

Unpacking the Fiscal Elements of OSEP's New General Supervision Guidance

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Presenters



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Chat Poll

How does this new guidance impact your work?

Who within your team is responsible for ensuring fiscal compliance with the guidance?

Overview of Today's Webinar

Introduction

- Guidance overview, stated purpose, and relationship to previously issued guidance
- Organization of guidance

Clarified and expanded OSEP positions within guidance

Guidance by section

Introduction



Guidance Overview

- Released by the U.S. Department of Education Office of Special Education and Rehabilitative Services on July 24, 2023
- Guidance addresses general supervision responsibilities
- OSERS issued the guidance to better inform SEAs of their responsibilities; guidance is not intended to be a replacement for careful study of IDEA and its implementing regulations

Guidance Purpose

To provide states with:

- “Updated and consolidated guidance interpreting the general supervision requirements of States under IDEA.”
- “The information necessary to exercise general supervision responsibilities under IDEA and ensure appropriate monitoring, technical assistance, and enforcement regarding local programs.”

Guidance Intent

Using the information in this document, and continued guidance, support, and technical assistance, OSEP expects states to build robust general supervision systems to ensure statewide accountability that:

- swiftly identifies and corrects noncompliance;
- increases accountability through the collection of timely and accurate data; and
- ensures the full implementation of IDEA to improve functional outcomes, and early intervention and educational results for children with disabilities.

Supersedes Previous OSEP Guidance

Guidance incorporates longstanding OSEP policy and supersedes the following three previously issued OSEP guidance documents:

- *Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan/Annual Performance Report (SPP/APR) (September 3, 2008)*
- *Office of Special Education Programs (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 (Oct. 17, 2008) (OSEP Memo 09-02)*
- *Questions and Answers on Monitoring, Technical Assistance, and Enforcement (Revised June 2009)*

Guidance Sections

The guidance is organized as a Q&A around topics that impact compliance:

- A. State General Supervision Responsibilities
- B. Identification and Correction of Noncompliance
- C. State Performance Plan/Annual Performance Report
- D. State Annual Determinations
- E. State Enforcement Through Determinations and Other Methods

Clarified and Expanded Positions



Clarifications and Expansions

Through the guidance, OSEP clarified or expanded positions in these areas:

1. Reasonably designed state general supervision systems
2. Timeline considerations for identification of noncompliance
3. Correction of child-specific noncompliance

Reasonably Designed State General Supervision Systems

- OSEP clarified that, as part of a State's general supervision system, a State may not ignore credible allegations about potential noncompliance, to ensure the timely identification of noncompliance.
- **“States should ensure all LEAs are monitored at least once within the six-year cycle** of the State's SPP/APR, presumptively implementing a reasonable timeframe for monitoring.” (See Questions A-11 and B-2.)

Timeline Considerations for Identifying Noncompliance

OSEP articulated reasonable timelines for identifying noncompliance and issuing a written notification of noncompliance (i.e., a finding). (See Questions B-2 and B-7.)

- States must issue a finding of noncompliance, generally within three months of the state's identification of the noncompliance.

Consideration: Timing

34 CFR § 81.31 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

- (a) Meets the standards for proportionality in [§ 81.32](#);
- (b) In the case of a state or local educational agency, excludes any amount attributable to mitigating circumstances under the standards in [§ 81.23](#); and
- (c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under [§ 81.34](#).**"

Poll

Do fiscal and programmatic monitoring teams communicate with one another?

How often does your state conduct fiscal monitoring for each LEA?

- Every 1–3 years
- Every 4–6 years
- More than 6 years

Guidance by Section Related to Fiscal Compliance



Guidance Section A

The guidance is organized as a Q&A around five topics:

- A. State General Supervision Responsibilities**
- B. Identification and Correction of Noncompliance
- C. State Performance Plan/Annual Performance Report
- D. State Annual Determinations
- E. State Enforcement Through Determinations and Other Methods

Question A-1: What is general supervision?

- “A State’s general supervision responsibility over its local programs is a longstanding IDEA requirement and broader than its monitoring responsibilities under IDEA Sections 616 and 642.
- “IDEA’s general supervision responsibility must also be read with other Federal monitoring requirements, including those under the Office of Management and Budget (OMB) Uniform Guidance, the General Education Provisions Act (GEPA) in 20 U.S.C. § 1232d(b)(3)(A), and the Education Department General Administrative Regulations (EDGAR) in 34 C.F.R. Part 76.”

