

# EXHIBIT - A

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between the Utah State Board of Education (“USBE”) and Utah Charter Academies dba Utah Preparatory Academy (“APA”). USBE and APA are sometimes referred to herein separately as a “Party” and collectively as the “Parties.” This Agreement is effective upon its execution by the Parties (the “Effective Date”).

### RECITALS

A. USBE is responsible for disbursing and overseeing state and federal funds relating to special education and other programs (collectively, “Restricted Funds”) to public schools in Utah, including APA.

B. A dispute has arisen between USBE and APA relating to APA’s accounting for certain Restricted Funds. On or about August 23, 2019, USBE issued a Notice of Non-Compliance and Notice of Corrective Action (“Notice of Non-Compliance”), claiming that APA had failed to properly account for its use of Restricted Funds and demanding repayment of certain Restricted Funds for fiscal years (“FY”) 2017 through 2019.

C. On September 20, 2019, APA appealed the Notice of Non-Compliance by filing a Notice of Appeal (the “Appeal”). In the Appeal, APA argued that the Notice of Non-Compliance was both legally and factually flawed.

D. The Parties now desire to settle the dispute between them without admission of any wrongdoing or liability, on the terms and conditions set forth herein.

## AGREEMENT

NOW THEREFORE, in consideration of the recitals, mutual promises, covenants, releases, and agreements contained herein, the Parties, intending to be bound, hereby covenant and agree as follows:

1. Approval by the Parties' Respective Boards. This Agreement is conditioned upon approval by the USBE and the Governing Board for APA.

2. Withdrawal of Notice of Non-Compliance and Dismissal of Appeal. The Parties agree that the Notice of Non-Compliance is hereby withdrawn and null and void, and that the Appeal is moot.

3. State Special Education Audit. USBE agrees that it will conduct a new audit of APA's use of State Special Education Funds for FY 2019. The Parties agree that the audit shall be completed as follows:

a. Delivery of Supporting Documentation. APA will have the opportunity to provide back-up documentation for all claimed State Special Education expenses incurred during FY 2019, including but not limited to employee certifications. A list of back-up documentation requested by USBE is attached as Exhibit A. To the extent the requested back-up documentation exists in electronic form it shall be provided by APA to USBE on or before December 23, 2019. Back-up documentation that exists in hard copy, requiring manual handling, shall be provided by APA to USBE on or before January 7, 2020, if possible. If all of the hard copy materials cannot be provided by January 7, 2020, APA shall, at a minimum, provide to USBE examples of the categories of hard copy documents by that date.

b. Scope of the Audit. The Parties agree that the scope of the audit shall be limited to a determination of whether the State Special Education funds were incurred for expenses that qualified for State Special Education funds during FY 2019.

c. Audit Conference. During the course of the audit and after reviewing the back-up documentation provided by APA, USBE agrees that it will meet with representatives of APA to hear APA's explanations of the accounting and cost treatment at a time and place that is mutually convenient for the Parties.

d. Results of the Audit. USBE agrees to complete the audit in a fair and impartial manner and consistent with generally applicable accounting and auditing standards. Once it completes the audit, USBE shall provide a written report of the audit to APA, including an explanation of any disallowed expenditures and the reasons why those expenses were disallowed.

e. Appeal of the Audit. In the event APA disagrees with the outcome of the audit, it shall have a right to appeal to the full board of the USBE but shall have no other appeal rights.

f. Repayment of Any Amount. APA agrees to repay as a penalty any amount determined by the audit to be improper. Any amount to be repaid shall be paid 10% per fiscal year over ten fiscal years, but at a minimum of \$200,000 per year until paid in full. In the event that the cost of the Fiscal Compliance Mentor, as set forth in Paragraph 5 below, and the amount owing from this audit exceed \$400,000 in FY 2021 and FY 2022, APA's maximum payment obligation shall be \$400,000 per year and any excess shall be rolled over to the eleventh and, if necessary, twelfth fiscal years.

4. APA Accounting System. APA has purchased and agrees to implement the NetSuite accounting system, including the use of program codes contained in the USBE chart of accounts, and will maintain back-up documentation as required by state and federal law. APA further agrees to provide a copy of its General Ledger for FY 2020 from the new NetSuite accounting program once it is operational. APA will have the NetSuite system operational and connected with the USBE system pursuant to applicable state law and consistent with any generally applicable, state-wide requirements.

5. Fiscal Compliance Mentor. APA agrees to a fiscal compliance mentor (“Compliance Mentor”) on the terms set forth below.

a. Selection of the Compliance Mentor. USBE shall issue a Request for Proposal (“RFP”) for the Compliance Mentor to review APA’s implementation of the NetSuite accounting system and APA’s compliance with state and federal accounting requirements regarding the use of federal and state special education funds for FY 2021 and FY 2022. After receiving proposals in response to the RFP, USBE shall forward to APA its top three recommendations for the Compliance Mentor. APA shall then be entitled to select the Compliance Mentor from the options provided by the USBE in APA’s sole discretion. The Compliance Mentor shall be from outside of Utah.

b. Responsibilities of the Compliance Mentor. The Compliance Mentor shall conduct a monthly review of APA’s accounting records and have the right to recommend and require accounting adjustments from APA that are consistent with applicable state and federal laws and generally applicable requirements for other Local Education Agencies. The

Compliance Mentor shall also file quarterly reports with USBE. USBE agrees that it will not take any action against APA for compliance with any instructions from the Compliance Mentor.

c. Costs for the Compliance Mentor. APA shall be responsible for the costs of the Compliance Mentor up to a cap of \$400,000 total for the two years. The Compliance Mentor shall determine the amount of time required to complete its responsibilities.

6. Release of Federal Funds. With respect to APA's pending requests for reimbursement for federal expenses in FY 2019 and FY 2020, USBE will immediately identify and communicate to APA any additional documentation required. Upon receipt of any requested documentation, prior to January 10, 2020, USBE will review APA's pending request and, absent any legitimate issues relating to compliance with federal law, release such funds to APA in accordance with USBE funding dispersal schedules at the end of January 2020.

7. Release of State Special Education Funds. APA shall provide a complete copy of its up-to-date QuickBooks file for FY 2020. Upon receipt of that QuickBooks file, USBE will immediately release all withheld State Special Education funds and will continue to release State Special Education Funds to APA each month during FY 2020 pursuant to the generally applicable state schedule (e.g., 1/12 of the total funds each month). USBE's release of such funds shall not constitute a waiver by USBE of any right to audit or challenge the correctness or use of such funds by APA. It is critical to APA to receive the State Special Education funds currently being withheld for FY 2020 by January 10, 2020, and USBE agrees to release all withheld State Special Education Funds within one business day after this Agreement is signed by both parties.

8. Special Education Conference. APA and USBE agree to meet in January 2020 to discuss, among other things, (a) specific guidelines for what special education expenses are reimbursable or recoverable; (b) methods for improving APA's special education program; (c) methods for improving APA's documentation of special education expenses; and (d) any other related issues.

9. Indemnification. APA agrees to indemnify, defend, and hold harmless USBE from any future challenges, claims, actions or determinations by federal agencies, including but not limited to the Department of Education, claiming that APA's use of federal special education or Title program funds from FY 2017 through FY 2020 was improper. USBE shall promptly give notice of any such claim to APA and support APA's efforts to intervene and/or participate in any such future challenge, claim, action or determination.

10. Mutual Release of Claims. Except as set forth herein and excluding the right of the Federal Department of Education to audit and seek other remedies, the Parties hereby release and forever discharge each other and, where applicable, their respective parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, associates, predecessors, successors, heirs, assigns, agents, partners, employees, insurers, representatives, lawyers and all persons acting by, through, under, or in concert with them (collectively, the "Released Parties") of and from any and all manner of action or actions, cause or causes of action, in law or in equity, and any suits, debts, liens, claims, complaints, obligations, demands, damages, losses, costs, or expenses, of any nature whatsoever, known or unknown, fixed or contingent, that either Party now has or may have against the Released Parties as of the Effective Date by reason of any matter, cause, or thing whatsoever, including without limitation, any claims arising out of, based upon, or in any

way relating to the use of state or federal special education funds in or during the period from FY 2014 through FY 2019.

11. No Assignment of Claims. Each of the Parties represents and warrants that there has been no assignment or other transfer of any interest in any claim released by them as set forth above.

12. Counterparts. This Agreement may be signed in counterparts, which separate signature pages taken together shall constitute the Agreement. Signatures to this Agreement may be made and evidenced by original, photocopy, facsimile or electronic signatures.

13. Entire Agreement. This Agreement represents the sole and entire agreement between the Parties and supersedes all prior agreements, negotiations, and discussions between the Parties and/or their respective counsel with respect to the subject matter covered hereby. The Parties acknowledge that they have read this Agreement and are fully aware of its content and its legal effect. The terms of this Agreement have been negotiated by the Parties and the language of the Agreement shall not be construed in favor of or against any particular Party. The headings used herein are for reference only and shall not affect the construction of this Agreement. The undersigned sign this Agreement as their own free act and acknowledge that the terms of this Agreement are contractual and not merely recital and that it is a fully binding, final, and complete settlement.

14. Review by Counsel. The Parties have had their own legal counsel review this Agreement prior to execution of the same or, alternatively, have had a full and fair opportunity for legal counsel to review the Agreement and have affirmatively chosen instead to waive such right.

15. Enforcement of Agreement. If any Party brings an action or proceeding to enforce its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including court costs and reasonable attorneys' fees, if any, incurred in connection with such action or proceeding.

16. Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, the Parties hereto and, where applicable, their respective parents, subsidiaries, divisions, officers, directors, owners, associates, predecessors, successors, heirs, assigns, agents, partners, employees, insurers and representatives.

17. Admissions and Third-Party Beneficiaries. This Agreement is a compromise of disputed claims and shall not be deemed an admission by any party of any claim, cause of action, or allegation made by or against any party to this Agreement. Except as expressly provided in this Agreement, no rights shall inure to any third party from the obligations, representations, and agreements of the Parties made herein.

18. Further Assurances. Each of the Parties to this Agreement agrees to execute and deliver to the other Parties such other documents, instruments, and writings necessary to effectuate this Agreement and shall undertake such other actions to cause the consummation of the transactions contemplated by this Agreement, if any.

19. No Challenges to Validity. The Parties agree that they shall not take any action to (i) obtain a determination that this Agreement, or the transactions contemplated hereby, are unlawful, illegal or against public policy, (ii) challenge the validity or enforceability hereof or the transactions contemplated hereby, or (iii) allege that any of the terms and conditions set forth



herein or any of the transactions contemplated hereby, are unlawful in any other manner whatsoever.

20. Severability. In the event that any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable, the validity, legality, or enforceability of other provisions in or obligations under this Agreement will not in any way be affected or impaired thereby.

21. Authority. By executing this Agreement, all of the Parties represent that he, she or it has the right, legal capacity, power, and authority to enter into this Agreement and to perform its obligations hereunder, without the consent, approval, or authorization of any person, entity, tribunal, or other regulatory or governmental authority. The execution of this Agreement by the Parties, the performance by the Parties of their obligations hereunder, and the transactions contemplated hereby do not require any further action by or the consent of any third party.

22. Amendment to Agreement. Any amendment to this Agreement must be in a writing signed by the Parties hereto and/or their duly authorized representatives and must clearly state the intent of the Parties to amend this Agreement. No course of dealing or performance between the Parties, nor any delay in exercising any rights or remedies hereunder or otherwise, shall operate as a waiver of any of the rights or remedies of any Party. Any waiver by any Party of any breach of any kind or character whatsoever by any other Party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement on the part of the other Party or Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

DATED this 14 day of January, 2020

THE UTAH STATE BOARD OF EDUCATION

  
By: Mark Huntsman

Its: Chair

DATED this \_\_\_\_ day of January, 2020

UTAH CHARTER ACADEMIES DBA UTAH  
PRÉPARATORY ACADEMY

By: Clay Hatch

Its: Chair

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

DATED this \_\_\_\_ day of January, 2020

THE UTAH STATE BOARD OF EDUCATION

\_\_\_\_\_  
By: Mark Huntsman

Its: Chair

DATED this 13<sup>th</sup> day of January, 2020

UTAH CHARTER ACADEMIES DBA UTAH  
PREPARATORY ACADEMY

  
\_\_\_\_\_  
By: Clay Hatch

Its: Chair

## EXHIBIT - B

**From:** [Gillespie, Lauralee](#)  
**To:** [Joan Ottley-Zeeman](#); [Sharette, Carolyn](#)  
**Cc:** [Slade, Jennifer](#); [Voorhies, Leah](#)  
**Bcc:** [Gillespie, Lauralee](#)  
**Subject:** UPIPS Report APA 2018-2019.pdf  
**Date:** Friday, August 2, 2019 11:27:00 AM  
**Attachments:** [UPIPS Report APA 2018-2019.pdf](#)

---

Please see attached report regarding the May 2019 monitoring visit. If you have any questions let me know.

**Lauralee Gillespie, Esq.**

*UPIPS Specialist*

801-538-7866

[lauralee.gillespie@schools.utah.gov](mailto:lauralee.gillespie@schools.utah.gov)

## **EXHIBIT C**

# **American Preparatory Academy**

12894 South Pony Express Road, Suite 600, Draper, Utah, 84020

## **UPIPS Monitoring Report on Services for Students with Disabilities**

**August 2, 2019**

Ms. Carolyn Sharette, Director  
Ms. Joan Ottley-Zeeman, Special Education Director



Utah State Board of Education  
250 E 500 S  
PO Box 144200  
Salt Lake City, UT 84114-4200

## UIPS Background Information

The Utah State Board of Education, Special Education Services (USBE-SES) has the responsibility of monitoring compliance with federal and state requirements under the Individuals with Disabilities Education Act of 2004 (IDEA). This responsibility is administered within the framework of supporting positive results for students with disabilities.

USBE-SES's results-driven accountability and continuous-improvement monitoring system reflects the federal intent to emphasize a data-driven, systemic approach to compliance as well as improvement of outcomes for students with disabilities. American Preparatory Academy (APA), was a local education agency (LEA) selected for a coordinated 2018-2019 visit. This coordinated visit included Title I and special education programs.

Several methods of data collection were utilized during the on-site visit including reviewing the LEA's Self-Assessment and 618 data, reviewing student records, interviewing school staff, reviewing LEA procedures and policies, and touring one school site. The results of that visit are presented in this report. **All compliance errors in every file as well as areas of noncompliance identified in this report must be corrected as soon as possible, but in no case later than one year.**

At the end of the visit, the monitoring team presented a brief summary of preliminary findings to the Director of Special Education and the Steering Committee during an exit meeting. APA will report annually to USBE on progress related to its Program Improvement Plan. The Utah State Board of Education will conduct a yearly data review and assign monitoring activities, including on-site visits, as needed.

This report lists the strengths of the special education programs and personnel, areas of non-compliance with IDEA requirements, and recommendations for program improvement.

## **Type of Visit**

Full On-Site Visit

### **Dates and Sites Visited**

May 22, 2019	Opening Meeting: American Preparatory Academy Draper #3 Campus Site Visits: American Preparatory Academy Draper #3 Campus, American Preparatory Academy West Valley #1 Campus
May 23, 2019	Site Visits: American Preparatory Academy West Valley #2 Campus, American Preparatory Academy Draper #1 Campus Exit Meeting: American Preparatory Academy Draper #1 Campus

### **Monitoring Team Members**

The monitoring team had the following members:

- Lindsey Cunningham, Utah State Board of Education, UPIPS Specialist
- LauraLee Gillespie, Utah State Board of Education, UPIPS Specialist
- Kelsey Gressmen, Utah State Board of Education, UPIPS Specialist
- Karen Kowalski, Utah State Board of Education, UPIPS Contract Reviewer
- Jennifer Slade, Utah State Board of Education, UPIPS Coordinator
- Deb Spark, Utah State Board of Education, UPIPS Contract Reviewer

### **Team On-Site Activities**

In conducting the on-site visit, the monitoring team carried out the following activities:

- Conducted an orientation and an exit meeting with the LEA Stakeholder Steering Committee.
- Reviewed 21 student special education files which included student IEPs, student progress reports, and any other pertinent data.
- Interviewed school personnel, including school administrators, the special education director, special education teachers, general education teachers, and paraeducators.
- Conducted two focus groups of APA students at the Draper #3 Campus and West Valley #2 Campus.

**UPIPS Program Review Areas**

<b>General Supervision</b> <b>APR Indicators 3, 11, 15</b>	<b>FAPE in the LRE</b> <b>APR Indicators 1, 2, 4, 5, 6</b>
<ul style="list-style-type: none"> <li>● Child Find</li> <li>● Forms</li> <li>● Surrogate Parents</li> <li>● Evaluation/Eligibility/IEE procedures</li> <li>● Timelines (Evaluation and Reevaluation)</li> <li>● English Proficiency Assessments</li> <li>● Qualified Staff</li> <li>● Confidentiality</li> <li>● Statewide Assessment</li> <li>● Policies and Procedures</li> <li>● Fiscal Management</li> <li>● Evaluation Materials</li> <li>● Complaint and Due Process</li> <li>● Referral Process</li> <li>● Professional Development</li> <li>● National Instructional Materials Access Center/National Instructional Materials Accessibility Standard NIMAC/NIMAS</li> <li>● State and Federal Reports</li> </ul>	<ul style="list-style-type: none"> <li>● Individualized Education Programs (IEP)                             <ul style="list-style-type: none"> <li>○ Present Levels of Academic Achievement and Functional Performances (PLAAFPs) and Goals</li> <li>○ Service Delivery, including Related Services</li> <li>○ Special Factors</li> <li>○ State-wide Assessment</li> <li>○ Extended School Year (ESY)</li> <li>○ Behavior Intervention Plan (BIP) and Health Care Plan</li> </ul> </li> <li>○ Accommodations                             <ul style="list-style-type: none"> <li>● Timelines (IEP and Placement)</li> <li>● Physical Education</li> <li>● Access to the General Curriculum</li> <li>● Team Membership</li> <li>● Least Restrictive Environment/Placement</li> <li>● Request for IEP meetings</li> <li>● Discipline</li> <li>● Graduation/Dropout Rates</li> </ul> </li> </ul>

<b>Parental Involvement</b> <b>APR Indicator 8</b>	<b>Transitions</b> <b>APR Indicators 7, 12, 13, 14</b>	<b>Disproportionality</b> <b>APR Indicators 9, 10</b>
<ul style="list-style-type: none"> <li>● Copies to Parents</li> <li>● Written Prior Notice</li> <li>● Notice of Meeting</li> <li>● Progress Reports</li> <li>● Procedural Safeguard Notice</li> <li>● Parental Consent</li> <li>● Communication in a Variety of Languages</li> <li>● Disciplinary Procedures (LRBI)</li> </ul>	<ul style="list-style-type: none"> <li>● Part C to Part B                             <ul style="list-style-type: none"> <li>○ Transition Planning with EI</li> <li>○ Utah Preschool Outcomes Data (UPOD)</li> <li>○ IEP in Place by 3rd Birthday                                     <ul style="list-style-type: none"> <li>● School to Post-School</li> </ul> </li> <li>○ Transition Plans, 14+</li> <li>○ Post-secondary Goals</li> <li>○ Age-Appropriate Transition Assessments</li> <li>○ Course of Study</li> <li>○ Summary of Performance</li> <li>○ Age of Majority</li> <li>○ Notice to Adult Students</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Prevalence and Categories of Disabilities, Race and Ethnicity</li> </ul>



## Utah State Performance Plan (SPP)/Annual Performance Report (APR)

[The Utah State Performance Plan and Annual Performance Report](https://schools.utah.gov/specialeducation/resources/datareporting) may be downloaded at <https://schools.utah.gov/specialeducation/resources/datareporting>.

Reports on LEA performance on each indicator are distributed annually to each LEA.

### 17 Indicators in the SPP

- Indicator 1** Improving graduation rates for students with disabilities.
- Indicator 2** Decreasing dropout rates for students with disabilities.
- Indicator 3** Ensuring all students with disabilities participate in and perform well on statewide or alternate assessments.
- Indicator 4** Reducing suspension and expulsion rates for students with disabilities.
- Indicator 5** Providing services for students with disabilities in the least restrictive environment.
- Indicator 6** Providing preschool children with disabilities services in the least restrictive environment.
- Indicator 7** Improving cognitive and social outcomes for preschool children with disabilities.
- Indicator 8** Improving parent involvement in their child's special education program (parent survey).
- Indicator 9** Reducing disproportionality of cultural groups in special education.
- Indicator 10** Reducing the number of students from other cultures in certain disability categories.
- Indicator 11** Improving efforts to locate, evaluate, and serve students with disabilities (child find) (initial evaluations completed within 45 school days).
- Indicator 12** Ensuring a smoother transition from preschool programs to school-based programs (IEP developed and implemented by eligible students' third birthday).
- Indicator 13** Improving transition services for students with disabilities at the secondary level, i.e., 15+ years (complete transition plans).
- Indicator 14** Improving the outcomes for students moving from secondary to postsecondary activities (post-school outcomes survey).
- Indicator 15** Improving the number of due process hearing requests resolved during the resolution period.
- Indicator 16** Improving the number of mediations held that result in mediation agreements.
- Indicator 17** Creating a State Systemic Improvement Plan (SSIP).

## General Supervision

APA is responsible for providing a free appropriate public education for all students with disabilities who are enrolled in the LEA. The Utah State Board of Education ensures that both federal IDEA and state requirements and standards are met.

LEA support and involvement are critical to the successful implementation of the provisions of IDEA. To carry out their responsibilities, LEAs also monitor the implementation of state and federal statutes and regulations. Effective general supervision promotes positive student outcomes by providing appropriate educational services to students with disabilities, ensuring the effective and timely correction of identified deficiencies, and helping personnel to gain the knowledge, skills, and abilities necessary to perform their assigned responsibilities.

