

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 document 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 regulations and state laws and rules.

The requirements for the conduct 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.

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

[Montana Special Education Compliance Process](#)

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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 Federal Regulations and Montana Administrative Rules (ARM). 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:

- Visits to selected schools, virtual monitoring using the hard copy files and the AIM system to access records, when appropriate
- Review of a sample of student records to examine current practices and documentation
- Contact with individual teachers and specialists to discuss records selected for review; and
- Monitoring results are sent to Superintendent and copied to the Special Education Director.

Selecting Districts for Compliance Monitoring

The OPI meets its general supervisory responsibilities in multiple ways, one of which is regularly scheduled compliance monitoring of 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. [Compliance Monitoring Schedule](#) lists all public-school districts, special education cooperatives, and multiple-district consortia by each year of the five-year cycle of compliance monitoring.

2. 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-supported programs are those residential programs that provide special education to students with disabilities under contract with the OPI. The state-operated programs and state-supported programs are listed in Appendix 1.

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

The Office of Public Instruction posts the current [Compliance Monitoring Schedule](#) on its website. At least 6 months prior to monitoring, District Superintendents and Special Education administrators receive a general notice of schools scheduled for compliance monitoring prior to the beginning of the school year. The district and the OPI work together to determine a date for the Compliance Monitoring review. The offering of an optional pre-monitoring training is offered at this time. This training consists of outlining the monitoring process overall, provides details of proper documentation, and recommendations for best practices.

4. 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 consortium, the responsible school official of each member district and the special education director will receive notice of the upcoming compliance monitoring.

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

5. Who will conduct the monitoring review?

OPI will assign a staff member as the lead monitor and will act as the point of contact for all correspondence associated with the monitoring process. Additional OPI staff and Short-Term Works will assist with the compliance monitoring review.

6. Will School Improvement 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 visits occur. If the OPI will not visit in person, monitoring will take place virtually using the AIM system. When monitoring takes place virtually, meetings may take place in virtual formats. If a monitor needs to contact a teacher, a meeting will be scheduled at a time that is convenient for the teacher.

7. Where will the monitors review student records?

In the case of onsite monitoring, the lead monitor 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. Virtual monitoring can also occur using the AIM system.

Selecting Student Records for Review

The lead monitor 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.

8. How are records chosen for review?

Two full files will be selected for each special education case manager in the district. Records will be selected in the following order: records for students who have been newly identified for special education services this year; IEPs developed since the beginning of the school year; evaluation reports developed since the beginning of the school year; and then records from the previous year with the most recent chosen first. The monitoring process will 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 that will be sent by the monitor to the district prior to monitoring.

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

The *Students with Unique Concerns (SWUCs)* spreadsheet 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.

The form is sent by the OPI to each school district that is scheduled for a compliance monitoring. School district personnel complete the *SWUCs* spreadsheet and return it to the OPI prior to the scheduled monitoring.

10. Who are students with unique concerns?

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

- Transfers
- Have surrogate parents
- Attend private schools
- Have aversive treatment plans
- Underwent a manifestation determination review during the school year
- 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)

11. 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. Every case manager can debrief with the monitor at the end of the monitoring to discuss their records. Debriefings will occur with the case manager only unless the case manager invites other staff members to attend.

Individual teachers and specialists are welcome to contact the monitors at any time.

12. 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 email, 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.

13. 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 as indicated on the report sent to the district.

14. How are items of noncompliance corrected?

Noncompliant items are identified by individual student. Corrections and timelines for specific items are detailed in the attachments to the 10-day letter and may include the following:

- Having a new Individualized Education Program or Evaluation Report (ER) meetings.
- IEP Amendments.
- ER addendums; or
- the district providing a letter of assurance changes have been made.

15. 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 Corrective Action Plan (CAP) letter is submitted to the district after 90 days from the monitoring. The district has one year to correct the findings.

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

No. When items of noncompliance are found during the review, they must first all be corrected **and** secondly “Evidence of Sustained Post-monitoring Compliance (ESPC)” must be provided to the OPI within 60 days of the review.

17. What is “Evidence of Sustained Post-monitoring Compliance?”

“Evidence of Sustained Post-monitoring Compliance” are additional documents submitted after the initial corrections are made. These are documents completed after the on-site or virtual monitoring. They cannot be documents created before the monitoring.

18. What happens if “Evidence Sustained of Post-monitoring Compliance” is not completed within the 60-day timeline?

Any items that do not have corresponding “Evidence of Sustained Post-monitoring Compliance” documents submitted within the 60-day timeline will become “finding.” A Corrective Action Plan letter is sent to the district with these findings. The district has one year to correct the findings.

Validation

After the compliance monitoring and 60-day corrections period, a 75-day meeting is scheduled involving the Division of Special Education staff to: review data collected during the compliance review; discuss the details and prevalence of concerns identified; and review the completion of corrections and evidence of sustained post-monitoring compliance. This meeting includes the Director and, or Assistant Director of the Division of Special Education, one or more specialists with monitoring responsibilities, specialists from the AIM unit, data unit, and often the Early Assistance Program Manager and possibly specialists from the Professional Development unit.

If concerns are identified, the staff discuss whether the frequency of concerns identified are systemic to the district's special education program. They also discuss isolated instances of noncompliance or other concerns evident in one or more records, if any. In other cases, local practices may not reach the level of a systemic concern nor indicate that a particular student is not receiving FAPE but suggest that changes in practice may improve outcomes for students. Following this meeting, the OPI informs the district of the outcomes of the compliance monitoring review in a written report.

19. 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.
- One or more corrective actions to address each finding of noncompliance
- Ongoing evidence of change requirements; and
- Reference to a Confidential Letter when appropriate.

20. When is a concern determined to be systemic?

A concern is determined to be systemic when a large proportion of record reviews indicate a pattern of noncompliance, and that pattern reflects the district's policies and/or procedures governing the delivery of special education. The OPI will address a systemic issue by writing a finding of noncompliance and developing a Corrective Action Plan (CAP) to resolve the compliance issue.

21. What is a finding of noncompliance?

Failure to meet regulatory standards is 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.

22. What is a Corrective Action Plan?

A Corrective Action Plan (CAP) results from a finding of noncompliance and identifies a systemic issue that requires a change in policy, procedure, or practice to ensure full compliance with the IDEA and Montana laws and rules. A CAP establishes timelines for the district to stop the noncompliant practice, 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.

23. 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 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 or other additional document reports to the Division of Special Education for review.

24. What is a required action?

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

25. What is a timeline?

Each CAP contains a timeline that states the date by which the evidence of change must be completed and received by the OPI. The timeline considers 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.

26. 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.

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

Yes. The district may request assistance from the OPI, Division of Special Education.

28. What is technical assistance?

Technical assistance provides suggestions that may improve the quality of the district's special education services. Technical assistance does not require the district to implement the suggestions. Technical assistance may come in the form of various professional development opportunities through the OPI.

29. How does a district know when it has successfully demonstrated compliance with the Corrective Action Plan?

After completing the requirements of the Corrective Action Plan, 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 School Improvement Manager to the district's responsible school official. Copies will be sent to the district's special education director or cooperative director, as appropriate, and the OPI's Accreditation Department.

30. What is Ongoing Evidence of Change?

When a district has a high area of non-compliance, the district may be required to submit Ongoing Evidence of Change (OEC). Ongoing Evidence of Change shows continued compliance for the area of non-compliance after the monitoring corrections and Evidence of Sustained Post-monitoring Compliance have been submitted. The Ongoing Evidence of Change is for further documentation that the compliance practice can be sustained over time after the monitoring has been completed. This is done by the submitting documents to the le