

**FREQUENTLY ASKED QUESTIONS REGARDING IDENTIFICATION AND
CORRECTION OF NONCOMPLIANCE AND REPORTING ON CORRECTION IN THE
STATE PERFORMANCE PLAN (SPP)/ANNUAL PERFORMANCE REPORT (APR)
SEPTEMBER 3, 2008**

Identification of Noncompliance

1. What is the definition of a “finding,” as used in Indicators C-9/B-15?

As used in SPP/APR Indicators B-15 and C-9, a finding is a written notification from the State to a local educational agency (LEA) or early intervention services (EIS) program that contains the State’s conclusion that the LEA or EIS program is in noncompliance, and that includes the citation of the statute or regulation and a description of the quantitative and/or qualitative data supporting the State’s conclusion that there is noncompliance with that statute or regulation.

2. How are States to count findings in reporting their data for completing the worksheet for Indicators C-9/B-15?

Each State may determine how it will count monitoring findings in order to provide a clear picture of its effectiveness in ensuring the timely correction of noncompliance. A State may choose to group individual instances in an LEA or EIS program involving the same legal requirement or standard together as one finding (except for findings identified through State complaints and due process hearings; each of those findings *must* be counted as a finding), or it may choose to report each of the individual instances of noncompliance as a separate finding.

For example, 30 student records are examined to determine whether initial evaluations were completed within the State-established timeline, as required by 34 CFR §300.301(c). In ten of the records, the evaluation was completed beyond the State-established timeline. The State could choose whether this would represent one finding of noncompliance under §300.301(c) for the measurement in Indicator B-15, or ten findings. Similarly, a finding identified through multiple components or from multiple sources could be counted once (except for findings identified through State complaints and due process hearings), or could be counted as multiple findings.

An LEA or an EIS program would have multiple findings of noncompliance for the same time period if the LEA or the EIS program is noncompliant with more than one legal requirement or standard. In this case, the total number of these findings of noncompliance (i.e., legal requirements or standards violated) should be reported rather than reporting that the LEA or the EIS program is noncompliant. Therefore, if there were six requirements for which the LEA or the EIS program had noncompliance, this would be reported as six findings.

3. Must a State make a finding of noncompliance (i.e., inform the LEA or EIS program in writing of the State’s determination that there is noncompliance) if it finds any level of noncompliance with the IDEA?

Yes, subject to the response to question 4, below. Regardless of the specific level of noncompliance, if a State finds noncompliance in an LEA or EIS program, it must notify the LEA or EIS program in writing of the noncompliance, and of the requirement that the noncompliance be corrected as soon as possible, and in no case more than one year after the State’s identification (i.e.,

the date on which the State provided written notification to the LEA or EIS program of the noncompliance). In determining the steps that the LEA or EIS program must take to correct the noncompliance and to document such correction, the State may consider a variety of factors, including: (1) whether the noncompliance was extensive or found in only a small percentage of files; (2) whether the noncompliance showed a denial of a basic right under the IDEA (e.g., a long delay in initial evaluation beyond applicable timelines with a corresponding delay in the child's receipt of FAPE or EI services, or a failure to provide any services in accordance with the IEP or IFSP); and (3) whether the noncompliance represents an isolated incident in the LEA or EIS program, or reflects a long-standing failure to meet IDEA requirements. Thus, while a State may determine the specific nature of the required corrective action, the State must ensure that any level of noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification, and – except as explained in the response to question 4 below – must make a finding of noncompliance.

4. Must the State make a finding if the LEA or EIS program demonstrates that it has corrected the noncompliance before the State issues a finding of noncompliance?

If the LEA or EIS program immediately (i.e., before the State issues a finding) corrects noncompliance and provides documentation of such correction, the State may choose not to make a finding.

5. Must every finding of noncompliance with a requirement of the IDEA that meets the above definition be included in a State's data for Indicators C-9/B-15?

Yes. A State must account for all noncompliance, whether collected through the State's on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, State complaint or due process hearing decisions, data system, or statewide representative sample or 618 data.