AREAS OF STRENGTH
USB E Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>• Based on interviews collaboration across the school includes data and child find discussions during frequent school team meetings.</li> <li>• Individuals interviewed described a positive staff climate across schools.</li> <li>• There are regularly scheduled trainings and professional development provided to general education teachers and all staff to support collaboration efforts as reported by staff.</li> <li>• Based on interviews there are regularly scheduled trainings, evaluations, and planning provided to paraeducators. A record of paraeducator training is kept. Paraeducators have a coach to help with teaching as well as case manager to provide training and information on the IEP.</li> <li>• In student files reviewed the IEP timelines are compliant and WIDA Access assessments of language proficiency were in the IEP file and mentioned in the present levels of academic achievement and functional performance (PLAAFP).</li> </ul>

AREAS OF SYSTEMIC NONCOMPLIANCE
USB E Monitoring Team Findings (2018–2019)
All findings of noncompliance can be viewed and correction documented on the <a href="https://upips.schools.utah.gov">UPIPS website</a> ( <a href="https://upips.schools.utah.gov">https://upips.schools.utah.gov</a> ).
<b>Areas of noncompliance are required to be corrected as soon as possible, but in no case later than one year, and an additional sample of files must be reviewed that demonstrate compliance with each regulatory requirement (OSEP 09-02 Memo).</b>

RECOMMENDATIONS FOR PROGRAM IMPROVEMENT
USB E Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>• Ensure paraeducators who support and assist in providing special education and related services are training, supervised, and clearly understand their role (<i>USB E SER I.E.30. and VIII.K.4.</i>). Based on interviews it is unclear which paraeducators work with special education and which work with general education. Staff reported that special education paraeducators were only with students who need one on one support.</li> <li>• Ensure a continuum of alternative placements is available to meet the needs for students with disabilities (<i>USB E SER III.Q.</i>). Based on interviews, there is an inconsistent understanding of the continuum of alternative placements, specifically for students with severe disabilities. We would encourage some training for all staff on placement options for students with disabilities.</li> </ul>

RECOMMENDATIONS FOR PROGRAM IMPROVEMENT
We would also encourage a review of coding for Self-Contained Resource Attendance Management (SCRAM).

## Parental Involvement

One purpose of the IDEA is to expand and promote opportunities for parents and school personnel to work in new partnerships at the state and local levels. Parents have an opportunity and right to participate in meetings with respect to the identification, evaluation, educational placement, and provision of a free appropriate public education to their student with disabilities. Parent involvement has long been recognized as an important indicator of an LEA's success. Parental involvement has positive effects on students' attitudes toward the LEA and benefits school personnel as well.

AREAS OF STRENGTH
USBE Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"><li>Staff reported that progress reports are provided to parents as often as report cards. Files reviewed consistently included progress reports.</li><li>Specific parent input was found in files reviewed.</li><li>Based on interviews, interpreter services are provided onsite or through Comgap. Documents are translated to ensure parent understanding.</li></ul>



AREAS OF SYSTEMIC NONCOMPLIANCE
USBE Monitoring Team Findings (2018–2019)
All findings of noncompliance can be viewed and correction documented on the <a href="https://upips.schools.utah.gov">UPIPS website</a> ( <a href="https://upips.schools.utah.gov">https://upips.schools.utah.gov</a> ).
<b>Areas of noncompliance are required to be corrected as soon as possible, but in no case later than one year, and an additional sample of files must be reviewed that demonstrate compliance with each regulatory requirement (OSEP 09-02 Memo).</b>

RECOMMENDATIONS FOR PROGRAM IMPROVEMENT
USBE Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"><li>No recommendations currently.</li></ul>



## Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

The provision of a free appropriate public education in the least restrictive environment is the foundation of IDEA. Students with disabilities receive educational services at no cost to their parents, and services provided meet the student's unique learning needs. These services are provided, to the maximum extent appropriate, with students without disabilities and, unless their IEP requires some other arrangement, in the school they would attend if not disabled. Any removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes cannot be achieved satisfactorily.

The IDEA '97 Committee Report emphasized that almost twice as many students with disabilities drop out as compared with their non-disabled peers. A further concern was the continued inappropriate identification and placement of students from minority backgrounds and students with limited English proficiency in special education.

IDEA's intention is to increase the opportunity for students with disabilities to experience and benefit from the general education curriculum. Most students identified as eligible for special education and related services are capable of participating in the general education curriculum to varying degrees with some accommodations and modifications. This provision ensures that a student's special education and related services are in addition to and related to the general education curriculum, not separate from it.

AREAS OF STRENGTH
USB E Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>• Teams are using data to drive instruction (Observation, informal testing, general education data, DIBELS) as reported during interviews.</li> <li>• Based on interviews the schoolwide general education program follows an inclusive model schoolwide that provides interventions to meet student needs and abilities.</li> <li>• Staff report that the team in IEP meetings ensure that the process is followed and ensure team members are heard.</li> <li>• Staff report content is adapted through different modalities, reteaching, scaffolding, pacing, more time with content, progress monitoring.</li> <li>• Students at the APA Draper Campus are running their own IEPs but were unclear what the expectations were.</li> <li>• Files reviewed were aligned between PLAAFPs and goals.</li> </ul>

AREAS OF SYSTEMIC NONCOMPLIANCE
USB E Monitoring Team Findings (2018–2019)
All findings of noncompliance can be viewed and correction documented on the <a href="https://upips.schools.utah.gov">UPIPS website</a> ( <a href="https://upips.schools.utah.gov">https://upips.schools.utah.gov</a> ).
<b>Areas of noncompliance are required to be corrected as soon as possible, but in no case later than one year, and an additional sample of files must be reviewed that demonstrate compliance with each regulatory requirement (OSEP 09-02 Memo).</b>

RECOMMENDATIONS FOR PROGRAM IMPROVEMENT
USB E Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>• Consider professional development regarding specially designed instruction (<i>USB E SER I.E.42. and 43.</i>). Based on interviews and conversations during file reviews interventions and accommodations are clearly provided but specially designed instruction to meet the unique needed outlined in the student IEP are not. Some comments provided during interviews included:             <ul style="list-style-type: none"> <li>- An understanding that case managers/special education teachers observe, give feedback, and check in on student progress.</li> <li>- Students receiving special education are included in the ability grouping intervention program and are receiving only accommodations.</li> <li>- Students are fully included in the classroom. There have not been any students who couldn't fully participate in the general education classroom with accommodations and modifications. Student needs are met in ability-based grouping using modifications.</li> </ul> </li> </ul>

## RECOMMENDATIONS FOR PROGRAM IMPROVEMENT

The classroom location of the specially designed instruction is not suspect. It is unclear that the student's IEP with measurable annual goals designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum, and special education services are individualized and specially designed (*USBE SER III.J.*).

Observations, feedback, techniques, accommodations, modifications, interventions, and data are valuable tools for any educator. Students who only require these tools may not actually require special education. The IDEA requires instruction addressing the unique needs of the student resulting from the disability.

- Ensure students are receiving special education services as outlined in the IEP. During focus groups, some students were unsure who the special education teacher was, or what they were working on in terms of IEP goals. They are only able to identify accommodations.
- Ensure accommodations outlined in the IEP are provided to students. Some students stated that teachers do not provide accommodations unless they ask and some stated that they were ridiculed when asking for accommodations.
- Be cautious about using "as needed" for the frequency of modifications and supports. It sends a message that it is optional and at the discretion of the teacher rather than based on student need. Several files reviewed included "as needed" for the frequency of modifications and supports.
- Make sure modifications and supports are individualized to meet the needs of the student. Several files reviewed included identical modifications and supports.
- Consider some professional development around determining extended school year services (ESY). None of the files reviewed included ESY services.
- Ensure that the special education service and related service time aligns with the IEP goals. Files reviewed included IEPs with several goals that lacked services and alternatively other files included IEPs with few goals and several services. Examples include:
  - 10 minutes daily for personal development and 15 minutes twice a year for counseling. 4 Goals with no clear specially designed instruction.
  - 600 minutes a month for reading basics and comprehension.
  - 1200 minutes a month for math. 660 minutes a month for written language.
  - 30 minutes of speech for one sound and 30 minutes for four different sounds.
  - 2000 minutes a week of behavior support.
- Consider strengthening PLAAFPs to include statements of how the student's disability affects the student involvement in the general education curriculum (*USBE SER III.J.2.*). Several files reviewed were missing this information.

## Transitions

Transition is a multifaceted process that covers two major transition points for students with disabilities and their families. For early childhood transition, Congress recognized the importance of coordination between the local education agency and the early intervention system.

Transition planning for children who may be eligible for special education preschool services must include scheduling a planning meeting with the early intervention agency, the educational agency, and the family at least 90 days prior to the child's third birthday.

The National Longitudinal Transition Study identified factors associated with post-school success in obtaining employment and earning higher wages for youth with disabilities. These factors include completing high school, spending more time in regular education, and taking

vocational education courses. Post-school success is improved when youth have a transition plan in high school that specifies an outcome, such as employment, as the goal. Transition requirements of IDEA require the involvement of students in transition planning, consideration of students' preferences and interests, and the reflection, in the IEP, of a coordinated set of activities within an outcome-oriented process that promotes movement from school to post-school activities. Involvement of all appropriate agencies ensures that each student's needs can be appropriately identified and met.

<b>AREAS OF STRENGTH</b>
USBE Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>This area was not reviewed during this visit.</li> </ul>

<b>AREAS OF SYSTEMIC NONCOMPLIANCE</b>
USBE Monitoring Team Findings (2018–2019)
All findings of noncompliance can be viewed and correction documented on the <a href="https://upips.schools.utah.gov">UPIPS website</a> ( <a href="https://upips.schools.utah.gov">https://upips.schools.utah.gov</a> ).
<b>Areas of noncompliance are required to be corrected as soon as possible, but in no case later than one year, and an additional sample of files must be reviewed that demonstrate compliance with each regulatory requirement (OSEP 09-02 Memo).</b>

<b>RECOMMENDATIONS FOR PROGRAM IMPROVEMENT</b>
USBE Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>This area was not reviewed during this visit.</li> </ul>

### **Disproportionality**

In an effort designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment, it is the responsibility of the State Education Agency to collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the local education agencies (LEAs) in the state with respect to:

- The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment;
- The placement in particular educational settings of such children; and
- The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

<b>AREAS OF STRENGTH</b>
USBE Monitoring Team Findings (2018–2019)
<ul style="list-style-type: none"> <li>This area was not reviewed during this visit.</li> </ul>

<b>AREAS OF SYSTEMIC NONCOMPLIANCE</b>
USBE Monitoring Team Findings (2018–2019)

<b>AREAS OF SYSTEMIC NONCOMPLIANCE</b>
--

All findings of noncompliance can be viewed and correction documented on the <a href="https://upips.schools.utah.gov">UPIPS website</a> ( <a href="https://upips.schools.utah.gov">https://upips.schools.utah.gov</a> ).
--

<b>Areas of noncompliance are required to be corrected as soon as possible, but in no case later than one year, and an additional sample of files must be reviewed that demonstrate compliance with each regulatory requirement (OSEP 09-02 Memo).</b>
--

<b>RECOMMENDATIONS FOR PROGRAM IMPROVEMENT</b>
--

USBE Monitoring Team Findings (2018–2019)
---

- |   |
|---|
| <ul style="list-style-type: none"><li>• This area was not reviewed during this visit.</li></ul> |
|---|

# EXHIBIT D

**From:** [Gillespie, Lauralee](#)  
**To:** [Joan Ottley-Zeeman](#)  
**Cc:** [Voorhies, Leah](#); [Slade, Jennifer](#); [Stevens, Neil](#)  
**Subject:** Additional Documentation of Implementation  
**Date:** Thursday, August 15, 2019 3:03:55 PM

---

Joan,

I created a spreadsheet based on the notes from our review on August 13, 2019 regarding additional requested documentation of implementation. It has been uploaded to UPIPS. I have counted 17 files, but you may have additional files requested in your notes. Please let me know when you would like me to come review additional documentation.

**Lauralee Gillespie, Esq.**

*UPIPS Specialist*

801-538-7866

[lauralee.gillespie@schools.utah.gov](mailto:lauralee.gillespie@schools.utah.gov)



# EXHIBIT E

**From:** [Voorhies, Leah](#)  
**To:** [Joan Ottley-Zeeman](#)  
**Cc:** [Mortensen, David L.](#); [Sharette, Carolyn](#); [Beus, Michelle \(AG\)](#); [Gillespie, Lauralee](#); [Bryan Quesenberry \(AG\)](#); [chatch@apamail.org](mailto:chatch@apamail.org)  
**Subject:** Special Education Conference  
**Date:** Wednesday, February 26, 2020 3:32:41 PM

---

*Joan,*

*Thank you for hosting USBE special education staff at APA schools on January 30<sup>th</sup> and 31<sup>st</sup>. As per the settlement agreement, we agreed to hold a Special Education Conference and discuss the items outlined in the agreement including this recent visit (SETTLEMENT AGREEMENT #8). LauraLee Gillespie and I have reviewed all of the information from our visit and look forward to the opportunity to discuss our findings with you.*

*We are available to meet with you and other appropriate staff on the following dates:*

*March 6, 1 pm to 4 pm*

*March 11, 9 am to 12 pm*

*March 11, 11 am to 2 pm*

*March 23, 9 am to 12 pm*

*March 23, 1 pm to 4 pm*

*We are happy to host you at our office or meet you at a location of your choosing.*

*Best, lv*

## **Leah Voorhies, PhD**

Assistant Superintendent of Student Support

Utah State Board of Education

[leah.voorhies@schools.utah.gov](mailto:leah.voorhies@schools.utah.gov)

801-538-7898

## EXHIBIT F

**From:** [joz@apamail.org](mailto:joz@apamail.org)  
**To:** [Voorhies, Leah](#)  
**Cc:** [Mortensen, David L.](#); [Sharette, Carolyn](#); [Michelle Beus](#); [Gillespie, Lauralee](#); [Bryan Quesenberry](#); [chatch@apamail.org](mailto:chatch@apamail.org)  
**Subject:** Re: Special Education Conference  
**Date:** Thursday, March 19, 2020 10:48:20 PM

---

Leah,

Thank you for your thoughtful email and concern for our staff and students. So far, reports on staff and student health are good. We do have a number of families and some staff in voluntary quarantine as missionaries and other family travelers return home from abroad.

Yes indeed, like all educators, our plates are very full right now! The upside is that we are becoming “virtual technology” experts and our behavior issues have “virtually” disappeared! (tsk, tsk) We really do miss our kids and I see many comments from the teachers in Google Classroom telling the kids that very thing. It’s really quite touching.

We appreciate your additional guidance letters over the last few days related to virtual learning. In particular, the shared resources for online training available to our Para educators, the clarifications about FERPA, and extended due dates for our APR appeal and PIP completion.

We appreciate your consideration and accommodation for the challenging circumstances we all find ourselves in at this point. We agree. It would serve us all better to reschedule our meeting so we can meet in person.

Either date in April will work for us. Let us know which one works best for you and I will re-send the meeting invitation.

Kind regards,

Joan Ottley-Zeeman, Ma.Ed.  
APA District Administrator  
SpEd Coordinator  
801-548-6333

On Mar 18, 2020, at 6:18 PM, Voorhies, Leah <[leah.voorhies@schools.utah.gov](mailto:leah.voorhies@schools.utah.gov)> wrote:

Joan,

The last couple days have been unique and challenging. We hope your staff and students are all healthy and safe. We know your team has a ton on your plates right now trying to provide virtual instruction/education to students.

As USBE staff are following the CDC’s guidance to restrict in-person meetings, we are all working

remotely, as we're guessing all of you are. Our team thinks it might be in everyone's best interest to postpone our meeting on Monday until we can, hopefully, meet in person.

What are your thoughts?

If you agree we should postpone, here are a couple of times we are available:

April 20 1-4 pm

April 24 1-4 pm

I can suggest others if these don't work.

Let us know and please be safe! Best, lv

### **Leah Voorhies, PhD**

Assistant Superintendent of Student Support

Utah State Board of Education

[leah.voorhies@schools.utah.gov](mailto:leah.voorhies@schools.utah.gov)

801-538-7898

---

**From:** joz@apamail.org <joz@apamail.org>

**Sent:** Wednesday, March 4, 2020 8:16 PM

**To:** Voorhies, Leah <Leah.Voorhies@schools.utah.gov>

**Cc:** Mortensen, David L. <david.mortensen@stoel.com>; Sharette, Carolyn <csharette@apamail.org>; Beus, Michelle (AG) <mcbelus@agutah.gov>; Gillespie, Lauralee <Lauralee.Gillespie@schools.utah.gov>; Bryan Quesenberry (AG) <bquesenberry@agutah.gov>; chatch@apamail.org

**Subject:** Re: Special Education Conference

Leah,

Thank you for your invitation. We look forward to sitting down with you and LauraLee to discuss the results of the special education observation visit completed in January.

We would like to host you at the American Preparatory Schools' business office on the 23rd of March from 1:00 to 4:00. The address is:

12894 S Pony Express Rd, Ste. 600

Draper, UT 84020

Are there any special equipment needs or other accommodations we can provide for you?

Hopefully, the date and time are still suitable. Please let us know.

Regards,

Joan Ottley-Zeeman, Ma.Ed.  
APA District Administrator  
SpEd Coordinator  
801-548-6333

On Feb 26, 2020, at 3:32 PM, Voorhies, Leah <[leah.voorhies@schools.utah.gov](mailto:leah.voorhies@schools.utah.gov)> wrote:

*Joan,*

*Thank you for hosting USBE special education staff at APA schools on January 30<sup>th</sup> and 31<sup>st</sup>. As per the settlement agreement, we agreed to hold a Special Education Conference and discuss the items outlined in the agreement including this recent visit (SETTLEMENT AGREEMENT #8). LauraLee Gillespie and I have reviewed all of the information from our visit and look forward to the opportunity to discuss our findings with you.*

*We are available to meet with you and other appropriate staff on the following dates:*

*March 6, 1 pm to 4 pm*

*March 11, 9 am to 12 pm*

*March 11, 11 am to 2 pm*

*March 23, 9 am to 12 pm*

*March 23, 1 pm to 4 pm*

*We are happy to host you at our office or meet you at a location of your choosing.*

*Best, lv*

**Leah Voorhies, PhD**

Assistant Superintendent of Student Support

Utah State Board of Education

[leah.voorhies@schools.utah.gov](mailto:leah.voorhies@schools.utah.gov)

801-538-7898

Confidentiality Notice: The information contained in this e-mail is for the intended recipient(s) alone. It may contain privileged and confidential information that is legally protected. If you are not an intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this e-mail in error, please notify the sender immediately by reply to this email and delete the material from your computer.

Confidentiality Notice: The information contained in this e-mail is for the intended recipient(s) alone. It may contain privileged and confidential information that is legally protected. If you are not an intended recipient, you must not copy, distribute or

take any action in reliance on it. If you have received this e-mail in error, please notify the sender immediately by reply to this email and delete the material from your computer.

# EXHIBIT G



## UTAH STATE BOARD OF EDUCATION

Mark Huntsman, Chair     Brittney Cummins, Vice Chair

Laura Belnap  
Michelle Boulter  
Janet A. Cannon  
Cindy Davis  
Jennie Earl

Jennifer Graviet  
Scott L. Hansen  
Mike Haynes  
Carol Barlow Lear

Mark R. Marsh  
Scott B. Neilson  
Shawn E. Newell  
Laurieann Thorpe

Sydnee Dickson, State Superintendent of Public Instruction  
Lorraine Austin, Secretary to the Board

## American Preparatory Academy (APA) Special Education Corrective Action Plan (CAP)

April 24, 2020

### Overview

From January 7–8, 2020, American Preparatory Academy (APA) uploaded documentation on paraeducator training and supervision to the Utah Program Improvement Planning System (UPIPS) website. Documentation was reviewed in preparation for the onsite visit.

From January 30–31, 2020, the Utah State Board of Education (USBE) Special Education Services (SES) section performed an onsite UPIPS monitoring visit. APA school sites were visited for observation and student focus groups. Observations were conducted and student focus groups held to monitor for compliance and to make program improvement recommendations. The onsite review team consisted of the following USBE staff at each school location:

- American Preparatory Academy—Draper 1, 12892 S Pony Express, Draper, UT 84020
  - Jennie Defriez, Special Education Effective Instruction Coordinator
  - Kelsey Gressmen, UPIPS Specialist
- American Preparatory Academy—Draper 2, 11938 S Lone Peak, Draper, UT 84020
  - Teresa Davenport, Special Education Preschool Specialist
  - Brook Hatch, Special Education Secondary Math Specialist
  - Leah Voorhies, Assistant Superintendent of Student Support
- American Preparatory Academy—Draper 3, 431 W 11915 S, Draper, UT 84020
  - Naté Dearden, Parent and Family Rights Coordinator
  - Jordan DeHaan, Dispute Resolution Specialist
  - Tanya Semerad, Autism and Significant Cognitive Disabilities Specialist
- American Preparatory Academy—Salem, 1195 S Elk Ridge Drive, Salem, UT 84653
  - Ellen Bailey, Special Education Elementary English Language Arts Specialist
  - Emily Berry, Student Support Program Evaluator Specialist
  - Lindsey Cunningham, UPIPS Specialist
  - Tracy Gooley, Alternate Assessment and Accommodations Specialist
- American Preparatory Academy—West Valley 1, 1255 W Crystal Ave, West Valley, UT 84119
  - Dana Archuleta, Residential Treatment Center Monitoring and UPIPS Specialist
  - Sydnee Seager, Multi-Tiered System of Supports Project Manager Specialist
  - Jennifer Slade, Special Education Compliance Support Coordinator

- American Preparatory Academy—West Valley 2, 3636 W 3100 S, West Valley, UT 84120
  - Casey Dupart, Behavior Supports and Mental Health Needs Specialist
  - LauraLee Gillespie, UPIPS Specialist
  - Deanna Taylor, Transition Special Education Specialist
  - Becky Unker, Special Education Elementary Mathematics Specialist

After reviewing data and information from paraeducator training and supervision documentation, student focus groups, and observations, the USBE SES identified the following:

### Training and Supervision Data | January 7–8, 2020

APA documentation of the training and supervision of paraeducators in the implementation of specially designed instruction (SDI) included student individualized education program (IEP) progress reports, teacher notes on specific students, teacher calendars, and evidence that paraprofessionals received and reviewed student IEPs with a special educator at one point each school year. Paraeducators met regularly with staff to discuss students on IEPs as well as all other students. Paraeducators were also provided generalized special education training. No items provide information of what SDI looks like for individual students or how paraeducators are trained and supervised as they provide SDI.

