

Montana Special Education Compliance Monitoring Process



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Technical Assistance guides are developed by the Division of Special Education to provide guidance to schools, parents and advocates regarding eligibility for and the implementation of services to students with disabilities under the Individuals with Disabilities Education Act, the Administrative Rules of Montana and Montana statutes.

The purpose of this guide is to provide a description of the compliance monitoring process the Montana Office of Public Instruction implements to ensure that public school districts, state-operated and state-supported programs provide special education and related services in accord with the Individuals with Disabilities Education Act (IDEA) regulations and state laws and rules.

The requirements for the administration of special education in Montana can be found in Montana's fully approved State Plan. The State Plan is available on the Office of Public Instruction's Web site at:

http://www.opi.mt.gov/pdf/SpecED/12MTPartB_App.pdf

If you have questions regarding the special education compliance monitoring process after reviewing this guide, please contact the Division of Special Education at (406) 444-5661 or 1-888-231-9393.

You can find an electronic copy of this guide and other resources on our Web site at:

<http://www.opi.mt.gov/Programs/SpecialEd>

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Introduction

As part of its general supervision responsibilities under the Individuals with Disabilities Education Act (IDEA), the Office of Public Instruction (OPI) uses its compliance monitoring procedure to ensure that all children with disabilities receive a free appropriate public education (FAPE) in accord with the Individuals with Disabilities Education Act and Montana statutes and administrative rules. As one step of its compliance monitoring procedures, the OPI reviews individual student records to verify that the district's child find procedures, evaluation and re-evaluation processes, and the Individualized Education Programs (IEP) procedures meet Montana's standards. The student record review also addresses procedural safeguards and notices, suspension and expulsion, post-high school transition, least restrictive educational environment and transfer of students from other Montana districts or out of state, as well as the provision of services to parentally enrolled students with disabilities in private schools.

Compliance monitoring activities consist of:

- Review of a sample of student records to examine current practices and documentation;
- Visits to selected schools, when appropriate; and
- Contact with individual teachers and specialists to discuss records selected for review, when appropriate.

Following the on-site record review, the OPI staff meet to determine whether the documentation in individual student records met the requirements of IDEA and the Administrative Rules of Montana (ARM) governing special education. This process is used to determine whether the district is in full compliance with both federal and state regulations. Following this meeting, the OPI informs the district of the outcome of the compliance monitoring review in a written report. When necessary, the OPI directs districts to take actions necessary to come into compliance in a timely manner.

Selecting Districts for Compliance Monitoring

The OPI meets its federal compliance responsibilities in a number of ways, one of which is regularly scheduled compliance monitoring of local public school districts, state-operated programs, and state-supported programs.

1. How are districts selected for compliance monitoring?

Each district can expect a compliance monitoring review once every five years. Districts that are members of a special education cooperative or consortia will have compliance monitoring in the same year as all other members of the cooperative or consortia. The five-year cycle is based on statewide distribution of public school districts, participation in a special education cooperative or consortia, and district size. Current lists of all public school districts, special education cooperatives, and multiple-district consortia by each year of the five-year cycle of compliance

monitoring can be found on the OPI Website:
<http://www.opi.mt.gov/pdf/SpecED/Mon/ScheduleByYear.pdf>.

2. Can a district be subject to a compliance monitoring visit other than on the five-year cycle?

Yes. If the OPI receives information that suggests a district may not be meeting all of the requirements of the IDEA regulations and Montana Administrative Rules, a compliance review might be warranted. Examples of information that would be of concern would be findings from a due process or state complaint, fiscal concerns (high-risk status, concerns regarding unallowable costs, etc.), multiple parental complaints, or very poor student performance data.

