedied.

One interviewee suggested charging ED's Inspector General with regular reviews of OSEP's monitoring and enforcement.

Several interviewees stated that most states fail to make their annual

ratings of LEAs special education implementation available to the public in a manner that is user-friendly, accessible to people with disabilities, and easy to locate. Doing so would significantly aid the public's scrutiny of LEAs and assist with any challenge to the actions of an LEA in either individual or systemic cases. As states were unwilling to make critical data and assessments about LEAs available, stakeholders unanimously asserted that OSEP should require states to make the data public.

IDEA Dispute Resolution Options

As was stated in a recent law review article, "[t]he general consensus is that [IDEA's] heavy reliance on private enforcement (such as due process) has led to underenforcement, especially for poor or otherwise marginalized groups. . . ."⁶⁷ The stakeholders interviewed for this report had

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similar views. Many stated that in most instances where an individual is challenging the actions of an LEA, the burden falls entirely on the parents.⁶⁸

There were similar views about the use of resolution meetings. One interview participant said resolution meetings are seldom used in his state. Another commented that even when used, the burden still seems to be on the parent to show the school's decisions are incorrect. Another stated that parents are often intimidated in such meetings. Nearly all agreed that, even in resolution meetings, parents need the kind of legal or educational expertise school district personnel already have.

When a due process hearing is the next available step for parents, it is seldom used. The individuals interviewed unanimously stated

people of limited means are simply unable to use these processes to challenge a school's IEP or other aspects of IDEA. Formal due process hearings are expensive, and legal representation is essential to obtaining a successful outcome. As all those interviewed recognized, schools automatically have legal representation, but parents must afford their own. Although parents may be able to seek reimbursement for their attorney fees if they are successful, parents must bear the costs of bringing the case. In addition, the burden of proof is on the parents, making a successful challenge much more difficult. Many felt that due process hearings are also stacked against parents because the hearing officers are trained by the SEAs, and their conduct will be biased to support the LEA.

Some stated that use of IEP Facilitation is resulting in a better and less adversarial process. Several commented that the PTIs funded through IDEA provide parents the needed assistance in understanding their dispute resolution options, but that the "playing field" between many parents and school systems is simply financially uneven, with parents at a serious and often insurmountable disadvantage.

Nearly all forum participants stated that there is a pressing need for more information

and training for parents. They stated that many parents are unprepared for meetings with schools or LEA administrators, and therefore are at a severe disadvantage. Many do not understand their rights under IDEA, and they are unable to

challenge decisions that school officials make for their children.

One interviewee made the interesting observation that the legal relationships created by IDEA effectively excludes parents. OSEP's relationship in the federal review process is with state agencies, and a state agency's direct relationship in this process is with its LEAs. Parents have little formal or required input into the process by which OSEP reviews and evaluates the performance of states and LEAs.

There was also concern about the written state complaint process. There were comments that staffing at some SEAs has been cut, reducing the state's ability to take in and investigate individual complaints. This

[P]eople of limited means are simply unable to use these processes to challenge a school's IEP or other aspects of IDEA. Formal due process hearings are expensive, and legal representation is essential to obtaining a successful outcome.

reduction makes it impossible for those states to investigate many complaints within the mandatory time requirements (60 days), or to investigate them thoroughly. Complaints about individual cases or individual children were not given any sort of priority, and SEAs did not appear to pursue any complaints aggressively. Some SEAs appear to dismiss complaints without any basis or because of lack of information, without giving the complainant an opportunity to respond. Several research participants expressed a general view that state complaint systems are not effective, even though this is the least adversarial and least expensive route to settling disputes. Forum participants expressed general feelings

[S]taffing at some SEAs has been cut, . . . mak[ing] it impossible for those states to investigate many complaints within the mandatory time requirements (60 days), or to investigate them thoroughly.

of bias, with SEAs making rulings in favor of districts. Parents who fail to follow very strict and specific complaint procedures are unlikely to have their case investigated, creating yet another disadvantage. One stakeholder noted

that SEA does not feel that it has enforcement authority over LEAs—that the state could recommend that an LEA take corrective actions as a result of a complaint investigation but could not require that

action be taken despite the clear enforcement authority of SEAs in federal regulations. It is important that IDEA provides no basis for raising these concerns beyond SEA, as the direct appeal option to OSERS was removed in IDEA regulations issued in 1997.

Chapter 9: Findings and Recommendations

This report examined findings in previous NCD reports, the progress achieved since the last report 16 years ago, the evolution of monitoring practices and current practices by ED, and makes the following findings.

Monitoring

It is disturbing that very little has actually changed since the passage of IDEA more than 40 years ago with regard to the use of monitoring as an effective tool to drive compliance with the law and systemic change that is demonstrated to have an effect on student learning and outcomes.

There is still a heavy reliance on private enforcement resulting in underenforcement by OSEP. This continues to leave an unfair and arguably inequitable burden on children and families.

IDEA does not impose a specific monitoring framework on states; however, the system should be utilized to its full capacity, and states need to be held accountable for enforcing IDEA requirements and for ensuring continuous improvement.

- Forum participants and interviewees were nearly unanimous in support of ED's move to RDA, believing the new system has a better balance of focus on compliance and results, such as academic achievement and graduation.