The intervention program progress chart (i.e., LPC) lists all enrolled students, not just those on IEPs. The LPC provides a menu of interventions and supports the paraeducator may provide for a student on an IEP. Listed supports included “individual instruction” and “individual help.” There is no clear evidence of what “individual instruction” or “individual help” looks like in the classroom setting or how the IEP aligns with instruction. The intervention program drives the student instruction, not the student’s IEP.

Based on provided documentation, the general education classroom or the intervention classroom are the locations where most special education services should be observed. There is no clear evidence of SDI implementation based solely on documentation.

### Monitoring Visit | January 30–31, 2020

During the two-day visit, 60 student files were reviewed, and 58 students were observed. The two students not observed were absent. Some students were observed multiple times for a total of 65 observations. Observation locations were selected based on student IEPs. Observers were specifically looking for special education, related services, supports, accommodations, and modifications.

Of the 65 observations:

- 19 (29%) were of students entitled to 180+ minutes of daily special education and related services,
- 42 (65%) were of students entitled to 60–179 minutes of daily special education and related services,
- 3 (5%) were of students entitled to 1–59 minutes of daily special education and related services, and
- 1 student’s daily special education and related service amount is unknown.

Of the 65 observations:

- 6 (9%) students received primary instruction from special education teachers,
- 28 (43%) students received primary instruction from regular education teachers,
- 29 (45%) students received primary instruction from paraeducators, and
- 2 (3%) students received services from a related service provider.

Additional staff provided educational services in the class setting in 22 of the 65 observations. Five (8%) students received additional instruction from a special education teacher, one (1%) student received additional instruction from a regular education teacher, and 16 (25%) students received additional instruction from a paraeducator.

The intervention programs provided on all APA Campuses were the dominant locations where observers expected to find special education. These classes are taught by paraeducators and occasionally general educators. The intervention programs appeared scripted. When a student is struggling or needs individualized instruction, APA teams meet and determine where the student would better fit in the program, rather than what the individual needs of the student are in the current setting. APA staff report and documentation supports that students are moved into different intervention classes to meet student needs. It is unclear if this impacts the service pattern on the IEP.

In addition to classroom observation data, files reviewed raised additional questions regarding student placement. USBE SES staff had questions regarding student placement on the IEP in 38 (63%) of the student files. Special education services outlined in IEPs were compared with Self-Contained Resource Attendance Management (SCRAM) data. USBE SES staff reported that 31 (52%) student's IEPs aligned with SCRAM data, 16 (26%) student's IEPs did not align with SCRAM data, and IEP and SCRAM data alignment was unclear for 13 (22%) students.

USBE SES staff stated several additional concerns following the monitoring visit, including:

- Specially designed instruction to access grade-level core instruction was not provided. Instead, students attended classes with students in lower grades (e.g., third grader in a first-grade class, ninth grader in a fourth-grade class).
- Observers were unable to differentiate specially designed instruction from general instruction in the intervention classrooms and general education settings.
- Special educators were not designing instruction. Instead, paraeducators developed changes to meet student needs and took them to special educators to seek approval.
- Students with behavior needs were placed in special classes most of the day with no functional behavior assessment, behavior intervention plan, or behavior data provided.
- Students who are learning English may be inappropriately identified as having a disability.
- Students were identified as students with disabilities in front of peers (e.g., they were not provided a book with all other students, they were identified in class as students who needs additional help, staff wore nametags identifying them as special education paraeducators).



## Areas of Correction

- Implementation of specially designed instruction and the role of general education teachers and paraeducators
- Eligibility determination and placement
- Behavior support
- Civil rights

## Corrective Action Plan

- By July 1, 2020, APA will provide LauraLee Gillespie with the name of the USBE-approved special education mentor they will contract with from July 1, 2020 through December 31, 2021. APA will contract with a special educator mentor for four (4) hours per week at each school location for a total of twenty-four (24) hours per week. The mentor may determine time at a specific school location for a cumulative of twenty-four (24) hours weekly. Monthly service logs will be provided to LauraLee Gillespie including dates, locations, and services provided by the mentor. USBE-approved mentors include (in alphabetical order):
  - [AnLar](https://anlar.com/) (https://anlar.com/)
  - [Sage SpEd Consulting](https://www.linkedin.com/in/laura-sage-b279369) (https://www.linkedin.com/in/laura-sage-b279369)
  - [SPEDCO](https://www.spedco.co/) (https://www.spedco.co/)
  - [SPED Strategies](http://spedstrategies.com/) (http://spedstrategies.com/)
  - [TAESE](http://taese.org/cms/) (http://taese.org/cms/)
- By July 1, 2020, APA will provide LauraLee Gillespie with three to five optional dates and times, prior to the end of the 2020–2021 school year, for each USBE training listed below. Trainings will include homework assignments to be submitted to LauraLee Gillespie by the end of the 2020–2021 school year. Training includes:
  - Specially designed instruction training for all APA administration and special educators (six hours)
  - Special education eligibility determination for all members of the APA eligibility determination team (i.e., administration and special educators) (two hours)
  - Addressing student behavior needs for all APA administration and special educators (three hours)
  - The role of the general educator in special education for all APA administration, special educators, and general educators (two hours)
  - Civil rights of students with disabilities for all APA administration, special educators, and general educators (one hour)

# IDENTIFICATION AND CORRECTION OF IDEA NONCOMPLIANCE

## Identification of Noncompliance:

The Utah State Office of Education (USOE) monitoring specialist reviews data collected from and/or submitted by each LEA to ensure compliance with the regulatory requirements of the IDEA. LEAs have the option to correct noncompliance within three weeks of data collection before the USOE issues written findings of noncompliance. The USOE will review the additional data submitted by the LEA and verify whether the data demonstrate compliance, and issue a finding if the data demonstrate noncompliance. Regardless of the specific level of noncompliance, if the USOE identifies noncompliance, the LEA will be notified in writing of the noncompliance and of the requirement that the noncompliance be corrected as soon as possible, but in no case later than one year from identification.

## Correction of Noncompliance:

The Office of Special Education Programs (OSEP) requires that all noncompliance be corrected as soon as possible, but in no case later than one year from the date of notification of noncompliance. The USOE has considered various ways in which LEAs could document the correction of compliance errors. The USOE has made an effort to consider methods that will require the least amount of time and effort for LEAs while providing the USOE with evidence verifying corrections.

Before the USOE can conclude and report that noncompliance has been corrected, it must first verify, consistent with the OSEP Memo 09-02, that the LEA;

- Prong 1 – Has corrected each individual case of noncompliance, and
- Prong 2 – Is correctly implementing the specific regulatory requirements (i.e., subsequently achieved 100% compliance), based on the USOE review of the updated data.

### **Prong 1: Correcting each individual case of noncompliance**

To document that individual student-level noncompliance is corrected; LEAs must demonstrate that the student file is compliant with regulatory requirements. For any noncompliance concerning child-specific requirements that are not subject to a specific timeline requirements, the LEA must submit documentation that the LEA has corrected each individual case of noncompliance, unless the student is no longer within the jurisdiction of the LEA. These items include requirements such as:

- Eligibility determination is not current or complete.
- Eligibility criteria are not met.
- Evaluation Summary Report is not current or complete.
- IEP is not current or complete.
- IEP content does not meet criteria (i.e., measurable goals, PLAAFP statements include current data and how the disability affects progress in the general curriculum, state-wide assessment, ESY decision, etc.).
- Consent for Initial Placement is missing or unsigned by parents.
- Copy to Parent documentation is missing.
- Transition Plan is missing or incomplete.
- Age of Majority notification missing.
- Language proficiency and assessment documentation missing.
- Prior Written Notice missing.
- Documentation that Procedural Safeguards were provided to parents missing.
- Documentation of IEP and eligibility team participation missing.
- Change in Placement missing.

LEAs may select one of the following three (3) procedures to show correction of individual noncompliance (prong 1):

#### **Method A:**

The LEA could list each file by school, student name, DOB, and classification; list the errors; and give dates of new/current documentation that shows file is in compliance. For example:

<b>School</b>	<b>Student</b>	<b>Compliance Items</b>	<b>Evidence of Correction</b>	<b>Documentation of Correction</b>
Jojo Junior High	Sam Jones 5/6/03 ID	No current IEP Notice of meeting: placement not listed as purpose	2/10/10 Training 2/10/10, files rechecked and correct 3/10/10	Submitted documentation of corrected files.
	John Smith etc.	Transition plan missing No consent for initial placement	2/10/10 2/10/10	Submitted documentation of corrected files.

**Method B:**

The LEA could document the required evidence by writing the evidence on the individual file report received from the USOE and submitting to the USOE.

Utah Program Improvement Planning System Student Record Review Individual Student File Report USOE
<hr style="border-top: 1px dashed black;"/> Jane Doe Student Record #1 Classification: SLD Age: 13.4 Date of Last IEP: 1/16/2010 Date of Most Recent IEP: 8/23/2010 Teacher: John Smith
<hr style="border-top: 1px dashed black;"/> All items in the file for Jane Doe were found to be in compliance with the following exceptions: [* indicates that the item is a systemic problem for this set of files.]
Continuing Eligibility Items <b>CEL.7 Parents given copy of Eligibility Determination Documentation Problem: No documentation that copy was given. <u>Copy mailed to parent 9/12/2010</u></b>
Continuing/Reevaluation IEP <b>* CIEP.8 IEP team documents present levels of educational performance. [USOE Rule III.I. p. 46] Problem: PLAAFP missing. <u>New IEP 9/12/2010</u></b>

**Method C:**

The LEA could submit the required evidence by making copies of the evidence on the individual file report received from the SEA and submitting them to the USOE.

Item	Evidence to Submit (Copies of Completed Forms)
Current Eligibility Document and Evaluation Summary	Eligibility Document and Evaluation Summary
Current IEP Consent for Initial Placement	Signature page Signed consent document
Transition Plan	Copy of current and complete plan

For any noncompliance concerning child specific timeline requirements, the LEA must submit documentation to the USOE that the required action (e.g., the evaluation, reevaluation, or IEP) was completed, though late.

**Prong 2: Correctly implementing the specific regulatory requirements (i.e., subsequently achieved 100% compliance), based on the USOE review of the updated data**

To document that the LEA is correctly implementing the specific regulatory requirements, the LEA will review additional student special education files, regardless of the level of noncompliance, and submit documentation that the LEA has achieved 100% compliance. The number of additional files reviewed by the LEA will be determined based on the identified root cause of noncompliance and the following factors:

- The level of noncompliance,
- The LEA's willingness to collaborate and consult with the USOE,
- The LEA's history of correction of noncompliance, and
- The size and demographics of the LEA.

The USOE is committed to supporting LEA efforts to improve results for students with disabilities through the framework of compliance. If you have any questions, please do not hesitate to call the USOE Monitoring Specialist, Tiffanie Owens at 801-538-7806 or [Tiffanie.Owens@schools.utah.gov](mailto:Tiffanie.Owens@schools.utah.gov).

References:

- [OSEP Timely Correction Memo](#)
- <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/417/?1>
- [Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the State Performance Plan \(SPP\)/Annual Performance Report \(APR\)](#)

# UPIPS

Utah Program Improvement Planning System

**2018–2019 MANUAL**



## TABLE OF CONTENTS

Utah State Board of Education Strategic Plan—Education Elevated .....	1
Purpose: Educational Excellence .....	1
Imperatives .....	1
I. Educational Equity .....	1
II. Quality Learning.....	1
III. System Values .....	1
Overview of Utah’s Monitoring System.....	2
UPIPS Objectives .....	2
UPIPS Themes .....	3
Six Principles of IDEA.....	3
Free Appropriate Public Education (FAPE) .....	3
Appropriate Evaluation .....	3
Individualized Education Program .....	4
Least Restrictive Environment (LRE) .....	4
Parent and Student Participation in Decision Making .....	4
Procedural Safeguards .....	4
Utah’s Program Improvement Planning System (UPIPS) .....	4
UPIPS Program Areas and Goal Statements .....	5
Program Area I—General Supervision .....	5
Program Area II—Parent Involvement .....	5
Program Area III—FAPE in the LRE .....	5
Program Area IV—Transition.....	5
Program Area V—Disproportionality.....	6
UPIPS Program Review Areas .....	7
Utah SPP/APR/SSIP .....	8
Relevant Documents.....	8
APR Indicators in the SPP.....	8
Framework for Recognition, Assistance, and Intervention (APR Determination) .....	10
Determination Level Criteria.....	10
Rewards and Enforcement Actions.....	11
USB ESES Tiered Monitoring Structure .....	12
UPIPS Program Improvement Supports and Activities.....	12

Tiered Monitoring One-Year Process .....	16
RDA Tier Descriptions .....	17
Supporting Tier .....	17
Description .....	17
Supports Available .....	17
Activities.....	17
Guiding Tier.....	17
Description .....	17
Supports Available .....	18
Activities.....	18
Assisting Tier .....	18
Description .....	18
Supports Available .....	18
Activities.....	18
Coaching Tier .....	19
Description .....	19
Supports Available .....	19
Activities.....	19
Directing Tier.....	20
Description .....	20
Supports Available .....	20
Activities.....	20
Data Collection and Analysis.....	21
Stakeholder Steering Committee .....	21
Purpose .....	21
Committee Membership Requirements.....	21
Committee Membership Options .....	21
Interview Data .....	21
Student Record Review Data .....	22
Outcome Data.....	22
Other Data Sources.....	23
Other Data at LEA Discretion .....	23
Internal Student Record Review Guidelines.....	24
Identification and Correction of IDEA Noncompliance.....	25



Identification of Noncompliance .....	25
Correction of Noncompliance.....	25
Prong 1: Correcting Each Individual Case of Noncompliance.....	25
Prong 2: Correctly Implementing the Specific Regulatory Requirements (i.e., Subsequently Achieved 100% Compliance), Based on the SEA Review of the Updated Data.....	26
Appendix .....	27
Policies, Procedures, and Practices Review .....	27
A. Forms .....	27
B. Child Find System.....	28
C. Identification and Evaluation .....	31
D. Personnel .....	32
E. Private Schools (NA for Charter Schools).....	33
F. Fiscal Compliance and Accountability Monitoring (FiCAM) Checklists.....	33
Classroom Observation of Special Education Services .....	34
Parent Focus Group Questions .....	35
Yes/No/NA Questions .....	35
Open Ended Questions .....	35

# UTAH STATE BOARD OF EDUCATION STRATEGIC PLAN—EDUCATION ELEVATED

## **Purpose: Educational Excellence**

The foundation of the Utah public education system is to provide an opportunity for educational excellence for each Utah student. This requires advocacy, focus, and prioritization of effort.

## **Imperatives**

### **I. Educational Equity**

The Utah State Board of Education will set the general statewide conditions in which each student can excel, including equity of educational opportunities and culturally responsive practices to promote each student’s academic success and well-being. Resources and Board policies and practices will be aligned to high expectations and successful outcomes for each student.

### **II. Quality Learning**

The Utah State Board of Education will place focus on intended learning outcomes as a key to high student achievement with the understanding that high quality instruction is central to that ideal.

### **III. System Values**

The Utah State Board of Education will set the conditions and systems for student success by working with, understanding, and listening to stakeholders on every level on practices, strategies, resources, and policies that will lead to continued and even greater efficiencies and improvements in student outcomes.

(To see more specifics about the Utah State Board of Education Strategic Plan, visit the [Strategic Plan site](https://www.schools.utah.gov/board/utah/strategicplan) [https://www.schools.utah.gov/board/utah/strategicplan]).

## **OVERVIEW OF UTAH'S MONITORING SYSTEM**

The Utah State Board of Education Special Education Services (USBE SES) staff has the responsibility of monitoring compliance with federal and state requirements under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) (20 U.S.C. §1400; USBE SER VIII.C and D. ). The primary focus is improving educational results and functional outcomes for all students with disabilities (USBE SER VIII.C.3.)

The USBE SES's Results Driven Accountability (RDA) process, as part of Utah's Program Improvement Plan System (UPIPS) continuous monitoring program, reflects the federal intent to emphasize a data-driven, systematic approach to compliance, as well as the improvement of outcomes for students with disabilities.

UPIPS implementation has been generally effective in assisting Local Education Agencies (LEAs) in maintaining procedural compliance with federal and state regulations, and has also resulted in increased LEA commitment to the monitoring process. While continuing the monitoring of IDEA compliance, renewed focus is placed on the systematic evaluation of the impact of special education services on student achievement. Thus, this model has shifted from the previous emphasis on episodic procedural monitoring to active strategic planning and continuous improvement within the framework of compliance and student results.

The RDA process continues to provide a focus on LEA performance on USBE Annual Performance Report (APR) indicators, as well as additional levels of State Education Agency (SEA) support for LEAs with continuing uncorrected compliance issues which have not been corrected in one year, creating a process that is differentiated by results. This differentiation includes the level of monitoring by the SEA according to the LEA's performance in a variety of pre-identified areas and indicators. Methods and procedures used to implement UPIPS are consistent but flexible, in order to adapt to the individual needs of students, educational settings, and administrative realities.

UPIPS is based on the concept that monitoring is an ongoing process and includes an annual USBE review of each LEA's performance in a variety of pre-identified areas and indicators. LEAs are assigned a risk score in each of the pre-identified areas and indicators based on their data in each area. After risk scores have been assigned, LEAs are assigned a Program Implementation Monitoring Tier, which includes supports and activities for each LEA based on the LEA's level of identified risk.

### **UPIPS Objectives**

The monitoring system has five major objectives:

1. Ensure a meaningful and continuous process that focuses on improving academic and social outcomes for students with disabilities by linking LEA data to improvement efforts.
2. Ensure compliance with IDEA federal regulations and USBE SER.
3. Connect LEA improvement efforts with IDEA and USBE requirements.
4. Support each LEA in the UPIPS process which includes self-assessment, evaluation, and improvement of compliance and program effectiveness.
5. Link program improvement activities with multi-year professional development.

## UPIPS Themes

UPIPS is based on the following underlying principles:

- **Continuity.** UPIPS is continuous rather than episodic, is linked to systemic change, and is integrated with self-assessment, continuous feedback, and response.
- **Partnership with Stakeholders.** The USBE SES and LEA collaborate with diverse stakeholders in the following areas: collection and analysis of self-assessment data; identification of critical issues and solutions to problems; and development, implementation, and oversight of improvement strategies to ensure compliance and improved results for students with disabilities (SWD).
- **LEA Accountability.** LEAs are accountable for identifying strengths and areas of concern based upon data analysis; identifying, implementing and revising strategies for program improvement; and submitting annual measurement and progress reports through the LEAs Program Improvement Plan (PIP).
- **Self-Assessment.** Each LEA works with stakeholders to design and implement a self-assessment process that focuses on improving outcomes for students with disabilities.
- **Data-Driven Process.** The improvement process in each LEA is driven by data that focuses on improved outcomes for students with disabilities. On an ongoing basis, each LEA collects and uses data aligned with both the USBE's and the LEA's performance goals and indicators. Data that are available and can be critical to the self-assessment process may include, but are not limited to, Utah State Systemic Improvement Plan (SSIP), APR indicators and additional data points on the RDA letter, personnel needs, and other LEA improvement efforts and initiatives.
- **Technical Assistance.** Since the UPIPS process is continuous, technical assistance is a critical component. USBE provides key components of technical assistance such as promising practices and professional development. LEAs are encouraged to include these components as part of their PIP.

## Six Principles of IDEA

### Free Appropriate Public Education (FAPE)

*“Free appropriate public education or FAPE means special education and related services that—* (A) Are provided at public expense, under public supervision and direction, and without charge; (B) Meet the standards of the USBE and Part B of the IDEA); (C) Include an appropriate preschool, elementary school, or secondary school education in Utah; and (D) Are provided in conformity with an individualized education program (IEP) that meets the requirements of Part B of the IDEA and these rules (USBE SER I.E.17.)

### Appropriate Evaluation

Evaluation teams should collect and examine multiple sources of data, including existing academic achievement and performance data. Additional assessments are administered only as needed to identify the disability and guide the educational program to meet individual needs. Evaluation activities include gathering information related to enabling the child to be involved

in and progress in the general curriculum or, for preschool children, to participate in appropriate activities (USBE SER II.F.).

### **Individualized Education Program**

*“Individualized education program (IEP) means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with these rules and Part B of the IDEA.”* (USBE SER I.E.23).

### **Least Restrictive Environment (LRE)**

This is the presumption that children with disabilities are most appropriately educated with their non-disabled peers, and that special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when “the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily” (USBE SER I.E.25).

### **Parent and Student Participation in Decision Making**

“The Congress finds that: . . . strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home” (20 U.S.C. §1400.(c)(5)(B)).

### **Procedural Safeguards**

Safeguards ensure that the rights of children with disabilities and their parents are protected, that students with disabilities and their parents are provided with the information they need to make decisions about the provision of FAPE, and that procedures and mechanisms are in place to resolve disagreements between parties (USBE SER IV).

### **Utah’s Program Improvement Planning System (UPIPS)**

UPIPS is based on the concept that monitoring is an ongoing process. UPIPS includes an annual USBE review of each LEA’s performance in a variety of pre-identified areas and APR indicators. LEAs are assigned a risk score in each of the pre-identified areas and APR indicators based on their data in each area. This is provided annually to the LEA in an RDA letter. After risk scores have been assigned, LEAs are assigned a Program Implementation Monitoring Tier, which includes supports and activities for each LEA based on the LEA’s level of identified risk.