Question A-6: What are a State's responsibilities for ensuring compliance with IDEA and OMB Uniform Guidance requirements?

“For programs with subrecipients such as subgrantees, the SEA must, among other activities:

“(1) **evaluate each subrecipient's risk of noncompliance** with Federal statutes, regulations, and the terms and conditions of the subaward (i.e., subgrants) to determine appropriate subrecipient monitoring;

“(2) **monitor the activities of the subrecipient** as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved; and

“(3) **issue a management decision for applicable audit findings** pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. §§ 200.332 and 200.521.”

Question A-6: What are a State's responsibilities for ensuring compliance with IDEA and OMB Uniform Guidance requirements? (continued)

SEAs must monitor IDEA Part B fiscal requirements such as:

- LEA's compliance with IDEA's maintenance of effort provisions (34 CFR §§300.203 through 300.205)
- LEA's expenditure of a proportionate share of IDEA funds to provide equitable services to children with disabilities placed in private schools by their parents consistent with 34 CFR §300.133.

Consideration: Requirements

IDEA Part B Fiscal Requirements (not a comprehensive list):

- LEA Maintenance of Effort ([34 CFR §§300.203–300.205](#) & [Appendix E](#))
- Proportionate Share ([34 CFR §§300.130–300.144](#) & [Appendix B](#))
- Excess Costs ([34 CFR §300.16](#) & [Appendix A](#))
- Allowable Use of Funds ([34 CFR §300.202](#), [2 CFR §200.403](#), [2 CFR §200.404](#) & [2 CFR §200.405](#))
- CEIS ([34 CFR §300.226](#), [34 CFR §300.646](#))

Consideration: Requirements (continued)

IDEA Part B Fiscal Requirements (not a comprehensive list):

- Financial Management ([2 CFR §200.302](#))
- Cash Management ([2 CFR §75.707](#), [2 CFR §76.707](#), [2 CFR §200.305](#))
- Time and Effort ([2 CFR §200.430](#))
- Inventory Management ([2 CFR §200.313](#))
- Contracts and Procurement ([2 CFR Subpart D Procurement Standards](#))
- Fiscal Record Retention ([2 CFR §200.334](#))
- Written Fiscal Policies and Procedures

Poll

How does fiscal monitoring look in your state?

- Risk-based
- Cyclical
- Hybrid
- Other

Guidance Section B

The guidance is organized as a Q&A around five topics:

A. State General Supervision Responsibilities

B. Identification and Correction of Noncompliance

C. State Performance Plan/Annual Performance Report

D. State Annual Determinations

E. State Enforcement Through Determinations and Other Methods

Question B-13: What is the timeline for correcting noncompliance (i.e., demonstrating timely correction) under IDEA?

“Under the IDEA, there is a longstanding requirement to correct noncompliance as soon as possible, but no later than one year after the State’s written notification of noncompliance. This is codified in the IDEA regulations in 34 C.F.R. §§ 300.600(e) and 303.700(e).”

Question B-16: What steps must a State take to verify an LEA's correction of a fiscal finding of noncompliance with the OMB Uniform Guidance or IDEA's fiscal requirements?

- “Findings of noncompliance related to fiscal requirements may be a result of either a Single State Audit, or of fiscal monitoring, and would not reflect individual child-specific noncompliance.
- “Fiscal findings also may be made through the State’s fiscal monitoring process, which is part of the State’s overall general supervision system.
- “In either case, the steps required to verify correction of noncompliance depend on the nature of the fiscal finding of noncompliance.”

Consideration: Subrecipient Monitoring

2 CFR §200.332 Requirements for Pass-Through Entities

- Providing training and TA on program-related matters.
- Conducting on-site reviews of the subrecipient's program operations.
- Arranging for agreed-upon procedures engagements (audit services).