3. How are state-operated programs and state-supported programs selected for compliance monitoring?

State-operated programs and state-supported programs can expect a compliance monitoring review once every three years. State-operated programs are: the Montana School for the Deaf and Blind, Montana State Prison, Pine Hills Youth Correctional Facility, and Riverside Youth Correctional Facility. State-supported programs are those residential programs that provide special education to children with disabilities under contract with the OPI. Shodair Children's Hospital and Intermountain Children's Home are examples of state-supported programs providing special education. Current lists of all state-operated and state-supported programs by each year of the three-year cycle of compliance monitoring can be found on the OPI Website: <http://www.opi.mt.gov/pdf/SpecED/Mon/ScheduleByYear.pdf>

4. When will a district be informed of a scheduled compliance monitoring?

The Office of Public Instruction posts the current Compliance Monitoring Schedule on its Web page: <http://www.opi.mt.gov/pdf/SpecED/Mon/ScheduleByYear.pdf>. District Superintendents and special education administrators will receive a general notice of schools scheduled for compliance monitoring prior to the beginning of the school year (usually in the spring of the prior school year). The district/special education director will be contacted by the lead monitor to offer pre-monitoring training assistance and to schedule dates of the Compliance Monitoring review.

5. Who will be notified of the scheduled compliance monitoring review?

The district's superintendent and special education director will receive notice of upcoming compliance monitoring. When a district is a member of a special education cooperative, both the special education cooperative director and the district's responsible school official will receive the notice of upcoming compliance monitoring. In the case of a district that participates in a consortia, the responsible school official of each member district will receive notice of the upcoming compliance monitoring and a copy of the notice will be sent to the administrator of the consortia.

The notice will identify the date of the compliance monitoring and other pertinent information, including the location at which monitors will review student records.

6. Who will conduct the monitoring review?

Record reviews are completed by OPI compliance monitoring specialists and OPI Part-time Employees. Guest monitors may be invited to observe the process. Guest monitors are personnel from those districts that will be monitored during the next monitoring cycle.

7. Will monitoring specialists visit individual school buildings and classrooms?

The compliance monitoring may or may not include visits to individual school buildings, meetings with individual special education teachers, speech and language pathologists, other special education personnel, general education teachers, or administrators. The OPI will determine whether or not visits occur. If a monitor needs to contact a teacher, a meeting will be scheduled at a time that is convenient for the teacher.

8. Where will the monitors review student records?

The OPI Monitoring Specialist will coordinate with the district's special education director or special education cooperative director, building principal or other administrator to identify a location to conduct the record reviews. Examples may include: classrooms, conference rooms, board rooms, and facilities outside the school. The monitors will request a location that has wireless internet access.

9. Will it be necessary to hire substitute teachers or otherwise arrange leave time for special education teachers for the day of the monitoring review?

No.

Selecting Student Records for Review

The monitoring specialist will work with the district's special education director or special education cooperative director to prepare for the compliance monitoring review. One aspect of the preparation will be selecting a sample of student records for review.

10. How are records chosen for review?

The number of student records sampled will be proportional to the number of special education teachers and speech pathologists providing special education and related services in the district. The minimal sample will be twice the number of licensed special education teachers and speech pathologists providing special education and related services in the district. Larger samples will be drawn when the characteristics of the student population and other circumstances within the

district require. The monitoring may sample additional records of students for whom there are unique concerns. The district will identify these students using the OPI *Students with Unique Concerns* form. An electronic prefilled copy of the *Students with Unique Concerns* form will be sent to the district approximately four weeks before the onsite visit. The Achievement in Montana (AIM) data base and other data bases at the OPI will be used to prefill the form. The district will review the form, make necessary corrections and/or additions, and electronically send the form back to the OPI. A blank copy of this form can be found on the OPI Website: <http://opi.mt.gov/pdf/SpecED/Mon/14SWUC.pdf>.

11. What is the *Students with Unique Concerns* form?

The *Students with Unique Concerns* form identifies students whose needs call for particular attention. The review of these records will identify whether appropriate procedures were implemented when addressing the students with unique concerns. A blank copy of this form can be found on the OPI Website: <http://opi.mt.gov/pdf/SpecED/Mon/14SWUC.pdf>.

12. Who are students with unique concerns?

Students with unique concerns include children with disabilities who, during the current school year, met one of the conditions listed below:

- Transfer students;
- Have surrogate parents;
- Attend private schools;
- Have aversive treatment plans;
- Underwent a manifestation determination review during the school year;
- Have been suspended for more than seven days; or
- Have been expelled;
- Have graduated during the past year;
- Have exited all special education services;
- Were found to not be eligible for services under IDEA;
- IDEA services were revoked by the guardian(s); and
- Students enrolled in a Day Treatment facility.