## **UPIPS PROGRAM AREAS AND GOAL STATEMENTS**

### **Program Area I—General Supervision**

- Goal Statement 1: FAPE is available to all children enrolled in the LEA, because the SEA and LEA monitoring system and other mechanisms for ensuring compliance and parent and child protections are systematic and utilize data to develop corrective action plans and activities (RDA data points).
- Goal Statement 2: All members of the IEP team have access to professional development and support activities that facilitate improved educational results for students with disabilities and the implementation of the IDEA.
- Goal Statement 3: Evaluation and eligibility procedures that focus on needs of students with disabilities and are determined based upon State definitions, eligibility criteria, and appropriate evaluation procedures (APR Indicator 11).
- Goal Statement 4: Students with disabilities are making continuous progress within the SEA and LEA systems for educational accountability under the Utah Comprehensive Accountability System (UCAS) (APR Indicators 1–3).

### **Program Area II—Parent Involvement**

- Goal Statement 5: Parents and eligible students with disabilities are aware of and have access to their rights and responsibilities within the system for parent and child protections.
- Goal Statement 6: Program and services for students with disabilities improve because parents are actively involved in program improvement activities (APR Indicator 8).

### **Program Area III—FAPE in the LRE**

- Goal Statement 7: All students with disabilities receive FAPE in the LRE that promotes a high quality education and prepares them for post-school employment and independent living (APR Indicators 1–2, 4–6).

### **Program Area IV—Transition**

- Goal Statement 8: Children exiting Part C of IDEA (Birth–age 2), who are eligible for Part B of IDEA (ages 3–21), have IEPs developed and implemented by their third birthdays (APR Indicator 12).
- Goal Statement 9: All students with disabilities, beginning at age 14, or earlier if appropriate, receive individualized, coordinated transition services,

designed within an outcome-oriented process that promotes movement from school to post-school activities (APR Indicators 13–14).

### **Program Area V—Disproportionality**

Goal Statement 10: Students are identified as eligible under IDEA following SEA and LEA policies and procedures that ensure those from ethnic and racial minority backgrounds are not inappropriately identified (APR Indicators 9–10).

## UIPS Program Review Areas

<b>General Supervision</b> <b>APR Indicators 3, 11, 15</b>	<b>FAPE in the LRE</b> <b>APR Indicators 1, 2, 4, 5, 6</b>
<ul style="list-style-type: none"> <li>• Child Find</li> <li>• Forms</li> <li>• Surrogate Parents</li> <li>• Evaluation/Eligibility/IEE procedures</li> <li>• Timelines (Evaluation and Reevaluation)</li> <li>• English Proficiency Assessments</li> <li>• Qualified Staff</li> <li>• Confidentiality</li> <li>• Statewide Assessment</li> <li>• Policies and Procedures</li> <li>• Fiscal Management</li> <li>• Evaluation Materials</li> <li>• Complaint and Due Process</li> <li>• Referral Process</li> <li>• Professional Development</li> <li>• National Instructional Materials Access Center/National Instructional Materials Accessibility Standard NIMAC/NIMAS</li> <li>• State and Federal Reports</li> </ul>	<ul style="list-style-type: none"> <li>• Individualized Education Programs (IEP)               <ul style="list-style-type: none"> <li>○ Present Levels of Academic Achievement and Functional Performances (PLAAFPs) and Goals</li> <li>○ Service Delivery, including Related Services</li> <li>○ Special Factors</li> <li>○ Statewide Assessment</li> <li>○ Extended School Year (ESY)</li> <li>○ Behavior Intervention Plan (BIP) and Health Care Plan</li> <li>○ Accommodations</li> </ul> </li> <li>• Timelines (IEP and Placement)</li> <li>• Physical Education</li> <li>• Access to the General Curriculum</li> <li>• Team Membership</li> <li>• Least Restrictive Environment/Placement</li> <li>• Request for IEP meetings</li> <li>• Discipline</li> <li>• Graduation/Dropout Rates</li> </ul>

<b>Parental Involvement</b> <b>APR Indicator 8</b>	<b>Transitions</b> <b>APR Indicators 7, 12, 13, 14</b>	<b>Disproportionality</b> <b>APR Indicators 9, 10</b>
<ul style="list-style-type: none"> <li>• Copies to Parents</li> <li>• Written Prior Notice</li> <li>• Notice of Meeting</li> <li>• Progress Reports</li> <li>• Procedural Safeguard Notice</li> <li>• Parental Consent</li> <li>• Communication in a Variety of Languages</li> <li>• Disciplinary Procedures (LRBI)</li> </ul>	<ul style="list-style-type: none"> <li>• Part C to Part B               <ul style="list-style-type: none"> <li>○ Transition Planning with EI</li> <li>○ Utah Preschool Outcomes Data (UPOD)</li> <li>○ IEP in Place by 3rd Birthday</li> </ul> </li> <li>• School to Post-School               <ul style="list-style-type: none"> <li>○ Transition Plans, 14+</li> <li>○ Post-secondary Goals</li> <li>○ Age-Appropriate Transition Assessments</li> <li>○ Course of Study</li> <li>○ Summary of Performance</li> <li>○ Age of Majority</li> <li>○ Notice to Adult Students</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Prevalence and Categories of Disabilities, Race and Ethnicity</li> </ul>



# UTAH SPP/APR/SSIP

## Relevant Documents

[Utah State Performance Plan \(SPP\), Annual Performance Report \(APR\), and State Systemic Improvement Plan \(SSIP\)](https://www.schools.utah.gov/specialeducation/resources/datareporting?mid=936&tid=1)

<https://www.schools.utah.gov/specialeducation/resources/datareporting?mid=936&tid=1>

[Utah's Plan to Ensure Equitable Access to Excellent Educators](https://schools.utah.gov/curr/resources/educatorexcellence)

<https://schools.utah.gov/curr/resources/educatorexcellence>

[Utah State Board of Education Strategic Plan](https://schools.utah.gov/board/utah/strategicplan)

<https://schools.utah.gov/board/utah/strategicplan>

Reports on LEA performance on each indicator are distributed annually to each LEA.

## APR Indicators in the SPP

- Indicator 1** Improving graduation rates for students with disabilities.
- Indicator 2** Decreasing dropout rates for students with disabilities.
- Indicator 3** Ensuring all students with disabilities participate and are proficient in statewide or alternate assessments.
- Indicator 4** Reducing suspension and expulsion rates for students with disabilities.
- Indicator 5** Providing services for students with disabilities in the least restrictive environment.
- Indicator 6** Providing preschool children with disabilities services in the least restrictive environment.
- Indicator 7** Improving cognitive and social outcomes for preschool children with disabilities.
- Indicator 8** Improving parent involvement in their child's special education program (parent survey).
- Indicator 9** Reducing disproportionality of cultural groups in special education.
- Indicator 10** Reducing the number of students from other cultures in certain disability categories.
- Indicator 11** Improving efforts to locate, evaluate, and serve students with disabilities (Child Find) (initial evaluations completed within 45 school days).
- Indicator 12** Ensuring a smoother transition from preschool programs to school-based programs (IEP developed and implemented by eligible students' third birthday).
- Indicator 13** Improving transition services for students with disabilities at the secondary level, i.e., 14+ years (complete transition plans).

- Indicator 14** Improving the outcomes for students moving from secondary to postsecondary activities (post-school outcomes survey).
- Indicator 15** Increasing the use of resolution sessions to resolve due process hearings.
- Indicator 16** Increasing the use of mediation to resolve differences with the school.
- Indicator 17** State Systemic Improvement Plan (SSIP).

## Framework for Recognition, Assistance, and Intervention (APR Determination)

Further information can be found at the [Office for Special Education Program's SPP/APR Resources](https://osep.grads360.org/#program/spp-apr-resources) website (<https://osep.grads360.org/#program/spp-apr-resources>).

### Determination Level Criteria

Meets Requirements	Needs Assistance (NA)	Needs Intervention (NI)	Needs Substantial Intervention (NSI)
<ol style="list-style-type: none"> <li>1. LEA demonstrates substantial compliance on each compliance indicator (Indicators 9, 10, 11, 12, and 13;) and</li> <li>2. LEA submits valid and reliable data for all indicators, including performance indicators (Indicators 1, 2, 3, 4, 5, 6, 7, 8, 14;) and</li> <li>3. LEA demonstrates correction of noncompliance identified through other means (e.g., UPIPS, complaints) within 10 months of written notification.</li> </ol>	<ol style="list-style-type: none"> <li>1. LEA does not demonstrate substantial compliance on one or more compliance indicators (Indicators 9, 10, 11, 12, and 13;) or</li> <li>2. LEA does not submit valid and reliable data for one or more indicators, including performance indicators (Indicators 1, 2, 3, 4, 5, 6, 7, 8, 14;) or</li> <li>3. LEA does not demonstrate correction of noncompliance identified through other means (e.g., UPIPS, complaints) within 10 months of written notification.</li> </ol>	<ol style="list-style-type: none"> <li>1. LEA does not demonstrate substantial compliance on one or more compliance indicators and does not demonstrate significant progress (Indicators 9, 10, 11, 12, and 13;) and</li> <li>2. Upon notification of the lack of substantial compliance and progress on one or more compliance indicators, the LEA fails to respond or implement a written plan to correct the issue within 60 days.</li> </ol>	<ol style="list-style-type: none"> <li>1. LEA fails to comply on one or more compliance indicators (Indicators 9, 10, 11, 12 and 13;) or</li> <li>2. Upon notification of unreliable and/or invalid data or continuing noncompliance (after 10-month period), the LEA fails to respond and implement written plan to correct issue within 60 days; or</li> <li>3. LEA fails to correct noncompliance which significantly affects the provision of FAPE program-wide with stated time period; or</li> <li>4. LEA had indicated through action or non-action an unwillingness to comply.</li> </ol>

## Rewards and Enforcement Actions

Note: USBE may take one or more actions.

Meets Requirements	Needs Assistance (NA)	Needs Intervention (NI)	Needs Substantial Intervention (NSI)
<ul style="list-style-type: none"> <li>• Written recognition to the State and local school board.</li> <li>• Incentives upon request over RDA process to support ongoing LEA activities.</li> <li>• Notification to LEA superintendent/charter administrator and special education director regarding status.</li> <li>• Teacher level incentives upon request.</li> <li>• Additional funding upon request—LEA determines use to support PIP.</li> <li>• Letter of commendation from SEA special education director to LEA superintendent/charter administrator to be passed on to the local school board.</li> <li>• Technical assistance support (LEA determined: not part of UPIPS).</li> </ul>	<ul style="list-style-type: none"> <li>• Notification in writing of noncompliance to LEA superintendent/charter administrator and special education director.<sup>1</sup></li> <li>• Technical assistance to LEA (LEA selected).</li> <li>• Technical assistance to LEA (SEA selected).</li> <li>• Assist in connecting LEAs to supports and best practices in other LEAs.</li> <li>• Additional resources (e.g., funding, training, materials).</li> <li>• Additional funding—SEA determines use.</li> <li>• Notification in writing of status to LEA superintendent/charter administrator and special education director.</li> </ul>	<ul style="list-style-type: none"> <li>• Notification in writing of noncompliance to LEA superintendent/charter administrator and special education director.<sup>2</sup></li> <li>• Impose special conditions on IDEA Part B funding (negotiated between SEA and LEA).</li> <li>• Delay IDEA Part B funding until adequate compliance is achieved.</li> <li>• Provide a consultant to assist the LEA with implementation of the Program Improvement Plan.</li> <li>• Provide technical assistance to LEA to revise LEA Program Improvement Plan.</li> <li>• Notification in writing of status of Program Improvement Plan to LEA superintendent/charter administrator and special education director.</li> <li>• Use of any NA options</li> </ul>	<ul style="list-style-type: none"> <li>• Notification in writing of noncompliance to LEA superintendent/charter administrator and special education director.<sup>3</sup></li> <li>• Review LEA progress on Program Improvement Plan on a quarterly basis.</li> <li>• Remove the LEA's eligibility to apply for USBE-SES discretionary grants.</li> <li>• Withhold IDEA Part B funding until deficiencies are corrected.</li> <li>• Notification in writing of noncompliance from SEA superintendent and special education director.</li> <li>• Notification in writing of Program Improvement Plan to local board.</li> <li>• Direct the administration of the LEA's special education services.</li> <li>• Use of any NA and/or NI options.</li> </ul>

<sup>1</sup> LEA enforcement actions apply after two consecutive years.

<sup>2</sup> LEA enforcement actions apply after three consecutive years.

<sup>3</sup> LEA enforcement actions apply at any time.

## USBE SES TIERED MONITORING STRUCTURE

While the USBE continues to monitor IDEA compliance, renewed focus has been placed on the systematic evaluation of the impact of special education services on student achievement. Thus, the SES has re-conceptualized its IDEA general supervision, monitoring, and accountability systems to more effectively support LEAs in delivering compliant special education programs which lead to positive outcomes for students with disabilities. This process is called Results-Driven Accountability (RDA). Several stakeholders were involved in the revision process and provided input and feedback regarding this process.

The SES provides differentiated levels of monitoring and support to LEAs based on the LEA's level of risk. Levels of risk are determined by an annual data review conducted by the SES. Data sources used for this review are adjusted annually based on State and federal priorities and input from stakeholders, and may include compliance data, fiscal data, rates of internal monitoring, timely and accurate submission of data, APR Indicators, etc. While the SES monitoring and technical assistance efforts continue to address compliance issues, most efforts focus on working collaboratively with LEAs to develop and strengthen their capacity to implement, scale-up, and sustain LEA-level systems change that will result in improved outcomes for students with disabilities.

### UPIPS Program Improvement Supports and Activities

LEA Requirements	Supporting	Guiding	Assisting	Coaching	Directing
<b>General Supports and Activities</b>					
Access to additional funding for special pilot projects or innovative approaches, upon request and availability	X				
Access to professional development and technical assistance system (i.e. UPDN)	X	X	X	X	X
Technical assistance from SEA	X	X	X	X	X
Guidelines and technical assistance manuals	X	X	X	X	X
Online resources	X	X	X	X	X
LEA data analysis with LEA steering Committee	X	X	X	X	X

LEA Requirements	Supporting	Guiding	Assisting	Coaching	Directing
Improvement Plan for LEA areas of identified need or LEA-selected areas of focus	X	X	X	X	X
<b>Guided Supports and Activities</b>					
Technical assistance for data review		X	X	X	X
Technical assistance for areas of identified need		X	X	X	X
LEA Data Analysis with LEA steering committee and PD/TA provider		X	X	X	X
Improvement Plan addresses USBE areas of identified need		X	X	X	X
<b>Assisting Facilitated Supports and Activities</b>					
Professional development on conducting a root cause analysis			X	X	X
UPIPS mentor assigned to provide technical assistance (2 hours per month)			X	X	X
Guided access to professional development and technical assistance designed to meet areas of need			X	X	X
LEA root cause analysis with LEA steering committee facilitated by PD/TA provider			X	X	X
Policy, Procedure, and Practice (PPP) review and self-assessment in areas of USBE-identified need			X	X	X

<b>LEA Requirements</b>	<b>Supporting</b>	<b>Guiding</b>	<b>Assisting</b>	<b>Coaching</b>	<b>Directing</b>
Improvement Plan reviewed by UPIPS mentor prior to submission			X	X	X
Possible USBE onsite visit to review areas of identified need			X	X	X
<b>Coaching Thorough Supports and Activities</b>					
UPIPS coach assigned to provide needed support (4 hours per month)				X	X
Technical assistance on conducting a self-assessment				X	X
Facilitated development of a professional development and technical assistance plan designed to meet areas of identified need				X	X
LEA root cause analysis with LEA steering committee and UPIPS coach facilitated by PD/TA provider				X	X
Additional data collection through USBE onsite visit focused on areas of identified need				X	X
Improvement Plan developed with support from UPIPS coach				X	X
Policy, Procedure, and Practice (PPP) review of entire special education program and self-assessment of areas of need				X	X
Full onsite visit scheduled for current or following school year				X	X

LEA Requirements	Supporting	Guiding	Assisting	Coaching	Directing
<b>Directing Supports and Activities</b>					
UPIPS coach assigned to provide in-depth support (4 hours per month)					X
External review of files for compliance					X
USBE-directed customized professional development plan					X
Additional professional development opportunities based on needs					X
Support in building LEA capacity					X
Financial supports to assist LEAs in filling programmatic needs					X
LEA root cause analysis with LEA steering committee and UPIPS coach facilitated by PD/TA provider					X
Additional data collection through USBE onsite visit					X
Multi-year Improvement Plan developed under direction of UPIPS coach					X
Policy, Procedure, and Practice (PPP) review of entire special education program and self-assessment of areas of need.					X
Intensive onsite visit scheduled for current or following school year					X



## Tiered Monitoring One-Year Process

Month	Activities
September	<ul style="list-style-type: none"> <li>• SES provides training to LEA Special Education Directors.</li> <li>• SES-assigned mentors and coaches begin working with LEAs in Assisting, Coaching, and Directing tiers</li> </ul>
October–November	<ul style="list-style-type: none"> <li>• SES staff schedules onsite monitoring visits for LEAs with a higher risk score.</li> <li>• SES coaches/mentors work with higher risk LEAs to provide support.</li> <li>• UPIPS teams begin monitoring visits with LEAs.</li> </ul>
December–January	<ul style="list-style-type: none"> <li>• SES reviews LEA data and assigns each LEA a risk score for each identified area and indicator, as described in the Program Implementation Evaluation Rubric.</li> </ul>
February	<ul style="list-style-type: none"> <li>• Professional development offered on data review, root cause analysis, and Program Improvement Planning for LEAs in supporting and guiding tiers.</li> <li>• SES finalizes LEA risk scores, assigns preliminary monitoring tiers to each LEA, and sends letters to LEAs.</li> </ul>
March	<ul style="list-style-type: none"> <li>• SES staff provide data drill downs in multiple locations across the state for LEAs to look at current data and compare to state data.</li> <li>• LEAs work with steering committees to develop Program Improvement Plans.</li> <li>• LEAs may appeal preliminary monitoring tier assignments within 30 days of SES letter.</li> </ul>
April	<ul style="list-style-type: none"> <li>• SES reviews any additional data submitted by LEAs as well as any LEA monitoring tier assignment appeals.</li> <li>• Program Improvement Plans are due to UPIPS Team by April 30 if LEAs wish SES to review Program Improvement Plans and provide feedback to LEAs by June 1.</li> <li>• SES assigns final monitoring tiers. Final letters are sent to LEAs.</li> <li>• SES staff begins scheduling onsite monitoring visits for LEAs with a higher risk score.</li> </ul>
May, June, and July	<ul style="list-style-type: none"> <li>• SES staff review submitted Program Improvement Plans and provide feedback to LEAs where necessary.</li> <li>• All Program Improvement Plans are finalized and submitted to the RDA Specialist no later than June 30.</li> <li>• LEAs prepare to begin implementation of Program Improvement Plan.</li> <li>• SES plan professional development activities for next school year.</li> </ul>
August	<ul style="list-style-type: none"> <li>• LEAs begin/continue implementing Program Improvement Plans.</li> </ul>

## **RDA TIER DESCRIPTIONS**

### **Supporting Tier**

#### **Description**

LEAs in the Supporting Tier demonstrate successful self-monitoring, high levels of compliance with IDEA regulations, acceptable rates of positive outcomes for students with disabilities, and effective use of professional development resources. LEA-specific areas of need/improvement are targeted through activities and interventions outlined in a PIP developed by the LEA. A progress report on the PIP is submitted by the LEA on an annual basis. LEA special education program implementation is supported by the SES for LEAs in this tier.

#### **Supports Available**

LEAs in the Supporting Tier have access to funding for special pilot projects or innovative approaches that have the goal of improving outcomes for students with disabilities, and/or reducing the achievement gap between students with disabilities and their general education peers. Projects must be aligned with Utah's State-Identified Measurable Result (SIMR). LEAs have access to universal supports and activities from the USBE SES. This includes professional development and technical assistance through Utah's Professional Development Network (UPDN), SES guidelines and technical assistance manuals, and any online resources available through UPDN and SES.

#### **Activities**

LEAs in the Supporting Tier are required to conduct a data analysis with an LEA stakeholder steering committee to review the special education program and determine areas of strength and areas of need. As part of the data review, LEAs are expected to review policies, procedures, and practices within the LEA (a Policies, Procedures and Practices Review document is included in the Appendix). Additionally, the LEA steering committee should review student outcome data, APR data, compliance data, stakeholder input, and any other data the LEA has available or would like to collect. After identifying areas of need, the LEA creates a PIP to address those areas of need and submits the plan by June 30. If an LEA would prefer USBE feedback on their PIP before the due date, they should submit a draft PIP by April 30.

### **Guiding Tier**

#### **Description**

LEAs in the Guiding Tier demonstrate successful self-monitoring, high levels of compliance with IDEA regulations, acceptable rates of positive outcomes for students with disabilities, and effective use of professional development resources, but have one or more areas of minor need demonstrated over a single year. SES and LEA-identified areas of need are targeted through activities and interventions outlined in a PIP developed by the LEA with guidance from the SES. A progress report on the PIP is submitted by the LEA on an annual basis. LEA special education program implementation is guided by the SES for LEAs in this tier.

## **Supports Available**

LEAs in the Guiding Tier have access to technical assistance for the LEA data review, as well as for areas of identified need. LEAs have access to universal supports with possibly some targeted supports from the USBE SES. This includes professional development and technical assistance through UPDN, SES guidelines and technical assistance manuals, and any online resources available through UPDN and SES.