6. Is a State required to examine due process hearing decisions to identify any procedural and/or substantive violations of IDEA cited by a hearing officer and then report these as findings under Indicators C9/B15, whether or not the parent has prevailed in the hearing?

Yes. A State must examine every due process hearing decision to determine if the decision identifies any procedural and/or substantive violations of IDEA in a specific LEA or EIS program. The State must report in its APR every finding of noncompliance with a requirement of the IDEA identified in a due process hearing in a State's data for Indicator C-9/B-15. (Similarly, the State must report on correction of all findings made in State complaint decisions.)

7. How soon after a State concludes that an LEA or EIS program is in noncompliance with the IDEA must it notify the LEA or EIS program of the finding of noncompliance and of the requirement to correct the noncompliance as soon as possible, and in no case later than one year after the State's identification?

Written notification of findings needs to occur as soon as possible after the State concludes that the LEA or the EIS program has noncompliance. Generally, we would expect that written findings be issued less than three months from discovery.

8. Must a State make a finding of noncompliance if the State receives data through its database that show noncompliance with the requirements of the IDEA?

Yes, consistent with the response to question 5, above, a State must account for all noncompliance, whether collected through the State's on-site monitoring system, other monitoring processes such as self-assessment or desk review of records, data system, or statewide representative sample or 618 data. If a State examines data through its database and determines that they show noncompliance with the requirements of the IDEA, the State must make a finding and require correction as soon as possible, and in no case later than one year after the State's identification (the State's written notification to the LEA or EIS program of the finding of noncompliance).

9. If a State receives compliance data through a database on an ongoing basis, may it choose a specific point in time at which it will examine data from the database to determine whether an LEA or EIS program is in compliance and to make findings of noncompliance?

Yes. A State may identify one or more points in time during the SPP/APR reporting period when it will review compliance data from the database and identify noncompliance. In making compliance decisions, the State should then review all data that it has received since the last time that the State examined data from the database and made compliance decisions. A State may determine whether it will examine all data in the database or a statewide representative sample.

Correction of Noncompliance

10. When does the timeline for correction of noncompliance begin?

States must ensure that noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification. This timeline begins on the date on which the State informs an LEA or EIS program in writing that it has concluded that the LEA or EIS program is in noncompliance.

11. How should the State address timely correction in its FFY 2007 APR, if, for example, the State: (a) made a finding in FFY 2006 that an EIS program was not in compliance with the requirement for timely provision of services (Indicator C-1); and (b) also made a finding that there was noncompliance regarding the requirement that a service coordinator be appointed and found that this contributed to the noncompliance with the timely provision of services requirement?

In the FFY 2007 APR, the State should: (a) in Indicator C-1, report on the timely correction of the finding regarding the timely provision of services; and (b) in Indicator C-9, report – in the Indicator 1 row of the Indicator C-9 worksheet – on the timely correction of both findings.

12. If a State made findings of noncompliance in FFY 2006 with, for example, the requirement for timely initial evaluations (Indicator B-11), how would the State address, in its FFY 2007 APR, the timely correction of those findings in Indicator B-11 and in Indicator B-15?

In Indicator B-11 in the FFY 2007 APR, the State would report: (a) the number of FFY 2006 findings of noncompliance that it made with the timely initial evaluation requirement; (b) the number of those findings that were corrected within one year from identification; (c) for any of those findings that were not corrected within one year from identification, the number that were corrected more than one year after identification; and (d) for any of those findings that were not subsequently corrected by the time that the State submitted the APR, an explanation of what the State has done to identify the cause(s) of the continuing noncompliance and what the State is doing about the continuing lack of compliance including, as appropriate, sanctions/enforcement actions taken against any LEA that is continuing to show noncompliance.

For Indicator B-15, the State would, in the FFY 2007 APR, report in the Indicator B-11 row of the Indicator B-15 worksheet: (a) the number of FFY 2006 findings that it made of noncompliance with the timely initial evaluation requirement and with any related requirements; and (b) the number of those findings that were corrected within one year from identification. To the extent that any of the FFY 2006 findings of noncompliance with any requirements that the State reports in Indicator 15 were not corrected within one year from identification, the State would also: (a) report on the number that were corrected more than one year after identification; and (b) for any of those findings that were not subsequently corrected, provide an explanation of what the State has done to identify the cause(s) of the continuing noncompliance and what the State is doing about the continued lack of compliance including, as appropriate, sanctions/enforcement actions taken against any LEA that is continuing to show noncompliance.