13. When would the monitor contact a teacher or specialist to discuss records?

The monitor may contact the teacher or specialist when further information about the student is needed, the special educator's input is necessary to answer a question from the record, or the monitor wishes to discuss the student or special education services.

Individual teachers and specialists are welcome to contact the monitors during the monitoring visit. Individual teachers are invited to an exit debriefing with the monitoring specialist at the conclusion of the onsite review.

14. How is the District notified of the review results?

District record review results are summarized and reported to the district’s responsible school official either via e-mail, regular mail or both within ten (10) days of the review. Copies will be sent to the district’s special education director or cooperative director, as appropriate. The report will include all noncompliant items found during the review, as well as commendations for the positive work being done.

15. Do noncompliant items have to be corrected and in what time frame?

All noncompliant items must be corrected within either 30 days or 60 days from the date indicated on the report sent to the district.

16. How are items of noncompliance corrected?

Noncompliant items are identified by individual student. Corrections differ by item and may be done by:

1. Having meetings, and/or
2. Changing special education paperwork (IEP Amendment, ER Addendum), or
3. The district providing a letter of assurance stating changes to policy and practice have been made.

17. What happens if an item of noncompliance is not corrected within the 30 or 60-day timeline?

Any items which are not corrected become “findings.” A monitoring report is sent to the district with these findings. The district has one year from the date of the onsite visit to correct the findings.

18. If the district completes all the corrections within the 30 or 60-day timeline, is the district completely finished with the review process?

No. When items of noncompliance are found during the review they must first all be corrected **and** secondly, depending on the severity, high number or instance, and other factors, “evidence of sustained post-monitoring compliance” must be provided to the OPI within 60 days of the review.

19. What is “evidence of sustained post-monitoring compliance?”

“Evidence of sustained post-monitoring compliance” is a process that requires the school district to submit additional documents indicating that new and future documents will continue to meet compliance. Documents submitted as “evidence of sustained post-monitoring compliance” must be provided to the OPI within 60 days of the date indicated on the report.

20. What happens if “evidence of sustained post-monitoring compliance” is not completed within the 60-day timeline?

Any items that do not have corresponding “evidence of post-monitoring compliance” documents submitted within the 60-day timeline will become “findings.” A monitoring report is sent to the district with these findings. The district has one year from the date of the onsite visit to correct the findings.

21. Can the OPI still order the district to take specific actions if both the correction and evidence of post-monitoring compliance are completed within the timeline?

Yes. Even if both the correction and evidence of sustained post-monitoring compliance are completed, the OPI may require the district to continue to provide evidence of changes in policy and practice, conduct or participate in additional staff training, or the OPI may provide other types of technical assistance to the district.

Validation

After the compliance monitoring, the Division of Special Education staff meet, review the data gathered during the compliance review, discuss any findings and other concerns identified, and, if appropriate, determine corrective actions and/or other post-monitoring follow-up activities. This meeting includes the State Director, one or more specialists with monitoring responsibilities, and, when possible, the Early Assistance Program Manager.

During the course of the validation meeting, the special education staff may have identified a significant number of incidences of noncompliance which, even though the district has corrected, will require some follow-up activities. The follow-up activities, which the OPI calls ongoing evidence of change, may include the submitting of additional documents and the provision of additional training if necessary. The purposes of the ongoing evidence of change is to further validate that the district continues to be in compliance in providing FAPE and to help improve outcomes for students.

Following this meeting, the OPI informs the district of the outcomes of the compliance monitoring review in a written report.

22. What information will be contained in the written report received by the district following the compliance review?

The written report may include:

- Strengths in the district’s special education services,

- Technical assistance,
- Finding(s) of noncompliance (Corrective Action Plan),
- One or more corrective actions to address each finding of noncompliance,
- Reference to a confidential letter when appropriate (see question 28) and/or
- Ongoing evidence of change requirements (see question 21).