## **Activities**

LEAs in the Guiding Tier are required to conduct a data analysis with an LEA stakeholder steering committee to review the special education program and determine areas of strength and areas of need. A member of the SES and/or the UPDN will be available to guide the LEA during this process. As part of the data review, LEAs are expected to review LEA policies, procedures, and practices within the LEA (a Policies, Procedures, and Practices Review document is included in the Appendix). Additionally, the LEA steering committee should review student outcome data, APR data, compliance data, stakeholder input, and any other data the LEA has available or would like to collect. After identifying areas of need, the LEA creates a PIP to address those areas of need. If the LEA submits their draft PIP by the April 30 deadline, the USBE SES will provide feedback and an opportunity for the LEA to correct the PIP before the final June 30 deadline.

## **Assisting Tier**

### **Description**

LEAs in the Assisting Tier have one or more areas of moderate need demonstrated over one to three years. SES-identified areas of need are targeted through activities and interventions outlined in a PIP developed by the LEA with direct assistance from the SES. A progress report on the PIP is reviewed by an SES-assigned mentor before the plan is submitted. LEA special education program implementation is assisted by the SES for LEAs in this tier.

### **Supports Available**

LEAs in the Assisting Tier are provided professional development on conducting a data review and a root cause analysis. The SES provides the LEA with support up to two hours a month by an assigned mentor. LEAs have access to targeted supports from the USBE SES. This includes professional development and technical assistance through UPDN designed to address the LEA's areas of need. LEAs have access to SES guidelines and technical assistance manuals, as well as any online resources available through UPDN and SES.

### **Activities**

LEAs in the Assisting Tier are required to conduct a data analysis with an LEA stakeholder steering committee to review the special education program and determine areas of strength and areas of need. The USBE-SES assigned mentor assists with this process. As part of the data review, LEAs are required to review LEA policies, procedures, and practices (a Policies,

Procedures, and Practices Review document is included in the Appendix). Additionally, the LEA steering committee should review student outcome data, APR data, dispute resolution data, compliance data, stakeholder input, and any other data the LEA has available or would like to collect. Additional data on LEA-identified areas of need may be collected, either through an onsite visit or LEA data submission. After identifying areas of need, the LEA creates a PIP to address those areas of need. The LEA's assigned mentor reviews the PIP prior to the LEA submitting the plan.

## **Coaching Tier**

### **Description**

LEAs in the Coaching Tier have either one area of intense need or multiple areas of moderate need demonstrated over one to three years. USBE SES-identified areas of need are targeted through activities and interventions outlined in a USBE SES and LEA jointly-developed PIP. A progress report on the PIP is reviewed by a USBE SES-assigned coach before the plan is submitted on UPIPS. LEA special education program implementation is coached by the SES for LEAs in this tier.

### **Supports Available**

LEAs in the Coaching Tier are provided with professional development on conducting a data review and a root cause analysis. The SES provides the LEA with support from an assigned coach up to four hours per month. The USBE-SES-assigned coach provides technical assistance to the LEA on conducting a self-assessment. LEAs have targeted supports with possibly some directed supports from the USBE SES. This includes facilitated access to professional development and technical assistance through UPDN designed to address the LEA's areas of need. LEAs have access to SES guidelines and technical assistance manuals, and any online resources available through UPDN and SES.

### **Activities**

LEAs in the Coaching Tier are required to conduct a data analysis with an LEA stakeholder steering committee to review the special education program and determine areas of strength and areas of need. The USBE SES-assigned coach participates in this process. As part of the data review, LEAs are required to conduct a self-assessment of the LEA's areas of identified need. The self-assessment must include a review of LEA policies, procedures, and practices within the LEA (a Policies, Procedures, and Practices Review document is included in the Appendix). Additionally, the LEA steering committee must review student outcome data, APR data, compliance data, stakeholder input, and any other data the LEA has available or would like to collect regarding the LEA's areas of identified need. Additional data on LEA-identified areas of need are collected through an onsite visit. After identifying areas of need, the LEA creates a PIP to address those areas of need. The LEA's assigned coach assists the LEA in developing the PIP. LEAs in this tier are required to submit their PIP on April 30 in order to receive feedback from the monitoring team before the June 30 deadline. A full SEA onsite visit may be scheduled for the current or following school year.

## **Directing Tier**

### **Description**

LEAs in the Directing Tier have multiple areas of intensive need and/or needs demonstrated over several years. USBE SES identified areas of need are targeted through activities and interventions outlined in a SES and LEA jointly-developed multi-year PIP. A coach is assigned by the SES to follow up with the LEA on progress toward the PIP up to four hours per month. At a minimum, a written progress report based on the PIP is submitted by the LEA on an annual basis. LEA special education program implementation is directed by the SEA for LEAs in this tier.

### **Supports Available**

LEAs in the Directing Tier are provided with intensive support from a coach assigned by the SES up to six hours per month. Support includes professional development on conducting a data review and a root cause analysis. LEAs have directed customized access through UPDN to professional development and technical assistance designed to address the LEA's areas of need. Additional professional development opportunities are available to the LEA based on the LEA's needs. The SES provides support to the LEA in building capacity LEA-wide, and financial supports are available to assist the LEA in filling programmatic needs. The SES-assigned coach provides support to the LEA in conducting a self-assessment. LEAs have access to SES Guidelines, technical assistance manuals, and any online resources available through UPDN and SES.

### **Activities**

LEAs in the Directing Tier are required to conduct a data analysis with an LEA stakeholder steering committee to review the special education program and determine areas of strength and areas of need. The coach assigned by the SES participates in this process. As part of the data review, LEAs are required to conduct a self-assessment around the LEA's areas of identified need. The self-assessment must include a review of policies, procedures, and practices within the LEA (a listing of areas to be reviewed is included in the appendix). Additionally, the LEA steering committee must review student outcome data, APR data, compliance data, stakeholder input, and any other data the LEA has available or would like to collect regarding the LEA's areas of identified need. The SES conducts a review of the LEA's student special education files for compliance with IDEA. Additional data on LEA-identified areas of need are collected through an onsite visit. After identifying areas of need, the LEA creates a multi-year PIP to address those areas of need. The LEA's assigned coach assists the LEA in developing the PIP. LEAs in this tier are required to submit their PIP on April 30 in order to receive feedback from the monitoring team before the June 30 deadline. A Policies, Procedures, and Practices Review document is available in the Appendix. A full monitoring visit may be scheduled for the current or following school year.

## **DATA COLLECTION AND ANALYSIS**

The subcommittees of the LEA Stakeholder Steering Committee collect different kinds of information from a variety of sources. The Stakeholder Steering Committee considers data from a broad representation of stakeholders.

### **Stakeholder Steering Committee**

#### **Purpose**

The Stakeholder Steering Committee ensures that all stakeholders are involved and have input into the LEA data review and program improvement process.

#### **Committee Membership Requirements**

The Stakeholder Steering Committee should be representative of the size and demographics of the LEA, and should include at a minimum:

- The special education director.
- A school administrator.
- A general education teacher.
- A special education teacher (including preschool, if applicable).
- A parent of a student with disabilities.
- A student with disabilities, if appropriate.

#### **Committee Membership Options**

Others to consider adding as Stakeholder Steering Committee members:

- Related service staff
- Other agency personnel
- Facilitator
- Directors/staff from other LEA programs
  - YIC
  - Online personnel
- Those who affect and are affected by special education systems

### **Interview Data**

One important source of information about the LEA's special education programs is interviews with stakeholders. Interviews may be conducted with principals, teachers, parents, related service providers, paraprofessionals, and students. Suggested interview and focus group questions can be accessed on the [UPIPS page of the USBE website](https://schools.utah.gov/specialeducation/resources/lawsrulesregulations?mid=942&tid=4) at <https://schools.utah.gov/specialeducation/resources/lawsrulesregulations?mid=942&tid=4>.

LEAs may choose to conduct focus groups or a written survey and should determine the number of stakeholders needed to be representative of the LEA. The LEA should consider the information gained from conducting interviews and analyzing the results when writing the PIP.

## Student Record Review Data

Another critical place to look for information is in the records of student with disabilities. Student files should be checked for compliance with requirements of IDEA. This is accomplished using the LEA Internal Monitoring tool. The LEA must develop and submit an internal monitoring process to the USBE UPIPS Specialist for approval. The following analysis of the student record review data must be considered when writing the PIP:

- Number and percent of special education files reviewed
- How various ages, disability categories, placements, English Learners (EL), initial/reevaluation students were represented in reviewed files (ensure files of low-incidence disabilities are reviewed)
- Files from Youth In Custody and Adult Education, if applicable to the LEA
- Information about the district/school-wide results of the review for each compliance item
- Analysis of the file review results, identifying systemic areas of noncompliance
- Strengths of the special education program
- Program improvement and corrective action goals based on the analysis

**NOTE:** All noncompliance must be corrected as soon as possible, and in no case later than ten months.

## Outcome Data

Information on student outcomes may be obtained from a number of sources. One helpful source is the data from the OSEP reports presented in the LEA Data Profile and APR data. The subcommittee with this assignment needs to analyze and report these data points:

- Graduation rate of students with disabilities compared to non-disabled students (APR Indicator 1)
- Dropout rate of students with disabilities compared to non-disabled students (APR Indicator 2)
- Trend data for graduation and dropout rates
- Classroom observation data
- LRE/placement data for students with disabilities compared with state and national averages for students ages 6–21 and 3–5 (APR Indicators 5–6)
- Academic achievement data on state wide end of year assessments and the alternative assessments for students with disabilities compared to non-disabled students and with state averages (APR Indicator 3)
- Trend data on academic achievement
- Participation rate of students with disabilities in statewide assessment (APR Indicator 3)
- Suspension and expulsion rates of students with disabilities (APR Indicator 4)
- Representation of various ethnic backgrounds of students with disabilities compared to the general student population of district, and possible implications for the eligibility process (APR Indicator 9)
- Representation of students in various categories of disability compared to state averages (APR Indicator 10)

- Satisfaction data from the interviews with parents and staff referenced above (Indicator 8)
- Utah Preschool Outcomes Data (UPOD) data (APR Indicator 7)
- Post-school outcomes data (APR Indicator 14)

## **Other Data Sources**

Each Stakeholder Steering Committee looks at other important information about other factors that affect the quality of the special education program. The results of the policies, procedures, and practices review are analyzed, along with other considerations. These elements are considered in the Improvement Plan:

- Teacher licenses and endorsements for current assignments
- Caseloads of special education case managers
- Adequacy of LEA support for teachers in schools (e.g. staffing, leadership, supervision, and professional development)
- The LEA system for identifying personnel development needs
- Records of personnel development activities provided for all members of IEP team (including LEA representative, general education teachers, special education teachers, and parents)
- How the LEA ensures timely and accurate data (i.e., what procedures are in place for editing and validating data)
- Policies and procedures in place and followed LEA-wide
- Strengths, needed improvements, and areas of noncompliance from this information

## **Other Data at LEA Discretion**

LEAs may access information from many other sources. The analysis of this data should also be considered in the PIP.



## Internal Student Record Review Guidelines

December 1 Child Count	Number of Records to Review
Up to 500	20 Records (or All)
501–900	35 Records
901–1300	45 Records
1301–1700	55 Records
1701–2000	65 Records
2001–4000	75 Records
4001–6000	100 Records
6001–8000	140 Records
8001–10,000	180 Records
10,000–up	200 Records

Records reviewed must be a representative sample of the LEA and include:

- Preschool, elementary, middle school, and high school files across the LEA geographically
- Special schools, including YIC, Adult Education, and online programs (if any)
- All ethnicities
- All disability categories

**NOTE:** In order to get a representative sample, the LEA may need to increase the number of files reviewed.

## IDENTIFICATION AND CORRECTION OF IDEA NONCOMPLIANCE

### Identification of Noncompliance

The USBE SES reviews data collected from LEA during onsite visits to ensure compliance with the regulatory requirements of the IDEA and the USBE SER. LEAs have the option to correct areas of potential noncompliance within three weeks of data collection before the USBE issues written findings of noncompliance. The USBE SES reviews the additional data submitted by the LEA to verify whether the data demonstrate compliance, and issues a written finding if the data demonstrate noncompliance. If the USBE identifies noncompliance, the LEA will be notified in writing of the noncompliance, the citation of the area (IDEA and/or USBE SER), and of the requirement that the noncompliance be corrected as soon as possible, but in no case later than ten months from identification. A written letter of findings will be sent to the superintendent/Director of the LEA.

Note: Noncompliance identified through the LEA Internal File Review tool is not subject to USBE review; however, noncompliance identified through internal review must still be corrected by the LEA within ten months of identification.

### Correction of Noncompliance

The United States Department of Education Office of Special Education Programs (OSEP) requires that all noncompliance be corrected as soon as possible, but in no case later than one year from the date of notification of noncompliance. The USBE SES has made an effort to create a method that will require the least amount of time and effort for LEAs while providing the SES with evidence verifying corrections.

Before the SES can conclude and report that noncompliance has been corrected, it must first verify, consistent with the OSEP Memo 09-02, that the LEA: has corrected each individual case of noncompliance (Prong 1), and is correctly implementing the specific regulatory requirements (i.e., subsequently achieved 100% compliance) (Prong 2), based on the USBE SES review of the updated data.

#### Prong 1: Correcting Each Individual Case of Noncompliance

To document that individual student-level noncompliance is corrected, LEAs must demonstrate that the student file is compliant with regulatory requirements. For any noncompliance concerning **child-specific requirements that are not subject to a specific timeline requirement**, the LEA must submit documentation that the LEA has corrected each individual case of noncompliance, unless the student is no longer within the jurisdiction of the LEA. These items include requirements such as:

- Eligibility determination is not current or complete.
- Eligibility criteria are not met.
- Evaluation Summary Report is not current or complete.
- IEP is not current or complete.
- IEP content does not meet criteria (i.e., measurable goals, Present Levels of Academic Achievement and Functional Performance (PLAAFP) statements include current data

and how the disability affects progress in the general curriculum, statewide assessment, Extended School Year (ESY) decision, etc.).

- Consent for Initial Placement is missing or unsigned by parents.
- Copy to Parent documentation is missing.
- Transition Plan is missing or incomplete.
- Age of Majority notification is missing.
- Language proficiency and assessment documentation missing.
- Prior Written Notice is missing.
- Documentation that Procedural Safeguards were provided to parents is missing.
- Documentation of IEP and eligibility team participation is missing.
- Change in Placement is missing.

Method:

The LEA documents the required evidence by indicating correction and uploading the evidence on the Individual Student Noncompliance report received from the SEA.

For any noncompliance concerning **child-specific timeline requirements**, the LEA must submit documentation to the SEA that the required action (e.g., the evaluation, reevaluation, or IEP) was completed, though late.

**Prong 2: Correctly Implementing the Specific Regulatory Requirements (i.e., Subsequently Achieved 100% Compliance), Based on the SEA Review of the Updated Data**

To document that the LEA is correctly implementing the specific regulatory requirements, the LEA must review additional student special education files, regardless of the level of noncompliance, and submit documentation that the LEA has achieved 100% compliance. The number of additional files reviewed by the LEA will be determined based on the identified root cause of noncompliance.

Method:

The LEA documents the required evidence by uploading the evidence on the Verification of Compliance (Prong 2) report received from the SES on the UPIPS website.

The SES is committed to supporting LEA efforts to improve results for students with disabilities through the framework of compliance.

## APPENDIX

### Policies, Procedures, and Practices Review

As part of the LEA data review, the LEA should review the following data to ensure that this information is consistent with federal regulations and USBE SER . Although for most LEAs this data review is optional, it is highly recommended that all data points are reviewed to ensure continued compliance.

#### A. Forms

LEAs use a variety of standard forms and materials for documenting state and federal special education requirements. Since a majority of these forms and materials are required to address specific information, an LEA must ensure that their content is consistent with federal regulations and USBE SER.

State Requirements	USBE Special Education Rule	Documentation/Evidence
Procedural Safeguards Notice	IV.E	Current Procedural Safeguards
Revocation of Consent	III.T	Blank form
Notice of Meeting Purposes, time, date, location, name/role, bring others	IV.B	Blank form
Consent to Evaluate/Reevaluation	II.C IV.F	Blank form
Review of Existing Data	II.H	Blank form
Evaluation Summary Report	II.I	Blank form
Determination of Eligibility for each disability category	II.I II.J	Blank form

State Requirements	USBE Special Education Rule	Documentation/Evidence
Individualized Education Program Assessment Addendum PLAAFP and goals Progress—how measured/reported to parents Special factors and ESY Services, amount, and frequency Initiation date and duration Review of placement Participate extracurricular activities Signatures	III.J	Blank form
Transition Plan Goals and interests Age-appropriate assessments Services Course of study Agencies and responsibilities	III.J VII.B	Blank form
Service Plan for Private Schools and Home School <b>(NA for charter schools)</b>	VI.B VI.D	Blank form
Consent to Invite Outside Agencies for Transition Planning	VII.B	Blank form
Consent for Initial Placement	III.T IV.F	Blank form
Change of Placement	IV.D	Blank form
Notice Regarding Age of Majority Rights	IV.W VII.B	Blank form
Summary of Academic Achievement and Functional Performance	III.J.	Blank form
Record of Access	IV.X	Blank form
Access Authorization	IV.X	Blank form

## B. Child Find System

Review Child Find documents that demonstrate the LEA’s efforts to identify, locate and evaluate all students, including students ages 0–21, students in private schools including

religious school students, highly mobile students such as migrant and homeless, YIC, and students advancing from grade to grade who are suspected of being students with a disability and in need of special education and related services.

Requirements	USBE Special Education Rule	Documentation/Evidence
<p>LEA develops policies and procedures consistent with Part B of the IDEA and State Rules, to ensure all student with disabilities residing within the jurisdiction of the LEA, 0–21 (including private schools) regardless of the severity of the disability, and who are in need of sped/related services, are identified, located and evaluated. <u>Includes practical method for determining which students are currently receiving needed sped/related services.</u></p>	<p>II.A</p>	<p>Review LEA Policy and Procedures manual, revise as needed, and submit to SES for approval. Requirements for the Policy and Procedures manual can be found at the <a href="https://schools.utah.gov/specialeducation/resources/lawsrulesregulations?mid=942&amp;tid=0">USBE Laws, Policies, and Procedures website</a> (<a href="https://schools.utah.gov/specialeducation/resources/lawsrulesregulations?mid=942&amp;tid=0">https://schools.utah.gov/specialeducation/resources/lawsrulesregulations?mid=942&amp;tid=0</a>).</p>
<p>LEA implementation and coordination of Child Find activities, including private schools within a school districts jurisdiction.</p>	<p>II.A</p>	<p>Description of method for counting students involved in the Child Find process. A copy of the form or system used for tracking the time period of the evaluation and timelines for reevaluation. Documentation to show that private schools located with the boundaries of the school district were included and provided with information (see “Private schools” below).</p>
<p>LEA applies requirement to highly mobile students with disabilities, such as students who are migrant and homeless.</p>	<p>II.A</p>	<p>Documentation of active attempts to include highly mobile students in the Child Find process; for example: flyers, information in languages other than English, newspaper announcements, newsletters, school handbooks, etc.</p>
<p>LEA applies requirement to suspected students with disabilities advancing from grade to grade.</p>	<p>II.A</p>	<p>Agenda from school faculty/staff training on referral process and Child Find responsibility, school handbooks, memos</p>

Requirements	USBE Special Education Rule	Documentation/Evidence
Collaboration/coordination with state and local Depts. of Health or other provider of early intervention services for infants and toddlers with disabilities, ages birth-two (Part C program) for school districts.	II.A	Interagency agreements, MOUs, copies of meeting agendas  <b>Note:</b> If this area is not applicable for your LEA, please include a statement describing the reason.
LEA ensures that parents are notified of the Carson Smith Scholarship program.	R277-602-4	Documentation that written notice of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program was sent to parents or guardians of students who have an IEP. Documentation must include evidence that notice was provided annually, no later than February 1, for all students who have IEPs. Notice must be provided no later than 30 days after a student is found eligible for special education services initially. Ensure notice includes a link to the <a href="https://schools.utah.gov/specialeducation/resources/scholarships">Carson Smith Scholarship website</a> (https://schools.utah.gov/specialeducation/resources/scholarships)
LEA posted the Carson Smith Scholarship website on the LEA's website.	R277-602-4	Provide a link to the LEA's website where above link is posted.

**C. Identification and Evaluation**

Requirements	USBE Special Education Rule	Documentation/Evidence
Evaluation materials, tests, and assessment tools: Academic achievement: math, reading, written language Adaptive/self-help Autism checklist(s) Cognitive/general intelligence Communication/speech/language Emotional/behavioral/social Health/physical development Motor abilities Sensory-vision/hearing Transition assessments Native language Other modes of communication English proficiency Parental input Observation materials (teacher, service providers, etc.) Classroom-based assessment	II.F	Review the form following this section (page 40–44) <u>for each area.</u>
Evaluator qualifications	II.F	List the personnel responsible for administering each assessment and his/her qualifications, including certificates of training and/or license number (CACTUS ID or DOPL).



**D. Personnel**

Requirements	USBE Special Education Rule	Documentation/Evidence
Surrogate parent	IV.V	List names and contact information of people who have completed surrogate parent training and have agreed to serve as a surrogate parent for the LEA.
Educator license requirements	IX.H	List of the names of the teachers, their assignments, and CACTUS ID numbers.
Interpreter qualifications	VIII.K	<p>Documentation of the number of students who have a hearing loss, the number of students using American Sign Language or other manual communication system and copies of credentials for all sign language interpreters. Credentials must be issued by an agency approved by the Utah Interpreter Board.</p> <p>If the LEA does not currently have any students with a need for an interpreter, the LEA will provide documentation of the LEAs procedure for obtaining a qualified interpreter.</p>
Interpreter assurance	VIII.K	Provide an assurance that all students receiving academic content through sign language or any manual communication system have access to a certified interpreter, transliterator or direct instruction from a licensed and endorsed educator in the sign language or manual communication system used by the student. If the LEA does not currently have students with interpreter needs, the LEA must provide an assurance that if a student enters the LEA with a need for an interpreter, the above requirements will be met.