13. If the State monitors an LEA or EIS program in May 2007 and provides written notification to the LEA or EIS program of the State’s findings of noncompliance in August 2007, in which APR must the State include those findings in the measurement for Indicators C-9/B-15?

The State made the findings (notified the LEA or EIS program) in FFY 2007, so the State must report on the timely correction of those findings in its FFY 2008 APR, due February 1, 2010.

The following table sets forth the time periods on which States must report in their FFY 2007, FFY 2008, FFY 2009, and FFY 2010 APRs:

| | Report on findings made (notification sent to LEA or EIS program) in: | Report on correction made as soon as possible, and in no case later than one year after the State's identification: |
|-------------------------------------|---|---|
| FFY 2007 APR (due February 2009) | FFY 2006 (7/1/06-6/30/07) | FFY 2006 or FFY 2007 |
| FFY 2008 APR (due February 2010) | FFY 2007 (7/1/07-6/30/08) | FFY 2007 or FFY 2008 |
| FFY 2009 APR (due February 2011) | FFY 2008 (7/1/08-6/30/09) | FFY 2008 or FFY 2009 |
| FFY 2010 APR (due February 2012) | FFY 2009 (7/1/09-6/30/10) | FFY 2009 or FFY 2010 |

Examples of these timelines are provided at the end of this document following the response to Question 16.

14. How does the State demonstrate timely correction of noncompliance?

As noted in OSEP's prior monitoring reports and verification visit letters, in order for a State to report that previously identified noncompliance has been corrected in a timely manner, the State must have first done the following:

- (1) Account for all noncompliance whether collected through the State's on-site monitoring system, other monitoring process such as self-assessment or desk audit, State complaint or due process hearing decisions, State data system, statewide representative sample or 618 data or identified by OSEP or the Department;
- (2) Identify in which LEAs or EIS programs noncompliance occurred, what the level of noncompliance was in each of those sites, and the root cause(s) of the noncompliance;
- (3) If needed, change, or require each LEA or EIS program to change, its policies, procedures and/or practices that contributed to or resulted in noncompliance; and
- (4) Based on its review of updated data, which may be from subsequent on-site monitoring, determine, in each LEA or EIS program with identified noncompliance, that the LEA or EIS program was, within one year from identification of the noncompliance, correctly implementing the specific statutory or regulatory requirement(s).

If an LEA or EIS program did not correct identified noncompliance in a timely manner (within one year from identification), the State must report in the APR on whether the noncompliance was subsequently corrected by the time that the State submits the APR. Further, if an LEA or EIS program is not yet correctly implementing the statutory/regulatory requirement(s), the State needs to explain in the APR what the State has done to identify the cause(s) of continuing noncompliance, and what the State is doing about the continued lack of compliance including, as appropriate, enforcement actions taken against any LEA or EIS program that is continuing to show noncompliance.

For any noncompliance concerning a child-specific requirement that is not a timeline requirement (SPP/APR Indicators B-9, B-10, B-13, C-8A and C-8B), the State must, in addition to the steps described above, also ensure that: (1) the LEA or EIS program has ensured that each individual case of noncompliance has been corrected, unless the requirement no longer applies or the child is no longer within the jurisdiction of the LEA or EIS program; or (2) the State has instituted appropriate enforcement action. In ensuring that each individual case of noncompliance has been corrected, the State would not be required to review each child's record but rather could select a sample of records to review for verification of correction. In the APR, the State must report on the extent to which such individual cases of noncompliance have been corrected, and what enforcement actions it has taken when such cases have not been corrected.

15. In order to demonstrate timely correction, must a State, within one year from identification, provide notification to the LEA or EIS program that correction occurred, or may the State provide such notification subsequent to the one-year timeline, so long as the correction and State verification of such correction occurred within one year from identification?