Consideration: Noncompliance

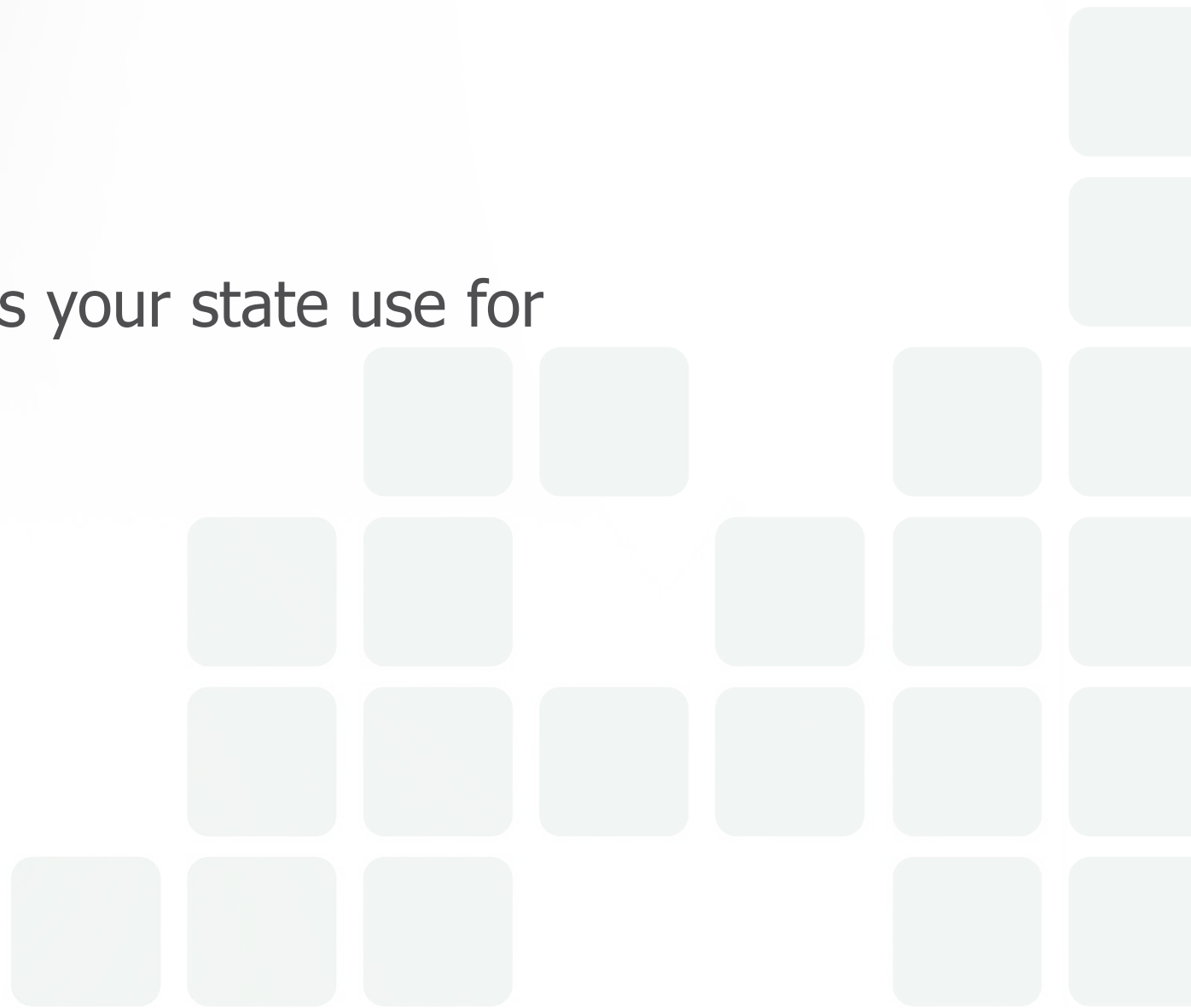
2 CFR §200.339 Remedies for Noncompliance

- Imposing Special Conditions
- Temporarily withholding cash payments pending correction of the deficiency or more severe enforcement action
- Disallowing all or part of the cost of the activity/action not in compliance
- Suspending or terminating the Federal award
- Withholding further Federal awards for the program or project

Poll

What actions or strategies does your state use for noncompliance in your state?

Are they applied consistently?



Guidance Section C

The guidance is organized as a Q&A around five topics:

A. State General Supervision Responsibilities

B. Identification and Correction of Noncompliance

C. State Performance Plan/Annual Performance Report

D. State Annual Determinations

E. State Enforcement Through Determinations and Other Methods

Question C-1: What must a State include in its annual SPP/APR submission related to its system of general supervision?