**E. Private Schools (NA for Charter Schools)**

Requirements	USBE Special Education Rule	Documentation/Evidence
Documentation of the number of parentally placed private school students evaluated, the number determined to be students with disabilities, and the number of students served	VI.B	Provide a table which includes the number of parentally placed private school students evaluated, the number determined to be students with disabilities, and the number of students served.
Documentation of annual consultation with each nonprofit private school within the LEA’s boundaries regarding Child Find, proportionate share, services provided by LEA, and disagreement actions, as well as affirmation from private school	VI.B	Include copies of letters, phone records, meeting notes, and written affirmation signed by representatives of the private schools, or documentation of refusal of consultation.

**F. Fiscal Compliance and Accountability Monitoring (FiCAM) Checklists**

The LEA reviews current fiscal policies and procedures in order to complete and submit the General Fiscal Compliance Checklist. The checklist provides the opportunity for LEAs to explain how they are conducting their own compliance monitoring of fiscal requirements.

Based on results of the General Fiscal Compliance Checklist, the LEA may need to complete additional checklists. These additional checklists allow the LEA to provide more detail in the areas of equitable services for students who are parentally placed in private schools (proportionate share), coordinated early intervening services, school-wide Title I programs, and/or high-cost students. Revised checklists are submitted as part of the Utah Consolidated Application (UCA) for funding.

## Classroom Observation of Special Education Services

LEA:	School:
Student Name:	
Teacher:	Observer:
Date:	
<b>Subject Area:</b> <input type="checkbox"/> Reading/Language Arts <input type="checkbox"/> Math <input type="checkbox"/> Social Skills <input type="checkbox"/> Science/Social Studies <input type="checkbox"/> Art <input type="checkbox"/> P.E. Other: _____	<b>Location:</b> <input type="checkbox"/> General Education Class <input type="checkbox"/> Special Education Class
Setting:	<input type="checkbox"/> Small Group <input type="checkbox"/> Whole Class <input type="checkbox"/> Individual
How well do the PLAAFP, goals, and services align?	No alignment                      Very good alignment 1            2            3            4            5
Notes on PLAAFP, goals, and services (Optional: Include any notes that will assist you during the observation)	
Is there a correlation between PLAAFP, goals, and services listed on the IEP and services and supports observed in the classroom?	No alignment                      Very good alignment 1            2            3            4            5
What accommodations, modifications, or specialized instruction did you observe?	
Additional Comments:	

## **Parent Focus Group Questions**

### **Yes/No/NA Questions**

Were your procedural safeguards (parent rights) explained so you understood them?

A student can be evaluated once a year and must be evaluated every three years to be determined eligible for an individualized education program (IEP). Did you have the opportunity to provide input during your student's evaluation?

Was your student's IEP meeting scheduled at a mutually agreed upon time?

Did at least one of your student's general education teacher attend the IEP meeting?

Did the principal or his/her representative attend the IEP meeting?

Did the team ask for and use your input on goals for your student's IEP?

Does the staff in the general classroom consistently provide the accommodations and modifications written in your student's IEP?

Do you know if your student is getting all services and time listed on the IEP?

### **Open Ended Questions**

What input were you able to give to the school team during the evaluation process?

How do you know your student is making progress toward meeting the goal(s) on his/her IEP?

If your student is 14 years or older, what transition services were discussed during the IEP meeting?

What has the school done to help you understand graduation requirements?

If your student is 3–5 years old, tell us about your preschool experience.

How does your school welcome and engage families?

In what ways are you connecting with the school? If you are not, what is holding you back?

Discuss the strengths of your student's special education program.

Discuss and suggest any area of improvement for the special education program in your school.

Do you have any other questions or issues you would like to discuss?

## EXHIBIT J

### APA Contact Timeline

Date	Format	Summary
8/24/2018	Email	Email to Joan Ottley-Zeeman providing notice that an indicator 11 and 13 visit was scheduled for January 11, 2019.
8/24/2018	Email	Email from Joan Ottley-Zeeman requesting a date change to January 24th or January 31st. She also requested information on the Internal monitoring system on UPIPS. Thirty-one additional APA staff were included on this email.
8/28/2018	Email	Email to Joan Ottley-Zeeman recommending we switch the indicator visit to January 31st. Explained that I did not have specifics on the UPIPS system currently, but that we hoped to be able to respond soon.
8/28/2018	Email	Response from Joan Ottley-Zeeman confirming January 31st for the indicator visit. She asked several specific questions about the day of the review (how long, how many files....).
8/29/2018	General Offering	Extended core science and engineering standards, explicit instruction, Autism, and Patterns of Strengths and Weakness training offered in SpEdOmeter.
8/31/2018	Email	Responded to Joan's email with specifics to each question and agreed to send additional information at a later date.
10/1/2018	General Offering	Extended core science and engineering standards, explicit instruction, Autism, and Patterns of Strengths and Weakness, behavior plans training offered in SpEdOmeter.
11/1/2018	General Offering	Patterns of Strengths and Weakness, behavior plans training offered in SpEdOmeter.
11/16/2018	Email	Email from Joan requesting specific information on post-secondary goals and transition IEP goals.
11/16/2018	Email	Responded to Joan's email explaining the difference between postsecondary and annual IEP goals. Provided specific information on the need for postsecondary goals to be measurable and in the future.
12/1/2018	General Offering	Patterns of Strengths and Weakness, behavior plans training offered in SpEdOmeter.
12/18/2018	Email	Email to Joan with specifics regarding the indicator 11 and 13 visit. Contractors assigned to review the files were Janet Gibbs and Susie Scherer.
12/18/2018	Email	Response from Joan with location for the review, West Valley Campus 2.
1/31/2019	Phone	Indicator visit occurred. Several phone calls from Susie Scherer seeking clarification specific to transition files. Provided TA over the phone to staff with help from contract reviewers. These reviews typically take 2-3 hours. This review took 5 hours, 9:00am-2:00pm.

1/31/2019	UPIPS System	Eighteen files required corrections. The initial report was released on January 31st. Main errors included transition services.
2/1/2019	General Offering	Evidence-Based Interventions/Practices Workshop, inclusive schools guide, and running start offered in the SpEdOmeter.
2/21/2019	Email	Email to Joan. All corrections were completed within the three week window. The final compliance summary report was released on February 21, 2019. No additional action needed.
3/1/2019	General Offering	Evidence-Based Interventions/Practices Workshop, discipline summit, and running start offered in the SpEdOmeter.
3/25/2019	Email	Email from Cole Shakespear, with attached letter provided to Joan Ottley-Zeeman. Letter specifically states that a detailed letter will be sent to Joan regarding special education during our visit.
4/1/2019	General Offering	Articles on specially designed instruction, math courses, and running start offered in the SpEdOmeter.
4/10/2019	Email	Email and attached letter to Joan regarding the FAPE visit scheduled for May 22-23,2019. Attached an online schedule to prepare for the review.
4/12/2019	Email	Email from Joan expressing concern about the visit. She understood it to be an financial audit only.
4/15/2019	Email	Responded to Joan explaining where in the coordinated visit letter she could find information about the review. Explained that we would be looking specifically at the IEPs and the alignment of services to provide FAPE.
4/18/2019	Email	Email from Joan expressing concern about the visit being five days prior to the last day of school. Expressed a desire for flexibility on locations and times. Provided nine additional questions about interview and file review questions, time for corrections....
4/19/2019	Phone Message	Asked if we would conduct observations, wanted to know about the parent focus group and requirements for notifying parents. Expressed a lot of concern about doing the review on the last week of school.
4/22/2019	Email	Email to Joan responding to all questions and continuing efforts to be flexible and complete the schedule.
4/25/2019	In Person	Discussion with Joan at USEAM. Answered questions about what to expect during the visit and agreed to send email with specific questions we will be asking.
4/26/2019	Email	Email to Joan providing staff interview questions, paraeducator interview questions, and questions for the student focus group.

4/29/2019	Email	Email from Joan asking if questions on the website will be used as well as the ones I emailed her.
4/30/2019	Email	Email to Joan explaining that this is a FAPE visit and that we will only be asking the questions I sent her in the email on 4/26/2019.
5/1/2019	General Offering	Co-Teaching English Language Arts, running start, math professional learning, and Speech Language Technician Institute offered in the SpEdOmeter.
5/2/2019	Email	Email to Joan with file review questions used in the FAPE visit.
5/13/2019	Email	Email to Joan asking what I could do to help get the schedule completed.
5/15/2019	Email	Email to Joan offering to help get the schedule completed. Stated that I would need to create the schedule if I did not hear from her by May 17th.
5/15/2019	Email	Email from Joan stating the schedule was almost ready. Joan asked about how to address the corrections timeline.
5/15/2019	Email	Discussed the corrections timeline with the UPIPS team and agreed that APA would have until September 30th to complete corrections (three week window) because we visited on the last few days of school. Sent email to Joan confirming the timeline.
5/15/2019	Email	Email from Joan with a draft of the schedule.
5/16/2019	Email	I updated the online schedule and provided the information to Joan. Included Cole Shakespear on the email to address fiscal questions Joan had. Plans to meet at the Draper 3 site to begin review.
5/20/2019	Email	Email from Joan with concerns about the interviews. She stated concerns about having enough time and stated that she did not have very many paraeducators for us to interview.
5/21/2019	Email	Email from Brent Burggraaf stating that everyone would meet at the West Valley 2 Campus to begin the review.
5/21/2019	Email	Email to Brent confirming that we needed to start there. The schedule provided by Joan had the UPIPS team starting at Draper 3.
5/21/2019	Email	Email from Brent that everyone should begin at the West Valley 2 Campus.
5/22/2019	In Person	Team arrives at West Valley 2 campus and it told it is not the correct location. Series of texts and calls shows confusion about the schedule and UPIPS team goes to the Draper 3 Campus as originally planned.
5/22/2019	Email	Email from Joan with the special education UPIPS schedule sent to APA team for clarification.

5/22-23/2019	In Person	Onsite visit. See attached schedule and summary of information. Carolyn Sharette was not with us during the monitoring visit, but she did attend the exit meeting on the last day. USBE staff recommended continued discussion of specially designed instruction and did not discuss it further during the exit meeting because it had been an area of dispute throughout the visit and guidance had been provided multiple times during the visit.
5/24/2019	Email	Sent email to Joan outlining the corrections that need to be completed. Provided a spreadsheet on the UPIPS system outlining errors. Provided a link to a survey regarding the visit. As of 7/6/2019 no one has responded on the survey.
5/24/2019	Email	Noelle Gatlin contacted Becky Unker at USBE at the recommendation of LauraLee Gillespie regarding support in 10th grade math.
5/24/2019	Email	Sent email to Joan with examples of impact statements for the PLAAFPs.
5/29/2019	Email	Email from Becky to Noelle and Joan offering to come meet with the APA team and stating that I would be joining her on the visit. Becky asked for Noelle to provide some dates and times.
5/30/2019	Email	Noelle responded asking if we could come on May 31st.
6/1/2019	General Offering	Co-Teaching English Language Arts and Math, running start, and Speech Language Technician Institute offered in the SpEdOmeter.
6/3/2019	Email	Email from Noelle recommending alternative times to meet anytime Monday - Wednesday.
6/3/2019	Email	Email from Becky offering July 1st or 2nd. No response was provided.
8/1/2019	General Offering	Functional communication and behavior training offered in the SpEdOmeter.
8/1/2019	Onsite Visit	Reviewed 15 files and found documentation of implementation of speech services. Requested documentation of implementation for a reading goal. Joan agreed to provide.
8/2/2019	Email	Emailed Joan and Carolyn to set up an additional file review specific to speech under related services. Requested a case load including students receiving speech that are qualified under another disability category.
8/2/2019	Email	Email to Joan and Jody with a template for the review
8/5/2019	Email	Email from Joan agreeing to a visit and providing a caseload list on UPIPS.
8/5/2019	Email	Reviewed list provided by Joan and requested more detail about disability categories.
8/5/2019	Email	Joan stated that the information requested is too detailed and offered to just have us come onsite and select files.
8/7/2019	Email	Email from Joan asking if we would be contacting her regarding OT services.
8/7/2019	Email	Email to Joan regarding OT stating I received her phone message and email. Stated I would talk to Neil Stevens and get back to her.



8/8/2019	Email	Email to Joan and Carolyn. Clarifying that we wanted to review speech and OT service files. Stated that we would come to each campus and select a few files. Offered possible dates.
8/8/2019	Email	Email from Joan recommending we meet at the Draper 2 Campus on August 13, 2019.
8/9/2019	Email	Email confirming, we would be coming on August 13th at 9:00am. Requested a caseload for each campus where students receive speech and OT.
8/13/2019	Onsite Visit	Reviewed 23 files. Implementation for speech and OT found. No special education documentation. Requested documentation be provided for special education services.
8/13/2019	Email	Email from Joan with a PowerPoint presentation regarding related services. I shared with leadership.
8/15/2019	Email	Uploaded spreadsheet to UPIPS of files reviewed. 17 files needed additional implementation documentation. Emailed Joan and told her where to find the list. Offered to come review implementation documentation at a time that worked for her.
9/1/2019	General Offering	Brain Injury Alliance of Utah Conference, and Running Start Booster offered in the SpEdOmeter.
9/3/2019	Email	Reminder to Joan that corrections from the May visit are due by September 30, 2019.
9/5/2019	Email	Email from Joan. File corrections from May are in process and additional information will be provided shortly. A question regarding the review in speech services in August was also asked.
9/12/2019	Email	Actual email questions and answers below: Joan: The case file corrections from the USBE Special Education Program audit that took place on the 22nd and the 23rd of May are being worked through and will be ready in time. LauraLee: Thank you, if you would like me to come review them let me know or if you plan to upload them just let me know when they are ready for review. Joan: In regard to the IDEA Submission data reviewed on the 13th of August, it appears USBE is expanding the scope of the IDEA submission for Speech Language Services. Can you please confirm this? LauraLee: I am unclear on the question here, but I will respond to the best of my knowledge. We are seeking information regarding implementation of special education services beyond speech, when speech is not the only service provided to the student. The students listed on the spreadsheet had special education services and speech as a related service. We saw implementation of speech and would like to see implementation of special education services. Hopefully this helps clarify the questions. If not let me know.
9/25/2019 - 9/27/2019	Email/UPIPS	Corrections completed with Jody Jensen on UPIPS.

11/19/2019	Email	Outlined plans of USBE to conduct onsite observations at all APA campus. The purpose outlined in the email was to observe implementation of special education and related services. Recommended December 5-6, 2019.
12/1/2019	General Offering	Early learning standards and behavior training offered in the SpEdOmeter.
12/9/2016	Email	Email correspondence rescheduling the observation visit to January 29-30,2020.
1/1/2020	General Offering	Behavior training and High Leverage Practices for Inclusive Classrooms offered in the SpEdOmeter.
1/7/2020	Email	Additional documentation of implementation provided by APA and uploaded to the UPIPS website. Reviewed 1/10/2020.
1/16/2020	Email	Monitoring date changed to January 30-31, 2020.
1/27/2020	Email	Email to APA with specifics for the observations.
2/1/2020	General Offering	High Leverage Practices for Inclusive Classrooms, Wasatch Reading Summit, Standards Implementation Institute, Utah Systems Conference, Law Conference, Autism Conference, and Running Start offered in the SpEdOmeter.
2/26/2020	Email	Email to set up special education conference to discuss the visit and comply with a recent settlement agreement. Several dates in March were provided.
3/1/2020	General Offering	High Leverage Practices for Inclusive Classrooms, Wasatch Reading Summit, Standards Implementation Institute, Utah Systems Conference, and Running Start offered in the SpEdOmeter.
3/5/2020	Email	Scheduled conference for March 23, 2020.
3/13/2020		Pandemic shuts down all schools.
3/18/2020	Email	Request to reschedule special education conference to late April.
3/19/2020	Email	APA agrees to postpone until April.
4/1/2020	General Offering	Speech Language Institute, Wasatch Reading Summit, Division of Early Childhood, and Running Start offered in the SpEdOmeter.
4/23/2020	Email	APA requests rescheduling in May so full team can attend.
4/23/2020	Email	USBE team agrees to meeting on May 18th and provides a virtual format.
5/1/2020	General Offering	Speech Language Institute, Wasatch Reading Summit, Division of Early Childhood, and Running Start offered in the SpEdOmeter.
5/18/2020	Virtual	Meeting held with APA and USBE. Corrective action plan provided. Additional information requested regarding specific areas of concern outlined in the plan.
5/26/2020	Email	Email to APA stating specific documentation had been uploaded to UPIPS for further review. Offered to answer any additional questions.

6/1/2020	General Offering	Co-Teaching, Speech Language Institute, Wasatch Reading Summit, Indicator 11 and 13 Trainings, Special Education Eligibility Evaluator Endorsement, Special Education Law, and Running Start offered in the SpEdOmeter.
6/15/2020	Email	Reminder to APA that some items on the corrective action plan were due 7/1/2020.
6/17/2020	Email	APA appeals corrective action plan.
7/6/2020	Email	APA made a GRAMA request of USBE.
7/16/2020	Email	APA provided documentation outlined in the GRAMA request.
7/27/2020	Email	APA requests additional documents under GRAMA.
8/1/2020	General Offering	DYAD Reading, Students with Complex Needs, Co-Teaching, Wasatch Reading Summit, Indicator 11 and 13 Trainings, and Indicator 13 and 14 coaching offered in the SpEdOmeter.
10/1/2020	General Offering	Students with Complex Needs, Wasatch Reading Summit, Scribe Edu Pro, Indicator 11 and 13 Trainings, and Indicator 13 and 14 coaching offered in the SpEdOmeter.
11/1/2020	General Offering	Students with Complex Needs, Scribe Edu Pro, Indicator 11 and 13 Trainings, and Indicator 13 and 14 coaching offered in the SpEdOmeter.
11/5/2020	TRP Request	APA made requests for training on the new UPIPS online system.
11/6/2020	Email	Email to APA to set up training for staff.
12/9/2020	Virtual Training	Virtual training on the UPIPS system was recorded and can be provided upon request. Twenty one staff in attendance.
12/11/2020	Virtual Training	APA staff in attendance for policy and procedure manual training. Had specific questions regarding caseload guidelines that LauraLee Gillespie agreed to follow up on.
12/14/2020	Email	Email to Joan regarding caseload rules and guidelines.

# EXHIBIT K

The Utah State Board of Education Special Education Services (USBE SES) section met with American Preparatory Academy (APA) virtually on May 18, 2020. During the meeting APA requested information regarding areas of additional concern outlined in the corrective action plan. APA specifically requested identification of students observed in specific areas outlined below.

Students listed and information provided is based on observations and information provided during the January 30-31, 2020 visit. USBE SES recognizes that additional information may be available. Information provided from observers was directly and/or indirectly connected to the outlined concern.

If there are additional questions, please contact LauraLee Gillespie (lauralee.gillespie@schools.utah.gov; 801-538-7866).

## **Students with behavior needs were placed in special classes most of the day with no functional behavior assessment, behavior intervention plan, or behavior data provided.**

- West Valley 1
  - Ikran Ibrahim: Observer noted no progress reported on the behavior goal.
  - Gerado Espindola-Cedilla: Observer noted emotional disturbance classification. Student spends part of the day in a class for student who are also classified as emotional disturbance. Ms. Samu shared that the IEP team is considering reclassification of intellectual disability.
  - Alexander Reyes Santiago: Observer noted social emotional service time that does not have clear alignment to behavior goals or present levels of academic achievement and functional performance. Behavior plan in the file but does not address IEP goals. Student is pulled out of class when behavior is impacting learning. Behavior is impacting academic goals.
- West Valley 2
  - Sebastian Chavez Vega: Observer noted that she was unsure how functional behavior support was calculated without a functional behavior assessment or a specific behavior intervention plan implemented. IEP does not reference a functional behavior assessment or a specific behavior intervention plan. Unclear how a placement with functional behavior support determined without a functional behavior assessment.
  - Tegan McLaughin: Observer noted emotional disturbance classification with no information about specific behavioral concerns and functionally appropriate replacement behaviors. Behavior intervention plan was attached to the IEP. Unclear how goals were created without a functional behavior assessment.

## **Students who are learning English may be inappropriately identified as having a disability.**

- Draper 1

- Ditzza Nazario Salinas: Observer noted that the student's native language is Spanish and that it is the language spoken in the home. Present levels of academic achievement and functional performance outline items needed for an English Language Learner. Student classified as other health impairment with no health needs identified in previous local education agency. Eligibility information should be further reviewed.
- Yaharj Japa: Observer noted that student is bilingual, the home language is Hindi and English. All IEP goals are connected to language and communication. Observer wondered if the student has a disability as opposed to a language barrier.
- West Valley 1
  - Ikran Ibrahim: Observer noted that the IEP listed English Language Learner services in the general education setting.
- West Valley 2
  - Sebastian Chavez Vega: Observer noted the student speaks Spanish at home and Spanish is listed as the native language. Unclear if evaluations were conducted in the student's native language.

**Specially designed instruction to access grade-level core instruction was not provided. Instead, students attended classes with students in lower grades (e.g., third grader in a first-grade class, ninth grader in a fourth-grade class).**

- Salem
  - Jorge Delara: Observer noted that teacher reported the student has met 2 of the 3 IEP goals. Student observed in an intensive class with two other students from lower grades. Observer wondered if student should be working with grade level peers.
  - Christian Taylor: Observer noted the IEP addresses speech and reading. Christian is the only third grade student in a class of 12 students for reading. All other students are in first and second grade. Progress reports note making progress on 2 of 3 IEP goals.
  - Khaleah Mahoney: Observer noted ninth grade student with an IQ of 47 in a class with fourth graders. There were 50 minutes of reading with 4<sup>th</sup> graders. Student unable to keep pace with peers. Observed modified assignments and excusing her from the work.
- West Valley 1
  - Ikran Ibrahim: Observer noted the student receiving fourth grade instruction even though she is enrolled in sixth grade.
  - Mohammed Roof: Observer noted the student in third grade working on level two in the reading mastery program.
- West Valley 2

- Elijah Tise: Observer noted students ranging from fourth to sixth grade. Elijah is a sixth-grade student. Whole class using Horizons Textbook with the number two (2) on the spine. Observer believed that the textbook reading level was second grade based on the observed text and the number two on the text.
- Ulises Lopez: Observer noted students ranging from fourth to sixth grade in an intensive reading class. Ulises is a fifth-grade student and his IEP indicates his instructional level at fourth grade. All students were working on the same book believed to be at a second or third grade level.