The State's notice to the LEA or EIS program verifying correction could be issued later than one year from the date of the written notification of findings of noncompliance, but the LEA or EIS program must have demonstrated that correction occurred, and the State verified such correction, within the one-year timeline. The State should maintain written documentation of the verification of correction of the noncompliance.

16. If the State made a finding in January 2007 and corrects it in February 2007, is the correction reported in the FFY 2007 APR due February 1, 2009?

Yes, because the State must report in the FFY 2007 APR on the correction of findings that the State made in FFY 2006 (July 1, 2006-June 30, 2007), even if the correction of the FFY 2006 findings occurred during FFY 2006.

Examples Illustrating Timelines for Reporting on Timely Correction

Example A

Facts

- The State conducted an on-site monitoring visit on January 15 through 17, 2007.
- The State notified the LEA in writing on April 1, 2007 of its finding of noncompliance.

Questions:

1. On what date did the one-year timeline for timely correction begin?

Answer: April 1, 2007 (the date on which the State notified the LEA of the noncompliance).

2. By what date must the State verify correction of the finding in order to report that the finding was timely corrected?

Answer: April 1, 2008 (one year after the date on which the State notified the LEA of the noncompliance).

3. In which FFY did the State make the finding?

Answer: FFY 2006 APR (the State notified the LEA of the noncompliance on April 1, 2007, which is during FFY 2006 [July 1, 2006-June 30, 2007]).

4. In which APR must the State report on the correction of the noncompliance?

Answer: The FFY 2007 (due February 2, 2009).

Example B

Facts

- The State conducted an on-site monitoring visit on June 15, 2007.
- The State notified the EIS program in writing on August 20, 2007 that it was making a finding of noncompliance.

Questions:

1. On what date did the one-year timeline for timely correction begin?

Answer: August 20, 2007 (the date on which the State notified the EIS program of the noncompliance)

2. By what date must the State verify correction of the finding in order to be able to report that the finding was timely corrected?

Answer: August 20, 2008 (one year after the date on which the State notified the LEA of the noncompliance).

3. In which FFY did the State make the finding of noncompliance?

Answer: FFY 2007 (the State notified the LEA of the noncompliance on August 20, 2007, which is during FFY 2007 [July 1, 2007-June 30, 2008]).

4. In which APR must the State report on the correction of the noncompliance?

Answer: The FFY 2008 (due February 1, 2010).

Example C

Facts

- The State examined data from its database on December 15, 2007, and determined that the EIS program was in noncompliance with Part C's 45-day timeline requirement.
- On March 1, 2008, the State notified the EIS program in writing of its finding.
- The EIS program reported on February 20, 2009 that it had corrected the noncompliance.
- The State examined data from its database on April 1, 2009, and determined that the EIS program had corrected the previously identified noncompliance.
- The State informed the EIS program on May 15, 2009 that the noncompliance was corrected.

Questions:

1. On what date did the one-year timeline for timely correction begin?

Answer: March 1, 2008 (the date on which the State notified the EIS program of the noncompliance)

2. By what date must the State verify correction of the finding in order to be able to report that the finding was timely corrected?

Answer: March 1, 2009 (one year after the date on which the State notified the LEA of the noncompliance).

3. In what FFY did the State make the finding of noncompliance?

Answer: FFY 2007 (the State notified the LEA of the noncompliance on March 1, 2008, which is during FFY 2007 [July 1, 2007-June 30, 2008])..

4. In which APR must the State report on the correction of the noncompliance?
FFY 2008
5. May the State report in Indicator C-9 in its FFY 2007 APR that this finding was corrected as soon as possible, but no case more than one year after identification (notification of the EIS program of the noncompliance)?

Answer: No. In order for a State to report that an EIS program (or LEA) corrected noncompliance within one year from identification, both of the following must occur within one year from the date of identification (in this case by March 1, 2009): (a) the EIS program must correct the noncompliance; and (b) the State must verify that the EIS program has corrected the noncompliance. In this case, the State did not verify correction until April 1, 2009.