The introduction must “include a description of the general supervision system components that are in place to ensure that the respective IDEA Part B and Part C requirements are met (e.g., integrated monitoring activities, the State data system, review of processes and results, **fiscal management**, dispute resolution). In addition, for any indicator where the State has selected ‘State monitoring’ as its data source, the State must ‘describe the method used to select the LEAs or EIS programs for monitoring.’”

Guidance Section D

The guidance is organized as a Q&A around five topics:

- A. State General Supervision Responsibilities
- B. Identification and Correction of Noncompliance
- C. State Performance Plan/Annual Performance Report
- D. State Annual Determinations**
- E. State Enforcement Through Determinations and Other Methods

Question D-3: What other factors may a State consider when making annual determinations of the performance of LEAs or EIS programs?

“A State may also want to consider any monitoring findings it has made that are not already included in data submitted under the SPP/APR indicators (e.g., noncompliance identified with an IDEA requirement unrelated to an SPP/APR indicator).

“Additionally, a State may establish criteria that preclude a ‘meets requirements’ determination for an LEA under certain circumstances. Such circumstances could include an LEA program whose grant award is under Specific Conditions imposed by the State. The State’s criteria should be transparent so that stakeholders, including LEAs are aware of the standards that the State is using to make these critical decisions, which could lead to enforcement actions.”

Consideration: Noncompliance

2 CFR § 200.339 Remedies for Noncompliance:

- Imposing Special Conditions
- Temporarily withholding cash payments pending correction of the deficiency or more severe enforcement action
- Disallowing all or part of the cost of the activity/action not in compliance
- Suspending or terminating the Federal award
- Withholding further Federal awards for the program or project

Guidance Section E

The guidance is organized as a Q&A around five topics:

- A. State General Supervision Responsibilities
- B. Identification and Correction of Noncompliance
- C. State Performance Plan/Annual Performance Report
- D. State Annual Determinations
- E. State Enforcement Through Determinations and Other Methods**

Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA does not meet the requirements of IDEA?

- “IDEA requires States to make an annual determination of the extent to which each LEA meets the requirements and purposes of IDEA based on the information in the SPP/APR, information obtained through monitoring visits, and any other publicly available information.
- “The State is then required to take certain enforcement action(s) if an LEA needs assistance for two consecutive years, needs intervention for three or more consecutive years, or at any time the State determines that an LEA or EIS program needs substantial intervention or that there is a substantial failure to comply with any Part B eligibility.”

Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA does not meet the requirements of IDEA? (continued)

“Needs Assistance for Two Consecutive Years

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

“1. Advise the LEA of available sources of TA that may help address the areas in which the LEA needs assistance and require the LEA to work with the appropriate sources of TA.

“2. Identify the LEA as a high-risk grantee and impose Specific Conditions on the LEA’s IDEA Part B grant award.”

Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA does not meet the requirements of IDEA? (continued)

“Needs Intervention for Three or More Consecutive Years

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

“1. Require the LEA to prepare a corrective action plan or improvement plan to correct the identified area(s).

“2. Withhold, in whole or in part, further payments under Part B to the LEA.”

Question E-1: What are the enforcement actions that a State must, or may, impose under IDEA if it makes a determination that an LEA does not meet the requirements of IDEA? (continued)

“Needs Substantial Intervention

“A State’s determination that an LEA ‘needs substantial intervention,’ at any time, must result in the State’s withholding [after reasonable notice and opportunity for a hearing] in whole or in part, any further payments under Part B to the LEA.

“For all three of these determination categories, the State may take additional enforcement actions that it identifies as appropriate under its determination’s policy.”

Question E-2: Under what circumstances must a State propose to withhold IDEA funds from an LEA after making an annual determination?

“As stated in Question E-1, a State’s determination under Section 616 (Part B) that an LEA needs substantial intervention, at any time, must result in the State’s withholding, in whole or in part, any further payments under Part B to the LEA....”

“States should have policies and procedures which describe how any IDEA funds withheld from an LEA would be managed.”

Question E-3: May a State take enforcement action unrelated to the annual determination for an LEA?

“Yes, if the State has such authority. Under 34 C.F.R. §§ 300.608 and 303.708, there is nothing in IDEA that restricts a State from utilizing any other authority available to it to monitor and enforce IDEA requirements.”

Question E-4: What steps must an SEA take when proposing to withhold IDEA funds from an LEA's IDEA Part B grant?

