

# Questions and Responses for the OSE Fall Forum Panel Discussion

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## Performance Reporting Unit, Jessica Brady, Supervisor

1. Do I exit a student from special education if s/he will be receiving transition services? Related is: Can I provide transition services if the student graduated with a high school diploma?
  - a. No, do not exit the student from special education. If the student graduates with a high school diploma, the student is no longer eligible to receive special education programs/services.
2. If a student is determined eligible for special education at end of school year, should I report the data in the MSDS End of Year collection even though services don't start until the fall?
  - a. Yes, report the special education component.
3. What day do we report for the new Initial IEP Date?
  - a. The date that an offer of a free appropriate public education (FAPE) has been made by the district.
4. It's not my turn on the General Supervision Monitoring (GSM) cycle, so why are you doing a GSM visit?
  - a. GSM has two paths of entry.
    - i. One of those paths is the rotation schedule. Following that path, 1-2 locals per ISD will be selected for a GSM visit during each cycle of the rotation. Those locals are randomly selected with some exclusionary factors, such as recent visits.
    - ii. The second path of entry is the same as it has been for what were called "FAPE" visits. The Monitoring and Technical Assistance team takes referrals from other OSE units. We work with complaints, finance, assessment, and ISD monitors who might each make referrals. We evaluate those referrals and make our selection. So, although your ISD may not be listed in the current rotation, you may still be selected to participate in a GSM visit.
5. Does the number of suspension days that a student with and IEP receives during the school year follow the student even if the student moves to a different LEA?
  - a. No. A district is considered for significant discrepancy based on the number of students with an IEP that the district suspended/expelled but the district is not penalized for disciplinary actions that occurred in a different district.
6. What is the difference between Indicator 4A, 4B and Significant Disproportionality?
  - a. 4A (Results Indicator): A district is considered to have a significant discrepancy if more than 5% of its students with an Individualized Education Program (IEP) were suspended/expelled out-of-school for greater than 10 days (cumulatively during the school year).
  - b. 4B (Compliance Indicator): A district is considered to have a significant discrepancy if greater than or equal to 3.6% of its students with an Individualized Education Program (IEP) were suspended/expelled out-of-school for greater than 10 days (cumulatively

during the school year) in any of the district's racial/ethnic groups. In addition, a district having a significant discrepancy by race/ethnicity must have its policies, procedures or practices reviewed to determine if those policies, procedures or practices contributed to the significant discrepancy and do not comply with the requirements relating to

- i. development and implementation of IEPs
- ii. the use of positive behavioral interventions and supports
- iii. procedural safeguards

c. Significant Disproportionality – Discipline: Is mandated by federal statute IDEA 20 U.S.C § 1418(d) and IDEA 20 U.S.C § 1413(f) Regulation §300.646 of the Individuals with Disabilities Education Act (IDEA) requires that each state that receives assistance under Part B of the IDEA provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the local education agencies of the state with respect to:

- i. Identification of children with disabilities (risk ratio >3.0 for two years)
- ii. Identification of children with disabilities in a particular impairment category (risk ratio >3.0 for two years)
- iii. Placement of children in particular education settings (risk ratio >3.0 for two years)
- iv. Incidence, duration, and type of disciplinary actions, including suspensions and expulsions (risk ratio >3.0 for one year)

d. There are three statutory requirements of Significant Disproportionality:

- i. Allocate 15% of IDEA Special Education (Part B, Section 611 and 619) Flow-Through Grant for Coordinated Early Intervening Services (CEIS)
- ii. Review/Revision of Policies, Practices and Procedures
- iii. Publicly Report Revisions of Policies, Practices, and Procedures

7. I wasn't identified for Indicator 4B, why did I receive notification for Significant Disproportionality?

- a. The calculations for Indicator 4B and Significant Disproportionality are very different. Indicator 4B is a percentage calculated on only the out-of-school suspensions greater than 10 days while Significant Disproportionality is a risk ratio calculated which includes all suspensions and expulsions (2-10 days in-school, >10 days in-school, 2-10 days out-of-school, >10 days out-of-school).

8. Why didn't I receive a warning letter?

- a. Significant Disproportionality for Discipline is based on one year of data unlike Significant Disproportionality for Identification and Educational Settings which are based on two years of data. Therefore, there is no way to warn districts for Significant Disproportionality for Discipline.

## **Program Accountability Unit, Sheryl Diamond, Supervisor**

1. Can a parent revoke parts of an IEP?
  - a. **No. Revocation is for consent. Parents do not consent to an Individualized Education Program (IEP) and therefore have no right to revoke the programming in whole or in part.**
2. Does a district have to provide notice after receiving a request for an Independent Educational Evaluation (IEE) from a parent?
  - a. **Yes. If the parent request is for an Independent Educational Evaluation (IEE) as defined at R 340.1723c of the Michigan Administrative Rules for Special Education and 34 CFR § 300.502 of the federal regulations implementing the Individuals with Disabilities Education Act, then the district must respond in writing to the request within 7 calendar days of receipt and indicate the district's intention to honor the request or initiate the due process hearing procedures at R 340.1724. The response must meet the Notice requirements of 34 CFR § 300.503 and include the content found at R 340.1723c(1).**
3. Is 'homebound' a service, a program, or a placement?
  - a. **It is a service. The term 'homebound' as it relates to special education in Michigan is a term found in the Michigan Administrative Rules for Special Education (MARSE) at R 340.1746. 'Homebound' in the MARSE is a service; it is not a program and it is not a placement. Homebound services must only be used for a medical impairment that requires the eligible student with a disability to be confined to the home. A student who is suspended or expelled does not meet the requirements in the MARSE to receive homebound services solely on the basis of being suspended or expelled.**  
  