23. When is an ongoing evidence of change necessary?

The OPI may require ongoing evidence of change whenever there is evidence that suggests that the correction of the identified noncompliance is not sufficient to establish that the district has changed its practices to ensure the provision of FAPE to all students. The OPI will address this issue by including an ongoing evidence of change requirement in the written report. The ongoing evidence of change may include the submission of additional documents and additional training if necessary.

24. What is a finding of noncompliance?

The failure of a district to correct all incidences of noncompliance during the required timeline period and/or the failure of a district to submit the necessary “evidence of sustained post-monitoring compliance” within the 60-day timeline (see question 19) results in a finding of noncompliance. Each finding of noncompliance cites a specific regulation, either federal or state, identified through a review of individual student records and describes the nature of the noncompliance.

25. What is a Corrective Action Plan?

A Corrective Action Plan (CAP) results from a finding of noncompliance and identifies an issue(s) that requires a change in policy, procedure, or practice to ensure full compliance with the IDEA and Montana laws and rules. A CAP establishes that the district must immediately stop the noncompliant practice and timelines for the district to implement policies and procedures to address the concern, implement required actions to produce permanent changes, review student records to demonstrate the effect of intervention, and continue these compliant practices.

26. What does a Corrective Action Plan require?

Each CAP will have these elements: finding of noncompliance, required action, evidence of change, and timelines. In all cases, a corrective action plan requires a response from the district or program to document changes in policy and/or procedure within a clearly defined timeframe.

A corrective action plan requires that the district do the following:

- Modify its policy, procedure, or practice to comply with the regulation cited;
- Inform personnel to ensure that the changes occur and become established practices; and
- Demonstrate that required changes occur in practice, usually by sending copies of Individualized Education Programs (IEP) or Evaluation reports to the Division of Special Education for review.

27. What is a required action?

A required action is a description within the CAP of the activities that the district must complete to correct a finding of noncompliance or a pattern of noncompliance. The OPI will determine and describe the required action.

28. What constitutes evidence of change?

Evidence of change is a description within the CAP or the Ongoing Evidence of Change page of the report, of what documentation will verify that the finding of noncompliance or a pattern of noncompliance has been resolved appropriately.

29. What is a timeline?

Each CAP or the Ongoing Evidence of Change requirements in the written report contains a timeline that states the date by which the evidence of change must be completed and received by the OPI. The timeline takes into account the amount of time necessary to revise policy and/or procedure, secure parent and/or school board approvals as necessary, and deliver training to staff, as well as to demonstrate the results of the change in policy or practice in the Evaluation reports, IEPs and other components of student records.

30. What is a confidential letter?

When the Division of Special Education staff determines that an individual student is not receiving FAPE, the OPI addresses that concern with a confidential letter. A confidential letter is a directive to the district that:

- Contains personally identifiable information regarding one or more students;
- Cites a specific violation of federal or Montana regulations governing the provision of FAPE;
- Requires the district to take specific required actions;
- Defines timelines for completing these actions; and
- Identifies the method for reporting completion of the required actions.

The confidential letter directs the district to review and revise, as appropriate, the student's evaluation, IEP, or other procedure as necessary. The OPI will generally send a confidential letter, when necessary, prior to the compliance monitoring report. The letter remains confidential because it includes personally identifiable information.

31. Is there assistance available for addressing the required action(s)?

Yes. The district may request assistance from the OPI, Division of Special Education. Also, in some instances and dictated by the circumstances, assistance or training from the OPI will be required as part of the ongoing evidence of change or the corrective action plan.

32. What is technical assistance?

Technical assistance is guidance from the OPI that provides suggestions to improve the quality of the district's special education services. Technical assistance does not require the district to implement the suggestions.

33. How does a district know when it has successfully demonstrated compliance with a corrective action plan or ongoing evidence of change requirements?

After completing the requirements of a corrective action plan or ongoing evidence of change requirements, the responsible school official will receive a letter verifying the district's compliance with the issues identified in the monitoring report. The verification letter will be sent from the OPI Compliance Monitoring Unit Manager or the Director of the Division of Special Education to the district's responsible school official. Copies will be sent to the district's special education director or cooperative director, as appropriate.