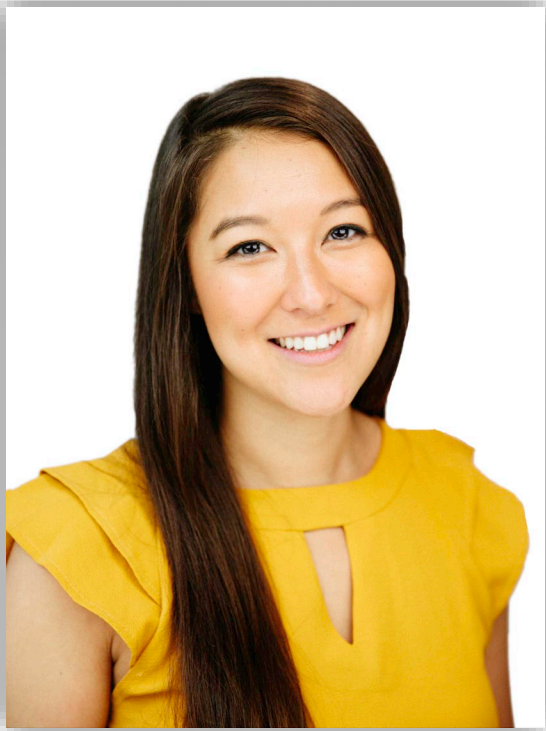


SEA Enforcement Mechanisms Under IDEA Part B and Utah's Experience

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Overview of Today's Webinar

Introduction

- Regulatory Guidance

Utah's Experience

State Discussion

Chat Poll

What experience do you have implementing enforcement mechanisms to ensure compliance with the IDEA fiscal requirements to improve outcomes?

Enforcement Mechanisms

Tools the state may use, informed through monitoring activities as part of its general supervision system, to:

- Hold LEAs accountable
- Improve outcomes for students with disabilities
- Promote compliance with IDEA

As a result of:

- LEA determinations
- Monitoring activities
- Longstanding, systemic, or extensive findings of noncompliance

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

2 CFR §200.339

Specific Conditions

SEAs may adjust specific conditions based on the following factors:

- Evaluation of risk
- History of compliance
- Application or recipient's ability to meet expected performance goals
- Responsibility determination

2 CFR §200.208(b)

Specific Conditions (continued)

If an SEA uses specific conditions, they must notify the subrecipient of the:

1. Nature of the additional requirements,
2. Reason,
3. Action required to remove the additional requirements,
4. Time allowed to complete the actions (if applicable), and
5. Method for requesting reconsideration.

2 CFR §200.208(d)

State Enforcement Through Determinations

State enforcement actions apply as follows:

- **Needs Assistance for Two Consecutive Years** takes one or more of the following:
 - Advise of available technical assistance
 - Identify the LEA as high-risk
 - Special conditions

State Enforcement Through Determinations

- **Needs Intervention for Three or More Consecutive Years**
 - Any of the actions described in **Needs Assistance**
 - Takes one or more of the following actions:
 - Require a corrective action plan
 - Withhold, in whole or in part, future payments
- **Needs Substantial Intervention**
 - Withhold, in whole or in part, further payments

Continuum of Incentives and Sanctions

1. Use incentives as well as enforcement actions or sanctions to motivate LEAs to improve outcomes and compliance
2. Reward progress toward the goal, not just reaching it
3. Be transparent with your procedures: clearly stated, publicly available list of the continuum
4. Involve interested groups in developing a continuum of incentives and sanctions
5. Use data to drive decision making to ensure that incentives, enforcement actions, or sanctions are meaningful

Withholding Funds

34 CFR §300.605: Withholding funds.

- Opportunity for a hearing with reasonable notice
- Suspend payments pending the outcome of a hearing
- Nature of withholding

Disapproval of an Application

- The SEA must provide the LEA with notice and an opportunity for a hearing before it may disapprove the application.
- The SEA must provide a hearing within 30 days of receiving a request.
- The SEA must issue a written ruling including findings of fact and reasons for the ruling no later than 10 days after the hearing.

34 CFR §76.401

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.

Utah's Experience Using Enforcement Mechanisms



Utah State Board of Education (USBE) Outline

- Statutes and Rules
- Activities and Enforcement Actions Taken
- Timing of Enforcement Actions
- SEA Implications
- LEA Implications

Statutes and Rules

- Utah State Board of Education is afforded broad supervision authority of public education by state statute
- Utah State Board of Education is granted rule making authority by state statute
- Utah State Board of Education is granted broad authority to impose corrective action for violations of education regulations by state statute

Statute and Rules

■ Supervision Authority

- 53E-2-401(2)(b), “General control and supervision” as used in Utah Constitution, Article X, Section 3, means directed to the whole system

■ Rule Making Authority

- 53-2-401(4)(a), “...the state board may make rules to execute the state board's duties and responsibilities under the Utah Constitution and state law”

■ Corrective Action

- 53E-2-(401)(8)(a), “If an education entity violates this public education code or rules authorized under this public education code, the state board may, in accordance with the rules described in Subsection (8)(c):”

Activities and Enforcement Actions Taken

USBE monitoring activities are comprised of the following:

- Investigations by fiscal and program staff
- Monitoring activities by fiscal and program staff
- Audits by USBE Internal audit

Activities and Enforcement Actions Taken

Examples of past enforcement actions

- Submit updated policies and procedures
- Submit monthly program reports
- Repayment of unallowable costs
- Suspension of State Funds
- Suspension of Federal Award
- Direct use of funds
- Require independent technical assistance at LEA's cost

Timeline of Enforcement Actions

- LEA is identified for monitoring
- LEA is notified of monitoring
- LEA monitoring begins with LEA staff interviews and documentation review
- Document review demonstrates non-compliance with rules and regulations
- Notice of Non-Compliance is sent to LEA along with instructions on appeal rights
- Substantial non-compliance requires suspension of award until non-compliance is rectified
- Notice of award suspension with 90 days to correct non-compliance

Timeline of Enforcement Actions

- If LEA does not correct non-compliance with 90 days, then award will be terminated
- Notice of intent to terminate award is sent to LEA with appeal rights
- USBE will contract with independent hearing officer to hold public hearing
- Public hearing held for LEA
- Hearing officer issues opinion within 10 days
- Hearing officer opinion will become final absent filing of additional legal procedures

SEA Implications

- SEA staff must have thorough understanding of available enforcement mechanisms and the SEA's role in the process
- SEA staff must provide timely notification to LEA for each step
- SEA must have written rules or regulations that govern that application of enforcement mechanisms
- SEA must be ready and willing to dedicate significant time and effort to enforcement activities

LEA Implications

- LEAs must understand the potential outcomes of non-compliance
- LEAs need recurring training on compliance with applicable federal and state regulations
- LEAs need to establish cooperative relationship with SEA
- SEAs need to clearly communicate in writing to LEAs the right to a hearing for each step of the enforcement actions

State Discussion



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