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# The Federal Update for July 28, 2023

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Re: Federal Update

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## Legislation and Guidance

### OSEP Updates Guidance on IDEA General Supervision Responsibilities

The U.S. Department of Education’s (ED’s) Office of Special Education Programs (OSEP) published updated guidance this week on States’ general supervision responsibilities under the Individuals with Disabilities Education Act (IDEA). Specifically, the guidance addresses provisions under Section 1412(a)(11)(A) that all educational programs for students with disabilities are “under the general supervision of individuals in the State who are responsible for educational programs, improving outcomes for children with disabilities, and meet the educational standards of the SEA.”

OSEP’s updates to the guidance, which was last updated in 2009, come in response to monitoring findings over the past several years that many States are not consistently meeting a number of IDEA requirements, as well as requests from stakeholders for consolidated and updated guidance. The guidance incorporates prior policy guidance released by OSEP and includes some new information to address frequently asked questions (FAQs) from stakeholders. Overall, the guidance covers a range of topics, including State general supervision responsibilities; identification and correction of noncompliance; the IDEA State performance plan and annual performance report; State annual determinations; and State enforcement through determinations and other methods.

The most significant updates in the guidance include prior clarifications from OSEP, including that States cannot ignore credible allegations about possible IDEA noncompliance and that States should be monitoring local educational agencies at least once per the State’s six-year State Performance Plan (SPP)/Annual Performance Report (APR) cycle. OSEP also provides more information on reasonable timelines for identifying noncompliance and issuing findings and clarifies that they expect States and LEAs to show that they verified correction of each individual case of previously noncompliant records with regard to child-specific noncompliance.

The updated guidance supersedes 2008 FAQs Regarding Identification and Correction of Noncompliance and Reporting on Correction in the SPP/APR, a 2008 memorandum on Reporting on Correction of Noncompliance in the APR Required under Sections 616 and 642, and 2009 Questions and Answers on Monitoring, Technical Assistance, and Enforcement.

[The FAQs are available here](https://sites.ed.gov/idea/files/Guidance_on_State_General_Supervision_Responsibilities_under_Parts_B_and_C_of_IDEA-07-24-2023.pdf) and the [accompanying “Dear Colleague” letter is available here.](https://sites.ed.gov/idea/files/dcl-general-supervision-responsibilities.pdf)

Author: KSC

### “Dear Colleague” Reiterates Foster Care Requirements

In a “Dear Colleague” letter published this week, the U.S. Department of Education (ED) reemphasized the importance of collaboration in ensuring continuity of education for children in foster care. The letter reminds States that the Elementary and Secondary Education Act (ESEA) requires collaboration between State educational agencies (SEAs), school districts, and State, local, and Tribal child welfare agencies (CWAs).

The document also reiterates requirements in Sections 1111(g)(1)(E) and 1112(c)(5) of ESEA, which include ensuring that the State has appointed a foster care point of contact, ensures that the determination of a student’s “best interest” prioritizes their school of origin, and reminds LEAs of enrollment and records transfer requirements. Finally, it notes that transportation procedures must be developed with the collaboration of the LEA and State and local CWAs—a requirement that some districts have struggled with since it does not include an instruction for how the cost of those services should be allocated. The agency further encourages the relevant agencies to share and collaboratively review data to better target supports.

ED says that it will announce new “technical assistance opportunities” over the next few weeks, including webinars and resources.

Author: JCM

### White House Offers Veto Threats on First Appropriations Bills

This week the White House issued a “statement of administration policy” opposing two appropriations bills that were being considered on the House floor this week (the vote on the Agriculture-Federal Drug Administration (FDA) bill was ultimately delayed until September). That statement lists a number of objections to the Military Construction-Veterans Affairs and Agriculture-FDA bills and says that the President would veto both if they make it to that stage. The bills are still early in the process—they would need to pass the Senate before being presented to the President.

This statement signals an unwillingness of the President to accept additional significant cuts that House appropriators have incorporated in their draft bills, suggesting they violate the “good faith” agreement negotiated in the debt ceiling deal earlier this year. The significant divergence from the debt ceiling deal also risks triggering another provision of that agreement, which would require an automatic government-wide spending cut if all 12 appropriations bills are not passed by January 1, 2024.

The lack of progress—and consensus—as Congress approaches the August recess indicates that it may be difficult for lawmakers to come to an agreement on appropriations any time soon, increasing the risk of a government shutdown later this calendar year.

Author: JCM

## News

### ED, DOL Announce New Collaboration on Educator Training

In an event at the U.S. Department of Education (ED) Thursday, the agency announced a joint effort with the U.S. Department of Labor to expand registered apprenticeship programs to include teachers. The announcement was accompanied by new national guidelines for teacher Apprenticeship Standards, $92 million in combined funding from the two agencies to develop and scale programs in 45 States, and a report that highlights State initiatives to support the recruitment, retention, and preparation of teachers.

The new funding from ED includes $14.5 million in new Teacher Quality Partnership grants and $12.7 million in Supporting Effective Educator Development grants.

Author: JCM

## Reports

### OIG Issues Report on Improper Payments

The U.S. Department of Education’s Office of Inspector General (ED OIG) published an audit report last week which found that ED was not in compliance with the Payment Integrity Information Act (PIIA) for fiscal year 2022. Compliance with PIIA requires that an agency meets six requirements; ED OIG found that ED was not compliant with one of those six requirements. The PIIA requires each federal agency to periodically review for improper payments, which includes overpayments, underpayments, and duplicate payments. Improper payments also include those payments which were made to ineligible entities, for ineligible goods or services, or for goods or services that were not received.

The audit report identified two findings. First, ED OIG found that ED reported unknown and improper payment estimate rates that exceeded the 10 percent requirement under PIIA. ED reported estimated rates of over 35 percent for the Elementary and Secondary Education Act (ESEA) Title I program. This is the second consecutive year that ED reported unknown and improper payments above 10 percent for ESEA Title I. ED also reported improper payment rates of 26.71 percent for the Special Education program and 12.09 percent for the Education Stabilization Fund.

Second, ED OIG found that that the Department’s estimates for ESEA Title I, Special Education, Education Stabilization Fund, Pell Grants, and Direct Loans were not reliable. The report indicated that for some of the programs, the unknown and improper payment estimates were based on inaccurate sampling populations and for other programs, ED’s results were simply inaccurate. Additionally, ED OIG found that some sampling was nonrandom and affected the confidence intervals used to calculate the estimates.

In the audit report, OIG recommended that ED submit a plan to bring its programs into compliance with PIIA. Additionally, the report included recommendations that ED develop estimation and sampling plans that would generate reliable estimates, create procedures to ensure estimates are produced from accurate sampling populations, and verify that the ED’s testing spreadsheets are accurate.

ED has 30 days to develop a corrective action plan, which will include action items and targeted completion dates.

[The entire report can be found here.](https://oig.ed.gov/reports/audit/us-department-educations-compliance-payment-integrity-information-reporting)

Author: BNT

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of The Bruman Group, PLLC’s virtual trainings. Topics cover a range of issues, grants management, COVID-19 relief programs, the Elementary and Secondary Education Act, and more. To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/training-and-recordings/*](http://www.bruman.com/training-and-recordings/)*.*

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