“If the SEA determines that withholding, in whole or in part, an LEA's IDEA Part B grant is an appropriate enforcement action, this would be considered a determination on LEA eligibility, and the SEA must notify the LEA of that determination and provide the LEA with reasonable notice and an opportunity for a hearing....”

Associated citations: 34 CFR §§76.401(a)(d), 300.155, 300.221, and 300.605

Question E-6: What are other enforcement actions a State could consider when previous enforcement actions have been unsuccessful in ensuring correction of noncompliance?

“States have used a variety of additional actions to facilitate improved compliance by their LEAs, including those that are available to them and described under IDEA (e.g., corrective action plans or Specific Conditions).

“In addition to the enforcement actions described in IDEA, a State’s system of progressive sanctions and enforcement provisions could include placing a State-designated management team at the local level to develop and implement the policies, procedures, and practices necessary to bring the agency into compliance.

- “This model can include training, TA, and coaching new or existing local staff so they can reassume operations and the State can gradually reduce its on-site support.”

Question E-6: What are other enforcement actions a State could consider when previous enforcement actions have been unsuccessful in ensuring correction of noncompliance? (continued)

“Under IDEA Part B, the SEA may take over the direct provision of special education and related services from an LEA in certain circumstances.

“In one such circumstance, if an SEA determines that the LEA is unable to establish and maintain programs of FAPE that meet Part B requirements, the SEA must use the payments that would otherwise have been available to the LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA.”

Consideration: Monitoring Requirements

34 CFR § 300.600 State monitoring and enforcement.

(a) The State must—

(1) Monitor the implementation of this part;

(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);

(3) **Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and**

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

Consideration: Enforcement

34 CFR § 300.604 Enforcement.

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

(1) **Advises the State of available sources of technical assistance** that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and requires the State to work with appropriate entities. See full citation for examples.

(2) **Directs the use of State-level funds under section 611(e) of the Act on the area or areas in which the State needs assistance.**

(3) **Identifies the State as a high-risk grantee and imposes special conditions on the State's grant under Part B of the Act.**

Consideration: Enforcement (continued)

34 CFR § 300.604 Enforcement.

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

(1) The Secretary may take any of the actions described in [paragraph \(a\)](#) of this section.

(2) The Secretary takes one or more of the following actions:

(iii) For each year of the determination, **withholds not less than 20 percent and not more than 50 percent of the State's funds under section 611(e) of the Act**, until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

(iv) **Seeks to recover funds under section 452 of GEPA.**

(v) **Withholds, in whole or in part, any further payments to the State under Part B of the Act.**

For a complete list see the full citation.

Consideration: Enforcement (continued)

34 CFR § 300.604 Enforcement.

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

(1) Recovers funds under section 452 of GEPA.

(2) Withholds, in whole or in part, any further payments to the State under Part B of the Act.

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Consideration: Withholding Funds

34 CFR §300.605 Withholding funds.

34 CFR §300.180 Hearing official or panel.

34 CFR §300.181 Hearing procedures.

34 CFR §300.182 Initial decision; final decision.

34 CFR §300.183 Filing requirements.

34 CFR §76.401 Disapproval of an application—opportunity for a hearing.

Additional Fiscal Considerations

34 CFR §300.705 Subgrants to LEAs.

34 CFR §300.205 Adjustment to local fiscal efforts in certain fiscal years.

34 CFR §300.227 Direct services by the SEA.

Poll

- Does your SEA have policies and procedures detailing the continuum of enforcement actions that the SEA will take based on LEA determinations and other data?
- How is that communicated to LEAs?

Open Door



23-01 Questions

- Has your team revised any of its policies and procedures based on the new guidance?
- What additional steps must your team take to be in compliance?
- What additional questions or guidance would you like to receive from OSEP?

23-01 Implementation

- How can we leverage this new guidance to prop up other general supervision components?
- What does “meaningful” enforcement look like?
- How does fiscal compliance result in improved outcomes for students?

Next Webinar: Continue the Discussion

CIFR 2023 Fiscal Webinar: SEA Enforcement Mechanisms Under IDEA Part B and Utah's Experience

December 5, 2021

2:00 – 3:00 pm ET / 11:00 am – 12:00 pm PT

Register here: <https://wested.zoom.us/meeting/register/tJwsd-ivrDouGN35gPwCfi2LJ5ijKGbm1zsP>



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