- Prior to the shift to the RDA model, monitoring using the SPP/APR data and information from on-site visits remained primarily focused on compliance rather than results. In response, states focused on correction of noncompliance. State performance on compliance indicators improved significantly while student performance remained relatively unchanged. The current system shows promise, but it is still too early to tell if RDA will in fact result in better outcomes.
- ED has suspended on-site visits, which stakeholders viewed as highly problematic. On-site visits are helpful to indicate to state and local officials and the public that OSEP is actively involved.
- Stakeholders view ED monitoring as "too mild and needs to be more assertive." Evidence of this includes the following:
 - No state has ever been designated as "needing substantial intervention."
 - ED does not make use of its authority to withhold federal funds when a state is noncompliant with the law. OSEP has not made any referrals to DOJ for enforcement under IDEA.

Office of Civil Rights

OCR does not have direct responsibility for monitoring of IDEA, rather it primarily enforces ADA and Section 504.

- There has been a dramatic increase in OCR complaints involving students with disabilities, the majority of whom are eligible under IDEA. The year 2016 saw the highest number of complaints ever filed ever, 61 percent higher than the number filed in 2015.
- This trend might suggest that parents and other parties, such as advocates, are turning to OCR complaints filed as violations of Section 504 rather than using the dispute resolution options under IDEA.
- Considering the trends in disputes, it is important to consider data on complaints filed under both IDEA and Section 504.

OSEP Oversight

- OSEP and OSERS regularly issue DCLs and Memorandums to address issues, including violations of IDEA, that appear to be systemic.
- OSEP also issues policy letters that are direct responses to requests for clarification on a variety of issues.
- There is no formal process through which one can file a complaint directly to OSEP regarding alleged violations of IDEA.
- The current method of OSEP review of state data and reporting can provide only

limited results because data is aggregated, showing only broad patterns of violations, and systemic violations within LEAs are not readily apparent.

- Though not currently used for such purpose, state complaints and investigation reports produced by SEAs can serve as critical sources of information in OSEP monitoring.
- Despite both IDEA requirements and annual reminders from OSEP, most SEAs are not providing the public with information about the findings of LEA monitoring.

IDEA

Several ways are provided in which disputes can be addressed through a state complaint system, through administrative hearing process, and through mediation.

- Given the low rate of due process hearings that are fully adjudicated, further study is needed to determine how families choose which dispute resolution option to utilize, and the pros/cons of each for both individual relief and systemic change.
- How parents might be better informed of alternative dispute resolution options and the state complaint process should also be fully explored.

Recommendations

The following recommendations are based upon independent reports and input from stakeholders interviewed to inform this report.

Congress should

1. Appropriate funds to establish an independent entity to assist states and the Federal Government using evidence-based practices shown to enhance robust state level monitoring and enforcement systems;
2. Expand the role of PTIs to include provision of IEP Facilitation and increase funding to provide such services to LEAs;
3. Appropriate funds for competitive grants to develop and pilot effective monitoring and enforcement activities that improve results and correct noncompliance in a timely manner;
4. Place the burden of proof in IDEA administrative hearings exclusively on LEA;
5. Ensure that IDEA requires the costs of expert witness to be assessed against LEA/SEA if the parent prevails, as other civil rights laws allow; and
6. Require SEAs to make all IDEA state complaint investigation reports available to the public, and provide for a period of reconsideration of findings.

ED should

7. Engage in more aggressive enforcement and utilize its authority to withhold federal funds and make referrals to DOJ for enforcement as permitted by IDEA;
8. Establish a formal procedure for submission of complaints to ED and OSEP;
9. Continue and accelerate efforts to improve validity and reliability of systems of data gathering and analysis;
10. Shorten the length of time between SPP/APR submission and release of determinations and other findings;
11. Provide clear instructions that enable stakeholders to locate OSEP's response to each state's SPP/APR and any actions required by the states;
12. Provide links to the information each state is required to make available in OSEP's SPP/APR online portal to improve the public's access to LEA determinations;
13. Provide comprehensive guidance to SEAs on investigating and enforcing state complaints, including corrective actions for denial of FAPE;

(continued)

ED should, *continued*

14. Analyze the issues raised, and findings of noncompliance in state complaints and investigative reports should be a standard part of monitoring activities by OSEP;
15. Pursue regulatory revision to extend the statute of limitations on filing written state complaints to two years; and
16. Increase funding of PITs in budget proposals, and expand the role of PTIs in monitoring and enforcement, including identification of systemic noncompliance.

SEAs should

17. Fully adhere to the requirement to make public all information regarding LEA monitoring and enforcement of IDEA compliance, including LEA APRs, annual determinations, corrective actions ordered, and funding withheld; and develop user-friendly, easily locatable information in collaboration with parents and other stakeholders in the state (Maryland's website for display of this information at http://mdideareport.org/special_main.aspx should be the model for such reporting);
18. Make public all state complaint investigation reports in a timely and user-friendly manner;
19. In responding to state complaints, address corrective actions for denial of FAPE, including compensatory services and monetary reimbursement consistent with CFR 300.151(b)(1), and rigorously enforce all corrective action ordered;
20. Consider state complaints with findings of noncompliance in conjunction with LEA monitoring;
21. Make information on dispute resolution options highly visible on SEA websites;
22. Expand parent training opportunities through increased support for outreach by federally funded PTIs and by requiring school systems to enhance the provision of training and educational material to parents;
23. Align all resources with SSIP-supported LEAs in improving the educational outcomes for students with disabilities;
24. Meaningfully include parents of children with disabilities, including PTI personnel, in monitoring of LEAs and in regularly reviewing data and development of SPP/APR; and
25. Ensure that SEA website content and functionality is accessible to people with disabilities.

Endnotes

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