(Each horizontal line reflects a single student being observed with name redacted.)

**EXHIBIT L**

Campus	Grade	resource	time	regular_percent	Educational Needs	ELL in Question	Goals	Services	SCRAM and Services Align (Daily)	Questions Regarding Placement	Observation Setting	Class Content	Primary Instructing Staff	Secondary Instructing Staff	Additional Staff in the Room	SDI Amount Observed	Additional Notes on Service	Access to grade level curriculum	Additional Information
Draper 1	2	OH	A	1	Reading, Behavior, Fine motor, Communication		Reading, Speech, Behavior	Reading 380 minutes weekly Behavior 100 minutes weekly Counseling 20 minutes weekly Occupational Therapy 8- minutes monthly Speech 120 minutes monthly	No	Yes	General Education	Reading Intensive	Paraeducator		Special Educator	Some			
Draper 1	4	CD	B	1	Speech, Health		Speech	Speech 120 minutes monthly	No	Yes	Speech Room	Speech	Speech technician			Some	SDI was observed		
Draper 1	2	VI	B	1	Reading, Braille,		Visual perception, reading, orientation and mobility	Reading 55 minutes daily Orientation and mobility 30 minutes monthly	Unclear	No									Braille listed in the PLAAFP but not marked in special factors.
Draper 1	3	SL	B	1	Reading		Reading	Reading 55 minutes daily	No	Yes	General Education	History	Regular Educator	Paraeducator		None			Questions about appropriate eligibility and services.
												General Education	Reading Intensive	Paraeducator		Some			
Draper 1	6	SL	B	1	Math, Reading, Low energy and anxiety		Math, Reading, Writing, Social/Emotional	Language Arts 25 minutes daily Math 55 minutes daily Social/Emotional 10 minutes daily Reading 30 minutes daily	Yes	No	General Education	Math	Regular Educator			None		Yes	
											General Education	Math Intensive	Paraeducator		Special Educator	Some		Special educator observing	
Draper 1	5	SL	B	1	Reading, Writing, Math, Motor, Social/Emotional		Self management, focus, Occupational therapy, math, reading, writing, Comprehension	Reading 60 minutes daily Written language 15 minutes 3 times a week Math 60 minutes OT 120 minutes monthly	Yes	No	General Education	Reading Intensive	Paraeducator	Special Educator		None	Special educator prompting student. No SDI, just keeping student focused.		
											General Education	Math Intensive	Regular Educator	Paraeducator		Some	Paraeducator working with student one on one		
Draper 1	2	CD	C	3	Language, Social/Emotional,	Yes	Language, Behavior	Social/Emotional 8 minutes monthly Speech 240 minutes monthly	No	Yes	Special Education	Speech	Speech technician			Some			

Draper 1	2	AU	B	1	Functional skills, language	Yes	Personal development, speech	speech 120 minutes monthly Executive functioning 30 minutes weekly	No	Yes	General Education	Reading Intensive	Paraeducator			None		
Draper 1	5	OH	B	1	Comprehension, writing, social/emotional *needs are not clear	Yes	Self concept, communication math, reading, writing	Comprehension 55 minutes math 55 minutes written language 20 minutes 4 times a week Speech 120 minutes monthly Counseling 80 minutes monthly	Yes	Yes	General Education	Math	?			None		
											General Education	Reading Intensive	Paraeducator			None		
Draper 1	2	ID	B	1	Writing, Math, reading, language		Writing, math, reading, language	Math 55 minutes Reading 380 minutes weekly Written language 30 minutes daily Speech 240 minutes monthly	Yes	Yes	General Education	Reading Intensive	Paraeducator		Special Educator	None		Curriculum not appropriate or individualized. Special educator observing
Draper 2	4	SL	B	1	Math, Speech		Math, Speech	Spech 120 minutes monthly Counseling 20 minutes weekly	No	Yes	General Education	Math or Reading (?)	Regular Educator	Paraeducator		Some	Observation states SDI observed.	
Draper 2	3	BD	C	3	Behavior, Functional Skills, Reading, Writing		Behavior, Functional Skills, Reading, Writing	Reading 450 minutes weekly Writing 360 minutes weekly SLE 450 minutes weekly Executive functioning 150 minutes weekly Behavior 775 minutes weekly Counseling 20 minutes weekly <b>7+ hours per day</b>	Yes	Yes	Special Education	Language Arts Science(?)	Paraeducator			Some	He gets to choose each day if he's going to spend time (for each content) in GenEd. He's apparently made progress spending more time in GenEd but then they don't actually "include" him, he's just sitting there	Group reading with all students holding book. Student observed was not provided a book, story was on the projector.
Draper 2	4	AU	B	1	Math, Reading(?), Writing(?), Speech (?), Behavior (?), OT (?)		Math, Reading(?), Writing(?), Speech (?), Behavior (?), OT (?)	Math 40 minutes daily Reading 15 minutes daily Written Language 30 minutes weekly Counseling 20 minutes weekly Speech 240 minutes monthly Occupational Therapy 120 minutes monthly	Yes	No	General Education	Math Intensive	Regular Educator	Paraeducator (?)		Some		
Draper 2	5	OH	C	3	Relationships, Behavior		Relationships, Behavior	Behavior 15 minutes daily Counseling 120 minutes monthly Check in/Check out daily	No	Yes	General Education	Vocabulary, Math, Math Intensive	Regular Educator/Paraeducator	Regular Educator/Paraeducator		None	No SDI observed in three observation sessions. Not in a special class.	
Draper 2	6	SL	B	1	Math(?), Reading (?)		Math(?), Reading (?)	Math 50 minutes daily Reading 50 minutes daily	Yes	Yes	Special Education	Reading	Special Educator	Paraeducator		Some	IEP states services in the general education class. Observed in special education class with one on one instruction	



Draper 2	6	AU	B	1	Math, Functional Skills	Math, Functional Skills	Personal Development 20 minutes weekly Math 50 minutes daily	No	No	General Education	Math	Regular Educator	Paraeducator		Some	Regular education math, then intensive math. Not clear where or if SDI occurs.		
Draper 2	3	OH	B	1	Writing, behavior, reading	Writing, behavior, reading	Reading 60 minutes daily Written language 30 minutes daily Behavior 20 minutes a week	Yes	No	General Education	Writing/Grammar	Regular Educator	Paraeducator	Special Educator	None	Special educator taking behavior observation data		
Draper 2	1	DD	B	1	Social/Emotional, Behavior,	Behavior, Speech(?)	Behavior 20 minutes a week (removed in amendment) OT 60 minutes a month Counseling Speech 120 minutes a monthly	No	Yes	General Education	Art	Regular Educator	Paraeducator	Special Educator	None	Special educator taking behavior observation data		
Draper 2	4	AU	C	3	Behavior	Behavior	SDI 450 minutes weekly general education setting 75 minutes weekly Special education setting Counseling 40 minutes weekly	Unclear	No	General and Special Education	Social Skills, Reading Math,	Special Educator	Paraeducator		None		Possibly	
Draper 2	5	SL	B	1	Reading, Communication	Reading, Communication	Reading and Speech(?)	Unclear	Yes	General Education	Reading Intensive	Paraeducator			None			
Draper 3	7	ID	B	1	DLM Student (See Additional Notes)		Discrepancy between service time and actual schedule. DLM history and science(?)	Unclear	Yes	Special Education	DLM Math and History	Special Educator			Some			Student is taking the Alternate Assessment. It is unclear on the IEP if being instructed on Essential Elements for Math and Reading, but it is clear from his schedule that he is in the "DLM Math and ELA" classes. Services indicate "DLM History" and "DLS Science". There are not alternate standards for history. Looking back in the file, Placement indicates special class. Looking at the past IEPs in the file but services do not line up with special class placement. His class schedule lines up with special class placement.
Draper 3	9	OH	C	2	Reading, writing, math, transition	Transition, math, writing, reading	Math 40 minutes daily Reading 45 minutes daily Life skills 45 minutes daily Study skills history 45 minutes daily Study skills science 45 minutes daily	Yes	No	General Education	Science	Regular Educator			Unable to observe			
Draper 3	12	VI	B	2	Reading, Math, Visual impairment, Transition	Reading, Math, Visual impairment, Transition	Reading 47 minutes daily Vision 160 minutes weekly	Yes	Yes	General Education	Language Arts 12 Honors	Regular Educator			Some	No, see information regarding goals on form	Found out during interview that student was given laptop for the first time in class during observation. Student had been getting large print and was happy to get to use the laptop.	

Draper 3	7	SL	B	1	Reading, functional skills		Reading, Academics	Reading 125 minutes weekly Study skills 10 minutes 4 times a week	No	No	General Education	English Language Arts 7th Grade	Regular Educator			Some		
Draper 3	10	AU	C	3	Unclear, student gone between regular and alternate assessment over last three years.		Unclear	Unclear	No	Yes	General Education	Orchestra	Regular Educator	Paraeducator		None		It was difficult to find current placement in the file. The paper trail that I was able to track down does seem to indicate that he is in regular class with part time special education services. However services, his class schedule and being coded as a "C" indicate the placement may be different than services indicated on the IEP.
Draper 3	7	OH	A	1	Writing, functional skills, communication		Speech, writing, personal development	Writing 200 minutes weekly Speech 120 minutes monthly	Yes	Yes	General Education	Language Arts(?)	Regular Educator	Paraeducator		Unable to observe		Teacher stated writing supports provided after school.
Draper 3	7	OH	C	2	Essential elements history, math and English Language Arts		Essential elements history, math and English Language Arts	Unclear	Unclear	Yes	Special Education	DLM Math and History	Special Educator			Some		Written Prior Notice signed in January 2020 indicates that placement for history, math and ELA changed to special class with instruction in the Essential Elements. There is no change indicated on the IEP regarding service minutes or switching to the alternate assessment. It is unclear when looking at the IEP, but made more clear when looking at the student's schedule.
Draper 3	8	SL	C	2	Reading, Math, Functional Skills, Communication	Yes	Math, Speech, Vocational Skills, Reading	Amount unclear, but all areas covered	Unclear	Unclear	General Education	Science	Regular Educator	Special Educator		Unable to observe		
											General Education	Comprehension	Regular Educator	Paraeducator (?)		Some		
Draper 3	12	OH	B	2	Reading, Writing, Math, communication		Reading, Writing, Math, communication	Writing 100 minutes weekly Math 100 minutes weekly Reading comprehension 100 minutes weekly Reading 150 minutes weekly Counseling 30 minutes monthly	Yes	Yes	General Education	Math	Regular Educator			Unable to observe		No speech services, but communication goals. No specific connection to disability category of OHI.

Draper 3	8	OH	C	2	Essential elements/DLM Math and History		Essential elements/DLM Math and History	Unclear, reviewer marked services align to goals	Unclear	No	Special Education	DLM Math and History	Special Educator			Some		Concern that student is enrolled in Essential Elements courses but taking standard assessment (as indicated on IEP) rather than alternate assessment. When I asked the teacher if the student takes the DLM the answer was yes, however this is not indicated on the current IEP.
Draper 3	11	ID	B	2	Reading, math, communication, functional skills		Reading, math speech, vocational	Math 47 minutes daily Speech 120 minutes monthly	No	Yes	General Education	Foods	Regular Educator			Unable to observe		See observation form. Several concerns regarding services including essential elements/DLM.
Salem		SL	B	1	Behavior, math, reading		Behavior, math, reading	Math 20 minutes daily Reading 60 minutes daily Social/emotional 5 minutes daily	Yes	Yes	General Education	Math	Regular Educator			Some		Student has been retained twice in third grade. Service time does not seem appropriate.
Salem		SL	B	1	English, Math, Speech		English, Math, Speech	English 45 minutes daily Math 45 minutes daily Speech 60 minutes monthly	Yes	Yes	General Education	Math	Regular or Paraeducator (?)	Special Educator	None	Special educator observed class		Student stated multiple times throughout both the initial and post focus group that he does not receive any extra help or support what so ever. Services state he is to be receiving services in a special education class for reading, however, he was only in a general education setting.
Salem		SL	C	2	Math, language arts		Math, language arts	Language Arts 120 minutes daily Psych services monthly	No	Yes	General Education	Reading Intensive	Paraeducator	Special Educator	None	Special educator observed class and coached paraeducator during observation	No	Observed in an intensive instruction class with 3 students. The other 2 students are in lower grade levels (one student is a special education student and one student is a general education student who is "RTI", according to the para educator.) Jorge has also meet 2/3 IEP reading goals, it may be more appropriate for him to receive is services with more grade level peers. The student was receiving smaller group instruction, but Mr. Redd confirmed this is considered a general education setting for the student and it's the pace the para educator goes that is the SDI. Jorge's IEP says his SDI is being provided in the special ed class and when asked to see that class for Jorge I could not get clarification on what time a day or what class is considered special education.
Salem	9	ID	B	2	Math(?), Reading (?), Writing (?), Transtion(?)		Math(?), Reading (?), Writing (?), Transtion(?)	Math 30 minutes daily Reading and Wring 45 minutes daily Independent skills 30 minutes weekly	Yes	Yes	General Education	Reading Intensive	Paraeducator			None		Student has an IQ of 47 and downs syndrome. Service time seems insufficient. Student was observed in a 4th grade intensive reading class, and she is the only 9th grade student.

Salem	4	SL	B	1	Reading (?)		Reading (?)	Reading 20 minutes daily	Unclear	No	General Education	Reading Intensive	Paraeducator		Principal	None	Principal coached paraeducator		IEP stated services in special education class. Observed in a general education intensive setting.
Salem					Math		Math	Math 30 minutes daily	Unclear	Yes	General Education	Math	Regular Educator	Special Educator		None	Special educator assisting all students		Rostered for the DLM.
Salem	7	ID	B	2	Behavior, Reading, Math		Behavior (?), Reading(?), Math (?) Goals are not aligned with services noted on the observation form	Reading 40 minutes Math 50 minutes Speech 40 minutes Functional Skills 80 Minutes OT 30 minutes	Unclear	Yes	Special Education	Math	Paraeducator			Some			Special education schedule and time of instruction does not align with IEP
Salem	3	SL	B	1	Reading, Speech		Reading, Speech	Reading 120 minutes daily Speech 30 minutes weekly	Yes	Yes	General Education	Reading	Paraeducator	Special Educator		Some	Special educator provided prompts to keep students on task	No	Only third grade student in reading class of first and second grade students
Salem	5	BD	C	2	Behavior		Behavior Questions around truancy goal and alignment to services	Behavior 990 minutes weekly in special education and 990 minutes in general education *We found an ammendment where services were changed and seemed more appropriate. General behavior and and academic/instruction support 60 minutes daily in regular ed and 30 minutes weekly in sped (this is the average time the student would spend in the sped room to deescalate. Life skills services 20 minutes weekly. *6.6 hours of special education service daily	Yes	Yes	General Education		Paraeducator		Special Educator	None	Special educator observing and monitoring		No related services on the IEP
Salem	2	ID	B	1	Reading (?), Math (?), Speech (?), OT (?), Counseling (?)		Reading (?), Math (?), Speech (?), OT (?), Counseling (?)	Reading 50 minutes Math 50 minutes Speech 120 minutes monthly OT 20 minutes weekly Counseling 15 minutes weekly	No	Yes	General Education	Math	Paraeducator			Some			Student IQ of 52. Adaptive scores from low to really low. Standard assessment at end of level.
West Valley 1	4	BD	C	3	Reading, Math, Social Emotional, Counseling, writing, motor, Speech		Reading (?), Math (?), Speech (?), OT (?), Counseling (?)	Writing 300 minutes weekly Math 345 minutes weekly Reading 400 minutes weekly Reading comprehension 400 Minutes Weekly OT 80 minutes monthly Speech 240 minutes monthly Behavior 400 minutes weekly Counseling 20 minutes weekly *Over 6 hours a day of special education and related services	Yes	Yes	Special Education	Math	Special Educator			Some			

West Valley 1	2	DD	B	2	Reading and Speech		Reading and speech	Reading 420 minutes weekly Communication 240 minutes monthly	Yes	No	General Education	Reading	Regular Educator(?)			None		
West Valley 1	6	SL	A	1	Reading, writing, communication, behavior *Student is reading on gradelevel, but has a goal		Reading, writing, communication, behavior	Reading 115 minutes weekly Writing 100 minutes weekly Behavior 40 minutes Speech 180 minutes monthly	No	No	General Education	Reading	Regular Educator		Special Educator	Some	Special Educator did a check in with the student in the class	
West Valley 1	4	SL	B	1	Reading and Behavior. Math not aligned		Reading, math, behavior	Reading 1200 minutes monthly Math 900 minutes monthly Behavior 40 minutes monthly	Yes	Yes	General Education	Math	Regular Educator			None		
West Valley 1	5	AU	B	1	Functional, OT, Speech, Math, Reading, Writing		Functional, OT, Speech, Math, Reading, Writing, personal development	Reading 40 minutes daily Math 45 minutes daily Written language 25 minutes daily OT 120 minutes monthly Speech 120 minutes monthly	Yes	No	General Education	Reading	Regular Educator			None		
West Valley 1	1	DD	B	1	Reading, communication, functional skills		Reading, communication functional skills	Reading 260 minutes weekly Functional Skills 25 minutes weekly Speech 120 minutes monthly	Yes	No	General Education	Reading Intensive	Paraeducator			None		
West Valley 1	3	AU	C	3	Reading, Writing, Math, communication, social/Emotional, Health		Communication, personal development, Personal needs, Math, Reading	Writing 150 minutes weekly Math 250 minutes weekly Behavior 1150 minutes weekly Speech 240 minutes monthly Counseling 30 minutes weekly *5+ daily hours of services	Yes	No	General Education	Reading Intensive	Paraeducator			None		
West Valley 1	6	SL	C	3	Reading, writing, social		Reading(?) Writing(?) Social	Reading 30 minutes weekly Writing 30 minutes weekly Social Emotional 400 minutes daily * 7+ hours of services daily	Yes	Yes	General Education	Math	Paraeducator	Special Educator		Unable to observe		Student pulled out whenever behavior impacts learning. No behavior plan. No related services. Classification seems suspicious.
West Valley 1	3	OH	B	2	Reading and Math		Reading and math	Reading 90 minutes weekly Reading comprehension 90 minutes weekly Math 60 minutes weekly Math skills 60 minutes weekly	Unclear	No	General Education	Math	Regular Educator			None		Services provided in general education class, but IEP states in the special education class.
West Valley 1	3	SL	B	2	Reading and Writing		Reading and Writing	Reading 60 minutes daily Writing 30 minutes daily	Yes	No	Student absent	student absent	Student absent	student absent				



West Valley 2	1	DD	C	3	Present levels and ELL impact unclear. Behavior seems to be the primary impact. Unclear how behavior calculated without functional behavior assessment.	Yes	Reading, Math, Communication, Motor, Social/Emotional	Math 1200 minutes monthly Reading 1200 minutes monthly Functional behavior support 120 minutes monthly Speech 480 minutes monthly Occupational therapy 120 minutes monthly	No	Yes	Unclear	Math and Reading	Paraeducator	Paraeducator		Unable to observe	Other students doing math. Observed student given a coloring page and had several outbursts. Challenging behavior was reinforced.	No	
West Valley 2	10	ID	C	2	Reading, Writing, Functional Skills, Self Help, Social emotional, Transtion, health, biology		Reading, Writing, Social/Emotional	Services are listed by content area and mirror class periods. Questions about student receiving full time services in the general education setting when skills are so low. Unclear on "adult support service" Related services lacking.	Unclear	Yes	Special education class	Language Arts	Paraeducator		Special Educator	None		Unclear	Lack of related services and interaction with special educator a concern.
				Special Education							Reading Intensive	Paraeducator	Paraeducator		Some				
West Valley 2	7	ID	B	1	Reading, Math		Reading, Math	Reading 45 minutes daily Math 45 minutes daily	Yes	Yes	General Education	Reading Intensive	Paraeducator		Special Educator	Some	Rereading with student and specific questions.	Unclear	Disability category seems inconsistent with special education needs.
				General Education							Math Intensive	Regular Educator			Some	Seating at the front of class. Small group work for 10 minutes at the end of class.	Yes		
West Valley 2	5	SL	B	1	Reading, Math	Unclear	Reading, Math	Math 48 minutes daily Reading 48 minutes daily Behavior 20 minutes monthly Speech 60 minutes weekly	Yes	No	General Education	Reading Intensive	Paraeducator			None	Small group of 4th - 6th grade students	No	5th grade student accessing 2nd grade materials.
				General Education							Math Intensive	Paraeducator		Special Educator	None	Special educator in the room taking notes on a clip board. No interaction with students	Unclear		
West Valley 2	8	OH	B	1	Reading, Writing, Behavior		Reading, Writing, Behavior	Home work check in 60 minutes weekly Social skills 30 minutes weekly Writing 220 minutes weekly Reading 220 minutes weekly	Yes	No	General Education	Science	Regular Educator		Paraeducator	None	Student played with pens most of the class period. Regular Educator provided check ins	Yes	Paraeducator (I think) sat in the back of the room. Unclear of purpose.