**The Individuals with Disabilities Education Act refers to 'home instruction' as a placement along the least restrictive environment (LRE) continuum. In referring to 'home instruction' the term 'homebound instruction' or just 'homebound' is often used. Home instruction is on the more restrictive end of the LRE continuum and must be carefully considered as an LRE placement. Districts are reminded that educational placement decisions must be made by a group that includes the parents of a student with a disability (see 34 CFR § 300.327).**

## **Program Finance Unit, John Andrejack, Supervisor**

1. What is the difference between a Single Audit and a Program Fiscal Review?
  - a. **The scope of the Single Audit is broader and includes testing the internal controls as they relate to the financial system. The Single Audit selects a statistical sample and projects errors onto the population. The scope of a PFR is to ensure compliance with Federal and State rules and regulations as they related to the allowability of costs for the program and samples are arbitrarily selected. Unallowable costs noted are not projected onto the population, all like transactions are considered unallowable.**

2. If something is noted during a Program Fiscal Review and it is corrected, why is it still a written finding?
  - a. Non-compliance is written to ensure that corrective action has been taken and follow up of issues takes place at a later time to ensure the corrective action has been fully implemented.
3. Why do we need a Personnel Activity Report (PAR) for aides reported on the SE-4096 for state aid reimbursement that are not employed 100% of their time in special education and are split-funded?
  - a. To ensure that State (and Federal) reimbursements for aides is accurately reported.
4. Is the amortization for spare buses reimbursed on the SE-4094 Transportation Expenditure Report?
  - a. No. Spare vehicles are not eligible for amortization reimbursement?
5. Related to LEA Maintenance of Effort, if a district fails to maintain effort in one year, what is the level of effort that must be maintained for the following year?
  - a. The level of effort the district must maintain in the following year is the level of effort that should have been met in the prior year in the absence of that failure.
6. Related to LEA Maintenance of Effort, is the 50% Flexibility gone?
  - a. No. This portion of the LEA Maintenance of Effort requirement is found in the IDEA Regulations at 34 CFR § 300.205(a). The provision provides that for any fiscal year in which an allocation received by an LEA exceeds the amount the LEA received for the previous fiscal year, they may reduce their level of expenditures by not more than 50% of the amount of that increase. This provision only applies to the Section 611 flowthrough allocations. It does not include Section 619 Preschool allocations.
  - b. While there have been several fiscal years in which allocations may not have increased as a result of the American Recovery and Reinvestment Act funding or the effects of the current Federal Sequestration, the 50% Flexibility provision remains available.
7. Is the State of Michigan, Office of special Education removing the FTE from the local school district MOE per capita calculation?
  - a. Yes. Beginning with 2013-14 MOE testing, the per capita testing for LEA MOE will only include the headcount as required by IDEA. IDEA only allows headcount and not FTE to be considered in the per capita calculations.

### Questions from conference participants:

1. Can the Office of Special Education provide any guidance regarding an “acceptable” range for program and services time?
  - a. Federal guidance states that the use of a range of time for a program or service is not encouraged, but is not forbidden by law. The Office of Special Education echoes the federal guidance. In compliance (state complaints), we have tolerated ranges when they are reasonable and realistically calculated toward improved student achievement and to meet Individualized Education Program goals.

2. Is a Notice really required for graduation?
  - a. Yes. The federal regulations implementing the Individuals with Disabilities Education Act at § 300.102(a)(3)(iii) states that “Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503.”
3. How close is Michigan with the “Age 26” saga?
  - a. The requirement to provide Michigan mandatory special education to age 26 is in the Michigan Compiled Law. It is not within the authority of the Office of Special Education to write or change legislation regarding this issue.
4. Please define with clarity “serious bodily injury.” Is biting a teacher part of this definition?

Serious bodily injury has the meaning given the term at Title 18 of the United States Code. Title 18 is the Crimes and Criminal Procedure section of the Code. The definition is found at Title 18, Part I, Chapter 65. Sec. 1365(h)(3) the term "serious bodily injury" means bodily injury which involves -

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

Sec. 1365(h)(4) the term "bodily injury" means -

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

Given this federal definition, biting a teacher would not ordinarily meet the definition of serious bodily injury.

5. In the session on parentally placed you mentioned an “organizational chart.” Where can we find that? Are there other sites to assist in nonpublic?
  - a. The chart for helping a district with the consultation process is referenced in a webinar posted by the federal Office of Special Education Programs at: <http://therightidea.tadnet.org/assets/2471>. This is an informative and helpful webinar regarding the Individuals with Disabilities Education Act requirements for parentally placed

nonpublic students. The organizational chart example is at approximately the 33 minute mark of the webinar. The static example of the chart may be found at the web site of the federal Office of Non-Public Education at:

<http://www2.ed.gov/about/offices/list/oii/nonpublic/index.html>. Web sites endorsed or sanctioned by the United States Department of Education offices will be reliable and accurate. Other reliable sources include the Michigan Special Education Reference (MI-SER) and LRP.

6. What is the Office of Special Education going to do to follow-up on the Stevan Kukic presentation?
  - a. The keynote presentation at the 2013 Fall Forum is a beginning. It is the opportunity to open a dialogue about the system of delivering effective special education to students with disabilities in Michigan.
7. During one of the sessions, the utilization of IDEA Part B funds on general education related activities was discussed. Please outline if there is more or less flexibility on utilizing State and local Special Education funds for general education initiatives than IDEA funds.
  - b. State special education funding is more restrictive in that professional development costs are only reimbursed for special education approved personnel.