
**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
GUIDELINES FOR PROGRESSIVE INTERVENTIONS
FOR FOCUSED MONITORING IMPROVEMENT PLANS**

April 2004

Introduction

The focused monitoring process for public school special education programs in New Mexico is designed to identify and correct systemic noncompliance with state and federal regulatory requirements by school districts, charter schools and other state-funded educational agencies. A monitored agency that is cited for noncompliance must propose an improvement plan that specifies the steps it will take to resolve all identified deficiencies. Before approving a proposed improvement plan, the Public Education Department (PED) specifies what evidence the monitored agency must submit to demonstrate that all identified findings of noncompliance have been resolved.

Each improvement plan includes a timetable for resolving all findings of noncompliance. Staff members in the PED Special Education Office periodically review each agency's progress toward completion of the improvement plan and note issues that remain unresolved. The following guidelines describe the principles the PED will use to identify situations that may require more intensive interventions to resolve all identified points of noncompliance..

Authority for Interventions

NMSA 1978, Sec. 22-2-14 (as amended by Chapter 27, N.M. Laws 2004) authorizes the PED, after appropriate notice and an opportunity for a public hearing, to disapprove instructional units or administrative functions of school districts that have failed to attain and maintain compliance with applicable laws and PED rules. NMSA 22-8-21(C) requires that school district special education programs be approved before their students may be counted for state equalization funding. PED disapproval of a special education program would mean that no state funding would be available for students in that program.

The New Mexico special education rules provide as follows:

Withholding of [IDEA flowthrough] funds for noncompliance. Pursuant to 34 CFR Sec. 300.197, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible [to receive IDEA Part B funds] is failing to comply with any requirement described in Secs. 300.220-300.250, the department must reduce or may not provide any further Part B payments to the agency until the department is satisfied that the agency is complying with that requirement. (6.31.2.9(E) NMAC.)

The PED recognizes that program disapproval and withholding of funds are extreme measures. In an effort to afford every reasonable opportunity for monitored agencies to achieve

compliance, the PED has developed the following guidelines for progressive interventions that may be implemented before disapproving programs and withholding special education funds.

Circumstances Justifying Interventions

The PED presumes that interventions will be warranted when a monitored agency's focused monitoring follow-up reviews reflect that the level of compliance required in the improvement plan has not been demonstrated by submission of the required evidence of change within the time frame established by the PED. The PED will determine which level of intervention will be implemented. This determination will depend on the progress the monitored agency has demonstrated toward full compliance, its demonstrated attitude toward achieving compliance and any other circumstances the PED considers relevant. For example:

- A monitored educational agency that fails to fully implement its focused monitoring improvement plan within the timelines established by the PED but that has implemented substantially all components of the plan will normally receive a level one intervention unless the circumstances indicate that a higher level of intervention is warranted.
- A monitored agency that fails to achieve the level of compliance required in its focused monitoring improvement plan by submission of the required evidence of change within the time frame established by the PED but that has achieved compliance in substantially all areas covered by the plan will normally receive a level one intervention unless the circumstances indicate that a higher level intervention is warranted.
- When the PED has sufficient evidence of system-wide failure to provide a free appropriate public education (FAPE) or to correct critical findings of noncompliance, a monitored agency may receive a level two or level three intervention.
- When the PED has sufficient evidence that a monitored agency is deliberately refusing to implement one or more elements of an approved improvement plan or deliberately delaying the implementation of an approved plan, the monitored agency may receive a level three intervention.

Procedural Steps for All Interventions

- The Secretary of Education will issue a letter indicating that specific personnel from the monitored agency must meet with the PED to develop an intensive PED-prescribed improvement plan, with specific deadlines and verification, to address all findings of noncompliance that remain unresolved.
- The prescribed improvement plan will specify the unresolved findings of noncompliance, the specific actions the monitored agency and the PED will take to resolve those findings and monitor progress, and the evidence the PED will require to demonstrate that each remaining finding has been resolved. The plan will also describe the steps the monitored agency will take to make the plan available to the public.

- A prescribed improvement plan will incorporate any elements of the original improvement plan that the PED considers necessary and will replace the original plan with regard to all findings of noncompliance that remain unresolved.
- Within 30 days of the meeting with the PED, the prescribed improvement plan must be approved by the governing authority of the monitored agency and the governing authority must provide the PED with a signed notice of approval and assurance that the requirements established by the PED will be completed by the prescribed deadline(s). The PED's acceptance of the monitored agency's approval and assurances will be noted by the signature of the Secretary of Education or a designee.

Level One Interventions

In addition to any actions incorporated from the original improvement plan:

- The monitored agency will allocate additional time and resources that may include, but are not limited to, funding, facilities, staffing and/or outside consultants, to focus on capacity building.
- The PED may provide guidance on how the monitored agency can shift state or IDEA Part B funds to address the remaining findings of noncompliance. The monitored agency must track the use of these funds to show the PED how the funds were targeted to address the areas of noncompliance.
- When a monitored agency fails to comply with a level one improvement plan, the monitored agency will move to a higher level intervention.

Level Two Interventions

In addition to any actions incorporated from the original improvement plan and any prescribed level one plan:

- The PED will direct how the monitored agency's IDEA Part B funds will be expended to ensure that the agency comes into compliance. This direction may take the form of a codicil on the monitored agency's IDEA budget, as approved by the Secretary of Education or designee after an appropriate budget review.
- The PED will release IDEA funds on a conditional basis.
- When a monitored agency fails to comply with level two interventions, the monitored agency will automatically receive level three interventions.

Level Three Interventions

In addition to any actions incorporated from the original improvement plan and any prescribed level one or level two plan:

- The PED will withhold all or part of a monitored agency's IDEA Part B flowthrough funds after providing appropriate notice and an opportunity for a public hearing pursuant to 6.31.2.9(C)-(E) NMAC and 34 CFR Secs. 300.196 and 76.401(d). Withholding will continue until all areas of noncompliance are resolved as approved by the Secretary of Education or designee.
- The PED will disapprove a school district's special education programs in whole or in part, as approved by the Secretary of Education or designee and after providing the district with appropriate notice and an opportunity for a public hearing pursuant to NMSA 1978, Sec. 22-2-14, as amended by Chapter 27 of N.M. Laws 2004. The PED may withhold state equalization funds for disapproved programs until all areas of noncompliance are resolved as approved by the Secretary of Education or designee.
- School districts and other monitored agencies will continue to be responsible for providing services to ensure that students receive a FAPE pursuant to NMSA 1978, §22-13-5, and 6.31.2.9(A)-(B) NMAC, regardless of whether state or federal funds are withheld.
- The PED may appoint a special master or management team to oversee the prescribed level three improvement plan and improvement strategies until the matter is officially closed by the PED.