West Valley 2	1	BD	C	3	Low adaptive and social skills		Self regulation, organization, following directives	2100 minutes weekly in a special education class. *7 hours daily	Yes	Yes	General Education	Math	Regular Educator	Paraeducator		Some	Some prompting and verbal praising.		Concerns about BD classification without a functional behavior assessment. No clear observation, cognitive, or communication assessment.
West Valley 2	11	AU	C	1	Reading, Writing, Math, Motor, Social/Emotional, Transition, functional skills, science		Reading, Writing, Math, Motor, Social/Emotional, Transition	Services are listed by content area and mirror class periods. No services to address social emotional goal.	Unclear	No	Special Education	EE Language Arts	Paraeducator		Special Educator	None			Special educator in the room for part of the class period. No interaction.
West Valley 2	6	SL	B	1	Reading, Writing		Reading, Writing	Writing 600 minutes monthly Reading 600 minutes monthly Reading comprehension 600 minutes monthly	Yes	Yes	Special Education	Reading Intensive	Paraeducator			None		Class is three grade levels below	
West Valley 2	4	SL	B	1	Below grade level in reading, math, and communication.		Reading, Math, Communication	Math 1200 minutes monthly Reading 600 minutes monthly Reading comprehension 600 minutes monthly Speech 120 minutes monthly	Yes	Yes	Special Education	Reading	Paraeducator			Some	IEP lists all services in the general education classroom. All services observed were in the special education setting.	Unclear	
						Yes = 5			Yes = 31	Yes = 38			Paraeducator = 29	Paraeducator = 16	Paraeducator = 1	Some = 28			
						Unclear = 1			No = 16	No = 21			Regular = 29	Regular = 1	Regular =	None = 31			
									Unclear = 13	Unclear = 1			Special = 6	Special = 5	Special = 13	Unable = 7			
													Related = 2	Related =	Related =				
														Other =	Other = 1				

**66 IDELR 227****115 LRP 53903**

**Dear Colleague Letter**  
**Office of Special Education and**  
**Rehabilitative Services**  
**Office of Special Education Programs**

N/A

**November 16, 2015**

**Related Index Numbers****265.005 Contents of IEP****200.055 State Law Authority/Requirements****Judge / Administrative Officer****Michael K. Yudin****Judge / Administrative Officer****Melody Musgrove****Ruling**

Citing the need to prepare students with disabilities for "college, careers and independence," OSERS and OSEP urged districts to focus on their state's academic content standards when developing IEPs. The agencies issued a *Dear Colleague* letter to clarify how districts can draft appropriate IEP goals for all students with disabilities.

**Meaning**

This guidance does not require districts to ensure that students with disabilities perform at grade level in all areas. Rather, it explains how a district can develop IEPs that allow students with disabilities to learn material based on grade-level content standards. For example, a student with SLD might have science or history assignments that are based on grade-level content but are shortened to assist with reading fatigue. The agencies indicated that such modifications will allow a student who is performing significantly below grade level academically to access the same general education curriculum as his nondisabled peers.

**Case Summary**

Just because a student with a disability performs

significantly below grade level in some academic areas doesn't mean that his IEP should set less ambitious goals. OSERS and OSEP stated in a joint *Dear Colleague* letter that IEP goals must align with state academic content standards for the grade in which the student is enrolled. The agencies explained that aligning IEP goals with grade-level content standards reflects the IDEA's emphasis on having high expectations for students with disabilities and meets the instructional standards set forth in NCLB. That said, OSERS and OSEP cautioned districts not to abandon the individualized decision-making process that is the hallmark of IEP development. Rather, the IEP team must consider how the student's disability affects his progress toward annual goals that are aligned with state grade-level standards. "For example, the child's IEP team may consider the special education instruction that has been provided to the child, the child's previous rate of academic growth, and whether the child is on track to achieve grade-level proficiency within the year," the agencies wrote. OSERS and OSEP presented a hypothetical example of how to develop IEP goals based on grade-level content for a student with SLD. Although the fictional student was four years behind grade level in reading, he was able to understand grade-level content when read aloud. The agencies observed that an IEP for the student in question might call for a 1.5 grade level improvement in reading fluency, include specialized instruction to improve his reading skills, and provide for modified assignments that still require him to learn grade-level material. OSERS and OSEP noted that states still have the ability to adopt alternate academic achievement standards for students with the most severe cognitive disabilities. However, they stressed that IEP goals developed for those students must reflect high expectations and be based on the state's content standards for the grades in which they are enrolled.

**Full Text**

Dear Colleague:

Ensuring that all children, including children



with disabilities, are held to rigorous academic standards and high expectations is a shared responsibility for all of us. To help make certain that children with disabilities are held to high expectations and have meaningful access to a State's academic content standards, we write to clarify that an individualized education program (IEP) for an eligible child with a disability under the Individuals with Disabilities Education Act (IDEA) must be aligned with the State's academic content standards for the grade in which the child is enrolled.<sup>1</sup> Research has demonstrated that children with disabilities who struggle in reading and mathematics can successfully learn grade-level content and make significant academic progress when appropriate instruction, services, and supports are provided.<sup>2</sup> Conversely, low expectations can lead to children with disabilities receiving less challenging instruction that reflects below grade-level content standards, and thereby not learning what they need to succeed at the grade in which they are enrolled.

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must take into account a child's present levels of academic achievement and functional performance, and the impact of that child's disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities. The State, however, as discussed on page five, is permitted to define alternate academic achievement standards for children with the most significant cognitive disabilities.<sup>3</sup>

### **Application of Provisions in the Elementary and Secondary Education Act**

### **of 1965 to Children With Disabilities**

Since 2001, the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), has required each State to apply the same challenging academic content and achievement standards to all schools and all children in the State, which includes children with disabilities. 20 U.S.C. § 6311(b)(1)(B). The U.S. Department of Education (Department), in its regulations implementing Title I of the ESEA, has clarified that these standards are grade-level standards. 34 CFR § 200.1(a)-(c). To assist children with disabilities in meeting these grade-level academic content standards, many States have adopted and implemented procedures for developing standards-based IEPs that include IEP goals that reflect the State's challenging academic content standards that apply to all children in the State.

### **Interpretation of "General Education Curriculum"**

Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. 20 U.S.C. § 1414(d)(1)(A). The term "general education curriculum" is not specifically defined in the IDEA. The Department's regulations implementing Part B of the IDEA, however, state that the general education curriculum is "the same curriculum as for nondisabled children." 34 CFR § 300.320(a)(1)(i). In addition, the IDEA Part B regulations define the term "specially designed instruction," the critical element in the definition of "special education," as "adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability and to ensure access of the child to the general curriculum, *so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.*" 34 CFR § 300.39(b)(3) (emphasis added). Otherwise, the IDEA regulations do not specifically address the connection

between the general education curriculum and a State's academic content standards.

### **Analysis**

The Department interprets "the same curriculum as for nondisabled children" to be the curriculum that is based on a State's academic content standards for the grade in which a child is enrolled. This interpretation, which we think is the most appropriate reading of the applicable regulatory language, will help to ensure that an IEP for a child with a disability, regardless of the nature or severity of the disability, is designed to give the child access to the general education curriculum based on a State's academic content standards for the grade in which the child is enrolled, and includes instruction and supports that will prepare the child for success in college and careers. This interpretation also appropriately harmonizes the concept in the IDEA regulations of "general education curriculum (i.e., the same curriculum as for nondisabled children)," with the ESEA statutory and regulatory requirement that the same academic content standards must apply to all public schools and children in the State, which includes children with disabilities.

The IDEA statutory and regulatory provisions discussed above, the legislative history of the IDEA, and clarification the Department has provided on the alignment of the IEP with a State's content standards in the Analysis of Comments and Changes to the 2006 IDEA Part B regulations also support this interpretation. When it last reauthorized the IDEA in 2004, Congress continued to emphasize, consistent with the provisions in the ESEA, the importance of "having high expectations for [children with disabilities] and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible." 20 U.S.C. § 1400(c)(5)(A). The Senate Report accompanying the 2004 reauthorization of the IDEA also explained that "[f]or most children with disabilities, many of their IEP goals would likely conform to State and district wide academic content standards and progress indicators consistent with standards based reform

within education and the new requirements of NCLB." S. Rep. No. 108-185, 105th Cong., 1st Sess. 29 (Nov. 3, 2003).

The Analysis of Comments and Changes accompanying the 2006 IDEA Part B regulations also included important discussion that further clarifies the alignment of an IEP with a State's academic content standards under the ESEA, explaining: "section 300.320(a)(1)(i) clarifies that the general education curriculum means the same curriculum as all other children. Therefore, an IEP that focuses on ensuring that the child is involved in the general education curriculum will necessarily be aligned with the State's content standards."<sup>4</sup>

The Department's interpretation of the regulatory language "general education curriculum (i.e., the same curriculum as for nondisabled children)" to mean the curriculum that is based on the State's academic content standards for the grade in which a child is enrolled is reasonable. This interpretation is also necessary to enable IDEA and ESEA requirements to be read together so that children with disabilities receive high-quality instruction that will give them the opportunity to meet the State's challenging academic achievement standards and prepare them for college, careers and independence. Therefore, in order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled.

### **Implementation of the Interpretation**

Based on the interpretation of "general education curriculum" set forth in this letter, we expect annual IEP goals to be aligned with State academic content standards for the grade in which a child is enrolled. This alignment, however, must guide but not replace

the individualized decision-making required in the IEP process.<sup>5</sup> In fact, the IDEA's focus on the individual needs of each child with a disability is an essential consideration when IEP Teams are writing annual goals that are aligned with State academic content standards for the grade in which a child is enrolled so that the child can advance appropriately toward attaining those goals during the annual period covered by the IEP. In developing an IEP, the IEP Team must consider how a child's specific disability impacts his or her ability to advance appropriately toward attaining his or her annual goals that are aligned with applicable State content standards during the period covered by the IEP. For example, the child's IEP Team may consider the special education instruction that has been provided to the child, the child's previous rate of academic growth, and whether the child is on track to achieve grade-level proficiency within the year.

The Department recognizes that there is a very small number of children with the most significant cognitive disabilities whose performance must be measured against alternate academic achievement standards, as permitted in 34 CFR § 200.1(d) and § 300.160(c). As explained in prior guidance,<sup>6</sup> alternate academic achievement standards must be aligned with the State's grade-level content standards. The standards must be clearly related to grade-level content, although they may be restricted in scope or complexity or take the form of introductory or pre-requisite skills. This letter is not intended to limit a State's ability to continue to measure the achievement of the small number of children with the most significant cognitive disabilities against alternate academic achievement standards, but rather to ensure that annual IEP goals for these children reflect high expectations and are based on the State's content standards for the grade in which a child is enrolled.

In a case where a child's present levels of academic performance are significantly below the grade in which the child is enrolled, in order to align the IEP with grade-level content standards, the IEP Team should estimate the growth toward the State

academic content standards for the grade in which the child is enrolled that the child is expected to achieve in the year covered by the IEP. In a situation where a child is performing significantly below the level of the grade in which the child is enrolled, an IEP Team should determine annual goals that are ambitious but achievable. In other words, the annual goals need not necessarily result in the child's reaching grade-level within the year covered by the IEP, but the goals should be sufficiently ambitious to help close the gap. The IEP must also include the specialized instruction to address the unique needs of the child that result from the child's disability necessary to ensure access of the child to the general curriculum, so that the child can meet the State academic content standards that apply to all children in the State.

### **An Example of Implementation**

We provide an example of how an IEP Team could apply the interpretation of "general education curriculum" set forth in this letter. For example, after reviewing recent evaluation data for a sixth grade child with a specific learning disability, the IEP Team determines that the child is reading four grade levels below his current grade; however, his listening comprehension is on grade level. The child's general education teacher and special education teacher also note that when materials are read aloud to the child he is able to understand grade-level content. Based on these present levels of performance and the child's individual strengths and weaknesses, the IEP Team determines he should receive specialized instruction to improve his reading fluency. Based on the child's rate of growth during the previous school year, the IEP Team estimates that with appropriate specialized instruction the child could achieve an increase of at least 1.5 grade levels in reading fluency. To ensure the child can learn material based on sixth grade content standards (e.g., science and history content), the IEP Team determines the child should receive modifications for all grade-level reading assignments. His reading assignments would be based on sixth grade content but would be shortened to assist with reading fatigue resulting from his disability. In

addition, he would be provided with audio text books and electronic versions of longer reading assignments that he can access through synthetic speech. With this specialized instruction and these support services, the IEP would be designed to enable the child to be involved and make progress in the general education curriculum based on the State's sixth grade content standards, while still addressing the child's needs based on the child's present levels of performance.<sup>7</sup> This example is provided to show one possible way that an IEP could be designed to enable a child with a disability who is performing significantly below grade level to receive the specialized instruction and support services the child needs to reach the content standards for the grade in which the child is enrolled during the period covered by the IEP.<sup>8</sup> We caution, though that, because the ways in which a child's disability affects his or her involvement and progress in the general education curriculum are highly individualized and fact-specific, the instruction and supports that might enable one child to achieve at grade-level may not necessarily be appropriate for another child with the same disability.

### Summary

In sum, consistent with the interpretation of "general education curriculum (i.e., the same curriculum as for nondisabled children)" based on the State's academic content standards for the grade in which a child is enrolled set forth in this letter, an IEP Team must ensure that annual IEP goals are aligned with the State academic content standards for the grade in which a child is enrolled. The IEP must also include the specially designed instruction necessary to address the unique needs of the child that result from the child's disability and ensure access of the child to the general education curriculum, so that the child can meet the State academic content standards that apply to all children, as well as the support services and the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals.

### Opportunities for Input

We are interested in receiving comments on this document to inform implementation of this guidance. If you are interested in commenting on this document, please e-mail your comments to [iepgoals@ed.gov](mailto:iepgoals@ed.gov) or write to us at the following address: U.S. Department of Education, 550 12th Street SW, PCP Room 5139, Washington, DC 20202-2600. Note that we are specifically interested in receiving input from the field on examples of models of alignment of IEP goals with State content standards that are working well at the State and local level, and how this guidance could be implemented for children with disabilities who are English learners and children with the most significant cognitive disabilities. We will share appropriate models with you in further communications as they become available. We would also be glad to help answer your questions and help with your technical assistance needs in this important area.

We ask you to share this information with your local school districts to help ensure all children with disabilities are held to high standards and high expectations. Thank you for your continued interest in improving results for children with disabilities.

<sup>1</sup>The Department has determined that this document is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at [www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507\\_good](http://www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good). The purpose of this guidance is to provide State and local educational agencies (LEAs) with information to assist them in meeting their obligations under the IDEA and its implementing regulations in developing IEPs for children with disabilities. This guidance does not impose any requirements beyond those required under applicable law and regulations. It does not create or confer any rights for or on any person. If you are interested in commenting on this guidance or if you have further questions that are not answered here, please e-mail [iepgoals@ed.gov](mailto:iepgoals@ed.gov) or write to us at the following address: U.S. Department of Education,

Office of Special Education and Rehabilitative Services, 550 12th Street SW., PCP Room 5139, Washington, DC 20202-2600.

<sup>2</sup>For a discussion of this research see *Improving the Academic Achievement of the Disadvantaged; Assistance to States for the Education of Children With Disabilities, Final Rule*, 80 Fed. Reg. 50773, 50776 (Aug. 21, 2015).

<sup>3</sup>In accordance with 34 CFR § 200.1(d), for children with the most significant cognitive disabilities who take an alternate assessment, a State may define alternate academic achievement standards provided those standards are aligned with the State's academic content standards; promote access to the general curriculum; and reflect professional judgment of the highest achievement standards possible. See also 34 CFR § 300.160(c)(2)(i).

<sup>4</sup>See *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule*, 71 Fed. Reg. 46540, 46662 (Aug. 14, 2006); see also 71 Fed. Reg. 46579.

<sup>5</sup>The IEP must include, among other required content: (1) a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum; (2) a statement of measurable annual goals, including academic and functional goals, designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (3) the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals, and to be involved in and make progress in the general education curriculum in accordance with the child's present levels of performance. 34 CFR § 300.320(a).

<sup>6</sup>See U.S. Department of Education Non-regulatory guidance: *Alternate achievement standards for students with the most significant cognitive disabilities* (August 2005) available at: <https://www2.ed.gov/policy/elsec/guid/altguidance.pdf>

<sup>7</sup>For information on developing, reviewing, or revising the IEP for a child with limited English proficiency, see: *Questions and Answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives* <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/q-and-a-on-e>

<sup>8</sup>While the Department does not mandate or endorse specific products or services, we are aware that many States have issued guidance addressing standards-based IEPs. For example see Minnesota Department of Education, *Developing Standards-Based IEP Goals and Objectives A Discussion Guide* available at: [#### Statutes Cited](https://education.state.mn.us/mdeprod/idcplg?IdcService=GET_FILE&States and LEAs also may consider reviewing the following examples from OSEP-funded projects regarding implementation of standards-based IEPs: inForum: Standards-Based Individualized Education Program Examples available at: www.nasde.org/portals/0/standards-basediepeexamples.pdf. For an example of annual goals aligned with State academic content standards for a child taking the alternate assessment based on alternate academic achievement standards, see: an issue brief provided by the OSEP-funded National Center and State Collaborative (NCSC), NCSC Brief 5: Standards-based Individualized Education Programs (IEPs) for Children Who Participate in AA-AAS available at: http://www.ncscpartners.org/Media/Default/PDFs/Resources/NCSCBrie</a></p></div><div data-bbox=)

20 USC 1400(d)(1)(A)  
20 USC 1414(d)(1)(A)

**59 IDELR 170**

**112 LRP 37475**

**Letter to Chambers**

**Office of Special Education Programs**

N/A

**May 9, 2012**

**Related Index Numbers**

**200.050 Right to FAPE**

**265. INDIVIDUALIZED EDUCATION PROGRAM (IEP)**

**Judge / Administrative Officer**

**Melody Musgrove, Director**

**Ruling**

A district must develop an IEP for an IDEA-eligible student, regardless of whether the instruction the student needs because of his disability is already part of the district's general education program or best teaching practices.

**Meaning**

A district's obligation to develop an IEP for a student with a disability doesn't change just because it incorporates innovative and or flexible teaching methods into its general education curriculum. A district must develop an IEP that includes the specialized instruction and related services a student with a disability needs in order to achieve meaningful progress, regardless of whether the instruction and services are also available to general education students.

**Case Summary**

Just because the specialized instruction a student with a disability requires is already part of the general curriculum in a particular district or state doesn't mean the student doesn't need an IEP. A district must develop an IEP that provides a student with a disability specially designed instruction that meets his or her unique needs, regardless of whether the same instruction is provided to other children with disabilities, or to nondisabled children, in the child's classroom, grade, or building, OSEP stated. OSEP

was responding to a special education advocate's concern that districts in Massachusetts consider that some services or types of instruction, such as counseling, social skills training, and modified teaching methodologies, are not special education because they constitute best teaching practices. As a result, the advocate stated, districts deny IEPs to children who have been determined eligible and in need of those services. OSEP noted that the IDEA requires a district to develop an IEP that includes a statement of the special education and related services and supplementary aids and services the individual child will receive. 34 CFR 300.320(a)(4). "The fact that some of those services may also be considered 'best teaching practices' or 'part of the district's regular education program' does not preclude those services from meeting the definition of 'special education' or 'related services' and being included in the child's IEP," OSEP Director Melody Musgrove wrote.

**Full Text**

Dear Ms. Chambers:

This is in response to your December 5, 2011 letter to me, in which you request guidance on how to apply the definitions of "specially-designed instruction" and "related services." You indicate that school districts in Massachusetts state that services or types of instruction, such as counseling, social skills training and modified teaching methodologies, are not special education because they constitute best teaching practices and are part of the district's regular education program. You state that districts argue that children with disabilities, evaluated, and determined eligible in accordance with 34 CFR §§ 300.304 through 300.311 and who need such services or instruction, are not eligible for an individualized education program (IEP) because such services or instruction do not meet the "legal definition" of "special designed instruction" or "related services."

Under 34 CFR § 300.39(a)(1), "special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Specially designed instruction

means adapting, as appropriate to the needs of an eligible child under Part B of the Individuals with Disabilities Education Act (IDEA), the content, methodology, or delivery of instruction: (1) to address the unique needs of the child that result from the child's disability; and (2) to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR § 300.39(b)(3). Under 34 CFR § 300.34, "related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Under 34 CFR § 300.39(a)(2), special education includes speech-language pathology services, or any other related services, if the service is considered special education rather than a related service under State standards, and if the services otherwise meet the requirements of 34 CFR § 300.39(a)(1). You indicate that in Massachusetts, related services that are necessary to allow the student to access the general curriculum are considered special education under State standards.

Once the child has been determined eligible for special education and related services under the IDEA, the local educational agency (LEA) is required to develop an IEP for the child, consistent with the requirements in 34 CFR §§ 300.320 through 300.324. The IEP must include, among other things, a statement of the special education and related services and supplementary aids and services the child will receive, as well as the program modifications or supports or school personnel that will be provided, to enable the child to advance appropriately toward attaining his or her annual goals and to be involved in and make progress in the general education curriculum. 34 CFR § 300.320(a)(4). The IEP Team is responsible for determining what special education and related services are needed to address the unique needs of the individual child with a disability. The fact that some of those services may also be considered "best teaching practices" or "part of the

district's regular education program" does not preclude those services from meeting the definition of "special education" or "related services" and being included in the child's IEP. The LEA must provide a child with a disability specially designed instruction that addresses the unique needs of the child that result from the child's disability, and ensures access by the child to the general curriculum, even if that type of instruction is being provided to other children, with or without disabilities, in the child's classroom, grade, or building.

OSEP recognizes that classrooms across the country are changing as the field of special education responds to innovative practices and increasingly flexible methods of teaching. While the needs of many learners can be met using such methods, they do not replace the need of a child with a disability for unique, individualized instruction that responds to his or her disability and enables the child to meet the educational standards within the jurisdiction of the public agency that apply to all children.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

I hope this information is helpful to you. If you have additional questions, please do not hesitate to contact Dr. Ken Kienas at 202-245-7621 or by email at [Ken.Kienas@ed.gov](mailto:Ken.Kienas@ed.gov).